

Court No. - 92

Case :- APPLICATION U/S 482 No. - 24598 of 2017

Applicant :- Sanjeev

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Nand Lal Pandey, Jai Shanker Audichya, Lok Nath Shukla, Yatindra Dubey

Counsel for Opposite Party :- G.A., Sushil Kumar Dubey

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Jai Shanker Audichya alongwith Sri Lok Nath Shukla, learned counsel for the applicant, Sri Sushil Kumar Dubey, learned counsel for the opposite party no.2 and Sri Rajeev Kumar Singh, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet no. 243/2016 as well as impugned cognizance order dated 08.06.2017, arising out of Case Crime No. 246/2016 u/S u/S 147, 148, 452, 323, 504, 506 of I.P.C. and Sections 3(1)(r)(s) of SC/ST Act, P.S.- Usrahar, District- Etawah and the entire proceedings of S.T. No. 37 of 2017 (State vs. Sanjeev Kumar), pending in the court of learned Special Judge SC/ST Act, Etawah.

3. Learned counsel for the applicant submits that from the plain reading of the F.I.R., no offence u/S 3(1)(r)(s) of SC/ST Act is made out against the applicant as there is no allegation that the applicant has abused the opposite party no.2 for his caste in public presence and public view, therefore, no offence u/S SC/ST Act, is made out against the applicant. Learned counsel for the applicant further submits that the applicant has been charge-sheeted for the offences u/S 147, 148, 452, 323, 504, 506 I.P.C. as well. However, the charge-sheet is filed only against the applicant herein and none of the accused persons who were found to have been involved in the instant case during the investigation. Therefore, learned counsel for the applicant submits that the offence u/S 147, 148 I.P.C., cannot be made out against the applicant herein. Learned counsel for the applicant has also relied upon the judgement of Apex Court in ***Gorige Pentaiah vs. State of Andhra Pradesh: (2008) 12 SCC 531*** and another judgement of this High Court in ***Chhatrasal Singh Sengar vs. State of U.P.: 2017 (101) ACC 603***.

4. Per contra, learned counsel for the opposite party no.2 submits that clear and categorical allegations have been made in the F.I.R., itself that the applicant herein belongs to the Scheduled Caste, which is added in the name of the applicant itself and there are categorical allegation with regard to the abuse of the caste name of the applicant herein. Learned counsel for the opposite party no.2 submits that so far as the incident is concerned, the F.I.R. itself makes that there were various unknown persons alongwith the applicant, who were involved in the incident. However, during the investigation, the Investigation

Agency could not trace them out and file the charge-sheet against them. Therefore, in the incident, more than five persons were involved who were duly alleged in the F.I.R. and failure of investigation would not in any way mean that no offence u/S 147, 148 I.P.C., is made out against the applicant.

5. Learned A.G.A. for State submits that the clear and categorical allegations abusing the opposite party no.2 for his caste has been made out in the F.I.R. Therefore, the offences under the provisions of SC/ST Act, is made out against the applicant herein.

6. Having heard the submissions made by learned counsels for the parties, this Court has carefully perused the record of the case. From the perusal of the F.I.R., which has been supported by one of the independent witnesses named in the F.I.R., the other witness in the F.I.R., has not supported the version of the opposite party no.2 as stated in the F.I.R. The police after due investigation has filed charge-sheet against the applicant herein for the offences u/S 147, 148, 452, 323, 504, 506 I.P.C and u/S 3(1)(r)(s) of SC/ST Act and learned Magistrate has taken cognizance against the applicant u/S 147, 148, 452, 323, 504, 506 I.P.C. and u/S 3(1)(r)(s) of SC/ST Act. With regard to the submissions of the applicant that no offence u/S 3(1)(r)(s) of SC/ST Act is made out against the applicant, it will be relevant to take note of the judgement of **Gorige Pentaiah (supra)**, wherein the Apex Court has observed as under:

"6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act the complaint ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

7. The aforesaid judgement has been subsequently relied upon by this Court in **Chhatrasal Singh Sengar (supra)** as under:

"5. It is settled law that when the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the applicants to face the criminal trial under the SC/ST Act would be totally unjustified leading to abuse of process of law. Reliance has been verdict in the case of Gorige Pentaiah vs. State of Andhra Pradesh and other. Paragraph 6 of the said which is reproduced as below:

"In the instant case, the allegation of Respondent no.3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant- accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere, it is mentioned that the appellant-accused was not a member

of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, the permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

7. Accordingly, the application under Section 482 Cr.P.C. is partly allowed. Proceedings of criminal case No. 2771 of 2001 with to offences under section 3(1)(x), S.C./S.T. Act. is quashed for want of necessary ingredients. However, it is provided that the Court below shall proceed with the criminal case with regard to offences under remaining section 147, 452, 323, 504, 506 IPC, accordance with law and to that extent application under section 482 Cr.P.C., is partly dismissed."

8. From the aforesaid law laid down by the Apex Court which has been applied by this Court as well, it is apparent that abuse to the caste of the person has to be made in public view and at public place to attract the offence u/S 3(1)(r)(s) of SC/ST Act.

9. In view of the aforesaid judgements and in the considered opinion of this Court no offence u/S 3(1)(r)(s) of SC/ST Act, is made out against the applicant herein. However, for the remaining offences, there are categorical allegations that alongwith the applicant various other unknown persons have assaulted the opposite party no.2. Therefore, from the allegations, it can't be said that no offence as alleged against the applicant is made out against the remaining sections of I.P.C.

10. In view thereof, the instant application is **partly allowed**. The charges u/S Section 3(1)(r)(s) of SC/ST Act are hereby **quashed** against the applicant and the trial Court is directed to proceed against the applicant for the remaining offences.

11. With the observations, the instant application is **disposed of**.

Order Date :- 24.11.2023

Shubham Arya