

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2387 of 2018**

- State Of Chhatisgarh Through Police Station - A.J.K., District - Janjgir-Champa, Chhattisgarh.

---- Petitioner**Versus**

1. Dharmendra Singh S/o Shri Darbar Singh Rathore Aged About 39 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
2. Shivnarayan S/o Shri Krishna Rathore Aged About 56 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
3. Ramshankar S/o Shri Ramprasad Rathore Aged About 45 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
4. Dilip S/o Shri Radhakrishna Rathore Aged About 29 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
5. Satish S/o Shri Gopal Prasad Rathore Aged About 30 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
6. Annu @ Dhirendra S/o Shri Devisingh Rathore Aged About 33 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
7. Devisingh S/o Shri Harprasad Rathore Aged About 38 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.
8. Rajendra (Dead) S/o Shri Jainarayan Rathore Aged About 30 Years R/o Village Saragaon, Police Station - Saragaon, District - Janjgir-Champa, Chhattisgarh.

---- Respondents

 For the Petitioner : Shri Vinod Tekam, Panel Lawyer
 For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

26.11.2018.

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 146 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 petition has been preferred against judgment dated 07.3.2018 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989'), Janjgir, Distt. Janjgir-Champa (CG) in Special Session Trial No.03/2013 wherein the said Court acquitted all the respondents for the charges under Sections 147, 294, 506 Part-II, 186 & 353 of the Indian Penal Code and under Section 3(i)(x) of the Act 1989.

5. In the present case, name of the complainant is SP Khakha, who was Sub Inspector of Police posted at Sargaon on the date of incident. As per the version of this witness, he was on patrolling duty on 02.01.2013 at about 9.00 pm and reached to the locality of village Saragaon where some altercation was going on between Devi Singh and others in one side and one Dharmendra Singh and others on the other side. As per the version of this witness, he intervened in the matter and then some one abused him and threatened him. From the statement of the complainant and other witnesses it is established that there was some altercation between two parties and it is not a case where any unlawful assembly was made for any criminal act, therefore, charges under Section 147 IPC is not

established. From the version of these witnesses, it is not clear as to who really uttered the abusive or obscene words.

6. From the evidence of the prosecution, it is not established that any obscene words were used by the respondents. The essence of the crime under Section 294 of the 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 the 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.

7. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the persons' mind. The words which have no literal significance cannot fall in the purview of obscene words. From the evidence it is not established beyond doubt that any obscene words were uttered by the appellant, thus offence under Section 294 IPC is not established against the respondents.

8. In the present case, it is not clear as to who really uttered the words, therefore, the evidence on this count is subjective in nature. For establishing the offence under Section 294 IPC, the evidence should be objective and it should be pointed to a specific person but that is not clear from the evidence of the prosecution witnesses. Therefore, the charges under Section 294 IPC is not established.

9. There is no evidence that any of the respondents has determined to execute any threat on the spot. Any word uttered regarding threat is mere fury which has only sound but has no substance, therefore, charges under Section 506 IPC is not established.

10. Cognizance under Section 186 IPC can be taken only on a written complaint of any public servant. As per Section 195 of the CrPC specific procedure has to be adopted and the same should be done in proper manner. But that is not done and charge sheet by the police was filed before the trial Court whereas it should have been a complaint case under Section 200 CrPC. Therefore, charges under Section 186 IPC is also not established.

11. For commission of offence under Section 353 IPC, it has to be established that someone assaulted or used criminal force against public servant to deter him from discharge of his duties. Criminal force as defined under Section 350 IPC and assault as defined under Section 351 IPC reads as under :-

“350. Criminal force.- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

351. Assault.- Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation – Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

12. Looking to both these provisions it is not established that any criminal force or preparation to use criminal force is established. Therefore, charges under Section 353 IPC is not established.

13. For commission of offence under Section 3(i)(x) of the Act 1989, criminal act should be done on the basis of caste. In the present case the complainant is a public servant who was discharging his duty and he intervened in the matters of two parties because he was on patrolling duty. Therefore, it is not a case where the offence is committed on the basis of caste and no intention is shown that any of the respondent had intention to insult or intimidate the complainant, therefore, charges under Section 3(i)(x) of the Act is not established. The trial Court has discussed the entire evidence and recorded a finding of acquittal. This Court has no reason to substitute a contrary finding. It is not a case where the respondent should be called for full consideration of the petition.

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

**Sd/-
(Ram Prasanna Sharma)
JUDGE**