

(2019) 09 CHH CK 0118

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition (CRMP) No. 783 Of 2018

State Of Chhattisgarh Through District Magistrate Bilaspur	APPELLANT
Vs	
Pushp Kumar Sahu @ Manmohan Sahu @ Golu	RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(wi), 3(1)(wii), 3(2)(v)
Indian Penal Code, 1860 — Section 363, 366, 376(2)
Protection Of Children From Sexual Offences Act, 2012 — Section 6
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2019) 09 CHH CK 0118

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

Bench : Division Bench

Advocate : Vikash Shrivastava

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. On due consideration delay of 21 days in filing of Cr.M.P. is condoned. Accordingly, I.A. No.1 of 2018 which is an application for condonation of

delay occurred in filing of the Cr.M.P. is allowed.

2. The trial Court has acquitted the accused of the charges under Section 3(1) (w-i) (w-ii) and Section 3(2)(v) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (in short ""the Act,1989"")

3. The trial Court has convicted the accused for committing offence under Sections 363, 366, and 376(2) of I.P.C. and under Section 6 of the

Protection of Children from Sexual Offences Act, 2012. For the convicted offence, the accused has been sentenced to undergo RI for 10 years for

each of the offence with fine of Rs.5000/- for each of the offence, in default to

undergo additional RI for 1 month for each of the offence. The sentences have been directed to run concurrently. The default sentence has been directed to run one after another.

4. The accused, a married person, fell in love with the prosecutrix and on his proposal, the prosecutrix accepted the offer and both of them eloped and stayed together after performing marriage at a local temple. They lived as husband and wife for a period of about 20 months. Neither in her case diary statement nor in her statement under Section 164 of Cr.P.C nor in the deposition, prosecutrix would allege that accused committed the offence to

humiliate her on the ground that she belongs to Schedule Caste Community.

5. The offence had taken place on 10.03.2015. On the said date the pre-amended provision of Section 3(2)(v) of the Act, 1989 CRMP No. 783 of

2018 was operative under which it was necessary that the offence should be committed ""on the ground"" that the victim belongs to SC or ST

community. The amendment doing away with the necessity of committing the offence ""on the ground"" by replacing it with the words Knowing was

introduced on 26.1.2016. Thus, as on date of offence it was necessary for the prosecution to prove that the offence under Section 3(2)(v) of the Act,

1989 was committed on the ground that the victim belongs to SC or ST community.

6. There being lack of such ingredients in the prosecution case, the trial Court has rightly held that offence under Section 3(2)(v) of Act, 1989 is not

proved against accused.

7. Accordingly, the Cr.M.P. seeking leave to appeal against acquittal under Section 3(2)(v) deserves to be and is hereby dismissed.

8. Nothing observed in this order would effect the Criminal Appeal preferred by the accused challenging the conviction under Section 363, 366, and

376(2) of I.P.C. and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.