

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1055-MA of 2013
Date of Decision : 12.03.2015

Major Singh

.....Applicant

Versus

Kulwinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. Achin Gupta, Advocate
for the applicant.

R.P. Nagrath, J. (Oral)

The instant petition has been filed by complainant Major Singh under Section 378 (4) of the Code of Criminal Procedure, 1973 for grant of special leave to appeal against the judgment of acquittal dated 13.09.2013 passed by the learned Special Judge, Mansa, whereby accused-respondents have been acquitted for the offence punishable under Section 3 (i) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

The complaint was filed on 28.05.2009 in respect of occurrence allegedly taking place on 07.05.2009. After recording preliminary evidence, learned Magistrate summoned the accused-respondents to face trial and the case was committed to the Sessions Court for trial.

In proof of the charge, the prosecution examined the complainant-appellant as PW-1 and two eye-witnesses, namely; Jagsir Singh PW-2 and Buta Singh PW-3, a resident of the village.

The story of prosecution briefly stated is that on 07.05.2009, complainant alongwith his son Jagsir Singh, his wife Shinder Kaur, mother Karnail Kaur came to village Dhaleva for casting their votes. When they came out of the school after casting their vote, the accused persons met them. They addressed the complainant "*Kutta Chamar*" and remarked as to why he is not leaving the village and how he had come to the village to cast their votes. Then complainant told them that they have votes in village Dhaleva and have every right to cast vote. The accused by addressing the competent "*Kutta Chamar*", insulted the complainant in the presence of his family members and in the presence of Nazar Singh son of Nand Singh, Buta Singh son of Kartar Singh. After the incident complainant alongwith his family went to village Bachhuana. On 19.05.2009, complainant moved an application to the SHO, P.S. Bhikhi, but no action was taken. On 28.05.2009, in the morning the complainant went to enquire about his application dated 19.05.2009, but police refused to take any action against the accused.

I have heard learned counsel for the petitioner and also gone through the judgment of the trial Court and find from the facts of the case that there is absolutely no ground to grant special leave to appeal, as the judgment of the trial Court is based on correct

appreciation of the evidence and well settled principles.

One of the ground considered by the learned trial Court is delay in filing the complaint to be a relevant factor but that by itself may not so important as the complainant stated that police did not listen to him. However, learned trial court has quite correctly observed that filing of the instant complaint is motivated because there is a judgment dated 11.02.2010 Ex. D-1 in FIR dated 27.05.2008 (Ex. D-2) pertaining to an incident dated 25.05.2008 recorded at the instance of accused-respondent no. 1. For the said occurrence dated 25.05.2008, Jagsir Singh the son of appellant-complainant and one Gobind Singh were convicted of the charge under Section 307 IPC. The other accused in that case were family members of Jagsir Singh son of the appellant-complainant.

The other important aspect as per observations of the trial Court is that there was no allegation in the complaint nor the asserted during evidence that accused were aware of the caste of the complainant. Such an allegation and the evidence on the fact could only bring the basic ingredients to attract the offence charged. The observations of the learned trial Court are reproduced as under:-

“Perusal of file reveals that in the complaint, it was no where mentioned that the accused were aware of the caste of the complainant. During examination of prosecution witnesses, none of witnesses have stated that accused were aware about the caste of the

complainant. The complainant himself appeared as PW-1 but he nowhere stated in his examination in chief that the accused were aware regarding the caste of the complainant. PW-2 Jagsir Singh have also nowhere stated in his examination in chief that accused were aware regarding the fact that complainant was member of Scheduled Caste or Scheduled Tribe. Buta Singh PW-2 also failed to disclose that accused were aware about the fact that complainant belong to Scheduled Caste or Scheduled Tribe community. So, provision of Section 3 of the Act are not attracted and no offence is made out. I am further supported my observation with the case law laid down in Charman Lal Goyal vs. Kaur Singh, 2008 (1) RCR (Criminal) 377, wherein it was held in para 5 of the judgment as under:-

“Learned counsel for the petitioner next contended that there is not even an averment in the impugned complaint (Annexure P-4) that the petitioner had knowledge that the respondent belongs to Scheduled Caste and consequently, no offence under the Act is made out. There is considerable merit in the argument. Perusal of impugned complaint reveals that the respondent has nowhere averred that the petitioner had knowledge that respondent belongs to Scheduled

Caste. In view of failure of the respondent to even allege this essential ingredient of the offence under the Act, no offence under the Act can be said to have been committed by the petitioner by the alleged utterances against the respondent with reference to his caste, even if the allegation made in the complaint are taken at their face value. The aforesaid essential requirement of the offence under the Act is completely missing in the impugned complaint. Consequently, the petitioner cannot be prosecuted for any offence under the Act.”

Trial Court has applied well settled principles while appreciating the aforesaid fact to say that offence was not made out.

Finding absolutely no merit in the contention of the learned counsel for the petitioner, the application under Section 378 (4) Cr.P.C. for special leave to appeal is declined. Consequently, the appeal against acquittal also stands dismissed.

March 12, 2015
jk

(R.P. NAGRATH)
JUDGE