

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 43 of 2019

State Of Chhattisgarh Through The Station House Officer, Police Station
Chakradharnagar, District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Petitioner

Versus

Dildar Sidar S/o Omprakash Sidar Aged About 29 Years R/o Village
Parghattipara, Vijaypur, Police Station Chakradharnagar, District Raigarh
Chhattisgarh, District : Raigarh, Chhattisgarh

---- Respondent

For Petitioner/State : Shri Suryakant Mishra, Panel Lawyer

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Order On Board

04/02/2019

1. Heard on IA No.1/19, application for condonation of delay in filing the petition (Cr.M.P.).
2. Upon due consideration of the grounds urged in the application, we are inclined to allow the same. Accordingly, the application is allowed. Delay in filing the petition is condoned.
3. Heard on prayer for grant of leave to appeal.
4. Learned counsel for the State would submit that despite categoric statement made by the prosecutrix (PW5) that the appellant had committed rape on her two months prior to the date of FIR, learned trial Court has acquitted the respondent by giving him benefit of doubt.
5. We have gone through the impugned judgment of acquittal, the evidence as also the other material on record. In order to come to the conclusion that the prosecution story of appellant having committed rape on the prosecutrix is doubtful, learned trial Court has taken into consideration that in the written report and the FIR dated 20th September 2016, there is no

allegation of commission of rape but only that the appellant was harassing the prosecutrix and it is only when she was examined under Section 164 Cr.P.C. before the Magistrate and thereafter during trial in the Court, then the prosecutrix has come out with the story of commission of rape on her. The learned trial Court has also taken into consideration that there exists certain enmity also.

6. We have gone through the evidence of the prosecutrix and the manner in which she has deposed that she and the appellant were known to each other since months together and there are call records of their conversation and further that the FIR was lodged two months after the alleged incident and even in the FIR and written report, there is no allegation of commission of offence of rape. Therefore, the view which has been taken by the learned trial Court appears to be plausible and cannot be said to be suffering from any patent illegality or perversity so as to call for interference against judgment of acquittal.
7. Accordingly, we are of the opinion that present is not a fit case for grant of leave to appeal. The petition is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge