

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 1290 of 2017**

State Of Chhattisgarh, Through The Incharge, Police Station Pandri,
District Raipur, Chhattisgarh. .

---- Applicant**Versus**

1. Nikolus Tirkey, S/o. Silvanus Tirkey, Aged About 59 Years.
2. Smt. Kripa Tirkey, W/o. Nikolus Tirkey, Aged About 54 Years.
3. Ku. Priyanka Tirkey, D/o. Nikolus Tirkey, Aged About 24 Years.

All are R/o. Dubey Colony, Gali No. 2, Mova, Police Station-Pandri, District
Raipur, Chhattisgarh.

---- Respondents

For Applicant : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11.10.2017**

Heard

1. Learned counsel for the applicant submits that the order passed by the learned Court below cannot be sustained as though there has been conviction under Section 294 of I.P.C. but acquittal was recorded under Section 506 Part-II of I.P.C. It is further submitted that sufficient reasons have been explained for the delay, therefore, the delay of 184 days caused in filing the petition may also be condoned.
2. The order under challenge is 25.01.2017 passed by the Judicial Magistrate First Class, Raipur, whereby the respondents were convicted under Section 294 of I.P.C. and were acquitted under Section 506 Part-II of I.P.C. However, in respect of Section 294 of

I.P.C. they were given benefit of the Probation of Offenders Act, 1958 with a direction to be kept under surveillance for six months. It was further observed that on 10th of each month with respect to good conduct of the respondents, the certificate would be produced by the SHO and the respondents shall also placed on affidavit by 10th of each successive month about their good conduct before the Probation Officer.

3. Case of the prosecution is that a dispute arose on account of throwing garbage and remaining food on the road. As per the prosecution, the complainant had lodged a report on 02.08.2014 that the respondents have abused them and also extended threat that the complainant would be killed by life.
4. The conviction under Section 294 of I.P.C. has been passed is not in dispute. Only with respect to acquittal made under Section 506 Part-II is subject of adjudication. The complainant Smt. Ishwari Sande was examined as PW-1 wherein she has stated about the filthy abuses and further stated that initially Smt. Kripa Tirkey, respondent No.2, had stated that she will kill her, subsequently, it was followed by respondent No.1, Nikolus Tirkey, and he also abused and stated that he would insert rod.
5. Perusal of the statement of PW-1, Smt. Ishwari Sande and PW-2, Jyoti Sande, daughter of the complainant, would show that the dispute arose out of a trivial issue, as the complainant were throwing the remaining food on the road. The statement would show that though the filthy abuses have been stated but casual statement has been made about extending threat of criminal intimidation. The statement of PW-2 would further show that it was advised not to throw the food on the road and it was stated that when it comes down, she would give a blow on her head. PW-3,

Ashok Sonwani, who is individual witness, has predominantly supported the fact about abuse and stated that there has been some dispute was going on in between the complainant and the accused and casual statement about criminal intimidation has been made. The statement of PW-4, Virendra, would show that some dispute was going on in between the parties and during such spur of moment, exchange of words took place. The statement of the witnesses do not further show that except omnibus statement of threat nothing particular has been stated how the criminal intimidation was caused. Therefore, the evidence sans the mens rea and particulars of ingredients of Section 506-II of I.P.C.

6. The petition is also delayed by 184 days. The order is dated 25.01.2017. The reason for delay is assigned that on 20.04.2017 the Law Department has sent the proposal to the Office of Advocate General. The petition appears to have been filed on 31.08.2017 though the date of appeal has been shown in the application for condonation of delay but what is the reason for such delay from 25.01.2017 to 20.04.2017 and the reasons thereof the end of the Law Department has not been explained. Further, the application shows that, it was received on 20.04.2017 at the office of Advocate General and thereafter on 31.08.2017, the Cr.M.P. has been filed. What was the reason of such huge delay of each days has not been properly explained by the office of Advocate General also and only the dates have been stated, which has caused the delay. Though it has been stated that the relevant exhibited documents were required to be filed but the documents were not filed alongwith the petition, it was only filed

on 25.09.2017. Consequently, no proper explanation has been given for each day delay caused to file the instant acquittal appeal.

7. Considering the totality of the facts, I do not find any reason to condone the delay also virtually no reason has been assigned. Accordingly, the application for condonation of delay is dismissed. Consequently, the petition is also dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge