

(2018) 09 CHH CK 0332

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 1570 Of 2018

State Of Chhattisgarh

APPELLANT

Vs

Dubendra Prasad @ Dubraj @ Kari Lohar

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378(3)

Indian Penal Code, 1860 — Section 363, 366A, 376(2)(n)

Scheduled Castes & Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v)

Protection Of Children From Sexual Offence Act, 2012 — Section 6

Citation : (2018) 09 CHH CK 0332

Hon'ble Judges : Pritinker Diwaker, J; Rajani Dubey, J

Bench : Division Bench

Advocate : Adil Minhaj

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J

24/09/2018 Considering the fact that record of the trial court has been received default as pointed out by the Registry is overruled.

Heard on I.A. No. 01, application seeking condonation of delay in filing the present petition.

For the reasons mentioned in the application, the same is allowed. Delay in filing the petition is condoned.

Also heard on admission.

This petition filed under Section 378(3) of the Code of Criminal Procedure assailing the impugned judgment and order dated 05.12.2017 passed by the

Special Judge (SC/ST (Prevention of Atrocities) Act 1989 Jashpur in Sessions Trial No.11/2017 whereby the court below has acquitted the

respondent of the offence under Sections 363, 366-A and 376 (2)(n) IPC, Section 6 of the Protection of Children from Sexual Offences Act and

Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

As per prosecution case, on 14.5.2016, FIR Ex. P-7 was lodged by father of the prosecutrix (PW-2) alleging that since 04.04.2016 prosecutrix has left

the house and did not return. He has stated that earlier also prosecutrix was allured by the accused and this time it is the accused who could have

done the same. Based on this FIR under Section 363 IPC was registered against the respondent/accused. On 7.06.17, the prosecutrix was recovered

from the custody of the accused. After her statement, accused was tried for the offence under Sections 363, 366-A and 376 (2)(n) IPC, Section 6 of

the Protection of Children from Sexual Offences Act and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

So as to hold the accused/respondent guilty, prosecution has examined 19 witnesses. Statement of the accused/respondent was also recorded under

Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case.

By the impugned judgment, the trial Judge has acquitted the accused/respondent of the offence as mentioned above.

Counsel for the petitioner/State submits that the court below has erred in law in acquitting the respondent.

Heard counsel for the State/petitioner and perused the record.

During the course of trial, not only the prosecutrix who have turned hostile and even her parents have also turned hostile. There is no legally

admissible evidence that the prosecutrix was minor. Considering the statement of the prosecutrix and other relevant factors, the trial court has come to

the conclusion that no evidence whatsoever has been adduced against the accused/respondent and therefore he is liable to be acquitted.

Thus, after hearing counsel for the parties and considering the material available on record as well as the elaborate judgment impugned passed by the

Court below, no illegality or infirmity is noticeable in the conclusion drawn by the court below acquitting the accused. Even otherwise keeping in mind

the material on record leads to two possible views the one favouring the accused has to be preferably taken, this Court is of the view that the

judgment impugned acquitting the respondent/accused of the offence under

Sections 363,366-A and 376 (2)(n) IPC,Section 6 of the Protection of Children from Sexual Offences Act and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, is just and proper and does not call for any interference.

Accordingly, the leave as sought for by the petitioner for registration of appeal against the judgment of acquittal is hereby refused and the petition is accordingly dismissed.