

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1832 of 2019**

- State of Chhattisgarh, through- District Magistrate, Raipur (C.G.)

---- Petitioner**Versus**

1. Jagnnath Sen, S/o- Thakur Ram Sen, Aged about- 46 years,
 2. Smt. Johatarin, W/o- Jagnnath Sen, Aged about- 40 years,
- Both respondents are R/o- Khamhardih, Near Satnam Chowk,
Police Station- Pandri, District- Raipur (C.G.)

---- Respondents

For State/Petitioner : Shri Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****02/01/2020**

1. Heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
2. This petition is directed against the judgment dated 3rd January, 2019 passed by Judicial Magistrate First Class, Raipur (C.G.) in Criminal Case No. 288/2013 wherein the said Court acquitted both the respondents for charge under Sections 447 read with Section 34, 294 and 506 Part-II of Indian Penal Code, 1860.
3. In the present case, the complainant is D.P. Ghritlahare (PW-1). This witness has deposed that disputed land is survey No. 372, area 24 dismal. He admitted that some portion of the said land is possessed by respondents but he is not able to state from which year the respondents are in possession of the said land. From his entire statement, it is clear that there is land dispute between the parties which can be settled by demarcation as per Section 129 of the Chhattisgarh Land Revenue Code, 1959. The parties ought

to have gone for demarcation but that is not done and a criminal complaint was filed before the trial Court. No Revenue Authority was examined before the trial Court to establish as who is in real possession of the land, therefore, possession of the appellant is not established. The trial Court after evaluating the evidence recorded finding that D.P. Ghrilahare (PW-1) admitted that land was purchased by his sister Khuni Bai (PW-4) but Khuni Bai (PW-4) has not identified both the respondents before the trial Court, therefore, charge under Section 447 read with Section 34 of IPC is not established.

4. Again from the statement of D.P. Ghrilahare (PW-1), it is not clear as to which of the respondents have used obscene words at the time of incident. 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.
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 respondents, thus offence under Section 294 of IPC is not established against the respondents.

6. In the present case, the words uttered cannot be called as obscene words, therefore, charge under Section 294 of IPC is not established.
7. From the version of the complainant, the respondents uttered some words of threatening but for commission of offence under Section 506 Part-II of IPC 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 were mere fury which has sound, but no substance, therefore, charge under Section 506 Part-II of IPC is also not established. The trial Court has elaborately discussed the entire evidence and recorded finding of acquittal. After re-assessing the entire evidence, this Court has no reason to take a contrary view, it is not a case where interference of this Court is required in 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, the application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge