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

CRR-1991-2015

Date of decision : 11.12.2015

Rajbir alias Raju and others Petitioners

VERSUS

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Deepak Shonak, Advocate for the petitioners.

Mr. C.S. Bakshi, Addl. AG, Haryana.

Mr. Mukesh Yadav, Advocate for respondent No.2.

M.M.S. BEDI, J.(Oral)

Petitioners have been charged for offence under Sections 323, 325, 341, 506 read with Section 34 IPC as well as for offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for short "the Act". The relevant charge under Section 3 of the Act against the petitioners reads as follows:-

'Lastly, on the same date, time and place you the above named accused along with your co-accused in furtherance of your common intentionally naked Amar Singh by removing his shirt and tied him with a rope and gave beating

to him and thus thereby you committed an offence punishable under Section 3 of SC/ST Act and within the cognizance of this Court.'

Learned counsel for the petitioners submits that while framing the said charge the Special Judge, Narnaul has not carefully gone through the material available on record and that there was no admissible evidence available in the report under Section 173 (2) Cr.P.C, warranting framing of the charge under Section 3 of the Act.

One of the petitioners, Rohtas had moved an application for dropping the charge under Section 3 of the Act. The said application has been dismissed by the trial Court vide order dated 17.04.2015.

Aggrieved by the order framing charge under Section 3 of Act and the order dated 17.04.2015, the petitioners have approached this Court for quashing of the charge and the proceedings under Section 3 of the Act.

With the assistance of counsel for the petitioners, counsel for the complaint and State counsel, I have gone through the report under Section 173 (2) Cr.P.C. The FIR, which was registered at the instance of respondent No.2, complainant Amar Singh does not anywhere contain an allegation that his shirt was removed. He has not specifically stated that he being a member Scheduled Caste was known to

the accused or that the act of removal of his shirt was committed in presence of general public.

Learned counsel for the respondent No.2-complainant has intervened to oppose the petition stating that the complainant in his complaint has mentioned that he is an ex-serviceman and belongs to Dhanak caste (Harijan).

With the assistance of counsel for the respondent No.2-complainant, I have gone through the entire report under Section 173(2) Cr.P.C. There is absolutely no allegation that the shirt of the respondent No.2-complainant was removed.

Section 3(1)(iii) of the Act reads as follows:-

"3. Punishments for offences of atrocities:-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

(i) xxxxx

(ii) xxxxx

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

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."

I have gone through the statement under Section 161 Cr.P.C of the witnesses. No witness has stated that the clothes from the person of complainant were forcibly removed, he being a Scheduled Caste. There are allegations of thrashing by the petitioners.

It is interesting to note that in order to bring the case within the ambit of Section 3 (1) (iii) of the Act, three statements of the petitioners, purported to be confessional statements made by them before the police on 18.11.2014 are referred to by the State counsel. In the present case, the challan was presented on 20.10.2014 against Rajbir. However, the challan was presented against Rohtash and other two accused on 04.01.2015. The confessional statements dated 18.11.2014 appear to have been incorporated after presentation of challan against Rajbir. There does not appear to be any occasion for the petitioners to make confessional statements on 18.11.2014. The statements dated 18.11.2014 appear to have been recorded by the investigating agency while Rohtash and two others had joined investigation being on interim bail. The said statements will be deemed to be statements made by Rohtash, Om Parkash and Manoj in police custody. The legislation in its wisdom has made such statements under Section 25 of the Indian Evidence Act inadmissible in evidence.

It is, apparently, a case where in order to bring the case within the ambit of Section 3(1)(iii) of the Act, the statements were made part of the supplementary challan though these were not existing till 20.10.2014. Such an attempt by the prosecution agency is nothing but an abuse of process of the law, which warrants interference in the exercise of powers under Section 482 Cr.P.C to secure the ends of justice and to prevent the abuse of process of the law.

It is also important to note here that in the present case the prosecution agency has gone beyond the allegations of the complainant to give a serious colour to the allegations. The learned Special Judge, Narnaul while framing the charges was required to carefully appreciate the material on the record, especially, when there is no admissible evidence available on the record. It is not permissible to frame charges under a particular Special Act in this case. It was a fit case where the learned Special Judge should have framed the charges only for the offences of assault under Sections 323, 325, 341 and 506 read with Section 34 IPC only and returned the case for trial to the competent Court of law.

In view of the said circumstances, the charge framed under Section 3 of the Act against the petitioners is hereby quashed. The Special Judge, Naunaul is directed to take the proceedings under Section 228 of the Code of Criminal

Procedure and send the matter back to the Chief Judicial Magistrate concerned for proceeding, in accordance with law.

Counsel for respondent No.2-complainant has submitted that the complainant has appeared as witness after framing of charges and stated that his shirt was removed. Such a statement made by the complainant is certainly an improvement beyond the allegations in the original complaint and deserves to be ignored for the purpose of determination a point regarding the culpability of the petitioners on the date when charges were framed.

The petition is allowed. The orders dated 03.12.2014 and 11.02.2015 framing charge under Section 3 of the Act against the petitioners and the order dated 17.04.2015 dismissing the application for dropping the charge under Section 3 of the Act are hereby set aside with the abovesaid direction. Order passed by this Court will be implemented by the Special Judge, Narnaul on the date fixed in the case on receipt of copy of order.

December 11, 2015
Ramandeep Singh

(M.M.S. BEDI)
JUDGE