

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-2173-2014(O&M)

Date of decision : 21.01.2015

Dalip Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Ashwani Gaur, Advocate
for the petitioner.

Mr.Rajesh Gaur, Addl. A. G.Haryana.

Mr.Ayush Gupta, Advocate
for respondents No.2 to 4.

REKHA MITTAL, J.

CRM-1516-2015

Allowed as prayed for.

Annexure P4 is taken on record.

CRR-2173-2014

The present petition has been directed against the order dated 04.07.2014 passed by the Sessions Judge, Jind whereby the Court has not framed charge under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (in short 'the Act') and sent back the case to the Chief Judicial Magistrate, Jind to proceed further in accordance with law for prima-facie offence made out against the accused punishable under Sections 452, 323, 506 read with Section 34 of the Indian

Penal Code (in short 'IPC').

Dalip Singh, petitioner filed the complaint under Section 156 (3) of the Code of Criminal Procedure (in short 'Cr.P.C.') for registration and investigation of criminal case against the accused for commission of offence punishable under Sections 323, 324, 325, 452, 506 IPC and Section 3 of the Act in regard to an occurrence which allegedly took place on 26.08.2013 at about 5 or 5.15 PM wherein the accused assaulted family members of the complainant. The petitioner made the following prayers in the alternative:-

- (i) To send the complaint to Police Station City Jind under Section 156(3) Cr.P.C. for registration of a criminal case against the accused for above mentioned Sections of IPC
- (ii) The accused may be summoned, prosecuted and punished for commission of aforesaid offences by treating his application as a private complaint.

The Court send the complaint to concerned police station and on the basis thereof, FIR No.921 dated 15.11.2013 for offence under Sections 323, 324, 325, 452, 506 IPC and Section 3 of the Act was registered in Police Station Jind. On completion of investigation, challan was presented in the Court and since the report under Section 173 Cr.P.C. also contained offence under Section 3 of the Act, the Sessions Judge, Jind came to be seized of the matter.

The parties were heard on the question of charge and vide impugned order dated 04.07.2014, it was held that ingredients of offence under Section 3 of the Act are not made out but a prima-facie case for commission of offence punishable under Sections 452, 323, 506 read with

Section 34 IPC is made out against the accused which are triable by the Court of Magistrate and accordingly the case was sent to the Chief Judicial Magistrate, Jind for further proceedings.

Counsel for the petitioner contends that the Sessions Judge, Jind committed a serious error in holding that no offence under Section 3(1) (x) of the Act is made out against the accused. It is argued that at the stage of framing of charge, the Court is neither required to make any probing into truth or falsity of the allegations nor whether the materials on record would ultimately result in conviction of the accused and the Court is only to be satisfied in regard to there being a prima-facie case for framing of charge for a particular offence. It is further submitted that charge can be framed by the Court even on the basis of suspicion. During investigation of the case, statement of one Shamsher Singh son of Chater Singh under Section 161 Cr.P.C. was recorded on 30.11.2013 and he stated that Surjeet and his son Mukesh (accused) used offending words against caste of the petitioner in his presence and in the presence of other neighbours, therefore, a prima-facie case is made out against the accused for committing offence under Section 3 of the Act.

Counsel for the contesting respondents, on the other hand, has not disputed the position in law that at the stage of framing of charge, the Court has simply to see if a prima-facie case is made out against the accused. However, it is argued with vehemence that FIR in this case has been registered on the basis of complaint made to the Judicial Magistrate wherein the petitioner-complainant gave a detailed version as he was aware that the Court itself may take cognizance of the offence. The petitioner in

para 3 of the complaint has narrated the facts in detail pertaining to occurrence dated 26.08.2013 at about 5/5.15 PM. In the said para, there is also reference to the earlier applications submitted by the complainant to PP Patiala Chowk, Jind, Superintendent of Police, Jind and Chairman SC Commission, New Delhi. However, there is no allegation raised that the accused uttered any offending words against caste of the petitioner or the accused intentionally insulted or intimidated with an intention to humiliate him as a member of Scheduled Caste in a place within public view. The complainant, in para 2, has raised certain allegations of the accused abusing the complainant and his family by calling them bad names of sister and committing atrocities upon him and his family by saying the offending words reproduced therein against caste of the petitioner. In para 2, nothing has been mentioned if the words reproduced therein were uttered in public view with intent to humiliate the petitioner. It is strenuously argued that as the complaint filed by the petitioner is conspicuously silent that the accused used any words against his caste on 26.08.2013 at 5/5.15 PM much less they have intentionally insulted or intimidated with an intention to humiliate him as a member of scheduled caste in a place within public view, the Court has rightly declined to frame charge under Section 3 of the Act.

I have heard counsel for the parties and perused the records.

To satisfy basic ingredients of offence under Section 3(1)(x) of the Act, the complainant is ought to allege that accused was not a member of scheduled caste or scheduled tribe and he was intentionally insulted or intimidated by the accused with an intent to humiliate in a place within public view. It is appropriate to extract certain observations made by this

Court in *Dr.Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh and another, 2012(1) RCR (Criminal) 931*, reads as follows:-

16. It is not a matter of dispute that the Scheduled Caste & Scheduled Tribe Act is a special enactment/statute and its provisions have to be strictly construed in the same manner as mandate by the Act and not otherwise. The element of intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in public view, should clearly be borne out from the FIR. Merely, the alleged utterance by the petitioners in the verandah of the house (not within public view) appears to be the result of fit of anger and emotion and not with the intention to insult the complainant party as a member of Scheduled Caste or Scheduled Tribe. It is a matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act. That means, merely uttering such words in the absence of intention/mens-rea to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste & scheduled caste and if the imputations are grossly vague and perfunctory, would not, ipso facto, constitute acts of commission of offence, which are capable of cognizance under the Act. Moreover, during the course of investigation, the police has recorded the statements of Kamlesh wife of Sohan Lal and Constable Avtar Singh. They did not support the allegations contained in the FIR, wherein they have stated that they have only heard the verbal abuses.

In the aforesaid authority, the complaint was made and the FIR was lodged against the accused on the basis of complaint. It was noted that

it is nowhere mentioned in the complaint which form the basis of FIR that the petitioners-accused are not the members of scheduled caste or scheduled tribe, they knew that the complainant was a member of scheduled caste or scheduled tribe, they intentionally insulted or intimidated with an intent to humiliate her as member of scheduled caste or scheduled tribe and at a place within public view. This Court quashed the impugned FIR and proceedings emanating therefrom.

The Division Bench of Karnataka High Court though was dealing with considerations for pre-arrest bail in a case registered under the Act in the light of implications of Section 18 thereof but has expressed its deep concern in regard to misuse of the provisions of the Act with malafide and by misusing process of law as noticed by different High Courts. A relevant extract from para 6 of the judgment ***N.B.Gungarakoppa and others Vs. State of Karnataka, 2002(4) RCR (Criminal) 77*** is quoted thus:-

6. Mr. Jadhav drew our attention to a few decisions to which we shall refer very briefly. In the case reported in 2001 Cri LJ 4587, the Delhi High Court did have occasion in passing to point out that the High Court cannot overlook situations in which the provisions of the Atrocities Act have been misused. In the decision reported in (1999) 1 Crimes 636, the Madhya Pradesh High Court had occasion to observe that where there is no prima facie material to justify the invocation of these provisions that the entertainment of a petition would be justified. In the decision reported in 1998 Cri LJ 157, the Punjab and Haryana High Court had occasion to come down rather strongly and point out that where total mala fide and vexatious allegations are made and a misuse of the process of law is apparent that an anticipatory bail

application cannot be barred. In another decision reported in (1997) 2 Crimes 684, the Madras High Court held that where there is absolutely no material to justify the commission of an offence under the Act, it would not be permissible to debar the accused from applying for anticipatory bail. The Andhra Pradesh High Court in the decision reported in 1999 Cri LJ 324, had occasion to do a deeper analysis of the issue and very rightly laid down that the mere mention of the provisions of the Atrocities Act is not sufficient unless it is supported by sufficient reliable material to establish charges under the Atrocities Act, obviously taking note of the situation referred to by us wherein even in petty disputes or non-existent disputes the provisions of the Act are virtually dragged in for purposes of securing an unfair advantage. The Orissa High Court reported in 1996 Cri LJ 2743, has laid down that the mere registration of an offence under the Act is not the criteria but the real test would be as to whether on a prima facie evaluation the Court is satisfied that the case has been made out. Much reliance was placed on a very well considered decision of the Rajasthan High Court reported in 2000 Cri LJ 2899, wherein the Full Bench of the Rajasthan High Court after doing an indepth analysis of the law has held that it would still be permissible to prefer an application for anticipatory bail under Section 438, Cr.P.C. within the parameters that we have had occasion to refer to. In this regard, we need to mention that the learned S.P.P. did submit, with perhaps considerable justification, that the real consideration in such situations would be as to whether on a responsible analysis of the material before the Court the invocation of the provisions of the Act can be prima facie justified and that it would not require or permit any deep probe or evaluation of evidence at that

stage. The Supreme Court in the earlier decision reported in AIR 1993 SC 1028 (sic) had occasion to deal with the constitutional angles of these provisions which we have already referred to but we reiterate those principles once again for purposes of emphasising that there was very valid justification for the provisions in Section 18 of the Act which presupposes that it is dealing with cases of barbaric atrocities such as those which are defined in Section 3 of the Act but we are here, more concerned with the day-to-day problem that the Courts are facing in the large number of situations where the provisions are wrongly and unjustifiably invoked and where the accused are shut out from a remedy that Section 18 prescribes an absolute bar to the grant of anticipatory bail. Perhaps the ultimate test would be the one that the Supreme Court applied in the decision reported in (2000) 1 Supreme 584, wherein the Supreme Court summarised the position that the Atrocities Act would not be applicable unless it is demonstrated that it is a castist attack. That in our considered view is the real essence of the distinction because the offence changes complexion and assumes grave seriousness when this particular ingredient is demonstrated to have coloured the incident. Again, we need to point out with a note of caution that is for very good reasons that the Andhra Pradesh High Court had reiterated the position that merely by mentioning something along these lines the Court would not be misled into believing that an ordinary incident had changed complexion into a castist attack unless the facts and circumstances of the case justified this.

In the case at hand, as has been argued by counsel for the respondents, the petitioner made the complaint to express his grievance

primarily in regard to an occurrence dated 26.08.2013 in which the complainant and his family was attacked by the accused and caused injuries. The complainant, while giving a detailed description of the occurrence dated 26.08.2013 has nowhere mentioned that the accused said something against his caste and they intentionally insulted or intimidated with an intent to humiliate him at a place within public view. In the complaint, there is no reference that the occurrence took place in the presence of Shamsheer Singh son of Chater Singh whose statement was recorded by the police during investigation on 30.11.2013. Said Shamsheer Singh has not been cited as a witness by the complainant-petitioner, in the complaint. In para 2 of the complaint, some of the allegations raised by the petitioner reads as follows:-

*“Whenever the complainant and his family members used to complain about the acts of the accused family, the accused persons used to abuse the complainant and his family by calling them with bad names of sister and also used to commit atrocities upon the complainant and his family by saying that **Sale, Dhedo, Kamino, Chamro, Tumahri Itni Okat Nahi, jo Hamhe gali me Pasu Bandhne se Rok Sako, Agar Koi Eitraj kiya to Jaan se Mar Denge.** The complainant & his family with motive to keep harmony in the street always avoided to quarrel but they all were very unhappy with the acts and conduct of the accused family.”*

The aforesaid allegations in para 2 of the complaint do not make reference to the date, month and year or the person who uttered those words. It is also not mentioned therein that these words were uttered by any of the accused at a place within public view. In this view of the matter, I am of the considered opinion that as the petitioner had given a detailed account

of imputations against the accused in the complaint filed before the Court and made the aforesaid prayers along with the fact that in the complaint, there is no reference that Shamsheer Singh was present at the spot, I do not find any error much less illegality in the impugned order as would call for intervention in exercise of revisional jurisdiction.

For the reasons aforesaid, the petition is dismissed.

(REKHA MITTAL)
JUDGE

January 21, 2015.

DK