

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 193 of 2020

State of Chhattisgarh Through - Its Station House Officer,
Police Station Gandhinagar, District Surguja Chhattisgarh.

---- Petitioner

Versus

1. Pankaj Bada S/o John Bada Aged About 19 Years Resident of Village Gangapur, Police Station Gandhinagar, District Surguja Chhattisgarh.
2. Ashu Xalxo S/o Late Stanis Xalxo Aged About 20 Years Resident of Village Mission Chowk, Police Station Gandhinagar, District- Surguja Chhattisgarh. **---- Respondent**

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

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

25.02.2020

1. Heard on I.A. No.1, which is an application for condonation of delay in filing the instant petition.
2. On due consideration, the application is allowed and the delay of 61 days in filing the instant petition is hereby condoned.
3. Also 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 22.07.2019 passed by learned Judicial Magistrate First Class, Ambikapur, District- Surguja (C.G.) in Criminal Case No. 4931/2012 wherein the said Court has acquitted the respondents for commission of offence under Sections 294, 506 Part-II, 427 & 323/34 of Indian Penal Code, 1860.
5. In the present case, name of the complainants are Shailendra (PW-1) and Bhupendra (PW-3). Shailendra (PW-1) has not

deposed regarding actual words uttered by any of the respondent which can be termed as obscene words for commission of offence under Section 294 of I.P.C. As the words uttered by the respondents is not stated before the trial Court therefore, charge under Section 294 of IPC is not established. Though Shalendra Kumar (PW-1) deposed that respondents threatened him but from his evidence it is not clear that respondents were determined to execute their threat for commission of offence under Section 506 Part-II. Determination to execute the threat is condition precedent but that is not the case here. The uttered words are mere fury which have sound but to no substance therefore, charge under Section 506 Part-II is not established.

6. From the evidence of the Bhupendra (PW-3) it is not clear as to who damaged the motor-cycle. As per his evidence, it is only established that motor-cycle was dashed that is why the damage was caused. Therefore, it is not a case of mischief of any of the respondent causing damage to motor-cycle therefore, charge under Section 427 of IPC is also not established. Shailendra Kumar (PW-10) did not depose as to who assaulted him. Bhupendra (PW-3) saying that respondent and one other boy assaulted him by club but no medical expert was examined before the trial Court to establish that any injury was sustained by Shailendra and Bhupendra. Therefore, in absence of medical evidence injury on the body of the complainants is not established. That is why the trial

Court recorded finding of the acquittal for offence under Section 323/34 of IPC.

7. After going through the record, 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.
8. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

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Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle