HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2371 of 2018

The State of Chhattisgarh Through Police Station Kukdur, District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Petitioner

Versus

1. Raj Kumar, S/o Hajari Lal Kashyap, Aged About - 48 Years.
2. Mitendra Kumar, S/o - Raj Kumar Kashyap, Aged About – 26.
3. Numesh Kumar @ Narendra, S/o Rajkumar Kashyap, Aged About - 24 Years.
4. Munaiya Bai, W/o- Raj Kumar Kashyap, Aged About - 40 Years.
5. Hira Bai, W/o - Hajari Lal Kashyap, Aged About - 75 Years.

All R/o - Village Birhuldeeh, P. S. Kukdur, District – Kabirdham, Chhattisgarh, Present R/o - Village Kishungarh, P. S. Pandaria, District – Kabirdham (C.G.)

---- Respondents

For State/ Petitioner : Shri A. N. Bhakta, Dy. Advocate General

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

25/02/2019

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 23 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 26.06.2018 passed by Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (amended 2015)], Kabirdham (C.G.) in Atrocity Special Criminal Case No. 24/2017, wherein the said court acquitted the respondent for commission of offence under Sections 448 of IPC, 1860 and under Section 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (amended 2015).

5. The respondents have been charge-sheeted for house trespass in the house of one Smt. Sahebin Bai (PW-3). She admitted in her statement (Para-4) that all the respondents were operating shop of public distribution system in her village and they were running the shop in the house of this witness. She again admitted that all the respondents were living in the said house while operation of the shop. She deposed that after closing of the shop the respondents did not vacate the said house that is why she asked them to vacate the house. From the evidence of the complainant herself it is clear that any of the respondent did not enter into her house in order to commit any offence or to cause intimidation, annoyance or insult to her. Since all the respondents were occupying the said house from running of the shop which was running since six to seven years, therefore, it is not a case where any

criminal act is committed by any of respondents. Therefore, finding of the trial court that offence charged is not established, is based on proper appreciation of the evidence.

6. Charge under Section 3 (1) (r) of the Act, 1989 is made out on the complaint of Binda Panagar (PW-1). She deposed in her cross-examination (Para-9) that she did not mention in her written statement (Ex. P1, P-2 & P-3) that any of the respondents insulted her in the name of her caste and said her Chamarin. Therefore, version of this witness is exaggeration to her earlier reports Ex.P-1, P-2 and P-3. This charge is based on uttering of some words but the witness is not stable as to what were the real words uttered by any of the respondents on the date of incident. She stated different versions in different stages and again her statement is general and bald in nature for all the respondents. For uttering any words charge-sheet should be specific against any of the respondent and it should be proved against such specific respondent. But that is not the case here.

7. Looking to the entire evidence, the trial court opined that charges under Section 3 (1) (r) of the Act, 1989 is also not established.

8. The finding of the trial court is based on relevant material placed on record and the same is not based on irrelevant or extraneous material, therefore, no interference of this Court is required against judgment passed by the trial court. 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.

9. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle