

(2018) 07 CHH CK 0185

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 270 Of 2018

State Of Chhattisgarh

APPELLANT

Vs

Chhannuram Kunjam And Ors

RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 341, 342, 366, 376(2), 376(अ), 506B

Citation : (2018) 07 CHH CK 0185

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Sangharsh Pandey, Aditya Bhardwaj

Final Decision : Dismissed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present leave to appeal has been filed against the order dated 26.08.2017, whereby the respondents have been acquitted of the charges under Sections 341, 342, 366, 376 (2), 376 () and 506 B IPC.

3. As per the prosecution on 05.12.2016, the prosecutrix while was going to answer the nature's call, at that time, the respondents came there caught hold of her, dragged her and committed forceful sexual intercourse. Thereafter, the report having been made and after investigation and the recording of the evidence, the charge-sheet was filed. The instant leave to appeal is also delayed by 75 days.

4. Learned State counsel submits that in this case the prosecution was able to substantiate the guilt beyond the doubt and the delay occurred was justified since it passed through the sanction, therefore, the order impugned

required to be set aside.

5. Learned counsel for the respondents vehemently opposed the same and submits that the prosecutrix herself has turned hostile, which is also

supported by the husband of the prosecutrix, therefore, in any case it cannot be presumed that the rape was committed and no sufficient reasons have

been assigned for condoning the delay. As such, the appeal is devoid of merits required to be dismissed at the threshold.

6. Perused the record. The prosecutrix in this case was examined as PW-1, she is aged about 45 years and she has not supported the case of the

prosecution instead she has stated that when she went to answer nature's call, both the accused came there objected as to the place wherein she was

answering the nature's call and therefore, the dispute arose. Thereafter, the report was made. In cross-examination of the witness nothing comes to

the fore so as to re-appreciate evidence as to circumstances under which she has made the statement. Likewise the statement of the husband of the

prosecutrix PW-3 he has also supported the fact that when the prosecutrix went to answer nature's call, it was objected to the place wherein she was

answering the nature's call, as such dispute arose, for which a report was made. The statement of Balmukund Sharma (PW-4), who is a document

writer, he has stated that the prosecutrix had come to him to get a report typed, except that nothing has been stated by him. Dr. Neha Thakur (PW-

14) has also negated the forceful sexual intercourse and the report is given by Ex. P-15.

7. After perusal of the entire statements, there is no scope of re-appreciation of the evidence on the ground that that the finding is completely absolute.

Furthermore, the reasons have been stated for the delay virtually no practical reasons have been assigned. The order impugned is dated 26.08.2017

and the movement to file appeal was moved on 9th of November, 2017, what was the reason for delay is completely silent. Furthermore, after

26.08.2017 the case was placed before Additional Advocate General on 16.11.2017, thereafter the delay occurred in between is also not explained.

Therefore, considering the over all aspect, I do not find any reason to allow this application for leave to appeal and also to condone the delay.

8. This petition has no merit. It is accordingly dismissed.