

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1090 of 2016**

Rukmani Patel W/o Ishwar Prasad Patel, age 50 years, occupation housewife, R/o village Khokhra, Police Station Pussour, Tahsil and District Raigarh (CG)

---- Petitioner

Versus

1. Laxman Patel S/o Bheem Patel, aged about 35 years
2. Bheem Patel S/o Genda Babu aged about 60 years
3. Smt. Rukmani Patel W/o Bheem Patel, aged about 55 years

All resident of village Khokhra, Police Station Pussour, Tahsil and District Raigarh (CG)

---- Respondent

For Petitioner : Shri Abhishek Saraf, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board**30.09.2016**

The present CrMP has been filed seeking for grant of leave to appeal against the judgment dated 12.04.2016 passed by the Judicial Magistrate First Class, Raigarh in Criminal Case No. 205 of 2006.

2. Brief facts of the case are that the petitioner had filed an FIR against the respondents at Police Station Pussour, District Raigarh alleging the offence under Sections 294, 323 and 506 Part II of IPC. The Police after investigation filed charge sheet and the case was put to trial before the JMFC, Raigarh in Criminal Case No. 205 of 2006

3. The trial Court finally after the evidences were recorded vide impugned order dated 12.04.2016 acquitted the respondents 2 & 3 from all the charges levelled against them and also acquitted the respondent no.1 of the offence

under Sections 294 and 506 Part-II of IPC. However, at the same time the trial Court found respondent no.1 Laxman Patel guilty for the offence under Section 323 of IPC and sentenced him till rising of the Court and also imposed fine of Rs.1,000/-, in default of payment of fine to further undergo simple imprisonment for one month.

4. It is this order dated 12.04.2016 which the petitioner intends to challenge by way of an acquittal appeal.

5. According to the counsel for the petitioner, once it has been the finding of the Court below that the offence under Section 323 of IPC has been proved, the Court below should not have imposed the punishment only till rising of the Court and it should have been some more period. Hence, counsel for the petitioner prays for grant of leave to appeal against the impugned order.

6. Having considered the submissions put forth by the counsel for the petitioner and on perusal of the judgment what is clearly reflected in the course of evidence is that the doctor who had examined the injured clearly states that there was only one injury sustained by the petitioner-injured and that the said injury was also very simple in nature. Further, from the evidence it does not reflect that the injured had to undergo any sort of treatment for the said injury nor was he put under medication in any manner.

7. The sentence envisaged under Section 323 IPC shows that whoever voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8. Now, in the instant case if we look at the sentence imposed, what is clear is that the Court below though sentenced the respondent no.1 till rising of the Court but at the same time has imposed fine to the maximum which is permissible under Section 323 IPC. So far as the acquittal of the respondents 2 & 3 are concerned, again it is a case where the petitioner has not been able

to establish the case by leading cogent evidence. He has not made any specific allegation of individual overtact to have been committed by the respondents 2 & 3 nor is there any direct or indirect evidence so as to establish the offence under Sections 294, 323 and 506 Part II IPC. All the allegations that have been made against the respondents 2 & 3 are omnibus and general in nature which by itself creates a great element of doubt in the mind of the Court and therefore, giving benefit of the same, the Court below acquitted respondents 2 & 3 of the charges levelled against them. Thus, in the opinion of this Court the order of the Court below cannot be said to be in any manner bad in law and contrary to the evidence which has come on record nor can it be said to be a perverse finding.

9. In the opinion of this Court, no strong case is made out by the petitioner for grant of leave to appeal against the judgment of acquittal dated 12.04.2016. Accordingly, the present CrMP stands rejected.

Sd/-

P. Sam Koshy
Judge