

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2126 of 2018**

State of Chhattisgarh, Through the District Magistrate, District-Baloda Bazar (C.G.)

---- **Petitioner**

Versus

1. Beer Ram, S/o Pyare Lal Chandel, about 22 years, R/o Village Raseda, Police Station Baloda Bazar, District Baloda Bazar (C.G.)
2. Munna Singh, S/o Pyare Lal Chandel, aged about 22 years, R/o Village Raseda, Police Station Baloda Bazar, District Baloda Bazar (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Lav Sharma, Panel Lawyer.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

13/12/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
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 96 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 15.03.2018 passed by Judicial Magistrate First Class, Baloda Bazar

(C.G.) in Criminal Case No. 784/2012, wherein the said court acquitted both the respondents for commission of offence under Sections 294, 506 (Part-II) & 323/34 of IPC, 1860.

5. In the present case, name of the victim is Heeralal Vishwakarma. As per version of the victim, respondent No. 2- Munna Singh had brought him out of his vehicle and respondent No. 1- Beera Ram assaulted him by club. Version of this witness is supported by version of medical expert who found simple injury on body of the victim. For the said act, offence under Section 323 of IPC was registered.
6. Though, this witness deposed before the trial court that the respondents used filthy words against him and threatened him, but it is not clear from his version that any obscene words is uttered by any of the respondent. Even, the words were not mentioned in his statement.
7. For establishing offence under Section 294 of IPC, the victim has not stated any word used by the respondents in his statement. The respondents are 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 on hand, the words uttered by the respondents are not clear, therefore, the words have no 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. So far as, offence under Section 506 (Part-II) is concerned, the prosecution has to establish that the respondents were determined to execute their threat, but evidence on this count is also lacking. In absence of determination of words uttered, it is mere fury which has no substance, therefore, offence under Section 506 (Part-II) of IPC is also not established.
10. It appears that it is a case only under Section 323 of IPC which is non-cognizable offence as per Section 155(2) of Cr.P.C., 1973. No police officer shall investigate non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In the present case, investigation for non-cognizable offence under Section 323 of IPC, is investigated without order of a Magistrate, which is not permissible, therefore, finding arrived at by the trial court is not liable to be interfered with.
11. The trial court has elaborately discussed the entire evidence and recorded judgment of acquittal. After reassessing the

entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.

12. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge