

(2018) 08 CHH CK 0080

**Chhattisgarh High Court****Case No:** Criminal Miscellaneous Petition (CRMP) No. 948 Of 2018

State Of Chhattisgarh

APPELLANT

Vs

Arimardan Rathia

RESPONDENT

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**Date of Decision:** Aug. 3, 2018**Acts Referred:**

- Indian Penal Code, 1860 - Section 376, 376(2)(n)
- Code Of Criminal Procedure, 1973 - Section 313, 378(3)

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J**Bench:** Division Bench**Advocate:** Rahul Tamaskar**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

1. Heard on I.A. No. 01/2018, application for condonation of delay in filling the appeal.

2. For the reasons mentioned in the application, the same is allowed and delay in filling the CRMP is condoned.

3. Also heard on admission.

4. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 assailing the

judgment and order dated 30.12.2007 passed by 2nd Additional Sessions Judge, Raigarh in Sessions Trial No. 70/2017 acquitting the

accused/respondent of the charge under Sections 376 (2)(n) of IPC.

5. Brief facts of the case are that on the basis of report Ex.P-1 lodged by the prosecutrix PW-1, FIR Ex.P-2 was registered against the

accused/respondent on 16.03.2017 under Section 376 of IPC. According to the prosecutrix, on the pretext of marriage the accused/respondent had physical relation with her for about 2 months and thereafter he refused to marry her, which led to lodging the report against the accused/respondent.

6. So as to hold the accused/respondent guilty, the prosecution has examined 11 witnesses. Statement of the respondent/accused was also recorded under Section 313 of Cr.P.C. wherein he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false

implication. In his defence, accused/appellant examined one S.N. Singh (DW-1)

7. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the

accused/respondent as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.

8. Counsel for the State submits that the trial Court has erred in law in acquitting the accused/respondent even when there is ample evidence against him.

9. We have heard learned State counsel and perused the material available on record.

10. During her examination in the Court, the prosecutrix has stated that she had physical relation with the accused/respondent for about 2 months but in the village meeting she refused to live with the accused/respondent.

11. Considering the statement of the prosecutrix and the evidence related to her age, the trial Court has come to the conclusion of acquitting the

accused/respondent of the charge levelled against him by extending him benefit of doubt. We find no illegality in the order impugned acquitting the

respondents particularly when it is a settled position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has

to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully

justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal

against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at

by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this

Court.

12. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed

at the admission stage itself leading to refusal of leave to appeal as sought for by the State.