

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No. 1273 of 2018

- State Of Chhattisgarh Through Police Station Gandhinagar District Surguja Chhattisgarh.

---- Petitioner

Versus

1. Devchand S/o Shri Dholuram Chouhan Aged About 35 Years R/o Village - Thakurpur Police Station Gandhinagar District Surguja Chhattisgarh.
2. Bindo Bai w/o Devchand Chouhan Aged About 28 Years R/o Village - Thakurpur, Police Station Gandhinagar District Surguja Chhattisgarh

---- Respondents

For Petitioner/State : Shri Vivek Sharma, Govt. Advocate

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

01.10.2018

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 and the law laid down by the Hon'ble Apex Court in the matter of State of Haryana Vs. Chandra Mani & Ors., (1996) 3 SCC 132, the application is allowed and delay of 41 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 instant Cr.M.P. has been filed against the judgment dated 9.2.2018, passed by the Judicial Magistrate First Class, Ambikapur,

District Surguja (CG) in Criminal Case No. 459/2012, wherein the said Court has acquitted the respondents from the charges under Sections 294, 506 Part II, 323 and 325 of the IP.C.

5. Charges were framed by the trial Court against the respondents for causing simple hurt to Sitara Bai and grievous hurt to Rambai. Rambai was not examined before the trial Court. Though Sitara Bai has deposed before the trial Court that respondent Devchand assaulted her by club, but the same is not mentioned in the First Information Report(FIR). In the FIR it is mentioned that Sitara Bai was assaulted by leg and fists.

6. Looking to the material contradictions, the trial Court opined that causing injury to Sitara Bai is under cloud. Again, Rambai was not examined and therefore, charges for assaulting Rambai were not established. Sitara Bai (PW2) did not depose regarding any obscene words used by the respondents.

7. To substantiate charge under Section 294 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. Filthy abuses are not uncommon. It had no more significance than mere platitudinous utterances signifying the enraged state of the person's mind. In the case in hand, it is stated by the witness that the respondents had uttered some abusive words, but what words were uttered is not stated. The words which are uttered have no literal significance and that cannot fall in the purview of

obscene words. From the evidence, it is not established beyond doubt that any obscene word was uttered by the respondents under Section 294 of the IPC, thus the offence is not established against them.

8. So far as offence under Section 506 Part II of the IPC is concerned, Sitara Bai has not stated that any threat was given by the respondents. Evidence on this part is lacking. Even if, any word is used, the same is not sufficient to establish the charge under Section 506 Part II of the IPC. There must be determination to execute threat, otherwise it is mere fury which has no substance. The trial Court has discussed the entire evidence and this Court has no reason to record a contrary finding. It is not a case where the respondents should be called for full consideration of the present petition. Accordingly, Cr.M.P. is rejected.

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

Sd/

(Ram Prasanna Sharma)
JUDGE