

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 17.12.2013

+ **CRL.REV.P. 622/2013**

STATE

..... Petitioner

Through: Mr. Vinod Diwakar, APP for State.

versus

OM PRAKASH RANA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

JUDGMENT

VEENA BIRBAL, J. (ORAL)

CRL.M.A. 16707/2013 (EXEMPTION)

Allowed, subject to just exceptions.

CRL.M.A. 16706/2013 (CONDONATION OF DELAY)

In view of the reasoning given, delay in filing the petition is condoned.

The application stands disposed of.

CRL.REV.P. 622/2013

1. This criminal revision petition has been filed wherein challenge has been made to judgment dated 12.07.2013 passed by learned ASJ in sessions case No.21/2013 whereby learned ASJ has held that no offence under Section 3(1)(x) of The Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act, (in short referred to as the SC/ST Act) is made out against the respondents and as such has discharged the respondents.

2. The facts relevant for the disposal of present revision petition are that on 18.07.2012, Smt. Neelam wife of Narender Kumar who is the complainant in the present case, made a complaint against the respondents/accused persons alleging therein that she is running a beauty parlour at shop no.C-54, Avantika, Rohini, Sector-1, for the past many years. Sh. O.P. Rana i.e. respondent No.1 is her landlord and respondent No.2 is his wife. On 11.7.2012 at about 6.00 PM the owner of the shop i.e. respondent no.1 O.P. Rana had locked the shutter of the shop when one customer and a female employee of the complainant were inside the shop. At that time the complainant was not there as she was unwell and was advised rest by the doctor. However, she went to police station and registered a complaint on the said date. Thereafter, the respondent no.1 Om Parkash Rana had opened the lock of the shutter and the customer and employee of complainant could come out from the shop and got the relief. It is alleged that on 12.07.2012 late night the respondents/accused persons opened the lock of the shop and in the presence of police officials, the complainant had put her lock on the shutter. Further allegations are that on 15.7.2012 at about 10 AM when the complainant went to her shop, the respondent No.1 O.P. Rana was present he did not allow the complainant to open the lock and misbehaved with her. His wife i.e. respondent no.2 was also present there. When she proceeded for lodging a report against them in the police station, both the respondents followed her and started abusing her. When she had reached near police station Vijay Vihar, both the respondents had abused her by saying “*churi chamari, gatar ki paidaish*”. She made a

call to police station by dialling 100 number. Thereupon, respondents/accused persons said “*Tu chamar hai aur chamar hi rahegi, hamari tarah jaat nahi ban jayegi*”. As per the complainant she somehow saved herself and went to the police station. Even outside the police station they called her “*churi chamari*”. On the basis of her report, FIR No.319/2012 under Section 3 of SC/ST Act was registered and the same was given for further action to the concerned official. During the investigation, statements of PWs were recorded. After completion of investigation, a report under Section 173 Cr.P.C. was filed against the respondents before the learned ASJ.

3. After supply of necessary materials to the respondents, arguments on charge were heard by the learned ASJ.

4. Learned ASJ vide impugned order has held that the complainant has not mentioned in the complaint in whose presence the offending words were used by the respondents. It is further held that there is no mention of presence of eye witnesses in the complaint dated 18.7.2012 at the time of alleged occurrence. Further, there was delay of three days in lodging the FIR for which there is no explanation. Relying on the judgment of *Daya Bhatnagar and Others v. State*: 2004 (2) JCC 1136 and *Deepa Bajwa v. State & Ors.*: 115 (2004) DLT 202, it has been held that no offence under Section 3 of SC/ST Act is made out against the respondents/accused persons, as such, the accused persons/respondents have been discharged.

5. Aggrieved with the same, present revision petition is filed by the State.

6. Learned APP appearing for State has contended that there is prima facie enough material on record to frame the charge against the

respondents/accused persons. It is submitted that complainant in her supplementary statement dated 27.08.2012 stated the presence of public witnesses Durga Dutt and Meenakshi in whose presence it is alleged that caste remarks were made. In these circumstances, the trial court ought to have framed the charge against the accused persons under Section 3 of SC/ST Act.

7. I have considered the submissions made.

8. The alleged occurrence is dated 15.7.2012. The complainant Neelam for the first time reported the matter to the police on 18.7.2012. In her entire statement to the police, on the basis of which FIR No.319/2012 is registered, there is no mention of presence of Meenakshi and Durga Dutt when the alleged offending words were alleged to have been uttered by the respondents/accused persons to the complainant.

9. In *Deepa Bajwa vs. State (supra)*, where quashing of FIR under Section 3 of SC/ST Act, 1989 was sought, it was held by this court that for ascertaining that a complaint on the basis of which the complainant seeks registration of FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the FIR. The relevant portion of the judgment is as under:-

“After considering the submissions made by the learned counsel for the parties, this Court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the FIR. If such a

course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence. In the complaint dated 19th April, 2001, the Complainant himself alleged that the Councillor Chhannu Mal was introducing him to the petitioner. If that was the case, how could he say later that on that day the petitioner knew that he was a Scheduled Caste. This statement, therefore, was a crude falsity introduced at the behest of the police to implicate the petitioner under Section 3 of the Act. This effort on the part of the police to supply the deficiency and cover up a lacuna in the complaint in view of legal opinion was totally unwarranted and an abuse of the process of law.”

10. In the present case, the original complaint lodged by the complainant does not mention in whose presence the offending words were used by the respondents/accused persons. There is also nothing on record to show that the respondents/accused persons were having the knowledge that the complainant was a member of SC/ST community. There is nothing on record to show that the offending words were used in full public view. The names of alleged witnesses are not mentioned in the complaint dated 18.7.2012. The witnesses i.e. Meenakshi and Durga Dutt have alleged themselves to be the eye witnesses. But their names have not been stated by the complainant in her complaint. The supplementary statement dated 27.8.2012 of the complainant giving the names of alleged witnesses can't fill up the lacuna. There is also delay of 3 days in lodging the FIR. The delay is also not explained. The basic ingredients of Section 3(x) of the SC/ST Act are missing in the present case. There is no illegality in the impugned order

which calls for interference of this court.

The revision petition is dismissed.

VEENA BIRBAL, J

DECEMBER 17, 2013

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