

(2019) 02 CHH CK 0346

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 129 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Suresh Kumar Patnayak And Ors

RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155, 378(3)
Indian Penal Code, 1860 — Section 34, 294, 323, 506

Citation : (2019) 02 CHH CK 0346

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Ravish Verma

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. Heard on IA No.01 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay of 225 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 31.01.2018 passed by Judicial Magistrate First Class, Raigarh (CG) passed in Criminal Case No.96/2014 wherein the said Court acquitted the respondent for the charges under Sections 323/34, 294 and 506 Part - II of the Indian Penal Code.
5. In the present case, victims are Radhey Shyam (PW-1) and his wife Videshni (PW-2). Though there is charge under Section 294 IPC but in the

FIR lodged by victim Radhey Shyam (PW-1), no obscene words are mentioned. Though Radhey Shyam (PW-1) deposed before the trial Court that

certain obscene words used by the accused, but said words are lacking in the FIR. 6 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.

7. 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. Looking to the entire evidence, the trial Court opined that

uttering of obscene words in public place by any of the respondent is not established

8. Though there is charge under Section 506 Part-II IPC in the FIR there is no mention of threat by any of the respondents. Even it is not stated

before the trial Court by Radhey Shyam (PW-1) and Videshni (PW-2) that any threat is given by any of the respondents. Therefore, evidence

regarding threat to kill is completely lacking, therefore, this charge is not established. If the offence under Sections 294 & 506 Part-II IPC are not

committed then only remains Section 323 IPC which is non-cognizable offence. As per Section 155 CrPC investigation can be done in noncognizable

offence only with the permission of Magistrate having jurisdiction over the Police Station but that is not done in the present case. Though there is

submission of assault by respondents on Radhey Shyam (PW-1) and Videshini (PW-2) but as the offence under Section 323 individually is not

cognizable offence. Therefore, cognizance ought to have taken only after the permission of the Magistrate concerned.

9. Looking to all these legal aspects of the matter and further looking to the factual marshaling of the case by the trial Court, that respondent Suresh

slapped Radhey Shyam is lacking in the FIR. The trial Court opined that version of Radhey Shyam is under cloud and the trial Court recorded a finding

of acquittal. View taken by the trial Court is one of the plausible view which is based on relevant material placed on record. It is not based on

irrelevant and extraneous materials. If two views are possible, the view in favour of the accused should be accepted, therefore, it is not a case where

interference of this Court is required. This not the case where the respondents should be called for full consideration of the case.

10. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.