

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1788 of 2019

- Applicant

- Santosh Nishad S/o Shatrughan Nishad Aged About 22 Years R/o Village Baroundabazar, P.S. City Kotwali, Mahasamund, District Mahasamund Chhattisgarh.

---- Respondent

For Applicant-State :- Shri K.K. Singh, GA

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

05/08/2019

1. Default having been removed we have heard learned State counsel on I.A. No.1, application for condonation of delay as also on admission.
2. On due consideration, delay of 12 days in filing the present Cr.M.P. is condoned. Accordingly, I.A. No.1 is allowed.

3. The trial Court has acquitted the accused of the charges under Sections 363, 366, 376 of IPC, Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocity) Act, 1989.
4. Prosecutrix, examined as PW-7, has deposed that she had gone with the accused of her own and stayed at Emlibhatha, District Mahasamund, for about a month. She would further state that during their stay they were living as husband and wife and the accused has made sexual relation with her consent.
5. In the Dakhil Karij Register her date of birth is mentioned as 08.11.2000, however, the teacher who has proved the Dakhil Kharij Register has stated that there is no mention in the Dakhil Kharij Register as to on whose information the date of birth of the prosecutrix was recorded. She also admits that if the parents or guardians were not present on the date of admission, the date of birth is entered on approximate basis. PW-7, Indira Bai, mother of the prosecutrix, has stated that she was married about 20-25 years back and one year after the marriage she gave birth to one son and after two years she gave birth to the prosecutrix. This witness is also not giving accurate or precise date of her own marriage or the date of birth of the prosecutrix, therefore, the trial Judge has

rightly concluded that there is no proof that the prosecutrix was less than 18 years of age on the date of incident.

6. Since the prosecutrix has stated that her relation with the accused was consensual, therefore, no case for grant of leave to appeal is made out.

7. Accordingly, Cr.M.P. is dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit