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**(2018) 08 CHH CK 0082**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 1017 Of 2018

State Of Chhattisgarh

APPELLANT

Vs

Ashok Verma @ Balram

RESPONDENT

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

**Acts Referred:**

- Indian Penal Code, 1860 - Section 363, 366, 376, 376(2)(J)(N)
- Code Of Criminal Procedure, 1973 - Section 313, 378(3)
- Protection Of Children From Sexual Offence Act, 2012 - Section 6

**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 07.11.2017 passed by Additional Sessions Judge, Khairagarh, District Rajnandgaon, C.G. in Special Sessions Trial No.

03/2017 acquitting the accused/respondent of the charge under Sections 363, 366, 376(2)(J)(N) of IPC and Section 6 of the Protection of Children

from Sexual Offences Act, 2012.

5. Brief facts of the case are that on 19.02.2016 missing report was lodged by Mehtar Nishad, father of the prosecutrix, alleging in it that since

17.02.2016 his daughter PW-8 was missing and she had eloped with the respondent/accused. Based on this report, offence under Section 363 of IPC

was registered against the respondent/accused. Subsequently, on 19.01.2017 the prosecutrix was recovered from the custody of the

respondent/accused. On the basis of the statement of the prosecutrix, offence under Sections 363, 366 & 376 of IPC was registered against the

respondent/accused.

6. So as to hold the accused/respondent guilty, the prosecution has examined 8 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.

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 trial, the prosecutrix turned hostile and has stated that she had gone to Hyderabad along with the respondent/accused for her livelihood and

no incident as alleged has been taken place.

11. Considering the statement of the prosecutrix and further considering the evidence relating to her age, the trial Court has come to the conclusion of

acquitting the respondent/accused of the charges 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.