

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 78 of 2020

State of Chhattisgarh Through The Police Station Dondilohara,
District Balod Chhattisgarh., District : Balod, Chhattisgarh

---- **Petitioner**

Versus

1. Kishore Kumar S/o Rup Singh Komre Aged About 36 Years R/o Village Karregaon, Koretitola, Police Station Magchua, District-Balod Chhattisgarh.
2. Mukesh S/o Rup Singh Komre Aged About 30 Years R/o Village Karregaon, Koretitola, Police Station Magchua, District Balod Chhattisgarh.

---- **Respondents**

For State/petitioner : Mr. D.K. Tiwari, Dy.G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

04.03.2020

1. Heard on I.A. No.1/2020, which is an application for condonation of delay in filing the instant 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 264 days in filing the petition is condoned.
3. Heard on application for grant of leave to appeal filed under Section 378(3) of Cr.P.C.
4. This petition is preferred against the judgment dated 07.12.2018 passed by learned Judicial Magistrate First Class, Dondihohara, District- Balod (C.G.) in Criminal Case No. 153/2018 wherein the said Court has acquitted the respondents for commission of offence under Sections 294, 506 Part-II, 323/34 of Indian Penal Code, 1860.

5. In the present case, name of the complainant Chabilal (PW-1).
This witness did not depose regarding real abusing words uttered by the respondents before the trial Court therefore, in absence of real words uttered by the respondents charge under Section 294 of IPC is not established.
6. For commission of offence under Section 506 part-II it has to be established that person giving threat was determined to execute his threat. Mere words are not sufficient to establish the charge. In the present case there is nothing on record that anything is done in furtherance of threat therefore, words uttered by the respondents is mere fury which have sound but no substance therefore, charge under Section 506 Part-II is also not established.
7. 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. In the present case, no medical expert was examined to substantiate the charge of simple injury. Therefore, the trial Court opined that oral evidence is not sufficient to established the charge.
9. 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.
10. The trial has evaluated the entire evidence and after going through the records, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case

where respondents should be called for hearing again 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

N.Mohle