

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1911 of 2018**

- State Of Chhattisgarh Through Police Station- Darri, District- Korba, Chhattisgarh.

---- **Petitioner****Versus**

- Kazi Rukhsar Hussain S/o Kazi Abrar Hussain Aged About 34 Years R/o Nagoikhar Darri, Infront Of Verma Ice Factory, Police Station- Darri, District- Korba, Chhattisgarh. Present Address- Aadarsh Nagar, M/1034, Kusumunda, P.S.- Kusmunda, District- Korba, Chhattisgarh.

---- **Respondent**-----
For the Petitioner/State : Shri Raghavendra Verma, Govt.

Advocate

For the respondent : None
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****08.01.2019.**

1. Heard on IA No.01/18 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 70 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition has been preferred against judgment of acquittal dated 16.3.2018 passed by Special Judge under the Protection of Children from Sexual Offences Act, 2012, Katghora, Distt. Korba (CG) in Special (POCSO) Criminal Case No.08/2017

wherein the said Court acquitted the respondent for the charges under Sections 354 A of the Indian Penal Code, 1860 and under Section 8 of the POCSO Act, 2012.

5. In the present case prosecutrix is PW-3 who was reading in Class-VIII in the Middle School while the respondent was teacher in the same school. It is alleged that the respondent called the prosecutrix in the room of the school and insisted her to sit on the chair and when she sat there, the respondent came near her and touched her mouth and cheek. The prosecutrix narrated the incident to other teachers of the school and her family members and thereafter the matter was reported and the respondent was charge sheeted.

6. To substantiate the charges, the prosecution has to establish that the respondent made physical contact or any other act with sexual intend. As per the version of the prosecution the appellant touched her mouth while the other witnesses namely Ku. Reena Kewat (PW-1), Deepak Kumar Yadav (PW-2), Pragya Yadav (PW-5) and Ku. Savita Dhobi (PW-7) deposed that the respondent has scolded the prosecutrix that is why she annoyed with the respondent and stated that she will make efforts for arrest of the respondent. In this way other witnesses have deposed that due to scolding of the respondent the prosecutrix had grudge against the respondent. Version of the prosecutrix is not sufficient to hold that the act of the respondent fall within sexual overtures or sexual intend. Mere touch on the mouth without any further advance is not sufficient to hold that such act is done with sexual

intend. The trial Court has elaborately discussed the entire evidence and recorded the finding of acquittal. After reassessing the evidence, this court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the petition.

7. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**