

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2208 of 2019**

- State of Chhattisgarh, through- Station House Officer, Police Station- Kanker, District- Uttar Bastar Kanker (C.G.)

---- Petitioner**Versus**

1. Hukum Singh Nag, S/o- Manhagu Ram Nag, Aged about- 35 years, R/o- Bardeori, P.S.- Kanker, District- Uttar Bastar, Kanker (C.G.)
2. Chaituram Bhoyar, S/o- Late Maghnath, Aged about- 33 years, R/o- Bardeori, P.S.- Kanker, District- Uttar Bastar Kanker (C.G.)

---- Respondents

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

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****06/01/2020**

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 131 days in filing the instant 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 4th February, 2019 passed by Judicial Magistrate First Class, Link Court- Kanker, District- Uttar Bastar Kanker (C.G.) in Criminal Case No. 960/2015 wherein the said Court acquitted both the respondents for charge under Sections 294, 323 read with Section 34 and 506 Part-II of IPC, 1860.

5. In the present case, the complainant/victim is Kejuram Yadav.

This witness has been examined before the trial Court as PW-1.

He has not deposed regarding use of obscene words by any of the respondent. He has also not deposed regarding any threat given by the said respondents. The other witnesses are not eye witness account to the 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.

6. 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 that any obscene words were uttered by respondents, thus offence under Section 294 of IPC is not established against the respondents.

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.

8. Voluntarily causing simple injury is an offence under Section 323 of IPC. After evaluating the entire evidence the trial Court recorded finding that in absence of medical evidence charge under Section 323 of IPC is not established. Finding of the trial Court is one of the plausible view. It is settled law that if two views are possible, the view which is favourable to the respondents/accused should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where respondents should be called for hearing again of this petition.
9. 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