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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.129 of 2019

- State Of Chhattisgarh Through The Police Station Chakradhar Nagar, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. Suresh Kumar Patnayak S/o Shri Radheshyam Aged About 42 Years R/o Village Beladula, Police Station Chakradhar Nagar, District Raigarh Chhattisgarh
2. Purnima Patnayak D/o Shri Suresh Kumar Patnayak Aged About 38 Years R/o Village Beladula, Police Station Chakradhar Nagar, District Raigarh Chhattisgarh

---- Respondents

For the Petitioner/State : Shri Ravish Verma, Panel Lawyer

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

20.02.2019.

1. Heard on IA No.01 for condonation of delay in filing the petition.

2. On due consideration, the application is allowed and the delay of 225 days in filing the petition is hereby condoned.

3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.

4. This petition is preferred against the judgment of acquittal dated 31.01.2018 passed by Judicial Magistrate First Class, Raigarh (CG) passed in Criminal Case No.96/2014 wherein the said Court acquitted the respondent for the charges under Sections 323/34, 294 and 506 Part – II of the Indian Penal Code.

5. In the present case, victims are Radhey Shyam (PW-1) and his wife Videshni (PW-2). Though there is charge under Section 294

IPC but in the FIR lodged by victim Radhey Shyam (PW-1), no obscene words are mentioned. Though Radhey Shyam (PW-1) deposed before the trial Court that certain obscene words used by the accused, but said words are lacking in the FIR.

6 From the evidence of the prosecution, it is not established that any obscene words were used by the respondents. 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. Looking to the entire evidence, the trial Court opined that uttering of obscene words in public place by any of the respondent is not established

8. Though there is charge under Section 506 Part-II IPC in the FIR there is no mention of threat by any of the respondents. Even it is not stated before the trial Court by Radhey Shyam (PW-1) and Videshni (PW-2) that any threat is given by any of the respondents. Therefore, evidence regarding threat to kill is completely lacking, therefore, this charge is not established. If the offence under Sections 294 & 506 Part-II IPC are not committed then only remains Section 323 IPC which is non-congnizable offence. As per Section

155 CrPC investigation can be done in noncognizable offence only with the permission of Magistrate having jurisdiction over the Police Station but that is not done in the present case. Though there is submission of assault by respondents on Radhey Shyam (PW-1) and Videshini (PW-2) but as the offence under Section 323 individually is not cognizable offence. Therefore, cognizance ought to have taken only after the permission of the Magistrate concerned.

9. Looking to all these legal aspects of the matter and further looking to the factual marshaling of the case by the trial Court, that respondent Suresh slapped Radhey Shyam is lacking in the FIR. The trial Court opined that version of Radhey Shyam is under cloud and the trial Court recorded a finding of acquittal. View taken by the trial Court is one of the plausible view which is based on relevant material placed on record. It is not based on irrelevant and extraneous materials. If two views are possible, the view in favour of the accused should be accepted, therefore, it is not a case where interference of this Court is required. This not the case where the respondents should be called for full consideration of the case.

10. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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