

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2024 of 2019**

- State Of Chhattisgarh Through Police Station Chakradharnagar, Raigarh, District Raigarh, Chhattisgarh.

---- Applicant

Versus

- Shivam Kumar Mahto @ Sikandar S/o Punit Mahto Aged About 21 Years R/o Village Sanha Urda, Post Khadariya, Police Station Tandwa, District Chatra, Jharkhand.

---- Respondent

For Applicant :- Shri Pawan Kesharwani, PL

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ.**

Order On Board**By****Prashant Kumar Mishra, J.****09/09/2019**

1. On due consideration delay of 251 days in filing of Cr.M.P. is condoned. Accordingly, I.A. No.01 of 2019, application for condonation of delay occurred in filing of the instant Cr.M.P., is allowed.
2. The trial Court has acquitted the accused of the charges under

Sections 363, 376 (2)(b) and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecutrix eloped with the accused at about 4 a.m. on 05.07.2016. The FIR was lodged against the accused on 08.07.2016, alleging abduction.
4. When the prosecutrix was recovered after 2 months, she informed the Police that the accused abducted her and thereafter they went to the local bus stand to travel to a place namely Kirodimal Nagar where they stayed in a rented house for about 2 months. During this period the accused used to commit forcible sexual intercourse. She would admit that the accused had performed marriage with her at a local temple and initially they stayed in the house of the sister of the accused. Since the conduct of the prosecutrix proved a case of consent, the trial Court has discussed in detail as to the evidence in respect of the age of the prosecutrix.
5. The trial Court has found that the prosecutrix is a native of Jamui in the State of Bihar where she studied upto 2nd Standard. She was admitted at Jagdamba school, Chakradharnagar, Raigarh in the 3rd Standard where her Dakhil Khareej Register has been proved by Smt Pramila (PW-3), Head Master of the school. This witness was not able to state as to on what documentary basis entry of Date of Birth of the prosecutrix was written as 25.02.1999. She referred to the

affidavit of the parents but no documents of the school has been filed by the prosecution where the prosecutrix studied 1st and 2nd standards in the State of Bihar. Kotwari Register has not been filed which could have been the best evidence in respect of her Date of Birth.

6. It has also been mentioned by the trial Court that her mother Jeeradevi Gupta (PW-1) would not remember the date of birth of the prosecutrix. Her father has also stated that he had not gone to the Jagdamba school at the time of admitting the prosecutrix in the said school. Thus, the evidence concerning age of the prosecutrix is not conclusive.
7. In view of the above, we are of the considered view that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of offence.
8. Considering the nature and quality of evidence available on record, we do not find the present to be a fit case for grant of leave to appeal.
9. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge