

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 59 of 2020

- State of Chhattisgarh Through- Station House Officer, Police Station Lormi, District- Mungeli Chhattisgarh. ---- **Petitioner**

Versus

1. Kunjbihari Sahu S/o Nandu Sahu Aged about 22 years,
 2. Nandu Sahu S/o Chhauwa Ram Sahu Aged about 55 years,
- Both respondents are R/o Village Jhajhapuri, Police Station Lormi, District- Mungeli Chhattisgarh. ---- **Respondents**

For State/Petitioner : Smt. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board05/02/2020

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 166 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 2nd March, 2019 passed by Judicial Magistrate First Class, Lormi, District- Mungeli (C.G.) in Criminal Case No. 188/2016 wherein the said Court acquitted both the respondents for charge under Sections 294, 506 Part-II and 323 read with Section 34 of Indian Penal Code (for short "the IPC"), 1860.

5. In the present case, the complainant is Ganpat Sahu (PW-1). The incident took place on 12th April, 2016 at about 13:15 pm at village- Jhajhapuri, Police Station- Lormi, District- Mungeli, the respondents have abused the complainant namely Ganpat Sahu in filthy language in public place and had committed maar-peet/tussle with the complainant with the help of Lathi and also threatened him to kill. The complainant (PW-1) did not depose in examination-in-chief before the trial Court that any obscene word was uttered by any of the respondent. He also did not depose that any of the respondent threatened him to kill.
6. Though on reply of question by the trial Court, he deposed that Nandu Sahu (respondent No. 2) abused him, but he has not deposed any words which may be treated as obscene word. He answered in a question by the Court that the respondents have threatened him to kill, but this version is not stated by him during examination-in-chief.
7. 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.

8. 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.
9. From the version of the complainant, the respondents 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 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. The trial Court has elaborately discussed the entire evidence and recorded finding of acquittal.
10. Taking into consideration the entire fact, the trial Court 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 in the judgment of the trial Court. It is not a case where the respondent should be called for full consideration of this petition.

11. 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