

Court No. - 28

Case :- APPLICATION U/S 482 No. - 2237 of 2007

Applicant :- Kamleshwar Prasad Pandey And 3 Ors.

Opposite Party :- State Of U.P.Through Through Station House Officer And Another

Counsel for Applicant :- Prashant Kumar,Chandra Shekhar Sinha

Counsel for Opposite Party :- Govt.Advocate,Badri Prasad Singh,Vashudeo Mishra

Hon'ble Shree Prakash Singh,J.

Heard Sri Chandra Shekhar Sinha, learned counsel for the applicant, Sri Badri Prasad Singh, learned counsel for the opposite party no. 2 and Ms. Nusrat Jahan, learned AGA for the State and perused the material placed on record.

The instant application has been filed with a prayer to quash the impugned order dated 29.06.2007 passed by the Court of ACJ-V, Room No. 37, Lucknow in Complaint Case No. 468 of 2007, under Sections 323, 504, 506 of IPC and Section 3(1)(x) of the SC/ST Act summoning the petitioners for appearance for 10.08.2007.

The learned counsel appearing for the applicants submits that initially an NCR was lodged by the opposite party no. 2 and on application U/S 155 (2) of Cr.P.C., the matter was investigated and the final report was submitted by the Police authorities. After such final report, the Magistrate has treated it as complaint case and the matter proceeded.

He argued that the statement of the complainant as well as the witnesses were recorded and being aggrieved with the proceeding, the instant application has been filed wherein this Hon. Court has granted interim protection to the applicant vide order dated 10.08.2007.

Contention of the learned counsel for the applicant is that in fact the NCR was lodged only because of the fact that there was animosity with the applicant no. 1, who was then posted as Bank Manager and there was certain dispute initially with regard to KCC loan account, which was running in the name of the opposite party no. 2. He next submits that the opposite party no. 2 narrated false story in his statement under Section 200 of CrPC as there is no whisper in the NCR moved by the opposite

party no. 2, himself, regarding hurling abuses, naming the caste of opposite party no. 2. The story has been twisted in the statement under section 200 of CrPC, which itself demolishes the story. He next added that even the applicant nos. 3 and 4, who themselves belong to the SC/ST category have been charged the offences under the SC/ST Act, on the basis of the statement of the complainant recorded under Section 200 of CrPC. He submits that it shows the cavalier manner, in which the learned trial Court has considered the statement of the complainant.

In support of his contentions, he has referred the Caste Certificate which has been annexed along with the supplementary affidavit dated 01.10.2023 and added that from the Caste Certificate itself, it is evident that the applicant nos. 3 and 4 belongs to the SC/ST category.

Further in support of his condition, he has please reliance on a judgement reported in **(2020) 10 SCC 710; Hitesh Verma versus State of Uttarakhand and anr.** and has referred paragraphs 13, 17, 18 and 21 of the above said judgement.

Paragraph 13, 17, 18 and 21 of the above said judgement are reproduced hereinunder:-

"13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

17. In another judgment reported as Khuman Singh v. State of Madhya Pradesh⁶, this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

6 2019 SCC OnLine SC 1104 "15. As held by the Supreme Court, the

offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

21. In Gerige Pentaiah, one of the arguments raised was non-disclosure of the caste of the accused but the facts were almost 9 (2020) 4 SCC 727 similar as there was civil dispute between parties pending and the allegation was that the accused has called abuses in the name of the caste of the victim. The High Court herein has misread the judgment of this Court in Ashabai Machindra Adhagale as it was not a case about the caste of the victim but the fact that the accused was belonging to upper caste was not mentioned in the FIR. The High Court of Bombay had quashed the proceedings for the reason that the caste of the accused was not mentioned in the FIR, therefore, the offence under Section 3(1)(xi) of the Act is not made out. In an appeal against the decision of the Bombay High Court, this Court held that this will be the matter of investigation as to whether the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. Therefore, the High Court erred in law to dismiss the quashing petition relying upon later larger Bench judgment."

Referring the aforesaid, he added that the Hon'ble Apex Court has held that offences under the SC/ST Act, attracts, where there is ingredients of intentional insult and intimidation with an intent to humiliate.

He also added that it has further been held that if the allegation with respect to naming the caste is not mentioned initially, in the First Information Report, the same would be doubtful. Thus, his submission is that the case of the present applicants is also squarely covered with the ratio of the judgement aforesaid.

Concluding his arguments, he submits that the applicants have falsely been implicated and the reason is the animosity of the opposite party no. 2 with regard to the KCC loan of the bank concerned and further there was no intent to insult or to intimidate the opposite party no. 2 and therefore, the criminal proceeding against the applicants may be quashed.

Per contra, the learned counsel for the opposite party no. 2 has

vehemently opposed the contentions aforesaid and submits that the statement of the complainant under Section 202 is evident, that the applicants have hurled abuses, naming the caste and the statement of the witnesses, also supports the aforesaid version of the complainant and therefore, it is up to the trial Court to decide during the course of the trial. He next added that though, the applicants nos. 3 and 4 have annexed their Caste Certificates along with the supplementary affidavit but this also is the factual matrix which can be examined before the trial Court itself.

He next added that so far as the ratio of the judgement of **Hitesh Verma (supra)** is concerned, it is not applicable to the case of the present applicants and thus, the instant application is liable to be dismissed.

The learned counsel for the State has also opposed the contention aforesaid and submits that the present applicants are not entitled for any relief.

Having heard the learned counsel for the parties and after perusal of the material placed on record, it transpires that as per the assertion of the applicants, there was a dispute with respect to some KCC loan in the year 2004 and thereafter, there was animosity of the applicants with the Bank Officials and thereafter, once the applicant, who was the Bank Manager at the time of the occurrence were implicated in the complaint. Further it has also been stated that the applicant nos. 3 and 4 belongs to SC/ST category and in support of aforesaid facts, Caste Certificates of the applicant nos. 3 and 4 are annexed along with the supplementary affidavit.

When this Court examines the abovesaid facts, it transpires from the assertion made in paragraph 23 of the paper book that there is a specific averment that the applicant nos. 3 and 4 belong to SC/ST category. Further the same is also supported by the Caste Certificate annexed along with the supplementary affidavit dated 01.10.2023, which clearly establishes that the applicant nos. 3 and 4 belongs to the SC/ST category. Thus, so far as the charge-sheet and the summoning order under the SC/ST act against applicant nos. 3 and 4 are concerned, are erroneous and against the law. Therefore, the charge-sheet filed against the applicant nos. 3 and 4 regarding the offence of SC/ST Act is hereby quashed and the matter against applicant nos. 3 and 4 shall proceed under Section 324, 504, 506 of the IPC. So far as the other applicants are concerned, since there is allegation in the statement under Section 200 and 202 of CrPC and therefore, those are subject matter of the final outcome of the trial in the complaint case.

Consequently, the instant application is hereby **partly allowed**.

However, the applicants nos. 1 to 4 are at liberty to move discharge applications before the trial Court concerned within a period of 30 days from the date of this order and if such an applications are moved, the trial Court is directed to consider and decide the same within a further period of 45 days.

It is clarified that the observations made hereinabove would have no bearing on the merits of the case.

Order Date :- 11.10.2023

Anurag