

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 689 of 2020**

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

Versus

1. Bablu Bargah, S/o- Chullu Bargah, Aged about 22 years,
 2. Dhundhan Bargah, S/o Amarsai Bargah, Aged about 45 years,
- Both respondents are R/o Village- Turiyabira (Sarasdol), Police Station- Lundra, District- Surguja (C.G.) ----- **Respondents**

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

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board**23/03/2020**

1. Heard on I.A. No. 01/2020, which is an 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 234 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 the judgment dated 18th April, 2019 passed by Judicial Magistrate First Class, Ambikapur, District- Surguja (C.G.) in Criminal Case No. 10/2013 wherein the said Court acquitted both 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.

5. In the present case, Lori (PW-4) is claiming to be eye witness account to the incident. Though this witness deposed that respondents assaulted Praja Ram and Battu and when she intervened Battu assaulted her, but in cross-examination she admitted that respondents have not assaulted her husband and son. The trial Court opined that version of this witness is not stable, therefore, she is not dependable.
6. Praja Ram (PW-1) admitted that Manikchand and his son Batuk are confined in jail because they assaulted one Om Prakash who died. From his version, it is doubtful whether the respondents were assailant while there was free fight from both parties.
7. Battu Ram (PW-2) deposed on same line. Manikchand (PW-3) also deposed the same line. The trial Court after evaluating the entire evidence recorded finding that voluntarily causing injury on the part of the respondents is not established, therefore, charge under Section 323 read with Section 34 of IPC is not proved beyond shadow of doubt.
8. 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.

9. 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.
10. 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.
11. The trial Court has elaborately discussed the entire evidence and recorded finding of acquittal. Finding of the trial Court is one of the plausible view. It is not the case that trial Court recorded finding on the basis of extraneous or irrelevant material or same is perverse. After going through the record, this Court is of the opinion that it is not a case where interference of this Court is

required in the judgment of the trial Court. It is also not a case where the respondents/accused should be called 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

Vasant