

**(2019) 10 CHH CK 0098**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 2250 Of 2019

State Of Chhattisgarh Through  
Its Station House Officer

APPELLANT

Vs

Avinash Mandal

RESPONDENT

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**Date of Decision:** Oct. 16, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 363, 366A, 376(2)(), 506
- Protection Of Children From Sexual Offences Act, 2012 - Section 5(), 6

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

**Bench:** Division Bench

**Advocate:** K.K. Singh

**Final Decision:** Dismissed

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**Judgement**

Prashant Kumar Mishra, J

1. Heard.

2. On due consideration, delay of 80 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, 376(2)() and 506 of the IPC and Section 5()/6 of the

Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989.

4. Prosecutrix was subjected to forcible sexual intercourse on promise to marry. They stayed together for about 5 months and thereafter the accused

refused to marry her. It appears the prosecutrix was a consenting party, therefore, her age is a very significant factor to decide as to whether the accused has committed rape with a minor girl, however, the prosecution has failed to seize and prove the Kotwar Register nor the prosecutrix was sent for ossification test despite so recommended by the physician. The only document produced by the prosecution for proving the age, is the progress report of the school, however, the said evidence is not conclusive in nature. Therefore, in the absence of conclusive evidence regarding the age of the prosecutrix the trial Court has rightly found that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of incident.

5. No case for grant of leave to appeal is made out.

6. Accordingly, CRMP deserves to be and is hereby dismissed.