NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1270 of 2018

- State Of Chhattisgarh Through Police Station Palari, District Baloda Bazar Chhattisgarh., District : Balodabazar, Chhattisgarh

---- Petitioner

Versus

- Shyam Ratan Ratre S/o Bhandari Ratre, Aged About 45 Years R/o Charoda, Police Station Palari, District Baloda Bazar, Chhattisgarh.

---- Respondents

For Petitioner/State : Ms. K.Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

29/8/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.

2. For the reasons mentioned in the application, same is allowed and delay of 37 days in filing the petition is condoned.

3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.

4. The present petition has been filed seeking leave to appeal against the judgment dated 3.2.2018 passed by Judicial Magistrate First Class, Baloda Bazar Bhatapara (CG) in Criminal Case No. 1073/2012, wherein the said Court has acquitted the non-applicant for commission of offence under Sections 294, 506 and 323 r/w Section 34 of the I.P.C.

5. In the present case one Radheshyam (PW1) was examined by the prosecution. From his statement it is not clear as to what were the actual

words uttered by the non-applicant. For commission of offence under Section 294 I.P.C., the prosecution is under obligation to prove that obscene words were uttered in public place to cause annoyance to others. The test of obscenity can be determined only after looking to actual words and place of incident. In the present case, no specific words have been specified by the witnesses and therefore, it cannot be said that any obscene word was uttered in public place. In absence of evidence, offence under Section 294 I.P.C. is not made out. From the evidence of this witness, there is no iota of evidence for threatening by the non-applicant. In absence of evidence in this regard offence under Section 506 part II is also not made out. It is stated by the witness that due to assault by the non-applicant, his tooth was uprooted, but no medical evidence is adduced in support of his version.

6. It is only when medical expert opined that the tooth is uprooted due to assault and same is caused during 26.5.2009, offence can be established. Period of uprooting of tooth is not established and therefore, the same cannot be connected with any assault as alleged by the witness. In absence of medical evidence regarding time of injury it cannot be said that same is caused by the non-applicant. In view of the above, evidence under Section 323 I.P.C. is also not established. The trial Court has decided the matter on the basis of evidence available on record and same is not liable to be interfered with by this Court. Accordingly, the prayer for leave to appeal is rejected.

7. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)

Judge

sunita