

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2465 of 2018**

State of Chhattisgarh, Through: Station House Officer, Police
Station City Kotwali, Balodabazar (C.G.)

---- Petitioner**Versus**

1. Bhupendra Nayak, S/o - Parme Nayak, Aged about - 18 years,
R/o - Village Laduwa , Police Station City Kotwali, Balodabazar
(C.G.)
2. Parme Nayak, S/o - Dhingalu Nayak, Aged about - 60 years, R/o -
Village Laduwa, Police Station City Kotwali, Balodabazar (C.G.)
(C.G.)

---- Respondents

For State/ petitioner	: Mr. Afroj Khan, Panel Lawyer
For Respondents	: None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****12/03/2019**

1. Heard on I.A No.1/2019, application for condonation of delay in
filing instant petition.
2. On due consideration, the application is allowed and the delay of
103 days in filing the petition is hereby 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 18th April, 2018
passed by the Judicial Magistrate, First Class, Balodabazar (C.G.)
in Criminal Case No. 781/2012 wherein the said Court acquitted all
the respondents for commission of offence under Sections 294,
506 part II & 333/34 of IPC, 1860.

5. In the present case the complainant/victim is Manoj Kumar Nayak (PW-1). He did not depose before the trial court as to what were the real words which said to be obscene word uttered by the respondent for establishing charge under Section 294.
6. 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.
7. 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.
8. From the entire evidence of the complainant himself it is not established that any threat was given by the respondent to said complainant. In absence of evidence, charge under Section 506 Part-II is not established.

9. Though Manoj Kumar (PW-1) deposed that the respondent assaulted him with club on his head but no medical expert was examined before the trial court to substantiate that really the complainant sustained injury on his head. Bald statement is not sufficient to establish the charge of causing simple injury. In absence of evidence of medical expert adverse inference can be drawn that if medical evidence would have been cited by the prosecution it would have not been supported by the version of prosecution.
10. Looking to the entire evidence the trial court opined that charge under Section 323 for causing simple injury voluntarily is not established.
11. The trial court has elaborately discussed the entire evidence and came to conclusion that the charge leveled against the respondent is not established. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition.
12. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge