

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1359 of 2018**

State Of Chhattisgarh Through The Station House Officer, AJK
Durg, District Durg Chhattisgarh.

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

1. Arun Gautam S/o Milan Singh Gautam, Aged About 40 Years
R/o Samoda, Police Chowki - Jewra Sirsa, Durg, District Durg
Chhattisgarh.
2. Dharmendra Deshmukh S/o Ramshri, Aged About 22 Years R/o
Samoda, Police Chowki Jewra Sirsa, Durg, District Durg
Chhattisgarh.
3. Bhuneshwar @ Sonu Deshmukh S/o Toran Deshmukh, Aged
About 27 Years R/o Samoda, Police Chowki Jewra Sirsa, Durg,
District Durg Chhattisgarh.
4. Bhupendra Deshmukh S/o Sawantram, Aged About 35 Years
R/o Samoda, Police Chowki Jewra Sirsa, Durg, District Durg
Chhattisgarh.
5. Manoj Deshmukh S/o Deosongh Deshmukh, Aged About 23
Years R/o Samoda, Police Chowki Jewra Sirsa, Durg, District
Durg Chhattisgarh.

---- **Respondents**

For the Petitioner/State : Ms. K. Tripti Rao, Panel Lawyer
For the respondents : None present.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****11.9.2018.**

1. Heard on IA No.01/18 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 61 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 30.01.2018 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act'), Durg (CG) in Special Case No.10/2016 wherein the said Court acquitted the respondents of the charges under Section 435 read with Section 147, 506 Part-II of the Indian Penal Code, 1860 and under Sections 3(1)(x) and 3(2)(iii) of the Atrocities Act.

5. To substantiate the charges, the prosecution has examined as many as 10 witnesses. Witnesses 5 to 10 are related to investigation who have assisted the investigation after registration of FIR. PW-1 is the prosecutrix. No one was examined to establish her caste as to whether she belongs to the Scheduled Caste or the Scheduled Tribe. Therefore, in absence of proof of caste certificate, it is not established that the prosecutrix is a member of the Scheduled Caste or the Scheduled Tribe.

6. Khemlal Deshmukh (PW-2), Mahesh Banjare (PW-3), Mohit Kumar Markandeya (PW-4) are the witnesses of the incident as per the prosecution. All these witnesses have made general and bald statement against the respondents but no one has made any specific allegation against any of the respondents regarding their role in commission of offence. When a number of persons are prosecuted the prosecution is under obligation to prove specific role of each of the person charged with commission of offence. It is

settled law that mere presence on the spot at the time of the commission of any offence is not sufficient to bring home the guilt. From the statements of all the witnesses, it is not clear who really uttered abusive or obscene words on the spot. Again from their statement it is not clear as to how the handcart of the prosecutrix got fire and what was the process of fire. In absence of any specific allegation and in absence of any narration of articles which used to commit the mischief by fire it is not established that any of the respondent has really participated in the commission of crime. No active role for any of the respondent is established and there is not live link between the commission of offence and the act of any of the respondent.

7. Looking to the entire evidence, the trial Court opined that the offence charged is not established. This Court has reassessed the evidence adduced by the prosecution and it has no reason to substitute a contrary finding because the evidence is only related to general and bald statement and not specifically implicating any of the respondents.

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

SD/-
(Ram Prasanna Sharma)
JUDGE