

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 626 of 2020**

State of Chhattisgarh Through Police Station Kanker, District
Uttar Bastar Kanker Chhattisgarh. **---- Petitioner**

Versus

1. Gajadhar Sinha S/o Late Shri Chain Singh Sinha Aged About 62 Years R/o Village Chhotepara Telkabod, Police Station Kanker, District Uttar Bastar Kanker Chhattisgarh.
2. Nagesh Sinha S/o Gajadhar Sinha Aged About 32 Years R/o Village Chhotepara Telkabod, Police Station Kanker, District Uttar Bastar Kanker Chhattisgarh. **---- Respondents**

For State/ Petitioner : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****12.03.2020**

1. Heard on I.A. No. 01/2020, 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 154 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 26/06/2019 passed by Learned Judicial Magistrate First Class, Kanker (C.G.) in Criminal Case No. 734/2017 wherein the said court

has acquitted the respondents for offence under Section 294, 323/34 of the Indian Penal Code, 1860.

5. In the present case, complainant is Manbai (PW-2). She deposed before the trial Court that respondents were uttered some filthy words but from her evidence it is not clear as to who really uttered the words. General and bald statement is not sufficient to establish the guilt of respondents in absence of evidence who is the real person uttered obscene words for commission of offence under Section 294 of IPC.
6. For establishing charge 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 charges as obscenity is depraved and corrupt those whose minds are open to such immoral influences. 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 respondent is 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.

7. In the present case, the statement of Manbai(PW-2) is not sufficient to establish the charge under Section 294 of IPC against the respondents. Offence under Section 323 of IPC which is non-cognizable offence and investigation cannot be initiated without permission of Magistrate under Section 155(2) of Cr.P.C. therefore, cognizance for the said offence itself is not legal.
8. View taken by the said Court is one of the plausible view It is settled law that if two views are possible, the view which is favourable to the respondent/ accused, should be accepted. There is nothing on record to convert order of acquittal into conviction.
9. The trial court has elaborately discussed the entire evidence and after going through the record, this Court has no reason to record contrary finding. It is not a case where the respondents should be called for hearing again for full consideration of this petition. It is not a case where trial Court has over-looked the relevant material placed on record. It is also not a case where order of the trial Court is based on extraneous or irrelevant material and it cannot be termed as perverse or unreasonable.
10. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)

Judge