

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.42471 of 2016

ORDER:

This writ petition under Article 226 of Constitution of India is filed seeking a writ of certiorari to call for the records relating to P.R.C.No.2 of 2015 on the file of Judicial First Class Magistrate, Narsapur, Medak District and to quash the proceedings in the said PRC as arbitrary and illegal.

It is the case of the petitioner that there are disputes between the father of the petitioner and his brothers in connection with family properties and a suit was also filed which ended in compromise and in terms thereof, the property in Sy.No.3 of Narsapur Village has to be divided between his father and his brothers. Meanwhile, since the husband of 3rd respondent and others claimed the property in Sy.No.3 of Narsapur Village as the said land is situated in Sy.No.8/1 of Narsapur Village, the petitioner filed a suit and obtained a decree against the husband of 3rd respondent and others and after due survey of the land, the Assistant Director of Survey found that the property claimed by the 3rd respondent and others is not in Sy.No.8/1, but it is in Sy.No.3, which belongs to the petitioner's family. Subsequently, the 3rd respondent lodged a complaint on 23.10.2013 alleging that at about 3.00 a.m. in the midnight of 22/23.10.2013, the petitioner along with other accused came to her plot; pelted stones and bricks on her house; that the petitioner and A.1 came to the first floor of the building, where she is residing; that they abused her in filthy language by taking her caste name; that they beat her with hands on her neck and left shoulder. On the basis of the said complaint, the Station House Officer, Narsapur Police Station registered a case in Crime No.128 of 2013 against the petitioner and

others for the offences punishable under Sections 448, 323, 506 r/w 34 IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. After completion of investigation by the 2nd respondent, charge sheet was filed on 02.12.2014 against the petitioner and others.

The main grievance of the petitioner is that even if the entire allegations in the complaint are accepted, no case is made out against the petitioner for the offences alleged. Even as per the complaint, the alleged incident is not within the public view as required under law since it was happened in the house of 3rd respondent. Further the complainant-3rd respondent is not a member of Scheduled Caste and in fact, she belongs to B.C. community, but however, she married to a Scheduled Caste person. The investigating officer-2nd respondent simply basing on the caste of husband of the 3rd respondent, proceeded with the investigation as if the 3rd respondent belongs to Scheduled Caste. Since the 3rd respondent does not belong to Scheduled Caste community, the provisions of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not attracted.

The Deputy Superintendent of Police/Sub-Divisional Police Officer, Toopran Sub-Division, Medak District- 2nd respondent herein filed a detailed counter affidavit stating that on the complaint lodged by the complainant-3rd respondent on 23.10.2013, a case was registered in Crime No.128 of 2013 against the petitioner and others for the offences under Sections 448, 323, 506 r/w 34 IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. During the course of investigation, as many as 10 witnesses were examined and their statements were recorded. It is elicited from the witnesses that there is civil dispute between the complainant and the

petitioner's family with regard to a landed property and in that connection, according to the complainant-3rd respondent, since she objected for survey of the disputed land, the petitioner and others came to her house on 23.10.2013, pelted stones, entered inside her house, abused in filthy language by touching her caste name and beat her. In the counter, it is stated that subsequently, the complainant stated that due to oversight because of darkness, she could not identify the persons properly and wrongly mentioned the names of Kandi Shanker & Gajula Praveen as if they were present along with Bamanagiri Krishna, but, in fact, they were not present at the time of occurrence.

Sri H.Venugopal, learned Government Pleader for Home (Telangana) basing on the counter affidavit filed by the 2nd respondent, argued the matter at length.

Heard and perused the material available on record.

Admittedly, there is a land dispute between the petitioner and the 3rd respondent. As seen from the complaint, it is alleged that on the date of occurrence, the persons namely; (1) Akula Laxman Rao; (2) Akula Gopal Rao @ Dampi; (3) Akula Arjun Rao, S/o. Laxmaiah; (4) Kandi Shankar; (5) Gajula Praveen; and (6) Bamanagari Krishna, RTC Conductor, who are residents of Narsapur village, came to her house at about 0300 hours and started pelting stones and bricks on her house. She woke up, came out from the house and when she opened the doors, the persons (1) Akula Laxman Rao & (2) Akula Gopal Rao @ Dampi entered into the compound wall premises and came to first floor of her house and abused her in filthy language by referring to the name of her caste like "mala kulam munda", Chillara munda" and beat her with hands on her neck and left shoulder. One Kandi Shanker, who stood in

the ground floor encouraged the above two persons, asking them to bring her to ground floor; and another person Bamanagari Krishna Goud abused in filthy language saying “mala lanjanu thannandira”. Subsequently, she stated before the investigating officer that due to oversight and darkness, she could not identify the persons properly and wrongly mentioned the names of Kandi Shanker and Gajula Praveen as if they were present along with other accused on the date of occurrence, but, they were not present and some unknown persons were there. In fact, the 3rd respondent made specific allegations in the complaint against those persons i.e. Kandi Shanker and Gajula Praveen.

Further, from the complaint, it is apparent that the incident, which is alleged to have taken place as per the complainant, has not taken place within the public view. The contents in the complaint clearly go to show that the tenants in the ground floor fled away by seeing the accused. There is no other witness present at the time of the occurrence. It is pertinent to note that if the offence is committed in any place, which is not within the public view, it cannot be treated as an offence under the SC & ST Act.

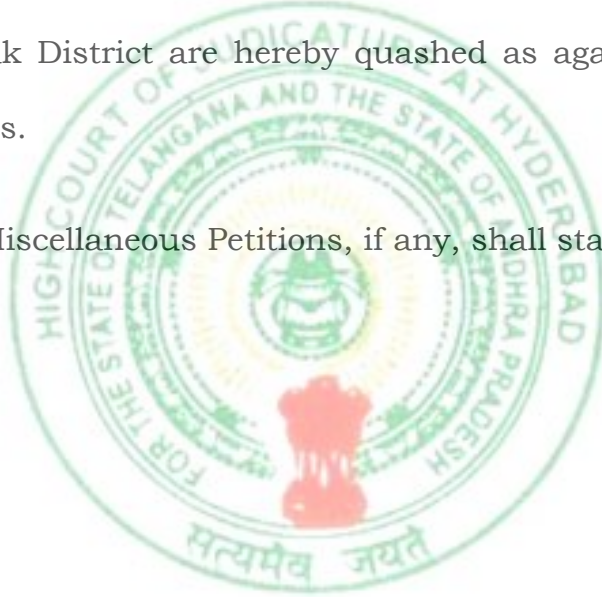
The material on record goes to show that there are civil disputes between the accused and the complainant. As per the complainant, due to such civil disputes, the accused came to her house and abused her in the name of her caste. Further, as per the complaint, the incident took place in the night and at the house of the complainant. It is not within the public view. The contents in the complaint do not disclose any intention of the accused. The mere allegation made against the accused that they abused the complainant, does not constitute an offence under the SC & ST Act, without there being any intention.

There are no specific allegations in the complaint. The contents in the complaint and the contents in the statement recorded before the investigation officer about the presence of the accused, creates a doubt as to the occurrence. Prima facie, no case is made out against the petitioner much less the offence punishable under Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and hence, the impugned proceedings are liable to be quashed as against the petitioner.

Accordingly, the Writ Petition is allowed and the proceedings in P.R.C.No.2 of 2015 pending on the file of Judicial First Class Magistrate, Narsapur, Medak District are hereby quashed as against the petitioner herein. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

11.07.2017.
Tsr



RAJA ELANGO,J

