

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1956 of 2018**

- State Of Chhattisgarh Through Police Station Ajk, Raigarh, District - Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. Ghanshyam Nishad S/o Sukhram Nishad @ Patela Aged About 29 Years Occupation - Driver, R/ O Village Tarapur, Police Station Kotraroad, District - Raigarh, Chhattisgarh.
2. Sitaram Nishad @ Nanu S/o Sukhram Nishad @ Patela Aged About 24 Years Occupation - Labour, R/ O Village Tarapur, Police Station Kotraroad, District - Raigarh, Chhattisgarh.

---- Respondents

For Petitioner/State : Ms. K.Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

20/9/2018

1. Heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
2. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 20/06/2018 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raigarh, District Raigarh (CG) in Special Case (Atrocities Act) No. 36/2016, wherein the said Court has acquitted both the respondents of the charges under Sections 294, 506 Part II, 323 r/w Section 34 of the IPC and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short the SC/ST Act, 1989).

3. In the present case, Lukeshwari (PW2) is the prosecutrix. As per version of this witness, the respondents came with a crowbar and tried to remove the construction and that is why some altercation took place. In cross-examination (para 8), she admitted that due to construction on her house drain of the respondents was closed and there was water-logging in the house of the respondents that is why they came to her and the incident took place. From her statement, it is clear that the incident is not based on any caste but it is based on account of construction and water-logging. From the evidence of this witness, it is not clear that any of the respondent used any word regarding caste of the prosecutrix. Again, from her statement it is not clear as to what were the actual words uttered by the respondents which can be termed as obscene words.

4. The essence of the crime under Section 294 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 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.

5. In the present case, the respondents have not uttered any abusive

words against the prosecutrix and version of the prosecutrix is bald and general. It is settled law that words which have no literal significance, cannot fall in the purview of obscene words.

6. Looking to the entire evidence, the statement of the witnesses is contradictory in nature and therefore, offence under Section 294 IPC is not established and as there is nothing in the statement of the prosecutrix regarding caste, therefore, offence under Section 3 (1) (r) (s) of the SC/ST Act, 1989 is not established.

7. The prosecutrix herself has not stated that any threat was given to her by any of the respondent to kill her. There is no evidence that any of the respondent was determined to execute threat. Any general statement or bald statement is not sufficient to establish the charge and any word has no force without any substance. In this way, charge under Section 506 Part II IPC is also not established. So far as offence under Section 323 r/w Section 34 IPC is concerned, version of the prosecutrix is contradictory. The only thing stated by the prosecutrix is that the respondent had moved her hand, but this version is also general in nature and it is not clear as to really which of the respondent had committed any physical violence against the prosecutrix.

8. Considering the facts and circumstances of the case, this Court is of the view that the trial Court has evaluated the evidence in its entirety and after elaborate discussion, recorded a finding that the charges are not established. This Court has re-assessed the evidence and there is no

reason to interfere with the finding recorded by the trial Court. Accordingly, the prayer for leave to appeal is rejected.

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

Sd/

(Ram Prasanna Sharma)

Judge