

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 202 of 2014**

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

Versus

1. Daharuram, S/o Shivprasad, Aged about 80 years,
 2. Kantharam Chaukse, S/o Shivprasad Chaukse, Aged about 60 years,
 3. Shashikumar, S/o Kantharam Chaukse, Aged about 19 years,
- All respondents are R/o Village Dadar Kala, PS- Kartala, District-
Korba (C.G.) ----- **Respondents**

For State/Petitioner : Shri Dinesh R.K. Tiwari, Dy. G.A.

For Respondents : Shri Arvind Dubey, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board**17/03/2020**

1. This appeal is preferred against the judgment dated 24th March, 2014 passed by Judicial Magistrate First Class, Kartala, District- Korba (C.G.) in Criminal Case No. 117/13 wherein the said Court acquitted all the respondents for charge under Sections 294, 506 Part-II and 323 read with Section 34 of the Indian Penal Code (for short "the IPC"), 1860.
2. To substantiate the charge, the prosecution examined as many as 11 witnesses. The complainant namely Omprakash (PW-1) has not deposed that any obscene words were used by any of the respondent or he was threatened to kill by them. From the entire evidence, there is nothing to establish charge under Sections 294 and 506 Part-II of IPC, therefore, these charges are not established.

3. Though, Omprakash (PW-1) deposed that respondent No. 3 Shashikumar assaulted him by club, but other witnesses namely Kumari Ajani (PW-6) deposed that Kantharam (respondent No. 2) and Shashikumar (respondent No. 3) have assaulted him. Kumari Tannu (PW-7) deposed that Daharuram, Kantharam and Shashikumar assaulted him. The trial Court after evaluating the different version of these three witnesses recorded finding that it is not safe to act on their statement and charge under Section 323 read with Section 34 of IPC is not established.
4. From 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.
5. 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 respondents, thus offence under Section 294 of IPC is not established against the respondents. In the present case, the words uttered are not clear and cannot be termed as

obscene words, therefore, charge under Section 294 of IPC is not established.

6. From version of the complainant, the respondents have not uttered some words of threatening but for commission of offence under Section 506 Part-II, it has to be established that person determined to execute his threat. The respondents were not having any weapon to execute his threat, therefore, words uttered are mere fury which has sound, but no substance, therefore, charge under Section 506 Part-II of IPC is also not established. If charge under Sections 294 and 506 Part-II of IPC is eliminated, the only section remains is Section 323 of IPC which is non-cognizable offence and no investigation can be initiated in absence of permission by concerned Magistrate as per Section 155(2) of Cr.P.C., 1973.
7. The trial Court has elaborately discussed the entire evidence and recorded finding of acquittal. After re-assessing the same, this Court has no reason to take a contrary view. It is not a case where interference of this Court is required with the judgment of the trial Court. It is not a case where the respondents should be called for full consideration of this petition.
8. Accordingly, application for grant of leave to appeal is rejected. Consequently, the appeal stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge