

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.1358 of 2020

The State Of Chhattisgarh Through District Magistrate Gourela Pendra
Marwahi (Chhattisgarh) **---- Petitioner**

Versus

Narendra Chandra @ Lala S/o Chhotua Chandra, Aged About 20 Years
Caste Mahra, R/o Lohari Navatola, Police Station Marwahi, District
Bilaspur Chhattisgarh **--- Respondent**

For Petitioner : Mrs. Fouzia Mirza, Additional A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board by Manindra Mohan Shrivastava, J.

02/12/2020

Heard.

1. There is a prayer for grant of leave to appeal against the judgment of acquittal dated 29.08.2018 passed by Special Sessions Judge, Pendraroad, District Bilaspur (CG) in Special Sessions Trial No.06/2018, by which, the respondent/accused is acquitted of charges of commission of Offences under Section 363, 366, 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Learned counsel for the State while beginning the argument with prayer for condonation of delay of about 634 days in filing application along with memo of appeal against the judgment of acquittal, we also heard on the merits of the case to convince ourselves, whether it is a fit case for grant of leave to appeal.
3. Learned Additional Advocate General contended that the finding of the learned trial Court with regard to the age of the prosecutrix suffers from gross perversity and patent illegality in as much as even though the prosecution has led evidence with regard to the date of birth of the prosecutrix recorded in the school register vide Ex.P/17, the same was treated doubtful in the absence of

any supporting evidence. Learned counsel for the State would further argue that not only the documentary evidence but oral evidence of the father of the prosecutrix has also clearly stated that the age of the prosecutrix was less than 18 years of age. She would submit that once the prosecutrix is less than 18 years of age, even if her evidence before the Court below is treated as a case of consent, it would be immaterial and a case would be made out. Learned counsel for the State would argue that according to Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, in the matter of determination of age of a juvenile, the entries made in the school register are relevant and admissible piece of evidence.

4. Having heard learned Additional Advocate General and after going through the impugned judgment and the evidence, oral and documentary both, led by the prosecution, we are not inclined to grant leave to appeal for the reasons that learned trial Court in order to arrive at the finding that the prosecution case with regard to the age of the prosecutrix is doubtful, has taken into consideration the entries made in the school register and also oral evidence also on record. We find that in the entries made in the school register, it has not been stated as to on whose declaration, the entries were made. The author of entries have not been examined. Father of the prosecutrix Purushottam (PW6), in his cross examination, has stated that while getting his daughter admitted in the school, he had declared the age of the prosecutrix only by estimation. That means, age of the prosecutrix was an approximate one and there is no other record to support the case. No ossification test was also done. Taking into consideration the totality of evidence as led above, the view taken by learned trial Court appears to be plausible view. Merely because there is possibility of another view, we are not inclined to grant leave to appeal, given the limited scope of interference against the judgment of acquittal as settled in catena of decision of the Apex Court and this Court.

5. In view of the above, it is not a fit case for grant of leave to appeal. The application for grant of leave to appeal is therefore rejected.

6. The CRMP is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge