

(2019) 07 CHH CK 0136

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 1673 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Sunil Kanwar

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376

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

Citation : (2019) 07 CHH CK 0136

Hon'ble Judges : Prashant Kumar Mishra, J;Gautam Chourdiya, J

Bench : Division Bench

Advocate : Madhunisha Singh

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. Heard learned State counsel for the applicant on I.A. No.1, application for condonation of delay in filing the appeal, as also on admission.
2. On due consideration, application is allowed and delay of 63 days in filing application, seeking leave to appeal, is condoned. Accordingly, I.A. No.1 is allowed.
3. The trial Court has acquitted the accused of the charges under Section 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012.
4. In the FIR prosecutrix had alleged that the accused committed forcible sexual intercourse on promise to marry for a period about 2 years. She stated that she is aged about 16 years, however, there is no cogent proof of her date of birth. Dakhil Kharij Register carries her date of birth as 11.07.2001, however, as per statement of her father PW-2, Krishna Das Mahant, school progress report and birth certificate were provided by the Angan Wari Centre and on the basis of said mark sheet her age was mentioned in the primary school. He also admits that he

had reported about birth of his daughter to the Angan Wari Centre after about 3 years. The prosecutrix was not sent for radiological examination, thus, there is no reliable documentary proof about her date of birth.

5. In respect of allegation of rape the prosecutrix would clearly state in her 164 Cr.P.C. statement as also in Court statement that when she was carrying pregnancy the matter was informed to the parents of the accused, who promised to compensate her family. Subsequently they did not adhere to their promise, therefore, she was compelled to lodge FIR. Thus, it is clear that if the family of the accused had kept CRMP No. 1673 of 2019 their promise and paid compensation no report would have been lodged. The trial Court has also recorded a finding that the prosecutrix has made false allegation of being pregnant from the accused. This finding is based on medical report proved by PW-8, Dr. B. Tigga, who has stated that the prosecutrix was not carrying pregnancy. We have seen all the statements of the prosecutrix including the contents of the FIR as well as the deposition of Dr. B. Tigga. The above finding recorded by the trial Court thus appears to be supported with material on record.

6. Considering the totality of the evidence on record, the present is not considered to be a fit case for grant of leave, accordingly, Cr.M.P. is dismissed.