

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2246 of 2019**

- State of Chhattisgarh, through- Station House Officer, Police Station- Ganj, District- Raipur (C.G.) ----- **Petitioner**

Versus

- Narayan Nishad, S/o- Maniram Nishad, Aged about- 20 years, R/o- Near Pani Tanki, Mangal Bazar, Gudhiyari, Police Station- Gudhiyari, District- Raipur (C.G.) ----- **Respondent**

For State/Petitioner : Shri Raghvendra Verma, Govt. Advocate.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****13/11/2019**

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 251 days in filing the instant petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 5th September, 2018 passed by Special Judge under the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act 2012') Raipur (C.G.) in Special Criminal (POCSO) Case No. 95/2018 wherein the said Court acquitted the respondent for charge under Sections 363 and 366 of IPC, 1860 and under Section 18 of the Act, 2012.
5. In the present case, to ascertain the age of the prosecutrix, the prosecution produced a progress report of prosecutrix in which date of birth of the prosecutrix is mentioned as 3rd November, 2002. The person who prepared the progress report is not

examined to establish that the same is date of birth of the prosecutrix. No school register or certificate was produced and proved to ascertain the age of prosecutrix. The oral evidence was not conclusive in nature, therefore, in absence of proof the age the trial Court opined that minority of the prosecutrix on the date of incident that is 24th April, 2018 is not established.

6. From the evidence, it is clear that prosecutrix instigated the respondent to marry with her and thereafter she was inclined to live with respondent. When minority of the prosecutrix is not established being adult she was free to move with the respondent out of her consent. There is nothing on record that the respondent taken her to marry with her without her consent or seduced her to illicit intercourse. There is nothing on record that the appellant tried to make physical contact with the prosecutrix. Looking to the entire evidence, the trial Court recorded that charge under Sections 363 and 366 of IPC, 1860 and under Section 18 of the Act, 2012 is not established. The view taken by the trial Court is one of the plausible view. It is settled law that if two views are possible, the view which is favourable to the respondent/accused should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where respondent should be called for hearing again for full consideration of this petition.
7. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge