

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1488 of 2018**

- Lal Sai, S/o. Jharu Kolta Aged About 70 Years R/o Village Kararjor, Thana Pusaur, Raigarh Chhattisgarh

---- **Petitioner****Versus**

1. Bhagirathi S/o Sunderlal Aged About 40 Years R/o Village Kararjor, Thana Pusaur, Raigarh Chhattisgarh
2. Bhagmani Avdhut R/o Village Jakela, Thana Pusaur, Raigarh Chhattisgarh
3. Rajni Bhagirathi R/o Village Kararjor, Thana Pusaur, Raigarh Chhattisgarh
4. Vijay S/o Avdhut Aged About 22 Years R/o Village Jakela, Thana Pusaur, Raigarh Chhattisgarh

---- **Respondent**

 For the petitioner : Shri Manoj Paranjpe and Shri Shubhank
 Tiwari, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****05.12.2019**

1. The petition is preferred against order dated 14.6.2018 passed by Judicial Magistrate First Class, Raigarh in Complaint Case No.282/2009 wherein the said Court acquitted the respondents for the charges under Sections 447 read with Section 34, 294 and 506 Part-II of the Indian Penal Code, 1860.
2. In the present case, name of the complainant is Dhansai who is the resident of Village Kararjor, Patwari Halka No.36. As per the complaint, property in question is Survey No.86 area 0.194 hectare of the said village.

3. For commission of offence under Section 447 IPC, the ingredients mentioned under Section 447 has to be established. As per Section 441 IPC, whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property is said to have committed offence of criminal trespass. In the present case, the land in question is Survey No.86 area 0.194 hectare, but no khasra number entry or record of rights were produced before the trial Court for showing possession of the appellant on the date of incident i.e. 16.7.2008. In absence of documents, the trial Court did not act on oral statement made by the petitioner.

4. For commission of offence under Section 294 IPC, it has to be established that obscene words were uttered in public place to give annoyance to the persons present on the spot. No words have been mentioned in the complaint and the complainant himself has not deposed before the trial Court as to what were the real words uttered by the respondents. Though one Ghurao Pradhan (PW-2) deposed some obscene words but that is not mentioned in the complaint and not stated by the complainant. That is why the trial Court recorded that charge under Section 294 IPC is also not established. For commission of offence under Section 294 IPC it has to be established 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.

5. 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 not 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 respondents. In absence of convincing evidence, the trial Court recorded finding of acquittal and this Court has no reason to record a contrary finding.

6. For commission of offence under Section 506 Part-II IPC, it has to be established that the respondents were determined to execute threat on the spot. In the present case, no one deposed that the respondents were determined to execute threat on the spot. Therefore, any words uttered regarding threat is mere fury which has sound but has no substance. Therefore, the trial Court recorded finding of acquittal and this Court has no reason to take a contrary view. It is not a case where interference of the judgment of the trial Court is required by this Court and it is also not a case where the respondents should be called for full consideration of the case.

7. Accordingly, leave to appeal is rejected. Consequently, the CrMP is dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE