

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22773 of 2011.
Decided on:-03.12.2015.

Resham Singh.

.....Petitioner.

Versus

Sushil Kumar and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. Dhirinder Chopra, Advocate
for the petitioner.

Mr. I.P.S. Kohli, Advocate
for the respondents.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash the order dated 17.2.2011 passed by learned Sessions Judge, Ferozepur whereby revision filed by the petitioner against order dated 15.3.2010 passed by the Judicial Magistrate 1st Class, Zira, was dismissed. Learned Magistrate vide order dated 15.3.2010 has discharged the respondent-accused.

Briefly stated, complainant Bishan Kaur filed a complaint under Sections 182, 500, 506 and 120-B IPC along with Section 7 of the Protection of Civil Rights Act, 1955 read with Article 172 of the Constitution of India. It has been alleged that the respondent No.1-accused was drunk and antisocial element. He was indulged in distillation of illicit liquor and running a brothel and was busy in antisocial activities. Number of cases were registered against him in Police Station Makhu. Whereas respondent No.2-accused who was running the business as contractor, was also indulged in antisocial activities. He used to have company of 8-10 antisocial persons. Similarly, respondent No.3-accused who was running a hospital in Makhu, was very rich man and was dismissed from the Government service because he has obtained that service on the basis of fake certificate. He was also having links with antisocial elements.

The main allegation against the respondents is that they insulted the complainant in the name of her caste and threatened her and her daughter-in-law Salwinder Kaur wife of petitioner Resham Singh. It is alleged that the respondents-accused uttered words such as “Kuttio Churio” to the complainant and her daughter-in-law.

The complainant has expired during the proceedings of the case and accordingly, it is being pursued by her son Resham Singh, the present petitioner.

Taking into consideration the complaint, evidence was required

to determine whether a prima-facie case was made out against the respondents. In the complaint filed by the complainant, it has nowhere been stated that the accused were having knowledge that the complainant belongs to scheduled caste. Her daughter-in-law Salwinder Kaur when came into witness box never stated that the accused had the knowledge regarding the caste of the complainant. The complainant in her statement has stated that Balwinder Kaur wife of Pritam Singh, Dalip Kaur wife of Gurdial Singh and Sewa Singh Khurba son of Bahal Singh were present at the spot when these words were spoken. None of them was examined by the complainant to corroborate her plea. The only single statement is of Salwinder Kaur, which was not found to be sufficient for framing charge against the accused.

Accordingly, the learned Magistrate discharged the respondents-accused. Even the revision petition filed against order dated 15.3.2010 passed by learned Magistrate was dismissed by learned Sessions Judge, Ferozepur vide order dated 17.2.2011.

It is in these circumstances, the petitioner has approached this Court by filing the instant petition.

I have heard learned counsel for the parties.

While appreciating evidence of the complainant at the stage of Section 245(1) Cr.PC, the Court was required to see if the evidence of complainant, if taken unrebutted, form a prima-facie case against the respondents-accused or not? Section 245 Cr.PC provides that the Magistrate

shall consider all the evidence and if, for reasons to be recorded, he considers that no case against the accused is made out, which if unrebutted, would warrant his conviction, the Magistrate shall discharge him. The main allegations against the respondents are that they have insulted the complainant in the name of her caste and threatened her as well as her daughter-in-law Salwinder Kaur. Said Salwinder Kaur in her statement made before the trial Court has nowhere made any reference to the fact that the accused were having the knowledge that the complainant was belonging to scheduled caste. Interestingly, said Salwinder Kaur, during the course of her cross-examination, admitted that the present complaint was filed as the accused had harassed them by getting a case registered against them for missing of daughter of respondent Sushil Kumar.

Therefore, from the evidence of the complainant, it seems that the complainant had filed the complaint as a counter-blast and actually, no incident had taken place. As such, even the trial Court has rightly observed that no case against the accused was made out and the evidence, even if unrebutted, would not warrant in the conviction of the accused and accordingly, discharged the accused while taking into consideration the provisions of Section 245 Cr.PC.

Taking into consideration the fact that even Salwinder Kaur who appeared as a witness in the trial Court, has nowhere supported the version of the complainant, no illegality can be found in the order dated

15.3.2010 passed by the trial Court and the same has rightly been upheld by learned Sessions Judge vide order dated 17.2.2011.

Accordingly, the instant petition, being devoid of any merit, is dismissed.

December 03, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE