

(2019) 12 CHH CK 0114

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 2699 Of 2019

State Of Chhattisgarh Through

APPELLANT

Vs

Rameshwar Kuldeep

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 368, 376(2)(झ)(ढ)

Protection Of Children From Sexual Offences Act, 2012 — Section 5(ठ), 6

Citation : (2019) 12 CHH CK 0114

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

Bench : Division Bench

Advocate : Chitendra Singh

Final Decision : Dismissed

Judgement

1. Heard.

2. On due consideration, delay of 126 days in filing the present CRMP is condoned. Accordingly, I.A. No.1 is allowed.

3. The Trial Court has acquitted the accused of the charges under Sections 363, 366, 368 and 376(2)(झ)(ढ) of the IPC and Sections 5(ठ) and 6 of the Protection of Children from Sexual Offences Act, 2012.

4. As per the prosecution case, a missing report was lodged by the father of the prosecutrix, informing the Police that the prosecutrix has left the house at about 23:00 hours on 02.03.2018 and despite rigorous search she is not traceable. From the statement of the prosecutrix, it appears that after she eloped with the accused at about 4:00 am on 02.03.2018, they came to Pankhajur and thereafter to Gadchiroli and then to Nagpur. They boarded a train and reached Mumbai where they were waiting in the Railway Station for their relatives to arrive. Representatives of Child Care Home caught the prosecutrix and got her admitted to the children's home. She also stated that prior to this incident she was having an affair with the accused and they used to have sexual intercourse

with her consent.

5. At one part of the deposition prosecutrix admits that the accused has promised to marry but she also admits that she left her house on her own sweet-will as she loves the accused.

6. In respect of the age of the prosecutrix, the prosecution has only filed the Dakhil Kharij Register. She was not subjected to Ossification test despite such recommendation by PW-8, Dr. Sarita Kumeti. In the seizure memo, Exhibit P/10, her date of birth is mentioned as 29.05.2004 whereas in the Dakhil Kharij Register of Class VIth filed as Exhibit P/11C her date of birth is mentioned as 04.11.2004. Thus, in the absence of proper birth certificate and Ossification test as well, the trial Court has concluded that the prosecution has failed to prove by producing cogent evidence that the prosecutrix was less than 18 years of age on the date of incident. The prosecutrix having otherwise been a consenting party, the view taken by the trial Court that the offences are not proved, does not appear to be perverse.

7. In above view of the matter, no case for grant of leave to appeal against the acquittal is made out. Accordingly, the present CRMP deserves to be and is hereby dismissed.