

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1546 of 2018**

State of Chhattisgarh, Through- Station House Officer, Police Station Berla, District- Bemetara (C.G.)

---- **Petitioner**

Versus

Pitamar @ Paklu Dhiwar, S/o Bhagbali Dhiwar, Aged About 33 Years, R/o- Village Bhimbhouri, Chowki Kandarka, Police Station Berla, District- Bemetara (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Ramakant Pandey, PL.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

12/09/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of K.P. Banjare
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 25 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 26.03.2018 passed by Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Bemetara, District-

Bemetara (C.G.) in Special (Atrocity) Case No. 05/2017, wherein the said court acquitted the respondent for commission of offence under Sections 294 & 506 Part-II of IPC and Section 3(1)(S) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5. To substantiate the charge, the prosecution examined as many as 13 witnesses. Kanhaiya Lal Dhruv (PW-2) is complainant and as per version of this witness, he is husband of Sarpanch of Gram Panchayat- Bhimbhouri. He deposed that the respondent asked him to supply some Murum near the canal and on that request, there was altercation between respondent and the complainant. From evidence of this witness, it is established that the incident took place because the complainant is husband of Sarpanch and respondent had requested for work which is assigned to Sarpanch. If wife of the complainant would not have been Sarpanch, there was no occasion for altercation between complainant and the respondent, therefore, it is not a case based on caste, but it is a case based on post of Sarpanch.
6. No one is examined before the trial court to establish caste of the complainant and no certificate was produced before the trial court for establishing his caste, therefore, in absence of certificate, it is not proved that the complainant belongs to any caste which comes within Scheduled Caste or Scheduled Tribe. As, the dispute arose for public work in the capacity of Sarpanch, the trial court is right in holding that offence under

Section 3(1)(S) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is not established.

7. Though, the complainant deposed that the respondent used some filthy words during altercation, but the point is whether filthy abuses are obscene words as defined under Section 294 of IPC. The appellant is charged under Section 294 of IPC, the essence of the crime under Section 294 of 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 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 no more significance than mere platitudinous utterances signifying the enraged state of the person's mind. In the case in hand, the words as uttered by the complainant are not the words which have literal significance and it cannot fall in the purview of obscene words. From evidence, it is not established that the offence under Section 294 of IPC is made out.
9. Though, the complainant deposed that the respondent threatened him to kill, but for establishing charge under Section 506 Part-II of IPC, mere words are not sufficient. It has to be proved that respondent was determined to execute

the threat at the time of incident. In the present case, the respondent was not having any article with him to execute his threat and therefore, he was not determined to substantiate his threat. Mere words are fury which has no substance and therefore, offence under Section 506 Part-II of IPC is also not established.

10. As the trial court has convicted the respondent for commission of offence under Section 323 of IPC and awarded compensation to injured and again the respondent was in custody for 39 days, the finding recorded by the trial court is not liable to be interfere with on count of offence under Section 323 of IPC. No case is made out for calling the respondent before this Court. Accordingly, application for grant of leave to appeal is rejected.
11. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge