

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 633 of 2018

State of Chhattisgarh Through- Police Station- A.J.K. Janjgir,
District- Janjgir-Champa, Chhattisgarh. **---- Petitioner**

Versus

Omprakash Kashyap S/o Gorelal Kashyap Aged About 20 Years
R/o- Village Loharsi, Police Station Shivrinarayan, District- Janjgir-
Champa, Chhattisgarh. **---- Respondent**

For State/petitioner : Mr. D.K. Tiwari, Dy.G.A.

For respondent : Mr. Arvind Sinha, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

04.03.2020

1. As per report this petition has been preferred within time therefore, application for condonation of delay i.e. I.A. No.1/2018 is not required in this case.
2. Accordingly, I.A. No.1/2018, application for condonation of delay is disposed of.
3. Heard on application for grant of leave to appeal filed under Section 378(3) of Cr.P.C.
4. This petition is preferred against the judgment dated 15.12.2017 passed by learned Special Judge(SC/ST Act), Janjgir-Champa (C.G.) in Special Sessions Case No. 9/2015 wherein the said Court has acquitted the respondents for commission of offence under Sections 341, 354 (A)(1)(ii) of Indian Penal Code, 1860 and under Section 3(1)(11) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocity) Act, 1989 (For Short "the Act, 1989") & Under Section 12 of Protection of Children from Sexual Offences Act, 2012.

5. In the present case, the prosecutrix is (PW-1). Mother and father of the prosecutrix was not examined before the trial Court for ascertaining the age of the said prosecutrix. Principal Ashok Kumar Mishra (PW-5) who was examined to prove the school register and entry of date of birth of the prosecutrix but said witness deposed before the trial Court that entry is made on the basis of transfer certificate of class 8th. It is not clear from his evidence as to who really made entry of the prosecutrix in school in first standard, when prosecutrix was admitted in school for the first time. It is also not clear on what basis entry was made in school by parents or by some other person. Therefore, in absence of evidence of person who made entry on register, the date of birth for class first standard and person who inferred about date of birth of the prosecutrix is not proved. The trial Court after evaluating the evidence recorded finding that age of the prosecutrix is not proved to be below 18 years and she is not a child as per definition of POCSO Act, 2012.
6. For commission of offence under Section 354 (A)(1)(ii) it has to be established that respondent committed any of the following acts—
 - (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
7. For commission of offence under Section 3(1)(11) of the Act, 1989 it has to be proved that some assault or criminal force is

used to outrage modesty of woman who is member of Scheduled caste and scheduled tribe.

8. In the present case, the prosecutrix did not depose regarding physical contact, demand, sexual favour, assault or any criminal force used against her by the respondent . Though, it is stated that respondent entered into the school for having conversation with the prosecutrix but he was asked to move out from school.
9. After going through the record, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case where respondent should be called for hearing again for full consideration of this petition.
10. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge