

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1184 of 2017**

State Of Chhattisgarh, Through Station House Officer, Police
Station Lapur, District Mungeli Chhattisgarh

---- **Petitioner****Versus**

Sunil Koshle, S/o. Dugdhadhari Koshle, Aged about 24 years,
R/o. Village Sonpur, Police Station Lapur, District Mungeli (CG)

---- **Respondent**

For the Petitioner/State : Shri Vinod Tekam, Panel Lawyer
For the respondent : Shri Neeraj Pradhan, Advocate on behalf
of Shri Utkarsh Pradhan, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

01.10.2018.

1. Heard on IA No.01/17 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 134 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This appeal has been preferred against judgment of acquittal dated 06.01.2017 passed by Special Additional Sessions Judge, Mugeli (CG) in Special Session Trial No.44/2015 wherein the said Court acquitted the respondent for commission of offence under Section 354(A)(i), 506, 294, 509 and 323 (two counts) of

Indian Penal Code and under Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

5. In the present case prosecutrix is PW-1. As per the version of this witness, the respondent lit a match stick and thrown on her which fell on her foot.

6. For attracting Section 354(A)(i) of the IPC, there must be physical contact and advances involving unwelcome and explicit sexual overtures. In the present case, from the statement of the prosecutrix, physical contact and advances are lacking on the part of the respondent. It is also not established that any word was used by the respondent intending to insult the modesty of the prosecutrix. The trial Court elaborately discussed the entire evidence and came to a conclusion that offence under Sections 354(A)(1) and 509 of the IPC and Section 12 of the POCSO Act are not established against the respondent.

7. From the evidence of the prosecution, it is not established that any obscene words were used by the respondent. 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 whether the tendency of the matter charges as obscenity is to be deprave and corrupt those whose minds are open to such immoral influences.

8. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the persons' mind. The words which have no literal significance cannot fall in the purview of obscene words. From the evidence it is not established beyond doubt that any obscene words were uttered by the appellant, thus offence under Section 294 IPC is not established against the appellant.

9. Again there is no evidence that the respondent determined to execute any threat. The evidence regarding threat is lacking and any words used by the respondent is just fury which is without substance. The trial Court has discussed this aspects of the matter and found that charge under Section 506 Part-II is not established and this Court has no reason to record a contrary finding.

10. So far as offence under Section 323 IPC for causing voluntary hurt to Amardas and Gulabdas is concerned, Gulabdas (PW-6) has admitted (para 6) that the respondent also sustained injury and the respondent reported the matter against him and thereafter he also reported the matter against the respondent. From the statement of this witness it is clear that the respondent also sustained injury during the course of the incident and for that no explanation was given by any of the prosecution witnesses. Therefore, it can be inferred that the witnesses have suppressed the material facts and they are not reliable on the point of assault to said Amardas and Gulabdas. Finding of the acquittal is based on relevant facts and the same is not irrelevant and extraneous

matter. It is not a case where the respondent should be called for full consideration of the case again.

11. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE