

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1107-SB of 2003 (O&M)
Date of Decision : 09.01.2015

Balwan Singh

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Tapan Yadav, Advocate
for the appellant.

Mr. Ashish Yadav, Addl.A.G., Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment dated 26.05.2003 and order dated 28.05.2003 passed by the Special Judge, Narnaul convicting the appellant under Section 3(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short '*the Act*') and sentencing to undergo imprisonment of 6 months with fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment of 1 month.

The allegations in brief were that on 24.09.2000 at about

9 A.M. the appellant came to the Chowk in front of Harijan Basti and started ranting against the members of the scheduled caste in general. When the complainant asked why he was doing so, he became enraged and started abusing the complainant with caste words, and tried to assault him but was stopped from doing so. Having been convicted by the Special Judge he is before this Court.

The precise argument of the learned counsel for the appellant is that the words 'with intention to humiliate' pre-suppose that the appellant knew that the complainant was a member of the scheduled caste and in this context it was necessary for him to have mentioned in the complaint specifically that the appellant knew that he was a member of the scheduled caste but there was no such averment in the complaint. He has relied upon the judgment in the case of **Gorige Pentaiah vs. State of Andhra Pradesh and others, 2008(4) R.C.R. (Criminal) 171**, wherein the Hon'ble Supreme Court in para No.6 held as follows:-

“6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.5.2004, 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, 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.”

Learned counsel for the appellant has further relied upon the judgment in the case of ***Dr. Onkar Chander Jagpal and another vs. Union Territory, Chandigarh and another, 2012(1) R.C.R (Criminal) 931***, wherein this Court in para No.14 held as follows:-

“14. A conjoint and meaningful reading of these provisions would reveal that in order to attract the penal provisions of Section 3(x) of the Act, it was incumbent upon the complainant to specifically mention in her complaint and the FIR should disclose that (i) the petitioners-accused were not the members of Scheduled Caste or Scheduled Tribe; (ii) they knew that she (complainant) was a member of Scheduled Caste or Scheduled Tribe; (iii) they intentionally insulted or intimidated with intent to humiliate her as a member of Scheduled Caste or Scheduled Tribe and (iv) in any place within public view. The words “intentionally insulted with intent to humiliate as a member of Scheduled Caste/Scheduled Tribe in any place within public view”, have significant meaning. An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult, the person insulted must be present in public view. In other words, the words “within public view” means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence alleged under this Section is attracted.”

Learned counsel for the complainant as well as the learned Additional Advocate General have accepted the factual assertion that there is no such averment in the complaint.

In the circumstances, the appeal is allowed, and the impugned judgment and order convicting and sentencing the appellant, are set aside.

January 09, 2015

ashish

**(AJAY TEWARI)
JUDGE**