

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 250 of 2013**

- Gopi Jaiswani S/o Late Govardhandas Jaiswani Aged About 39 Years
R/o Shivnath Marg Jarahabhata Bilaspur , P.S. Civil Lines , Distt. Bilaspur C.G. Pin 495001, Chhattisgarh

---- Petitioner**Versus**

1. Sharda Sinha W/o Shankar Prasad Sinha Aged About 50 Years
2. Sanjeev Ranjan Sinha S/o Shankar Prasad Sinha Aged About 31 Years
3. Rajeev Ranjan Sinha S/o Shankar Prasad Sinha Aged About 30 Years

All 01 To 03 Res Are residing Beside The Dr. Rajada Satyasai Hospital, Om Nagar Jarahabhata Bilaspur, P.S. Civil Lines , Distt. Bilaspur C.G. Pin 495001, District : Bilaspur, Chhattisgarh

---- Respondents

 For Petitioner : Mr. Vijay Kumar Deshmukh, Advocate.
 For Respondent : Mr. P.K. Tulsyan, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****26/11/2018**

1. Heard on I.A.No.1, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 166 days in filing the petition is hereby condoned.
3. Also heard on the application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 16.7.2012, passed by Judicial Magistrate First Class, Bilaspur (C.G.) in Complaint Case No. 190/2012, wherein the said court has acquitted all the

respondents for the charges under Sections 294, 506 Part II and 452 of the I.P.C.

6. In the present case, name of the complainant is Gopi Jaiswani (PW1). From the statement of this witness, it is not established that any of the respondent was in possession of any kind of weapon. For commission of offence under Section 452 IPC, it has to be established that house trespass is committed having made preparation for causing hurt or for some other offence.
7. Preparation is done before commission of offence. There is no evidence on record that any preparation was done before commission of the offence. From the statement of all the witnesses it is clear that no one was in possession of any kind of weapon or even club. In absence of possession of any weapon, it cannot be inferred that any of the respondent made preparation for commission offence. As preparation on the part of any of the independent respondent is lacking charge under Section 452 IPC is not established.
8. For commission of offence under Section 294 IPC it has to be established that obscene words are uttered in public place to cause annoyance. From the statement of the complainant himself it is clear that the respondents entered into his house and private house of the complainant is not a public place, therefore, it is not a case where any word is uttered in public place to establish charge under Section 294 IPC.
9. The essence of the crime under Section 294 of the IPC consists in creating a public nuisance which because of its gravity being of a public nature may endanger public peace. In order to bring home

the guilt of the accused for an offence under Section 294 of the IPC the prosecution has to establish that the words uttered were obscene. The test of obscenity is to be deprave and corrupt those whose minds are open to such immoral influences.

10. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the person's mind. The words which have no literal significance cannot fall in the purview of obscene words. From the evidence it is not specifically established beyond doubt that any obscene words were uttered by any of the specific respondent, thus offence under Section 294 IPC is not established against the respondents.
11. For commission of offence under Section 506 Part II IPC, determination to execute threat is sine-qua-non for establishing the offence. As no one was in possession of any kind of weapon, it cannot be inferred that any of the respondent was determined to execute threat on the spot. The words uttered were mere fury which has sound but no substance, therefore, charge under Section 506 Part II IPC is also not established.
12. The trial Court has evaluated the evidence in its entirety and this Court has no reason to interfere with the finding recorded by the trial Court and it is not a case where the respondents should be called for full consideration of the case. Accordingly, the prayer for leave to appeal is rejected.
13. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)
Judge

