

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 41132 of 2013

Arising out of P.S. Case No. - 1364 Year - 2010 Thana - SITAMARHI COMPLAINT CASE District - SITAMARHI

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1. Ram Nandan Rai, S/O Late Suraj Rai
2. Manoj Rai @ Manoj Kumar Yadav, S/O Ram Nandan Rai
3. Bimlesh Rai @ Bimlesh Kumar, S/O Ram Nandan Rai
4. Kailash Rai, S/O Late Achailal Rai,
All resident of Village - Masha, P.S. - Parihar, District - Sitamarhi
..... Petitioners

Versus

1. The State of Bihar
2. Gujar Ram, S/O Late Sonaf Ram, Resident of Village - Masha, P.S. - Parihar,
District - Sitamarhi
..... Opposite Parties

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Appearance :

For the Petitioners : Shri Krishna Prasad Singh, Sr. Advocate
Mr. Bhaskar Shankar, Advocate
For the O.P. No. 2 : Mr. Virendra Kumar, Advocate
For the State : Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 14-09-2017

Heard learned Senior Counsel for the petitioners, learned counsel for the opposite party no. 2 as well as learned counsel for the State.

2. The petitioners are accused in connection with S. Tr. No. 569 of 2011 arising out of Protest-cum-Complaint Case No. C1-1364 of 2010 filed in Vaishali P.S. Case No. 691 of 2009. The petitioners had filed a petition before the learned Sessions Judge under Section 227 of the Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C.”) for discharge from the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST Act”) only. The prayer



was refused by the impugned order dated 23.08.2013.

3. Submission of the learned counsel for the petitioners is that the ingredients to prove the charge for offence under Section 3(1)(x) of the SC/ST Act is completely lacking on bare perusal of the First Information Report lodged by opposite party no. 2. Hence, the impugned order suffers from non-application of judicial mind.

4. The record reveals that initially opposite party no. 2 had filed Complaint Case No. 1478 of 2009 against the petitioners alleging therein that on 13.09.2009, the complainant had gone to the flour mill of the petitioners for grinding of wheat. Due to some dispute relating to measurement of the wheat or flour, altercation started and petitioner no. 2 Manoj Rai abused to the complainant taking his caste name. Thereafter, the petitioners assaulted and attempted to commit murder by pressing wrapper on the neck of the complainant. Further allegation is of commission of theft of cash from the pocket of the complainant and of spitting on the body of the complainant. It is stated that the occurrence was committed for the reason that the complainant was member of a Scheduled Caste and weaker section of the society.

5. The aforesaid complaint case was registered as Vaishali P.S. Case No. 691 of 2009 on the direction under Section 156(3) of the Cr.P.C. by the Magistrate. After investigation, the police submitted final form as case untrue. Final form was submitted on 16.04.2010. The



sessions trial aforesaid is going on, on the basis of cognizance order in Protest-cum-Complaint Case above.

6. Learned counsel for the petitioner submits that the complaint should have specifically mentioned that the act alleged was committed with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe by a member of non-scheduled caste and non-scheduled tribe in public purview. Unless statement to the aforesaid extent is there, the whole prosecution would fail in view of the judgment of the Hon'ble Apex Court in *Gorige Pentaiah vs. State of Andhra Pradesh & Ors.* reported in (2009) 1 SCC (Cri) 446.

7. After some arguments, learned counsel for the opposite party no. 2 does not dispute the legal and factual position of this case. Section 3(1)(x) of the SC/ST Act which is relevant for this purpose is being reproduced below:-

“whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public preview.”

8. After considering the aforesaid provision in the judgment referred above, the Hon'ble Apex Court in paragraph 6 of the judgment observed as follows:-

“6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27-5-2004, the appellant abused them with the name of their caste.



According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

9. The present case is squarely covered by the aforesaid observation. There is no statement of the complainant and the witnesses examined under Section 202 Cr.P.C. that the petitioners were not a member of the Scheduled Caste or Scheduled Tribe or any statement clearly specifying that the petitioners were, in fact, not member of the Scheduled Caste or Scheduled Tribe. There is no ingredient to disclose that one of the petitioners allegedly used abusive words and took caste name with intent to humiliate the complainant for his being a member of the Scheduled Caste in the public purview. The entire occurrence allegedly took place inside the mill and there is no averment that any member of the public was there. Therefore, in my view, there is complete lack of requirement of ingredient to prove



charge under Section 3(1)(x) of the SC/ST Act. Accordingly, the prosecution of the petitioner for the aforesaid offence would amount to an abuse of the process of the Court.

10. In the result, the impugned order so far it relates to refusal to discharge the petitioner under Section 3(1)(x) of the SC/ST Act stands quashed and this application is allowed to the aforesaid extent only.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	AFR
CAV DATE	N.A.
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