

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.14101 of 2014

%22.04.2015

Between:

P. Bhaskar Raju. Petitioner

AND

The State of Telangana

Rep. by Public Prosecutor,

and others. Respondents

! Counsel for Petitioner : Sri K. Venumadhav

^ Counsel for Respondents 1 & 2 : Addl. Public Prosecutor

^ Counsel for Respondent No.3 :Smt. M.Bhagyasri

< Gist:

> Head Note:

? Cases referred:

1. 2007 (2) ALT (CrI.) 106 (AP)
2. 2012 (1) ALD (CrI.) 396 (AP)
3. 2012 (2) ALD (CrI.) 288 (AP)
4. 2008 (2) ALD (CrI.) 882 (SC)
5. MANU/DE/0085/2004 = 109(2004) DLT915
6. 2005 (5) ALD 566 = 2000 (5) ALT 602

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.14101 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., the

petitioner/accused seeks to quash the proceedings in FIR No.270 of 2014 of Thorrur PS, Warangal District.

2) On the report given by one Jatoth Gutta of Kistuthanda Chinnavangara, belonging to Scheduled Tribe, the police registered FIR. The allegations are that in respect of lands acquired by his grand-father, the names of complainant and his two brothers were not recorded in revenue records and so, in order to request the accused who is the VRO of their village, to enter their names in the Pahanies, the complainant and his own brother—Jatoth Mallaiah went to the house of accused at about 7 AM on 07.10.2014 and requested the accused to enter their in the Pahanies. On that, accused replied that he cannot do that work and they have put up an application to MRO but the complainant and his brother importuned him. On that, it is alleged, the accused grew wild and abused them as—“Lambada Bastards why you are pestering me in spite of my repeated telling to you”.

Hence the complaint. Investigation is reported to be pending.

3 a) Denying the FIR allegations, learned counsel for petitioner/accused vehemently argued that even if the entire allegations are uncontroverted, they do not constitute any offence inasmuch as they would reveal that the accused has explained to them that he was not competent to enter the names of complainant and his brothers in the Pahanies and they have to put up application to MRO for consideration and in spite of it they annoyed with repeated requests and in such scenario even if he shouted on them, it cannot be said that he had any criminal intention to abuse them by caste to demean them. Since there is no intentional insult or intimidation, the offence under Section 3(1) (x) of Scheduled Castes and Scheduled Tribes ((Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”) will not attract. In this context, he relied upon the following decision to buttress his argument that there must be requisite intention to insult the person by cast to attract the offence under Section 3(1)(x) of SC & ST Act.

Budapap v. State of A.P.

- b. Secondly and most importantly, he argued that even if the allegations are accepted to be true, still charge under Section 3(1) (x) of SC & ST Act cannot be maintainable in view of the fact that the alleged offence took place in the early hours of the day at the house of the accused which is neither a public place nor within public view. He contended that unless the offence is taken place within the public view accused cannot be held guilty. On this aspect he relied upon the following decisions.

1. ***D.Santosh Reddy v. S.H.O. of Shamshabad PS, Hyderabad***
2. ***V.Sudhakar v. R.Ram Mohan Rao***

He thus prayed to quash the proceedings.

4 a) Per contra, opposing the petition, learned counsel for 3rd respondent/complainant argued that a perusal of the FIR allegations would clearly show that accused had intentionally insulted the complainant by his caste and if really he were annoyed by the repeated requests of the complainant, he could have shouted at him in a different manner and there was no need of abusing him by his caste which reflects his intention to insult the complainant by his caste. He argued that in deciding a quash petition, the Court has to take the FIR allegations to be true on their face value and then only decide whether such allegations constitute any offence or not but at this stage the Court shall not make a roving enquiry as to the veracity or otherwise of the FIR allegations. On this aspect he relied upon the decision reported in ***Swaran Singh and others v. State through Standing Counsel***.

b) Secondly, he argued that though the offence was occurred in a private place, still it was within the public view and therefore, the

offence is maintainable against the accused. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** The offence alleged against the petitioner/accused is one under Section 3(1)(x) of SC & ST Act. The said Section reads thus:

“(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe—

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

To attract the offence, the requisite ingredients are:

- i. *Offender is not a member of Scheduled Caste or a Scheduled Tribe;*
- ii. *He intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe;*
- iii. *In any place within public view*

In the light of above ingredients, it has now to be seen whether a *prima facie* offence could be made out against the petitioner/accused or not.

a) The first and foremost argument on behalf of the petitioner is that even if the FIR allegations are uncontroverted, no offence could be made in this case because there was no intentional insulting of the complainant in the name of his caste by the accused inasmuch as in spite of the accused informing that he was not the authority to note the Pahanies in the names of complainant and his brothers and they have to file application before the MRO, still the complainant repeatedly demanded accused to enter their names in the Pahanies and in this back drop, even if the accused shouted on them, that might be due to annoyance got by him out of persistent pestering by

the complainant. On the other hand, the contention of 3rd respondent/complainant is that even if the accused was annoyed by the request of the complainant, there was no need of abusing him by his caste which demonstrates his intention to insult. His contention is that the FIR allegations should be taken to be true on their face value in this regard.

b) It is true in a quash petition, the allegations in FIR have to be notionally accepted to be true for deciding the petition. This was held by Apex Court in **Swaran Singh's** case (4 supra) wherein it was observed thus:

“At this stage the Court is not to see whether the allegations in the FIR are correct or not, but only to see whether treating the FIR allegations as correct as offence is made out or not.”

7) So, following the above principle, if the FIR allegations are perused, the accused abused the complainant as:

“లంబాడ లంజకొడుకుల్లారా ఎందుకు సతాఇస్తారురా మీకు ఎంత చెప్పినా వినరా”.

If the said allegations are uncontroverted, they demonstrate the intention of the accused to insult, because as rightly pointed out by the counsel for respondent, accused had no business to abuse the complainant by his caste even if he was annoyed by repeated importunes of the complainant. Hence the intention has to be inferred from the circumstances.

a) In this regard, the decision reported in the case of **Budapap** (1 supra) can be distinguished. In that case, the complainant was attacked by about 7 persons and they went to him and abused him and beat him with brooms, chappals, hands and legs and further abused him in his caste name. It was observed that the complainant did not make a specific allegation as to who among the accused used those abusive words. In the light of those facts it was held that the complainant could not prove the intention to humiliate him and quashed the proceedings. That is not case here. So, the first

argument raised by the petitioner does not carry merit.

b) Then, the second argument of the petitioner/accused is that since the offence allegedly took place in the house of petitioner which is a private place, and not within the 'public view' and no members of the public have allegedly witnessed the incident, the offence under Section 3(1)(x) of SC & ST Act was not made out by the prosecution. On the other hand, the contention of 3rd respondent/complainant is that though the offence took place in the house of accused, still that place was within the 'public view' and hence the offence was very much committed.

8) In this context, the questions would arise are what is the distinction between a 'public place' and a place within 'public view' and further, if the offence had occurred at either place, whether it is sufficient that that place is amenable to public or that public must physically viewed the incident to complete the offence. These questions were answered in the following decisions.

1. *Swaran Singh*'s case (4 supra)

2. *Daya Bhatnagar v. State*

3. *Bharat Petroleum Corporation Ltd., Mumbai v. Union of India*

a) In ***Swaran Singh***'s case (4 supra) the facts are that the complainant was working as car driver under Sh.Umesh Gupta. He belongs to Khatik caste. He used to stand near the car parked at the gate. His grievance was that every now and then Smt. Simran Kaur and her daughter while passing through him used to abuse him by his caste. On 10.12.2014, in the morning while he was cleaning the car, both mother and daughter threw dirty water on him and abused him on his caste which was witnessed by guard of the apartment and another driver. While drawing distinction between 'public place' and a place within 'public view' the Apex Court held as follows:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a `Chamar') when he

stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

b) In **Daya Bhatnagar's** case (5 supra) one of the points referred to third Judge is:

"(1) What is the correct and real meaning of expression "public view" occurring in Section 3(i)(x) of SC/ST (POA) Act, 1989 and whether it would include the view of the accused in a counter FIR?"

It was held as follows:

Para 15. x x x x x

(c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present."

Para-19 x x x x x

"Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties."

c) In **Bharat Petroleum Corporation Ltd.'s** (6 supra) a learned single

Judge of this High court expressed same view as follows:

Para -12 x x x x

“On the other hand, the learned Government Pleader submits that the interpretation sought to be given by the learned Senior Counsel is misconceived. He submits that the offence should be committed in a place which is amenable to public view and therefore, if the chamber of the Officer is amenable for public view, it is sufficient to constitute an offence and it is not necessary that the public should physically view the situation or event.” (Emphasis supplied).

13. Having given serious consideration to the issue, I am of the view that the contention of the learned Government Pleader cannot be countenanced for the simple reason the very section itself is specific that the insult or intimidation should have taken place in public view. It need not be a public place, it could also be a private place. The intention of the Parliament was very clear that this insult or intimidation should have been caused in a place within the public view. If it is committed in any place which is not within the public view, it would not be treated as an offence. Otherwise, the Parliament could have omitted the words within the public view, and it would be redundant if the contention of the learned Government Pleader is accepted. Admittedly, in the instant case, the alleged offence has taken place in the chambers of the Officers where there was no public, and which was not within the public view. It is not even the contention of the 4th respondent that the events were viewed by the public on the days mentioned by him in the complaint. In such a situation, it would be very difficult for this Court to conclude that even though public did not view the event, yet, it has to be treated as a offence under Section 3(1)(x) of the Act. The decision of Madhya Pradesh High Court fully covers the case on hand.” (Emphasis supplied)

9) So, from the above judgments, it is clear that irrespective of the place of offence being a ‘public place’ or ‘private place’, it must be within ‘public view’ i.e. member/members of public present and witnessed the incident to constitute an offence under Section 3(1)(x) of SC & ST Act.

9) Coming to the instant case, the complaint allegations would read as if the offence took place in the house of petitioner/accused, but it is not mentioned about the ‘public view’ i.e. presence of public and witnessing the incident. As such, from the facts, it must be held that the offence under Section 3(1)(x) of SC & ST Act is not made out as

per law and continuation of investigation will thereby amount to abuse of process of law.

10) In similar circumstances, in the cases of ***D.Santosh Reddy*** and ***V.Sudhakar*** (2 and 3 supra) proceedings were held not maintainable against the concerned accused.

11) In the result, this Criminal Petition is allowed and proceedings in FIR No.270 of 2014 of Thorrur PS, Warangal District are hereby quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

Dt. 22-04-2015

Note: LR Copy to be marked: Yes / No

Murthy