

201 (3 Cases)

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M No.26366 of 2017 (O&M)
Date of Decision: 22.12.2017**

Bhupinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CRM-M No.36782 of 2017

Teja Singh @ Gurtej Singh and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CRM-M No.38866 of 2017

Amolak Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. C.S. Bakhshi, Advocate,
for the petitioner(s).

Mr. Hittan Nehra, Additional Advocate General, Punjab.

Mr. Rajesh Bhatheja, Advocate,
for the applicant/complainant.

SUDIP AHLUWALIA, J. (ORAL)

CRM No.40273 2017:

Ld. Counsel for the applicant is permitted to place on record the documents/photographs (Annexures C-8 and C-9).

Application stands disposed off.

CRM-M No.26366 of 2017:

The matter is taken up for hearing.

2. Vide this common order, CRM-M No.26366 of 2017 titled Bhupinder Singh Vs. State of Punjab, CRM-M No.36782 of 2017 titled Teja Singh @ Gurtej Singh and others Vs. State of Punjab and CRM-M No.38866 of 2017 titled Amolak Singh Vs. State of Punjab are being disposed off.

3. It has been contented, *inter alia*, on behalf of the State as well as by Ld. Counsel for the complainant that the present petition under Section 438 of the Code of Criminal Procedure is statutorily barred on account of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The moot questions to be considered in the given circumstances are as follows:-

- a) Whether the complainant/victims are members of the Scheduled Castes/Tribes?;
- b) Whether the petitioner/other co-accused persons belong to the General Caste/Category?; and
- c) Whether intentional insults/intimidation with intent to humiliate the complainant side were done, “in any place within public view”, as required by Section 3

(1) (x) of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989?

4. Perusal of the detailed F.I.R. shows that according to the complainant, he and Lovepreet were allegedly waylaid near the house of accused Amolak Singh. Thereafter, the said accused along with Gurjant Singh, Soni Singh and Teja Singh came out of Amolak Singh's house and took the complainant and his companion inside, after which they were allegedly abused and profusely assaulted. The petitioner Bhupinder Singh was allegedly informed by telephone after the complainant had been tied up inside the house with a rope, and abusive language qua him was conveyed over the telephone. It is further alleged that the culprits kept on issuing life threats and capturing their videos through mobile phones. Thereafter, *“Amolak Singh made call to P.C.R. Moga that some persons have entered our house. The villagers gathered outside and after a while police also arrived listening to our cries, which got us free after getting in by getting the main gate of house of Amolak Singh opened. On the asking of Bhupinder Singh Secretary and in connivance with him, Amolak Singh, Soni Singh, Gurjant Singh, Teja Singh has waylaid us and inflicted injuries to us after tying us at home and have uttered curse words against our caste”*.

5. A perusal of the aforementioned narration from the F.I.R. clearly indicates that the casteist abuses/insults were hurled at the complainant inside the house of Amolak Singh, and that in any case, the petitioner Bhupinder Singh even assuming that he was the master mind behind the capture and beating of the complainant, was not actually present

in the house at the relevant time.

6. Furthermore, it has been explicitly mentioned in the F.I.R. that the villagers gathered outside, after Amolak Singh had already made a call to the P.C.R., Moga.

7. In the given circumstances, there remains little doubt in concluding that the alleged casteist abuses hurled at the complainant inside the house were not in presence of the people, who gathered outside later on.

8. Ld. State Counsel has drawn attention to the statement given by Lovepreet to support the complainant's claim, but perusal of the same indicates that he himself belongs to the Mazhbi Sikh Caste on account of which he cannot be said to be a member of the public before whom the alleged insult or castes remarks were made intentionally at the complainant.

9. In fine, therefore, in the opinion of this Court, one of the essential ingredients to attract Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, namely insult/intimidation "in any place within public view" is not made out.

10. It has also been the contention of Ld. Counsel for the petitioner that the complainant in any case was not actually a member of the Scheduled Castes. But this particular submission in the given circumstances becomes redundant and even otherwise is not tenable because admittedly the complainant has been able to place on record a copy of his Caste Certificate and it is immaterial whether or not the same was procured before or after lodging of the F.I.R.

11. Be that as it may, in view of the fact already noted that one of the essential ingredients to constitute the aforesaid offence is missing in the

given F.I.R., this Court holds that there is no bar to entertain the present petition on merits.

12. In the over all given facts and circumstances, the interim bail granted to the petitioner earlier is confirmed.

13. Nothing observed in this order shall, however, tantamount to cause any reflection to the final order, which shall be decided by the Ld. Trial Court independently.

14. Disposed off.

22.12.2017
Apurva

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No