

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.610 of 2009**

Chandrabhas Shrivastava, S/o. Teekaram, aged about 39 years,
Occupation Agriculturist, R/o. Village Sirri, PS. Kurud, Distt.
Dhamtari (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through District Magistrate Dhamtari,
Distt. Dhamtari (CG)

---- Respondent

For the appellant : Shri Raj Bahaduring Singh, Advocate

For the State/respondent : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****05.3.2019.**

1. The appeal is directed against judgment dated 29.7.2009 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Dhamtari (CG) in Special Session Trial No.32/2008 wherein the said Court convicted the appellant for commission of offence under Sections 186, 294 and 506 Part-II of the Indian Penal Code, 1860 and sentenced him to pay fine of Rs.500/-, fine of Rs.25,00/- and fine of Rs.2500/- with default stipulation.

2. In the present case complainant is Jeevrakhan Lal Dhruv (PW-6). As per the version of the prosecution, Jeevrakhan was working as Sub Divisional Officer (Rural Engineering), Kurud. On 16.10.2008 at about 3.00 pm when he was doing his office work, the appellant came at the office, had conversation with him

regarding construction of Anganbadi building. Thereafter the appellant abused him by using filthy language and also threatened him to dire consequences. The matter was reported and investigated, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Mahendra Kumar Netam (PW-1) and Chaman Lal (PW-3) have not supported the version of the prosecution and the trial Court has not considered the omissions and contradictions in the statement of the other witnesses.

(ii) The trial Court has failed to produce any evidence to show that the appellant knew about the caste of the complainant.

(iii) The trial Court has not appreciated the entire evidence properly, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. As per Section 195 of the CrPC, no Court shall take cognizance to any offence punishable under Sections 172 to 188 IPC except on the complaint in writing of such officer who is a victim of the case. In the present case, Jeevrakhan Dhruw (PW-6) is the victim of the case who was working as SDO (Rural

Engineering), but he has not made any written complaint under Section 195 CrPC. Therefore, the trial court was not authorised to take cognizance on the said matter i.e. for the offence under Section 186 IPC, taking cognizance itself is barred by said provision, therefore, the trial Court's conviction against the appellant is vitiated and he cannot be convicted for the said offence because case under Section 186 of IPC will proceed as per provision of complaint case mentioned between Section 200 to 204 of CrPC. Therefore, conviction of the appellant under Section 186 IPC is not sustainable and the same is hereby set aside. Accordingly, the appellant is acquitted of the said charge.

7. Though Jeevrakhan (PW-6) and other witnesses deposed before the trial Court that some filthy words have been used by the appellant, but the fact remains that whether the act of the appellant falls within the mischief of Section 294 IPC.

8. From the evidence of the prosecution, it is not established that any obscene words were used by the respondent. 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.

9. 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 appellant.

10. Complainant Jeevrakhan (PW-6) deposed regarding threat by the appellant, but mere threat is not sufficient to establish charge under Section 506 Part-II IPC. It has to be established that the appellant is determined to execute the threat on the spot but from the statement it is clear that but for the bald statement nothing has been done by the appellant. Words uttered by the appellant are mere fury which has sound only and has no substance, therefore, charge under Section 506 Part-II IPC is not established and this Court has no reason to record a contrary finding.

11. Accordingly, the appeal is allowed. Conviction of the appellant under Sections 186, 294, 506 Part-II IPC are hereby set aside and he is acquitted of the said charges. Fine amount paid by the appellant shall be refunded to him.

Sd/-

(Ram Prasanna Sharma)
JUDGE