

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: February 7, 2008

CRL.M.C. 1651-52/2006 & Crl M As 2690, 2690/06, 10432/07

HIREN TOKAS & ANOTHER PETITIONERS
Through Ms. Seema Gulati, Advocate

versus

STATE (N.C.T. OF DELHI) RESPONDENT
Through Mr. Sanjay Lao, APP

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in
Digest? | Yes |

Dr. S. Muralidhar, J (open court)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the Petitioner seeking quashing of the FIR No. 572/02 dated 26th September, 2002 under Section 3 (1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act') read with Section 506 of Indian Penal Code ('IPC').

2. On 26th July, 2002 one Shri Bhagwat Singh describing himself as a General Secretary of the Balmiki Samaj Sudhar Ekta Sangharsh Samiti (Rajasthan) gave a complaint that the Petitioner No. 1 Shri Hiren Tokas and his brother Shri Nalin
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Tokas @ Raju were threatening to kill him and that it was become difficult for him to even come out of his house and visit the children's school. He alleged that both of them had on several occasions called him as 'Chura-Chamar' and abused him saying they would not spare him wherever he went.

3. On the said complaint the Special Public Prosecutor on 11th September, 2002 gave an opinion that in the absence of the complaint mentioning whether he belonged to the SC/ST, without mentioning the time, date and place of occurrence and the manner in which the complainant had been insulted or intimidated the provisions of the SC/ST Act would not be attracted.

4. It appears that thereafter another complaint was given on 16th September 2002 and a supplementary statement of Shri Bhagwat Singh was recorded on 24th September, 2002. These were placed before the learned Special Public Prosecutor for his opinion.

5. After going through the earlier complaint dated 26th July, 2002 and the subsequent complaint dated 16th September, 2002 the learned Special Public Prosecutor gave the opinion that the provision of Section 3 (1)(x) SC/ST Act would stand attracted. Thereafter, the FIR was registered against the Petitioners for the offences aforementioned on the basis of the complaint dated 15th September, 2002.

6. Initially the Petitioners filed a Writ Petition (Criminal) No. 1211 of 2002 in this Court (*Hiren Tokas & Another v. State & Ors.*) seeking the quashing of the said FIR. That petition came to be dismissed by an order dated 13th September,

2005 passed by this Court which reads as under:

“In view of the fact that the challan has already been filed and a court of competent jurisdiction has seized off the matter, I see no ground to interfere in this matter nor accede to the prayer that the FIR be quashed.

Dismissed.”

7. It is submitted by learned counsel for the Petitioners that the present petition has been filed after the filing of the charge sheet and therefore is not barred by res judicata. She submits that there cannot be any recording of the supplementary statement of the complainant to make up for the lacuna the initial complaint and that such practice has been disapproved by this Court in *Deepa Bajwa (Smt.) v. State 2004 IV AD (Cr.) DHC 490*. Reliance is also placed upon the judgment in *Mukesh Kumar Saini v. State (Delhi Administration) 2001 III AD (Cr.) DHC 229*.

8. This Court is unable to agree with the submissions of the counsel for the Petitioners. The opinion of the Special Public Prosecutor at the initial stage was only a prima facie opinion and was not determinative of whether the case could be further investigated or not. The notings produced by learned counsel for the Petitioners indicates that what was recorded on 16th September, 2002 was a complaint on the basis of which a supplementary statement was recorded. It was perfectly possible to process the second complaint dated 16th September, 2002 and to order investigation thereafter. Whether in fact the offences are made out or not will have to be examined at the stage of framing of charges.

9. After charges are framed the Petitioner in any way will be able to avail of the statutory remedies. At this stage upon perusal of the FIR and the charge sheet it

is not possible to come into the conclusion that not even a *prima facie* is made out under the provisions for which the Petitioners are being proceeded against.

10. No grounds have been made out for interfering with the impugned order by this Court to exercise its powers under Section 482 CrPC to quash the FIR in question. It is clarified that no observation made in this order would influence the decision taken by the trial court at the subsequent stages of these proceedings.

11. The petition is dismissed. The pending applications are also dismissed.

S. MURALIDHAR, J.

FEBRUARY 7, 2008

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