

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 71 of 2019**

- State Of Chhattisgarh Through The Station House Officer, Police Station-Arang, District- Raipur, Chhattisgarh

---- Petitioner

Versus

- Sanjay Banjare @ Pakloo S/o Vishnu Ram Banjare Aged About 20 Years R/o Village- Beltukri, Police Station- Tumgaon, District- Mahasamund, Chhattisgarh

---- Respondent

For Petitioner : Shri K.K.Singh, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****18/02/2019**

Heard on I.A.No.1, application for condonation of delay in filing appeal.

Upon due consideration, the application is allowed.

Delay is condoned.

Also heard on application for grant of leave to appeal.

Learned counsel for the State would argue that even though the prosecutrix (PW 2) has stated that she had an affair with the respondent/accused and she had gone along with him and started residing with him also and later on, they married, the finding of the learned Trial Court that the prosecutrix at that time was minor, has convicted the respondent/accused under Section 363 IPC but acquitted of the charges under Section 376 IPC where prosecutrix is a minor and consent is immaterial.

We have gone through the evidence of the prosecutrix and we find that the prosecutrix has not made any specific allegation of commission of sexual

intercourse with her before she attained majority. Her evidence is that later on, she married him and started living as husband and wife. Therefore, on the totality of the evidence led by the prosecution, we do not find that the learned Trial Court has committed any illegality or perversity in recording the finding that offence under Section 376 IPC is not made out. Therefore, leave to appeal against acquittal of respondent from allegation of commission of offence under Section 376 IPC is rejected.

The present CrMP is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge