

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15915-2012 (O&M)

Date of Decision:- 08.02.2017

Kulvir Singh and others

...Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kamaljeet Singh Sidhu, Advocate, for the petitioners.

Mr. APS Gill, AAG, Punjab.

Mr. A.S. Khosa, Advocate
for Mr. G.S. Kaura, Advocate, for respondent Nos.2 to 4.

RITU BAHRI, J. (Oral)

Petitioners are seeking quashing of FIR No.88 dated 20.06.2011, registered under Sections 342, 341, 354, 323, 506, 148, 149, 452, 295-A IPC and Sections 3 and 4 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, at Police Station Chamkaur Sahib, District Roopnagar.

Briefly, the facts of the case are that on 17.06.2011, when wife of complainant Manjit Kaur cleaning her house, then Shamsher Singh, Kulvir Singh, Jasbir Singh, Bahadur Singh, Chattar Singh and Harkanwal Singh came to her house and grappled with her and torn out her clothes. Her wife escaped from there and went to house of Sarpanch where complainant Subheg Singh was already present and she narrated the whole incident.

Then, all accused persons started giving threats while standing outside the

house of Sarpanch. When the complainant was going on his motorcycle towards police station to give a written complaint, then the petitioners intercepted his motorcycle and gave beatings to him. His turban was thrown down and his shirt was torn off. Thereafter, when Nirmal Singh came forward to help him, the petitioners also gave beatings to him and gave abuses and used bad words in the name of his caste and dragged them up to the house of complainant and locked both of them in a room.

Upon notice, replies have been filed by learned State counsel. In the reply dated 04.03.2015, the respondent-State has taken the stand that after investigation, the challan under Sections 342, 341, 354, 355, 323, 506 and 148 and 149 IPC and Sections 3(1)(x) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, has already been presented on 07.11.2011, before the learned Judicial Magistrate, 1st Class, Roopnagar against the petitioners and thereafter it has not been committed so far and further proceedings in the present case have been stayed in view of orders passed by this Court.

Since the proceedings in the trial Court has been stayed for the last five years, the short question for consideration whether offences under Sections 3 and 4 of the Scheduled Caste & Scheduled Tribes Act, are made out in the instant case or not. For ready reference, Section 3 of the SC&ST reads as under: -

“3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe: -

i) to (ix) xxxxxxxxxx

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

Reference, at this stage, can be made to a judgment of Supreme Court in case Gorige Pentaiah Vs. State of A.P. & others, 2008(12) SCC 531 whereby it has been held that to attract Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the intentional insults or intimidation must be at the place in the 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.

After hearing the learned counsel for the parties, going through the above-said judgment, this Court is of the considered view that in the present case as per the allegations set out in the FIR neither the complainant had stated that Nirmal Singh (respondent No.3) belongs to which caste nor mentioned that what were the derogatory words used against the caste of person of SC/ST and which of the petitioners had uttered those words. Mere call by caste is not sufficient to constitute the offence. Since, all the essential ingredients of the offence punishable under Sections 3 and 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are not made out in the present case, accordingly, the criminal trial with regard to the said offences is hereby quashed. However, the trial may proceed in respect of other offences.

With the above-said observations, the present petition stands partly allowed.

February 08, 2017
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No