

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 07.07.2015
% Date of Decision: 16.07.2015

+ **CRL.REV.P. 592/2013**

GOVIND SINGH & ORS Petitioners
Through: Mr. N. S. Dalal with Mr. Amit
Rana & Ms. Nidhi Dalal ,
Advocates.
versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP.

+ **CRL.REV.P. 596/2013**

KANWAL SINGH & ORS Petitioner
Through: Mr. N. S. Dalal with Mr. Amit
Rana & Ms. Nidhi Dalal ,
Advocates.
versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. Both the cases have been heard together and a common order is being passed.

2. Heard the counsels for the parties in both the cases.
3. The petitioners in both the petitions have put a challenge to the order dated 3.5.2013 passed by ASJ-02, North District, Rohini Courts in Sessions Case No.89/2011 in connection with FIR No.242/2011 (P.S.Crime Branch) whereby the prayer for discharge of the offences under Sections 447/120B and 34 of the IPC read with Section 3(1)(v) of the SC & ST (Prevention of Atrocities) Act (hereinafter referred to as the 'Act') has been refused.
4. The prosecution case as projected by the petitioners is that during the floods of 1961-62 the lands in village Mohammadpur were washed away. The villagers left the village for settling at safer places and the village land remained vacant.
5. In 1977 the village was again ravished by floods in Yamuna. Later with the flood water receding, the land was reclaimed.
6. A resolution was passed in 1977 under the Chairmanship of Gram Pradhan distributing the land of the village amongst landless people belonging to Scheduled Castes and other landless residents. The aforesaid resolution was passed under 20 point programme.
7. The complainants came in possession of the land in question which was allotted under the aforementioned scheme.
8. Another resolution came into effect on 14.11.2010 wherein the Lal Dora land which was washed away in floods and later reclaimed was decided to be divided and allotted amongst villagers equally as the land belonging to village Mohammadpur.

9. The dispute began from this time when it was alleged that the accused persons, in order to benefit themselves trespassed the land which was allotted to the complainants and started leveling the land by means of tractors and JCB. Police was called to forestall the possibility of bloodshed.

10. The IO found that the saplings were uprooted.

11. It was alleged that accused persons namely Kanwal Singh, Raj Singh and Leela (Petitioners in Criminal Revision Petition No.596/2013) abused the victims by taking their caste name Balmiki.

12. On completion of investigation, chargesheet was submitted whereupon cognizance was taken. Since the offences under the Act are triable by Court of Sessions, the case was committed to the Court of Sessions.

13. On point of charge, the petitioners submitted that they have been falsely implicated and no caste remark was made against the complainants of the case. It was only after a reasonable lapse of time that such an allegation was leveled. It was also averred by the petitioners that assuming but not admitting the allegations against them to be ex facie true, no offence under Sections 447/120B and 34 of the IPC could be said to have been made out.

14. The aforesaid submissions were rebutted by the learned APP before the Court below and it was stated that the petitioners as accused persons wrongfully trespassed into the lands of complainants, destroyed their crops, interfered with their peaceful possession of the land and also

tried to disparage their dignity by abusing the complainants by their caste name.

15. As referred to earlier by order dated 3.5.2013, the prayer for discharge was refused and charges were framed under various sections of IPC referred to above and under Section 3(1)(v) of the Act read with Section 120B of the IPC.

16. Learned counsel for the petitioners submitted that from November, 2010 to September, 2011 proceedings were pending with respect to the said lands before Superior Courts. The property in question was Lal Dora property and, therefore, it could not have been used for any other purpose except residence. It was further submitted that the present case is only a ploy to blackmail and pressurize the petitioners so that they relinquish their claim over the land. It was emphasized by the learned counsel for the petitioners that assuming that the complainants were called by their caste name Balmiki, that by itself would not make them liable to be prosecuted under Section 3(1)(v) of the Act.

17. At the stage of framing of the charges, the Court is only required to evaluate materials and documents on record to decide whether facts emerging therefrom taken on their face value would disclose existence of ingredients constituting the alleged offence. At that stage, the Court is not required to go deep into the probative value of materials on record. What the Court is required to do is to evaluate whether there are grounds for assuming that the accused has committed offence or not. The sufficiency of the evidence is not to be seen.

18. Times without number it has been decided by the Supreme Court that if there is a grave suspicion against the accused persons, the framing of charges are justified.

19. Any discussion between the adequacy or inadequacy of evidence against the accused persons would be a premature assumption of evidence. In so far as the allegations under the Section 3(1)(v) of the Act is concerned, “Balmiki” denotes a specific caste which is a Schedule Caste. It is normally used in derogatory sense to insult.

20. In Swaran Singh vs. State (2008) 8 SCC 435, the Supreme Court observed as under:-

“21. Today the word ‘Chamar’ is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person ‘Chamar’ today is nowadays an abusive language and is highly offensive. In fact, the word ‘Chamar’ when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects & Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word ‘Chamar’ which it has acquired by usage, and not the etymological meaning. If we go by etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

(Emphasis supplied)

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobodys feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word `Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the `Chamar' caste, because use of such a word will hurt his feelings. In such country like ours with so much diversity - so many religions, castes, ethnic and lingual groups, etc. - all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste `Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word `Chamar' will of course depend on the context in which it was used."

21. Having seen the position of law, thus, there can be no doubt that utterance of the work "Balmiki" would prima facie attract the mischief of the Section.

22. However, the offences under the Act are to be investigated by an officer not below the rank of Deputy Superintendent of Police (refer to Rule 7 of SC & ST (Prevention of Atrocities) Rules).

23. There is no submission as to which officer conducted the investigation qua the allegations under the aforesaid Act. The investigation by an officer of a special rank is specifically limited to the offences relatable to the Act. In the present case, the petitioners have

been charged with offences under the Indian Penal Code along with the offences under the Act. The investigation with respect to the offences under the Act is vulnerable and not the other offences under the Indian Penal Code. This Court is expressing no opinion over this issue as no specific averment has been made in the revision petition.

24. Thus, for the present, this Court finds no fault with the order of the Court below refusing to discharge the petitioners.

25. Perused the status report dated 24.11.2014.

26. The case is at the stage of prosecution evidence and till the date of the filing of the status report, two witnesses had been examined.

27. The petitioners, if so advised can raise all the grounds available to them, in trial, especially whether investigation with respect to the Section 3(1)(v) of the Act was undertaken in the manner provided under Rule 7 of the SC & ST (Prevention of Atrocities) Rules.

28. Considering the fact that the charges have been framed and trial has proceeded, this Court is not inclined to interfere with the order refusing to discharge and framing charges consequently.

29. The petitions are dismissed.

Crl.M.A.15969-70/2013 & Crl.M.A. 15992-93/2013

1. In view of the main petitions having been dismissed, these applications have become infructuous.

2. These applications are disposed of accordingly.

ASHUTOSH KUMAR, J

July 16, 2015

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