

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2314 of 2018**

State of Chhattisgarh Through: Police Station- Sarangarh, District- Raigarh (C.G.)

---- Petitioner**Versus**

1. Gopesh Baretha, S/o Shri Ramesh Baretha, Aged About 30 Years.
 2. Milap Baretha, S/o Shri Ramesh Baretha, Aged About 35 Years.
- Both R/o- Village Phooljhariapara, Kamlanagar, Police Station- Sarangarh, District- Raigarh (C.G.)

---- Respondents

For State/ Petitioner : Mr. Raghvendra Verma, GA.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****17/01/2019**

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 20 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 22.06.2018 passed by Special Judge [Schedule Caste and Schedule Tribe

(Prevention of Atrocities) Act, 1989 (amended 2015)] (for short “the Act, 1989/2015”), Raigarh, District- Raigarh (C.G.) in Special Case (Atrocities Act) No. 31/2015, wherein the said court acquitted both the respondents for commission of offence under Sections 294, 506 (Part-II) of IPC, 1860 & Section 3(1)(x) of the Act, 1989/2015.

5. In the present case, name of the victim is Sarita Gonde (PW-5). As per version of the prosecution, on 16.08.2014 in the morning at about 10:30 a.m., respondents were standing near office of Sub-Divisional Magistrate and on seeing the complainant started giving filthy abuses saying to take back the complaint against them made by her and threatened her to kill and outrage her modesty.
6. The case of the prosecution is based on statement of victim- Sarita Gonde (PW-5) and Usmilla Khatoon (PW-6). Both have made general statement against the respondents. Though, both have deposed that certain abusive words were used by the respondents, but it is not clear as to who really uttered these words. Charge under Section 294 of IPC is specific in nature, therefore, it should be established as to who really uttered the obscene words but, looking to the general statement, it is not clear as to who really uttered the obscene words.
7. 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 charged as obscenity is to 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. For establishing offence under Section 506 (Part-II) of IPC, it has to be established that the respondents were determined to execute their threat. From statement of both the witnesses, the only thing which is to be established is that the certain words were uttered at the time of incident. Mere uttering of words is not sufficient to bring home the guilt, unless the same is uttered with instant execution of threat, but that is not the case here. In absence of determination to execute the threat, the words uttered by the respondents are mere fury which have sound, but no substance, therefore, the charge under Section 506 (Part-II) of IPC is also not established.

10. As per version of these witnesses, the incident took place because the complainant has earlier made complaint for cancellation of license of one postal agent. If, such complaint would not have been made, the occasion for altercation would not have arisen. In view of the evidence, it is clear that the incident took place on account of complaint and it is not based on the incident which is basically initiated on the basis of caste. From evidence, it is not established that the offence is committed on the basis of caste, therefore, charge under Section 3(1)(x) of the Act, 1989/2015 is also not established.
11. The trial court has elaborately discussed the entire evidence and recorded finding of acquittal. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondents 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