

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2261 of 2019**

- State Of Chhattisgarh Through The Incharge Police Station Pakhanjur, District - North Bastar, Kanker Chhattisgarh.... (Appellant)

---- Petitioner

Versus

- Dhananjay Sheel S/o Ravindra Sheel Aged About 32 Years R/o PV 116 Ravindrapalli, P.S. Pakhanjur, District North Baster, Kanker Chhattisgarh....(Respondant)

---- Respondent

For PetitionerMr. Aditya Sharma, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Order On Board by Prashant Kumar Mishra, J.****27/11/2019**

1. Heard on IA No.1, an application for condonation of delay in filing the CRMP.
2. On due consideration, the application is allowed and the delay is condoned.
3. The trial Court has acquitted the accused of the charges under Sections 363, 366 and 376(2)(n) of IPC read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

4. As per the prosecution case, the accused used to visit the village, where the prosecutrix was residing, in connection with his profession of drivership. They exchanged their mobile numbers and remained in contact for about 6 months. Thereafter, the accused proposed the prosecutrix for marriage and they started residing together at a different village where the accused committed sexual intercourse with the prosecutrix. When the prosecutrix later on became aware that the accused is already married, she informed her father, who reached the place where she was residing, and took her to his house and lodged the FIR.
5. Considering the statement of the prosecutrix and her conduct, the trial Court has rightly found that the relationship was consensual. The trial Court has acquitted the accused after recording a finding that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of the incident. In the V standard mark sheet, her date of birth is mentioned as 12.3.2001. The same date is mentioned in the *Dakhil Kharij* Register and the Birth Certificate issued by the Gram Panchayat. However, the first entry in the *Dakhil Kharij* register carries overwriting. This entry was the basis for subsequent entries in the V standard mark sheet. The original Birth Certificate was not produced in the Court nor exhibited. The entry in the *Dakhil Kharij* Register was itself on the basis of her date of birth in the Kotwari Register, but the same has not been produced.

6. Despite referring the prosecutrix for Ossification Test, the IO did not proceed to obtain the report of the Ossification Test of the prosecutrix.
7. In view of the above discrepancies and weakness in the case of the prosecution, the finding recorded by the trial Court that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of the incident, does not suffer from any perversity. Such finding is permissible being one possible view in the matter in view of the state of evidence on record.
8. No case for grant of leave to appeal is made out.
9. The CRMP is dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge