

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-534-MA-2014

Reserved on: December 04th, 2017

Pronounced on: December 15th, 2017

Vajinder Singh

..Applicant

versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Ms. G.K.Mann, Advocate, for the applicant.

Ms Bhavna Gupta, DAG, Punjab
for respondent no.1.

Mr. Viney Saini, Advocate, for
Mr. G.S.Nagra, Advocate,
for respondent nos. 2 to 4.

RAMENDRA JAIN, J.

1. The applicant has filed the instant application under section 378(4) of the Code of Criminal Procedure, seeking permission to file leave to appeal against the impugned judgment of acquittal dated 23.01.2014 of the Additional Sessions Judge, Amritsar under section 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short “the Act”) and Sections 323, 506 read with section 34 IPC.

2. Put pithily, the facts, as set out in the complaint case, are that complainant was employed on a monthly salary of Rs.2500/- as a care taker of a parking stand situated inside Chattiwind Gate, Mandi Fateh Singh, near Raj Cinema owned by one Rahul Dhammi. Respondent nos. 2 to 4 used to park their car at the adjoining parking stand. They belonged to upper

caste, i.e., Khatri Arora, whereas the complainant belongs to scheduled caste community, which was in the knowledge of respondents 2 to 4 since the date of his employment as a care taker in the parking stand owned by Rahul Dhammi. At around 10.00 A.M. on 01.11.2009, Mandeep Singh son of Mohinder Singh, who used to park his Motor Cycle bearing registration no. PB-02-BB-9158 make "Bajaj", came to the parking stand, being managed by the complainant. Respondents 2 to 4 came there in a car being driven by Salil Kumar @ Shailla and parked the same in front of the parking stand of the applicant. When the applicant requested Salil Kumar to remove his car from that place enabling Mandeep Singh to park his motor cycle inside parking stand, all the respondents alighted from their car. Om Parkash respondent no. 2 used derogatory language against the caste of the complainant and also exhorted to "catch hold the complainant and teach him a lesson", whereupon Salil Kumar caught hold the applicant from his neck and also gave slaps and fist blows to the complainant on his stomach and face. Sandeep Kumar also gave slaps on his face. On hearing a hue and cry, a large number of people assembled there, who rescued the applicant from the clutches of respondent nos 2 to 4, who, while running away from the spot, threatened the applicant to eliminate him, in case, he obstructed them to park their car in front of the said parking stand in future. The complainant along with Mandeep Singh went to the police station to lodge a report, but to no avail.

3 The complainant, in preliminary evidence, besides examining himself as CW4, got examined Alok Sharma as CW1, Mandeep Singh as CW2, Rahul Dhammi as CW3.

4 The trial court, after analysing the preliminary evidence and

hearing arguments advanced by learned counsel for the complainant, summoned respondents 2 to 4 under section 3(i)(x) of the Act and sections 323, 506 read with section 34 IPC. Thereafter, the case was committed to the court of learned Sessions Judge, Amritsar, who further entrusted it to the court of Special Judge, Amritsar.

5 The Special Judge, after hearing arguments addressed by learned counsel for the parties, going through the preliminary evidence and documents on the file, charge sheeted respondent nos. 2 to 4 under section 3(i)(x) of the Act and sections 323, 506 and 34 IPC, to which they did not plead guilty and claimed trial.

6 In order to prove charges against respondent nos. 2 to 4, applicant himself stepped into the witness box as CW1 and examined Mandeep Singh as CW2, Alok Sharma as CW3 and closed his evidence by producing on record scheduled caste certificate Ex.CW1/A.

7 After closure of evidence by the applicant, statements of respondent nos. 2 to 4 under section 313 of the Code of Criminal Procedure were recorded putting entire incriminating evidence came on record against them, to which they denied and pleaded their innocence. In defence, they examined Swaraj Singh as DW1, Tejpal Singh as DW2, Sunny Galhotra as DW3, Amandeep Kaur as DW4 and Tarunbir Clerk as DW5 and thereafter closed the defence evidence.

8 Learned counsel for the applicant has contended that the applicant belongs to scheduled caste, but, in the certificate produced on the record, his sub-caste was very much mentioned, therefore, the approach of the learned court below in acquittal of respondent nos. 2 to 4 on the ground that since the applicant did not mention his sub caste in the complaint,

therefore, respondent nos. 2 to 4 were liable to be acquitted, is completely erroneous. The finding of the learned court below that no official from the office of Tehsildar was produced to prove the caste certificate of the applicant, is also erroneous, especially when the certificate produced on the record was original and even otherwise, no suggestion was put to any of the witnesses that the same was forged and fabricated one. The learned court below has committed a grave error in acquitting the respondents by not appreciating the evidence led by the applicant in its correct perspective. The applicant had the right to file a complaint against respondent nos. 2 to 4, especially when he was physically and mentally tortured by them calling him by his caste and using derogatory remarks against him. The applicant has nothing to do with the ejectment petition separately pending between his employer (landlord) and the tenant since long.

9 On the other hand, learned counsel for the respondents while refuting pleas taken up by learned counsel for the petitioner contended that the learned court below after taking into consideration the ocular as well as documentary evidence available on the record, has rightly acquitted the respondent nos. 2 to 4. The present complaint has been filed at the instance of Rahul Dhammi with a view to put pressure upon the respondents to get the premises vacated in their possession regarding which an ejectment petition filed by Gopal Kishan Dass (father of Rahul Dhammi) against the respondents and others was pending at the time of alleged occurrence.

10 Having given thoughtful consideration to the submissions made by learned counsel for the parties, this court is of the view that the instant application, being without any merit, deserves to be dismissed for the reasons to follow:-

11 Primarily, the story put-forth by the applicant-complainant revolves around the derogatory remarks uttered by respondents 2 to 4, when the applicant prevented them to park their vehicle in front of the parking stand belonging to Rahul Dhammi, where the applicant was employed as a care taker. However, the applicant has no-where pleaded in his complaint that as to how respondents 2 to 4 knew him by his caste or that there was any previous enmity between them. It has also no-where been mentioned in the complaint that prior to the alleged occurrence, there was any relationship between his employer Rahul Dhammi and respondents 2 to 4. The applicant, though pleaded in his complaint that the respondents had the knowledge that he belonged to scheduled caste category since the date of his employment as care taker in the parking stand owned by Rahul Dhammi, but strangely enough, no person was examined by him to prove this plea. The questions posed, hereinabove, need to be examined on the strength of the evidence produced on the record by both the parties.

12 The core question that arises for consideration is whether the applicant belongs to Scheduled caste community. A perusal of the certificate Ex.CW1/A clearly spells out that apart from the name of the applicant as Vajinder Singh son of Sukhdev Singh, sub caste of the applicant does not find mention therein. It is no doubt true that it is written in the certificate that the applicant belongs to Mazbi caste, but it does not disclose from where it could be speculated that caste Mazbi falls in the category of scheduled caste. Although, the applicant poses himself to be the person belonging to scheduled caste community, but he had not disclosed, either in his complaint or even in his statement recorded before the trial court on oath, about his sub-caste. The applicant, in his cross-examination,

has testified that he got the certificate prepared from some person by making payment of some amount. In such circumstances, it cannot be presumed that the applicant belongs to scheduled caste category. Therefore, the findings recorded by the learned court below that the complainant has failed to prove that respondents 2 to 4 had the knowledge that he was the member of the scheduled caste category or that they were known to him, prior to the alleged occurrence or that the complainant had any previous enmity with them, can not at all be said to be erroneous, that may warrant interference by this court. Rather, it can safely be concluded that respondents 2 to 4 did not use derogatory language against the applicant with intent to insult or humiliate him as member of the scheduled caste or scheduled tribe in public view. That apart, it is not the case of the applicant that on account of the pendency of litigation between Rahul Dhammi, his master and the respondents, respondent nos. 2 to 4 used derogatory language against the applicant with a view to humiliate him. On a perusal of the complaint, it transpires that it does not find mention regarding pendency of any litigation between the respondents and his master Rahul Dhammi.

13 The fact that the applicant suffered injuries at the hands of the respondent nos 2 to 4 by means of slaps and fist blows, but he could not be able to produce any medical proof in support of his assertion. If, at all, the respondents had given slaps and fist blows to the applicant in public view by using indecent remarks, calling him in the name of his caste, he must have approached the high ups, the same day, and then he could also have got himself medically examined regarding the alleged injuries sustained by him, but he did not do so. Therefore, the finding recorded by the learned

court below that non-production of any medical evidence by the complainant, in this regard, creates an adverse inference against him, can not at all be said to be erroneous, that may call interference by this court.

14 The evidence, as discussed above, clearly spells out that the plea taken by respondents 2 to 4 in their defence that the present complaint has been filed by the applicant at the instance of Rahul Dhammi in order to exert pressure upon them to get the premises, in their possession, vacated regarding which litigation between the respondents and Rahul Dhammi was pending since long. In the given facts and circumstances of the case, this court is of the view that the judgment passed by learned court below is well reasoned, well founded, based on correct appreciation of evidence on record and therefore, does not call for interference.

15 In view of what has been stated hereinabove, this court does not find any illegality or perversity in the impugned judgment of the learned court below. Consequently, the application, being without any merit, fails and is dismissed. Leave to appeal, is, accordingly, declined.

15th December, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. Whether reasoned/speaking | Yes/No |
| 2. Whether Reportable: | Yes/No |