

\$~32.

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

+ CRL.L.P. 464/2016 and Crl. M.A. No.13620/2016

SUKHJEET SINGH

..... Petitioner

Through: Mr. Anil Rakhra, Advocate.

versus

STATE & ANR

..... Respondents

Through: Ms. Radhika Kolluru, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
02.09.2016

%

1. The petitioner has preferred the aforesaid petition to seek leave to appeal against the judgment dated 23.05.2016 passed by the learned ASJ-02/FTC, Patiala House Courts, Delhi in Complaint Case No.09/2016, whereby the learned ASJ has dismissed the said complaint case in relation to the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) and under Section 506 of the Indian Penal Code, and acquitted the respondent. The aforesaid application has been preferred to seek condonation of 13 days delay in filing the leave petition.

2. I have heard learned counsel for the petitioner and since I am not

inclined to issue notice on the leave petition, no useful purpose would be served in issuing notice on the application seeking condonation of delay.

3. The petitioner preferred the aforesaid complaint under Section 200 Cr.P.C. The application preferred by the petitioner under Section 156(3) Cr.P.C. was dismissed, and thereafter, the Court proceeded to record the pre-summoning evidence of the complainant and his witnesses. The complainant led evidence of three witnesses, including himself as CW-1, Ashok Kumar as CW-2 and Kalidas as CW-3. The accused was summoned, whereafter the complaint was committed by the learned ACMM to the Sessions Court on 15.02.2016.

4. The allegation of the petitioner/ complainant was that he was working as a Junior Operator ST 256030, Department GSDA-320 with Air India at IGI Airport. He claimed that he belongs to ‘*Mahashah*’ caste which is a Scheduled Caste. He was Chairman of the SC/ ST Employees Association at IGI Airport, New Delhi. The accused was working as a Deputy General Manager (DGM) in Air India.

5. The complainant alleged that on 17.08.2011, he had gone to the office of the accused to get his ‘interline tickets’ signed but the accused declined to do so and also tore his tickets. He alleged that the accused made caste specific derogatory remarks to the effect “... .. *chudeh, bangi tu wahan ja kar kaya karega aur chal dafa ho yahan se*”. On objection being raised by the complainant, he was further abused by the accused by uttering the words “... .. *main tujhe pair kee juti bana ke rakhunga aur jaise pehle tujhe maine Rajesh Kumar se pitwaya tha aur suspend bhee kiya tha, tere*

increment bhee rukwaya tha aur promotion bhee". The accused allegedly further used the derogatory remark "*chal saale banghi dafa ho yahan se thari shakal delkh kar main aapna din karab nain karna chatta*" while stating that he would not let the petitioner/ complainant go abroad. The complainant then made complaints on 17.08.2011 and 13.03.2012 to his department/ employer, but no action was taken. He complained the matter to the police, but no inquiry was made or FIR registered. Consequently, he preferred the aforesaid complaint.

6. The charges for the offence under Section 3(1)(x) of the Act and Section 506 IPC were framed against the accused on 29.02.2016, to which he pleaded 'not-guilty' and claimed trial. The complainant examined himself as CW-1, Kalidas as PW-2 and Ashok Kumar as PW-3. The complainant closed his evidence on 12.04.2016. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he claimed false implication by the accused and his witnesses. The accused claimed that the complainant as well as his two witnesses have been subjected to departmental enquiries regarding misconduct on their part by the accused himself and that they have been awarded punishments by the accused himself in the disciplinary proceedings. He claimed that no such incident, as alleged, had ever taken place. The learned ASJ upon appreciation of evidence concluded that the accused had been falsely implicated by the complainant and acquitted the respondent accused.

7. In the impugned judgment itself, the learned ASJ has analysed and marshalled the cross-examination of the prosecution witnesses. The complainant PW-1 in his cross-examination admitted that the accused was

his superior officer and was Head of the Department as DGM; that the accused in his capacity as the complainant's superior had taken disciplinary action against him; that in the year 2006, the accused had suspended him; and, on 24.10.2008, the accused had imposed punishment upon the complainant of reduction of two increments and had also stopped his promotion.

8. The Trial Court has also observed that though the complainant claimed that he had named the witnesses to the alleged utterances by the accused, namely Surjit Singh, Ashok Kumar and Kalidas in his complaint made in the Court, to his department and to the SHP, PS-IGI Airport, on being confronted, he admitted not to have mentioned the names of any of those persons as witnesses to the incident. He sought to explain that he did not mention their names to prevent them being threatened by the accused. He states that he had not disclosed the names of these witnesses even to the ACP, who inquired into the matter for the same reason. He also stated that in the enquiry conducted by the Air India on his complaint, he did not disclose the names of these witnesses. He explained that in the said enquiry, he was not asked to give the names of the witnesses and, therefore, he had no occasion to reveal their names. He admitted that in the year 2007, he had filed complaints of similar kind against P.K. Nambudri, DGM, Air India and Rajesh Kumar, DGM, Air India. Admittedly, both these complaints against P.K. Nambudri and Rajesh Kumar had been settled with the intervention of the present accused.

9. Paragraph 12 of the impugned judgment shows that PW-1/ complainant was also cross-examined on the aspect that the endorsement of

the 'interline tickets' of the complainant had been done by P.K. Nambudri, DGM of Major Maintenance Department of Air India, where the petitioner/ complainant was posted, whereas the accused was DGM of Ground Support Department. Thus, the complainant/ PW-1 during his cross-examination threw up several contradictions and the accused was also able to establish personal grudge against him entertained by the complainant/ petitioner.

10. The cross-examination of PW-2 and PW-3 Kalidas and Ashok Kumar respectively also shows that they had been proceeded against by the accused departmentally and action was taken against them by him. Both of them have been subjected to departmental punishment by the accused. Their cross-examination also shows that they were not able to justify their presence in the office of the accused on the relevant date and at the relevant time.

11. The learned Sessions Judge has recorded his reasons for the acquittal of the respondent in paragraphs 15 & 16 of the impugned judgment, which read as follows:

“15. After going through the evidence on record, I am of the opinion that the accused Upender Sharma deserved to be acquitted for the following reasons:-

(a) There is more than a common thread which points towards a very close association amongst the complainant and both of his witnesses. The complainant and his witnesses are known to each other very well and were working in the same organization. Both the complainant PW1 and Kalidas PW2 have been awarded punishments by the accused who has taken disciplinary action them. Even PW3 had been issued show cause notices by the accused. In these circumstances, the

statements of PW2 and PW3 have to be put to greater scrutiny.

(b) The complainant PW1 in cross-examination had claimed that he had revealed the names of PW2 and PW3 in his complaint made to the police and in the Court of the ACMM but when he was confronted with them, he admitted that the names of his witnesses were not mentioned therein. He tried to explain that he wanted to protect the identities of the witnesses so that they are not approached by the accused. This explanation is clearly an afterthought. His first statement in the cross-examination was that the names were mentioned. Even the police report filed before the Ld. ACMM stated that no witnesses had been brought by the complainant. It is therefore open to inference that no such incident took place and it was only at a later stage when the application for directions to register an FIR had been dismissed that the complainant has come forward with the names of PW2 and PW3 who are otherwise closely associated with him.

(C) PW2 had stated that he had gone to the office of the accused for making a representation regarding his increments which had been stopped while PW3 stated that he had gone there regarding requirements for post of Casual Operator. Both in cross-examination stated that they never applied to the department after the alleged incident. Neither PW2 nor PW3 made any application in writing for the purposes for which they had allegedly gone to the office of the accused that day.

(d) PW1 had set up a case that he had gone office of the accused to get his interline tickets signed. In cross-examination, he has admitted that the accused was heading the Ground Support Department while the complainant had joined the Major Maintenance Department. He stated that all interline tickets were approved by the Ground Support Department and not by Major Maintenance Department of which P.K. Nambudri was DGM. He stated that P.K. Nambudri had asked him to get the interline tickets endorsed by the accused. The complainant was confronted with his interline tickets Ex.PW1/DA to Ex.PW1/DD which he admitted all had

been approved by P.K. Nambudri. The complainant tried to explain that after the alleged incident dated 17.08.2011, the Major Maintenance Department of which P.K. Nambudri was head had started approving his interline tickets. When confronted with the documents again, he admitted that the dates on Ex.PW1/DA to Ex.PW1/DD were all prior to 17.08.2011. This admission puts a question mark on the credibility of PW1 as to why he had gone to the accused with his interline tickets when all of them used to be approved by P.K. Nambudri.

(e) PW1 in his cross-examination has admitted that previously he had filed similar complaints against P.K. Nambudri and Rajesh Kumar, both DGMs, Air India with whom he had settled his disputes.

16. The evidence led in this case clearly reveals that the complainant has made similar complaints against officials of similar rank in Air India. The reason for PW1 to have visited the office of the accused that day is not substantiated. Rather there is an admission that the accused was not the authority to whom the complainant had to submit his interline tickets for approval. The complainant did not reveal the names of his witnesses even in his complaint made before the ACMM. The complainant and PW2 have been imposed punishments in the past. Even PW3 has been the recipient of a show cause notice from the accused. The presence of PW2 and PW3 in the office that day is doubtful. Even otherwise they are very closely associated with the complainant who did not disclose their names till the last minute. These circumstances point towards only one direction, i.e. the accused has been falsely implicated by the complainant."

12. The submission of learned counsel for the petitioner is that the learned ASJ while acquitting the accused has only been swayed by the cross-examination of the PWs. He has not taken into account the examination-in-chief of these witnesses, who have categorically deposed with regard to the derogatory remarks made by the accused against the complainant.

13. I do not find any merit in the submission of learned counsel for the petitioner. The veracity of the deposition of a witness is decided on his cross-examination. The whole purpose of cross-examination of a witness is to test his credibility. The cross-examination of all the three PWs clearly shows that each of them has a clear motive to falsely implicate the accused as each one of them have been subjected to disciplinary proceedings and punishment by the accused.

14. It also came out during cross-examination of PW-1 that this was not the first occasion when he made such a complaint. Even earlier, he had made similar complaints against his superiors. He had not been able to establish his accusations. The so-called eye-witnesses produced by the complainant had also not been able to justify the circumstances in which they allegedly witnessed the incident. In fact, the purpose for which the complainant claims to have visited the accused, namely, endorsement of 'interline tickets' itself appear to be doubtful as the accused was not the authority to endorse the said 'interline tickets' qua the complainant.

15. In these circumstances, I find absolutely no merit in the present petition and there is no infirmity in the impugned judgment. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

SEPTEMBER 02, 2016

B.S. Rohella