

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 596 of 2017**

State of Chhattisgarh, Through: Police Station – Patan, District :
Durg (C.G.) **---- Petitioner**

Versus

Narayan @ Laxminarayan Dhimar, S/o – Shri Babulal Dhimar, Aged
about – 20 years, R/o- Village Gujra, P.S.- Patan, District: Durg
(C.G.) **---- Respondent**

For State/ Petitioner	:	Mr. Suryakant Mishra, Panel Lawyer.
For Respondent	:	Mr. B.P. Rao, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****23/08/2018**

1. Heard on I.A. No. 01/2017, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the delay of 309 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal under Section 378(1) of the Code of Criminal Procedure, 1973.
4. The respondent was charged for commission of offence under Section 294, 506 (Part-II) & 323 of IPC for using obscene words in public place on 05.04.2015 at about 5.00 p.m. at village- Gujra and for threatening to kill him and for causing voluntarily simple words to him.
5. To substantiate the charge, the prosecution examined 6 witnesses. Gajendra (PW-1) is complainant, but he himself did not depose as to what were the real words uttered by the respondent. No other witnesses deposed about the words uttered by the respondent.
6. It is settled law that filthy abuses are not obscene words therefore, the case should be very clear regarding actual words, but the evidence on this part is lacking on record of the trial court.

7. Again, from the evidence of the complainant and other witnesses, it is not established that the respondent determined to execute his threat. Uttering any words without any intention is having only sound without substance, for commission of offence under Section 506 (Part-II) of IPC, there should be substance that any threat was to be executed on spot and person giving threat was determined to execute the same. Evidence on this part is also lacking in the record of the trial court.
8. Looking to the entire evidence, it is not a case related to offence under Sections 294 & 506 (Part-II) of IPC. When the case is not related to under Sections 294 & 506 (Part-II) of IPC, other charge of offence under Section 323 of IPC is non-cognizable and as per Section 155(2) of the Code of Criminal Procedure, the investigating officer is required to seek permission of concerned magistrate to investigate the matter.
9. In the present case, it appears that two cognizable offence under Section 294 & 506 (Part-II) was added without substance and offence under Section 323 of IPC is non-cognizable, therefore, investigation without permission of the magistrate is contrary to provisions enacted for the same.
10. Looking to these aspects of the matter, no factual or legal issue is really involved to be adjudicated by this Court.
11. Accordingly, application is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge