

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2397 of 2018

State of Chhattisgarh, Through: The District Magistrate,
District - Rajnandgaon (C.G.)

---- **Petitioner**

Versus

Indrajeet Nishad, S/o - Durgeshwar Prasad, Aged about - 24
years, R/o - Village Saigona, Police Station Kawardha, District
- Kabirdham (C.G), Presently R/o – Motipur, Chandan Nagar,
Ward No. 3, Rajnandgaon, District - Rajnandgaon (C.G.)

---- **Respondent**

For State/Petitioner : Smt. Subha Shrivastava, Panel Lawyer.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

26/03/2019

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 12**, the delay of 12 days in filing the 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 23rd June, 2018 passed by Additional Sessions Judge (F.T.C.), Rajnandgaon (C.G.) in Special Criminal Case No. 44/2016 (under the POCSO Act) wherein the said court acquitted the

respondent for commission of offence under Sections 354 & 506 (Part-II) of IPC, 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

5. In the present case prosecutrix is (PW-7). She is sole eye witness account to the incident. As per the version of the witness the appellant tried to talk with her on the date of incident and on next day also he tried to stop her because he was willing to talk with her. Apart from this the prosecutrix did not depose anything against the respondent for commission of offence under Section 354 of IPC.
6. To constitute offence under Section 354 of IPC, there should be assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, but from the evidence the prosecutrix and other corroborative the evidence, assault or criminal force is not established for commission of offence under Section 8 of the Act, 2012. Physical contact is basic ingredient but that is also lacking in the evidence of all the prosecution witnesses.
7. Though, the prosecutrix deposed that respondent threatened her mother and father but the fact remains that father and mother of the prosecutrix were not present at the time of incident. For establishing offence under Section 506 Part-II of IPC, determination to execute threat has to be established in the present case. From the evidence, it is not clear whether any word uttered by the respondent. The word uttered is also not clear and whether he was determined to execute the

threat on the spot is not specific. It is settled law that any word of threat is not sufficient to establish the charge because word is mere fury which has sound but has no substance. The trial Court has discussed these aspects of the matter and found that charge under Section 506 is not established.

8. The trial court has elaborately discussed the entire evidence and came to conclusion that the charges leveled against the respondent are not established. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge