

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL MISC. PETITION NO. 539 OF 2010**

- State of Chhattisgarh, through P.S. A.J.K., Raigarh (C.G.)

... Applicant**Versus**

1. Haldhar @ Lamboo Yadav S/o Trilochan Yadav, aged about 23 years
2. Aatmaram S/o Nanhuram Yadav, aged about 52 years
3. Vashisht Yadav S/o Aatmaram Yadav, aged about 24 years
4. Krishna @ Krishna Kumar Yadav S/o Aatmaram Yadav, aged about 19 years
5. Sushil Kumar S/o Neelmani Vishwal, aged about 25 years
6. Darshan Rathiya S/o Parma Rathiya, aged about 30 years

All are R/o Village Tarpali, P.S. Chakradhar Nagar, District Raigarh (C.G.)

... Non-applicants

For Applicant-State : Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/08/2016**

1. The present application has been preferred seeking leave to appeal against the judgment of acquittal dated 16.2.2006 passed by the Special Judge, Raigarh in Special Sessions Case No. 5 of 2004, whereby the Non-applicants/accused persons had been acquitted from the charges under Sections 147, 148, 506, 323, 427, 342, 294, 149/34 of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. Learned Counsel for the Applicant-State submits that the Court below has committed an error of law as well as error on facts in not appreciating the evidence of the Complainant, PW-3, Lalit Singh as also the injured eye-witness, PW-6, Brijbhan. He further submits that it is case

where the prosecution has been able to adduce sufficient evidence before the Court below to establish the charges, however, the Court below has not considered the same and in a mechanical and technical manner has passed the judgment of acquittal in favour of the Non-applicants.

3. Having considered the arguments raised by the Counsel for the Applicant and on perusal of the records, what clearly reflects from the evidence is that though PW-3, Lalit Singh and PW-6, Brijbhan examined before the Court below but in the course of evidence these two witnesses were not able to establish as to which of the accused persons had played what role in the commission of the offence. In other words, the eye-witness as also the complainant have not been able to establish the individual overt-act on the part of each of the Non-applicants/accused so as to constitute the offence under Section 294, 149/34 of IPC.

4. Likewise, the finding of the Court below was also that the dispute between the parties was an old property dispute and for which proceeding under Section 145 was also pending and it is not a fresh dispute which has arisen so as to attract the offence under Section 3(1)(x) of the SC/ST Act. According to the Court below, the prosecution has failed to establish the fact that the dispute arose on the part of the Non-applicants/accused because of an intention on their part to insult the complainant on his caste, which is a mandatory requirement and the said ingredient was missing in the case of the prosecution and in the evidence of the witnesses which have been examined. The Court below has aptly referred to the judgment in the case of Hari Singh Vs. State [1993 (2) M.P.W.N. 25] in this regard.

5. Further, from the record what also reflects is that two of the material witnesses, i.e., one injured Makhan has not been examined by the prosecution. Likewise, another alleged abducted person, namely, Rakesh

was also not examined by the prosecution for reasons best known. In the evidence of the witnesses which have been examined on behalf of the prosecution before the Court, the fact that Rakesh also was abducted along with PW-6, Brijbhan is missing was the case of the prosecution at the time of lodging of FIR which creates doubt in the mind of the Court and the benefit of doubt has been granted to the Non-applicants/accused persons while acquitting them.

6. In the opinion of this Court, there is no illegality or infirmity committed by the Court below while passing the impugned judgment of acquittal of the Non-applicants calling for any interference by this Court.

7. The present Criminal Misc. Petition seeking leave to appeal thus being devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge