

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.01.2009
Date of decision : 23.01.2009

+ W.P(Crl.) 1197/2008

SATBIR SINGH & ANR. Petitioners
Through: Mr. Lalit Bhardwaj with Mr. Ajay
Larvia, advs.

Versus

STATE & ORS. Respondents
Through: Mr. Vikas Pahwa, Additional
Standing Counsel for the State.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. The aforesaid writ petition arises out of a dispute which arose between the two factions one led by the petitioner No.1 and the other led by Sh. Jaipal at whose instance FIR No.78/2008 (Second FIR) under Sections 147/148/149/323 IPC registered at P.S. Anand Parbat against petitioner No.1 and some other persons, petitioner No.1 is the author of FIR No. 77/2008 (First FIR) under Sections 147/148/149/323/435 IPC registered earlier at the same police station in respect of the same incident which

occurred in the midnight of 5/6th June, 2008.

2. The grievance made by the petitioner is slapping of provisions under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act) after more than 48 hours of the registration of FIR No.78/2008 on the basis of an additional complaint made by 24 person in writing to the senior officials of the police and recording of the statement under Section 161 of Cr.P.C.

3. According to the petitioner, after 4-5 boys in inebriated conditions were found indulging in lauding, abusing and using filthy language and were asked to stop that by petitioner no.1, the said boys went away but later came back with group of persons who were equipped with bricks, stones and glass bottles and started hurling abuses in front of the house of petitioner No.1 which is the basis of his complaint filed at about 12:10 am, i.e., almost in the midnight of 5-6th June, 2008 resulting registration of FIR No. 77/2008 under Sections 147,148,149,323 & 435 of IPC against Sh. Jaipal and Others. Soon thereafter, at the instance of Sh. Jaipal, the police registered a cross FIR No.78/2008 under Sections 147,148,149,323, & 435 of IPC against petitioner No.1 and some other persons in respect of the same incident which was also the basis of the registration of the FIR No.77/2007. The matter was also reported by the various dailies where the incident had been described as a fight between two rival factions

without a whisper about making of caste remarks.

4. It is also his case that adding of charges under Section 3(1)(x) of the SC/ST Act on account of pressure of persons of a particular community is malafide and has been done to help the accused persons in FIR No.77/2008 who had been continuously forcing the petitioners to withdraw the same and for which complaints have been made by the petitioners to the police authorities on 08.06.2008 and 09.06.2008. It is stated that the written complaint leading to addition of charges was made by persons belonging to Jatav Community alleging that in the incident subject matter of FIR No.78/2008 some utterances were also made by the accused persons which attract penalty under Section 3(1)(x) of the Act and it seems to be the basis of slapping of additional charges on or about 07.06.2008. It is also a matter of record that Dharna, Pradarshans were also organized by the persons belonging to Jatav Community outside police headquarters on 10.06.2008 seeking slapping of charges under Section 3(1)(x) of the SC/ST Act which also seems to be the basis of taking further action during the investigation of FIR No.78/2008 by the police as is borne out from the case diary which has been perused by me.

5. The petitioners claim to have come to know of this development only when on their bail application a report was called by the MM and this fact was informed by the police that provisions of Section 3(1)(x) of SC/ST Act has been added. It is

submitted that adding of Section 3(1)(x) of SC/ST Act in the second FIR is a clear and blatant abuse of the authority vested with the police under the Law and in this manner a simple dispute which arose between the two factions of the parties on account of acts and omissions of some boys, now sought to be made a dispute between two communities by slapping the provisions of Section 3(1)(x) of SC ST Act only to teach them a lesson and to ensure that the petitioners are not released on bail as and when they appear before the MM. It is submitted that the conspiracy involving the petitioner in a serious offence had started when one Ganga Devi lodged a report about a month ago where no such allegations were made.

6. It is also submitted that the addition of Section 3(1)(x) of SC/ST Act in FIR No.78/2008 merely because a subsequent complaint has been filed or a report has been made by some of the influential persons whose conduct is subject matter of investigation in FIR No.77/2008 and at the most amounts to recording of the statement under Section 161 Cr.P.C. could not have been done as no second FIR can be lodged at their instance even if FIR No.78/2008 is considered to have been lodged properly by the accused persons. It is submitted that the case of the respondents in having slapped charges under Section 3(1)(x) of the SC ST Act on the petitioners by adding the same as part of the FIR No.78/2008 tantamount to abuse of the process of court and thus required to be quashed by this Court by directing

quashing of the subsequently added Section 3(1)(x) of the SC ST Act.

7. It will be of importance to take note of some of the documents which have been annexed by the petitioners on record. The allegations in the FIR No.77/2008(first FIR) are to the following effect:

“That I reside on the above noted address and am employed in DTC. On the night of 05.06.2008 at about 10.00 pm when I was strolling in my street after having my dinner, I saw 4-5 boys who were apparently in drunken position and were hurling abuses and making noise I prohibited those boys from doing so who after arguing with me left away from there and after some time the same boys came with a mob of people armed with their hands stones, bricks, lathies and glass bottles and while hurling abuses they came in front of our house in the street. This mob of persons consisted of Jaipal s/o Tara Chand and his brothers Prem, Nekram and Lal Singh s/o Johri Yashpal s/o Tota Ram, Bobby and Balu sons of Yashpal and Mohan Devi wife of Yashpal, Devendri w/o Nekram, Ramo w/o Naresh Kumar, Basant Vasi w/o Tejpal and Tejpal, Sanja, Billu, Mukesh s/o Des Raj, Kamal Kishore, Pappu sons of Kundan Subhash Yashpal and Kailash s/o Pyare and other persons whom I know by their appearance. These persons while hurling abuses at our house started attacking with stones, lathies, bottles and started pelting stones which caused me head injury and due to which I ran inside my house and thereafter all these persons assembled and mobbed outside my house in the street and set our motorcycle No.DL-8SY-4278 on fire and broke the doors and windows with stones and all in one voice started saying to set his house also ablaze like his motorcycle and meanwhile the police made a bid to intervene bu the mob also started pelting stones at the police. Legal action may be initiated against all the above noted persons. RO&AC. Satbir Singh Attested ASI Ramphool dated 06.06.08, P.S. Anand Parbat.

8. After registering the FIR on the basis of the aforesaid allegations,i.e., FIR No.77/2008, the accused persons named in the FIR lodged a counter complaint on 06.06.2008 at about 04:00am in the morning which is the basis of FIR No.78/2008 where the petitioner No.1 has also been shown as one of the

accused. The said complaint was made by Sh. Jaipal, one of the accused mentioned in the FIR of Sh. Satbir Singh where he made the following allegations

Statement of Jai Pal s/o Shri Tara Chand r/o H.No.319/2, Gali No.2, Than Singh Nahar, Anand Parbat, Delhi, age 40 years phone No.9313616567 stated that I reside on the above noted address and deal in cosmetics items' shop. Today on 5.6.08 at about 10.00 p.m. when after closing my shop I reached the crossing near my house, I saw that some persons were standing at the crossing and just when I reached there I found among those persons Sonu son of Mr. Ram Niwas Kaushik @ Ramu slapped my son Deepak 2-3 slaps and when I asked "what is the matter and why are you beating him" then Sonu and his cousin whose name I do not know but Satbir @ Sattu who also lives in the neighbourhood is the sone of a neighbor started retorting and started saying that you cannot control children and children keep on running in the street and the child could have run over by my motor cycle and loudly spoke by hurling abuses that you will not be rectified/corrigible I asked him to behave properly at which he started indulging into abuses and just then people from the vicinity assembled there and just then Ram Niwas Kaushik @ Ramu and Satbir @ Sattu had reached I complained them about the indecent behavior and hurling of abuses by his sons so instead of persuading their sons both of them started abusing me and just then my nephew sandeep s/o Raj Kumar and some people from the neighbourhood indulged into altercation and all of a sudden Sonu Son of Ramu attacked on my head with an object resembling the cloth washing wooden device and by raising hue and cry started saying to "kill Ramu, Sattu" and sons of Ramu had entered the house and bolted the door from inside and reached first follor and second floor balcony and from where Ramu, Sattu and his son sonu and his cousin, whose name I do not know, and who is son of Sattu and whom I can identify if brought before me, and wives of Ramu and Sattu started hurling filthy abuses and started hitting us with bricks and stones and people of our community made every bid to persuade them but hey kept on throwing stones and whoever tried to intervene he was also hit by hurling of stones. Myself, my nephew and many other persons have sustained injuries and the mob set Sonu's motorcycle on fir and thereafter the police came on the spot and police somehow got control over the situation and rushed me to DDU Hospital and my nephew and some other perons, who sustained

injuries, were sent by persons from the public to someother unknown hospitals. My neighbor Ram Niwas Kaushik @Ramu, Satbir @ Sattu both of their sons, mother Shanti and wives of Ramu and Sattu have injured my nephew and our other people by hurling stones and they have abused us with filthy abuses and they are holding out threats and I apprehend that they may not give shape to any kind of incident. Action may be initiated against the above named person. RO & AC. Jaipal Attested
ASI Ramphool, P.S. Anand Parbat.

9. The perusal perusal of the aforesaid FIR shows that in the said FIR nothing had been stated by Sh. Jaipal which may attract the provisions of Section 3(1)(x) of the SC/ST Act. Copies of the newspapers which have also been annexed with the petition does not talk of any allegations regarding the allegations which may justify slapping of charges under Section 3(1)(x) of the SC ST Act

10. From a perusal of Annexure P-4 the allegations of the petitioners is also justified that there had been support coming to the petitioner party about the slapping of the provisions under Section 3(1)(x) of the SC/ST Act unless they withdrew the FIR lodged by the petitioners no.1 against Sh. Jaipal and others. The same is also reflected in the letter dated 09.06.2008, Annexure P-5. It also appears from Annexure P-7 that on 16.06.2008 that a pradarshan, dharna was organized by Jatav Community in front of police headquarters after making a mention about the dispute which are subject matter of investigation in respect of FIR No.77/2008 and 78/2008. It is submitted that a bare reading of the representation dated 16.06.2008 goes to show that while registering FIR No.78/2008 since the charges under Section 3(1)(x) of the SC/ST Act were not slapped against the petitioners

and others, the Jatav Community decided to lodge a demonstration to force the authorities to add such provisions so as to protect the owner of the community.

11. I have also gone through the case diary which was summoned. A perusal of the same goes to show that till 06.06.2008 there was not even whisper about the allegations which may make out a case under Section 3(1)(x) of the SC ST Act. However, it is only from 07.06.2008 onwards that some allegations have come on record on the basis of complaint which was marked to the I.O. by the SHO wherein some allegations have come regarding leveling of allegations which may form subject matter of the provisions under Section 3(1)(x) of the SC ST Act. In addition to the other allegations charged which is subject matter of FIR No.78/2008, Ramphool, SI who was marked with the investigation takes a decision that such allegations also makes out a case under Section 3(1)(x) of the SC ST Act of the statements of the witnesses have been recorded on the same day by the same ASI thereafter the entire investigation appears to have been concentrated only in respect of the allegations under Section 3(1)(x) of the SC/ST Act and in which as per the case diary dated 08.06.2008 additions have been made of these provisions in the FIR No.78/2008.

12. It has been fairly conceded by the learned Additional Standing Counsel for the State that in respect of the incident dated 5/6th June, 2008 two FIRs have been recorded by the police.

The first FIR was registered at the instance of Sh. Satbir & Ors, the petitioner herein while the second FIR had been registered on the statement of Sh. Jaipal who has been arrayed as accused in FIR No.77/2008. These facts have been so stated by learned additional standing counsel in the status report filed in the Court. The aforesaid position is also borne out from the case diary prepared by the Investigating Officer.

13. As discussed earlier, from the perusal of the case diaries till the registration of the second FIR, no case was made out by either of the faction for the slapping of charges under Section 3(1)(x) of the SC/ST Act which has been done only on the basis of statements made by some witnesses under Section 161 Cr.P.C. and the complaint made to the police which now makes the petitioners accused of non-bailable offences while earlier they were only accused of bailable offence as a cross case after registration of FIR No.77/2008. The result is that because of slapping of serious charges under Section 3(1)(x) of the SC ST Act, the second party arrayed as an accused in the first case has come in a position to pressurize the first party to either settle the matter or to withdraw other allegations which amounts to extortion.

14. The legal position in such kind of cases have been crystallized in a judgment delivered by the Apex Court on which reliance has also been placed by the State in T.T. Antony Vs. State of Kerala 2001 (6) SCC 181 where referring to similar

circumstances the Supreme Court observed:

20. From the above discussion it follows that under the scheme of the provisions of Sections [154](#), [155](#), [156](#), [157](#), [162](#), [169](#), [170](#) and [173](#) of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section [154](#) Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section [173](#) of the Cr.P.C.

15. However, some other observations made in this judgment are also relevant.

23. The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under the Cr.P.C. In Emperor vs. Khwaja Nazir Ahmad [AIR (32) 1945 PC 18], the Privy Council spelt out the power of the investigation of the police, as follows:

"In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court."

24. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well recognised limitation. One of them, is pointed out by the Privy Council, thus:

"if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police

would have no authority to undertake an investigation."

25. Where the police transgresses its statutory power of investigation the High Court under Section [482](#) Cr.P.C. or Article [226/227](#) of the Constitution and this Court in appropriate case can interdict the investigation to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

16. It will also be appropriate to refer to some observations made in another judgment cited by the State delivered in the case of Upkar Singh Vs. Ved Prakash & Ors. (2004) 13 SCC 292 where observations made in TT Anthony's Case (supra) have been clarified with respect to lodging of a cross complaint in respect of the same incident where legal rights of an aggrieved person to file a counter claim was likely to be affected and it was held that lodging of such counter claim is permissible.

22. A perusal of the judgment of this Court in Ram Lal Narang V. State (Delhi Admn.) also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case is in the same line as found in the judgments in Kari Choudhary and State Bihar V. J.A.C. Saldanha. However, it must be noticed that in T.T. Antony case, Ram Lal Narang case was noticed but the Court did not express any opinion either way.

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from hypothetical example given hereinbelow, i.e., if in regard to a

crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

17. The conspectus which arises out of the ratio laid down by the aforesaid judgment of the Supreme Court is as follows:

- i) In respect of an incident where two factions fight with each other and an FIR has been registered at the instance of one of the factions a cross FIR can be registered in relation to the same incident at the instance of the second party.
- ii) The police is entitled to investigate in respect of the charges leveled by both the parties and in this regard to collect the evidence which may disclose even the additional offence for which a report under Section 173(8) can also be filed along with the challan in respect of the investigation carried out by the police on the basis of the original FIR and the Cross FIR
- iii) However, any new fact which is being disclosed in the course of investigation and which makes out a new case cannot be slapped/added in either of the FIRs because that would be registration of a third FIR in relation to the same incident.

18. There can be no dispute that power of investigation vested with the investigating agencies are independent and the

allegations made either in FIR No.77/2008 or in FIR No.78/2008 will have to be investigated by the police independently without being influenced by any pressure which has been likely to be put on the State by holding demonstrations etc. The question whether any offence under Section 3(1)(x) of the SC/ST Act is made out against the petitioner will have to be decided by the police only after completing the investigation based upon the material which forms part of the two FIRs. Till such time the investigation is complete the slapping of charges under Section 3(1)(x) of the SC ST Act would not be justified and the same will be an abuse of the process of Court.

19. Thus, it is held that slapping of provisions under Section 3(1)(x) of the SC/ST Act against the petitioners by making them a part of the allegations contained in FIR No.77/2008 before completing the investigation is totally unjustified and is an act of mala fide for the simple reason that the statements made by the witnesses during the Course of investigation lodging of FIR No.78/2008 amounts to lodging of a third FIR without completing the investigation in respect of allegations made in the first and second FIR which is not permissible in the light of the judgment delivered by the Supreme Court in the case of T.T. Anthony (supra). Consequently the addition of charges under Section 3(1)(x) of the SC/ST Act against the petitioners in FIR No.78/2008 is quashed.

20. However, the aforesaid directions would in no way affect

the rights of the investigating agencies to investigate the allegations made in the first FIR and the Second FIR which has been lodged by the parties against each other. With these observations, the writ petition stands disposed of.

MOOL CHAND GARG,J

JANUARY 23, 2009
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