

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 2020 of 2019**

- State of Chhattisgarh, through- Police Station- Pendra, District- Bilaspur (C.G.) **---- Petitioner**

**Versus**

- Dhyan Singh, S/o- Late Shri Visambhar Singh, Aged about- 41 years, R/o- Dhobahar, Police Station- Pendra, District- Bilaspur (C.G.) **---- Respondent**

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For State/petitioner : Shri Ravish Verma, Govt. Advocate.

For Respondent : None.

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**Hon'ble Shri Justice Ram Prasanna Sharma**

**Order On Board**

**13/11/2019**

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 98 days in filing the instant 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 the judgment dated 7<sup>th</sup> February, 2019 passed by Judicial Magistrate First Class, Marwahi, link Court, Pendraroad, District- Bilaspur (C.G.) in Criminal Case No. 107/2017 wherein the said Court acquitted the respondent for charge under Sections 294, 323 and 506 Part-II of IPC, 1860.
5. In the present case, name of the complainant is Besahani Bai (PW-2). This witness has not deposed before the trial Court the actual words uttered by the respondent which may be termed as obscene words. The other witnesses are also not able to say

what actual words were uttered by the respondent on the date of incident.

6. For establishing the charge under Section 294 of IPC when actual words were deposed before the trial Court, the trial Court is right in holding that offence under Section 294 of IPC is not established.
7. There is nothing in the statement of Besahani Bai (PW-2) that any threat was given to her and the respondent is determined to execute the threat, for commission of offence under Section 506 of IPC. It is to be established that the respondent was determined to execute the threat on the spot but that is not the case herein, therefore, the trial Court is right in holding that charge under Section 506 is not established. Though Besahani Bai deposed that the respondent slapped her, but Dr. H.K. Tawar (PW-6) who examined the prosecutrix has not found visible injury on her body. Even otherwise, when there is no evidence for commission of offence charge under Sections 294 and 506 of IPC, the only section remains is Section 323 of IPC which is non-cognizable and no investigation can be initiated in absence of permission by concerned Magistrate as per Section 155(2) of Cr.P.C.
8. Looking to the medical report the charge under Section 323 is not established. Finding of the trial Court is one of the plausible view. It is settled law that if two views are possible, the view which is favourable to the respondent/accused should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where

respondent should be called for hearing again for full consideration of this petition.

9. Accordingly, the criminal petition stands dismissed at motion stage itself.

**Sd/-**

**(Ram Prasanna Sharma)**  
Judge

*Vasant*