

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 128 of 2017**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Bankimongra, District Korba, Chhattisgarh.

---- Petitioner**Versus**

- Vijay Kumar Pandey S/o Jagdish Pandey Aged About 42 Years R/o Village Darekhay, Police Station Nasriganj, District- Rohtash, Bihar, Presently Residing At Somvari Bazar, Bankimongra, District- Korba, Chhattisgarh.

---- Respondent

For State:Mr. Ashish Shukla, Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****31.01.2017**

1. The present Cr.M.P. has been filed seeking for leave to appeal against the order dated 06.10.2016 passed by the Special Additional Sessions Judge, Katghora, District – Korba in Special Case No. 17/2015.
2. The Respondent in the instant case was prosecuted in the said case for the offence under Section 354(A) of the IPC and also under Section 10 of the Protection of Children from Sexual Offences Act. The Court below after conclusion of the trial vide the impugned order dated 06.10.2016 has found that the prosecution has not been able to establish its case beyond all reasonable doubts against the Respondent and thus acquitted him from the said charges.
3. Learned State Counsel assailing the said order and seeking leave to

appeal submits that it is a case where the Court below has not appreciated the evidence which has been brought on record by the prosecution. According to the State Counsel the case of the prosecution stood established from the evidence of the victim Ku. Kasak Sharma which was further supported from the statement of Anil Kumar Viswkarma, PW-3 father of the victim and Shushma Sharma, PW-4 mother of the victim.

4. However, perusal of the record reflects that the independent witness particularly Harigovind Singh, PW-6 and Rajendra Prasad Shukla, PW-5 have categorically stated before the Court below that there was a fight /quarrel among the children which led to the lodging of the false complaint. From the deposition of PW-5 and PW-6 it is reflected that after the quarrel among the children a subsequent quarrel took place between PW-3 and PW-4 with Respondent Vijay Kumar Pandey and his wife. Further it is also reflected that the Respondent in the instant case is an employee of South Eastern Coalfields Limited (SECL) and working in underground mines of the SECL at Chhurakhachhar Underground Mine. It was a specific defence taken by the Respondent that on the fateful date of the incident he was on duty from 08:00 am to 05:00 pm and the alleged incident said to have taken place at around 12:00 noon. This aspect has not been properly investigated by the investigating agency neither have they tried to find out whether the Respondent was on duty on the said date or not. In addition, another aspect which has been brought on record is that the alleged date of incident was 24.04.2015 however the FIR has been lodged on the 16.05.2015 i.e. after a gap of more than 20-22 days. No satisfactory explanation has been given by the complainant for the delay caused in

lodging of the complaint particularly when it is said that the victim has immediately reported the incident to her mother, PW-4. All these discrepancies had led the Court below reaching to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt and has granted acquittal.

5. This Court therefore does not find any strong case made out by the State for interfering with the said finding of the facts arrived at by the Court below.
6. Accordingly, the Cr.M.P. being devoid of merits stands rejected. As a consequence leave to appeal also stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE