

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1441 of 2018**

- State Of Chhattisgarh Through Station House Officer, Police Station Kukdoor, Distirct- Kabirdham, Chhattisgarh.

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

1. Dev Singh S/o Kunwar Singh Yadav Aged About 45 Years R/o Village Gudha Rawan, Police Station Kukdoor, District-Kabirdham, Chhattisgarh.....(Accused)
2. Ghanshyam S/o Dev Singh Yadav Aged About 20 Years R/o Village Gudha Rawan, Police Station Kukdoor, District-Kabirdham, Chhattisgarh.....(Accused)
3. Gannu Yadav S/o Dev Singh Yadav Aged About 19 Years R/o Village Gudha Rawan, Police Station Kukdoor, District-Kabirdham, Chhattisgarh.....(Accused)

---- **Respondents**

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

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****24.9.2018.**

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 07 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 21.3.2018 passed by Special Judge under

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act') Kabeerdham, (CG) in Special Criminal Case No.02/2017 wherein the said Court acquitted all the respondents, who were charge sheeted for the offence under Section 3(1)(s) of the Atrocities Act/ Amendment Act 2015 for abusing one Rajesh Kumar Dhurve, a member of Scheduled Tribe, by caste name in a place within the public view and also under Section 506 Part-II and Section 323 read with Section 34 of Indian Penal Code for intimidating him to kill and for causing voluntary simple hurt to him.

5. Rajesh Kumar Dhurve (PW-2), Suresh Kumar Yadav (PW-3), Samlu Baiga (PW-4), Smt. Mamta Durve (PW-6) and Manglu Ram (PW-7) are the witnesses of the incident. Though Rajesh Kumar deposed before the trial Court that some specific word of abuse was used by respondent Dev Singh, but no other witness supported him on this count. All other witnesses have not deposed any word which was used during the course of the incident. Even in the FIR and statement recorded under Section 161 CrPC there is no such word which was stated by Rajesh Kumar before the investigating officer. In this way his version is exaggerated before the Court and he did not explain as to why such word was not stated during investigation. In absence of any cogent explanation, statement of Rajesh Kumar on this count was not acceptable and that is why the trial Court opined that the offence under Section 3(1)(s) of the Amended Act, 2015 is not established.

6. Again from the version of all the witnesses, it is not established that any of the respondents was determined to execute threat on the spot. Words which are used in a stage of rage are not words which is to be executed and therefore, such words of fury is without substance.

7. On overall assessment of the entire evidence, the trial Court opined that determination to execute the threat is not established, therefore, offence under Section 506 IPC is not established. So far as offence under Section 323 read with Section 34 IPC is concerned, the witnesses have deposed that the respondents assaulted Rajesh Kumar with hands and fists, but, Dr. BL Raj (PW-1) has clearly deposed (para 3) that injury found on the body of Rajesh Kumar is not caused by hands and fists and therefore, evidence of medical expert is rebutted the version of Rajesh Kumar and others. Looking to this aspect of the matter, the trial Court opined that offence under Section 323 is also not established.

8. Looking to the evidence in its entity, this Court has no reason to substitute a contrary finding and it is not a fit case where leave to appeal should be granted.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE