

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

CRM No.M-562 of 2016 (O&M)

Date of decision:09.01.2017

Atma Ram

... Petitioner

Vs.

Jagga

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Ghulam Nabi Malik, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

Petitioner Atma Ram filed a private criminal complaint under Sections 323/447/506 IPC and Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred to as 'the SC/ST Act') against the respondent-Jagga in relation to an alleged occurrence that took place on 06.07.2014. It was asserted that the complainant belongs to a scheduled caste i.e. Megh whereas the accused/respondent herein is a Rajput. In the complaint, it was alleged that on 06.07.2014 at about 6 P.M., the complainant along with his son Varinder Kumar and another person, namely, Tula Ram R/o Village Tharial, District Pathankot had proceeded to the land which is in the ownership of the wife of the complainant, then the accused person trespassed into the land and used filthy and derogatory language towards the complainant and even cast aspersions on his caste in the presence of the other witnesses. Further allegations were that the accused even gave a push blow on the chest of the complainant and on account of which he fell down in the fields and when

Varinder Kumar as also Tula Ram came forwards to rescue him, the accused

person even abused such witnesses and openly proclaimed that he is having good links with the local MLA and he has no fear of the police authorities. Complainant asserted that an application had even been filed to the Senior Superintendent of Police, Pathankot on the following day i.e. on 07.07.2014 but since no action had been taken, accordingly, the complaint was filed.

The trial Court took a view that no prima face case is made out against the accused and accordingly, vide order dated 04.09.2015 (Annexure P-1) passed by the Judicial Magistrate 1st Class, Pathankot, the complaint was dismissed. Complainant preferred a revision and which also has been dismissed vide judgment dated 01.12.2015 (Annexure P-2) passed by the Id. Sessions Judge, Pathankot, thereby affirming the order dated 04.09.2015 of the trial Court.

The instant petition has been preferred under Section 482 Cr.P.C. seeking quashing of the order dated 04.09.2015 (Annexure P-1) passed by the trial Court as also of the order dated 01.12.2015 (Annexure P-2) passed by the Revisional Authority.

Learned counsel appearing for the petitioner has submitted that the trial Court has dismissed the complaint without even summoning the accused and has erred inasmuch as the contents of the complaint and the statements made by the witnesses have not been appreciated in the correct perspective. It is submitted that the trial Court was swayed by the fact that the complainant had not produced any medical record to prove the injuries whereas it was the case of the complainant himself that on account of the push blows, he had fallen down on the ground and not that he had suffered injuries in such occurrence. It is argued that the trial Court while dismissing the complaint has held that uttering the words in the name of caste does not

amount to an offence under the SC/ST Act and such view is contrary to settled law and against the provisions of the Act. Counsel has also contended that even the Revisional Authority had proceeded on mere conjectures and surmises by holding that CW2, Tula Ram has been introduced subsequently by the complainant whereas the evidence on record would clearly reveal that Tula Ram had deposed that he was present on the spot when the accused had uttered derogatory words against the caste of the petitioner. Yet another submission raised is that even if statement of CW2, Tula Ram was to be ignored still the allegations contained in the complaint were corroborated by the deposition of the complainant himself when he stepped into the witness box as also the statements of his wife and his son Varinder Kumar, who was an eye witness.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

On the asking of this Court, counsel appearing for the petitioner has very fairly made available for perusal, a copy of the application initially moved by the petitioner dated 07.07.2014 before the Senior Superintendent of Police, Pathankot as also copy of the private complaint dated 15.10.2014 under Sections 323/447/506 IPC and Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It is by now well settled that criminal prosecution cannot be set into motion as a matter of course. The trial Court has to carefully scrutinize the evidence brought on record and to thereafter form a view as regards the offence having prima facie been committed by all or any of the accused. Judicial process cannot be made an instrument of oppression or harassment.

For offence under Section 3/4 of the SC/ST Act to be made out,

the derogatory remarks should have been uttered against the complainant by the accused in full public view. Undoubtedly, in the present case, the complainant had examined CW2, Tula Ram as an independent witness and who had deposed that the derogatory remarks were uttered by the accused against the complainant in his presence. However, a perusal of the application dated 07.07.2014 (C-4) that had been made by the complainant to the Senior Superintendent of Police, Pathankot immediately and on the following day of the alleged occurrence, the petitioner had not mentioned as regards presence of his son, Varinder Kumar CW5 as also of Tula Ram CW2. Rather the application dated 07.07.2014 submitted by the petitioner is categoric to the effect that he had proceeded to the spot of occurrence all by himself. There is not even a whisper as regards the complainant/present petitioner being accompanied by anyone else.

Under such circumstances, the view taken by the Courts below as regards Tula Ram having been introduced as a witness subsequently and upon due deliberation and consultation cannot be faulted. On the same very basis and reasoning, the testimony of CW5 Varinder Kumar cannot be given any credibility and weight. CW3 Leela Rani i.e. wife of the complainant in any case was not stated to be an eye witness to the occurrence. Counsel appearing for the petitioner has not been able to explain such material discrepancy and variation in the original application dated 07.07.2014 (C-4) filed by the complainant before the police authorities on the following day of the alleged occurrence as opposed to the contents of the complaint dated 15.10.2014.

During the course of arguments, counsel for the petitioner has conceded that no medical examination of the complainant had been got

conducted. As such, there is no corroboration by way of medical examination/record of any push blow having been inflicted upon the complainant on his chest.

For the reasons recorded above, this Court is of the considered view that the private complaint lodged by the petitioner herein has been dismissed on cogent and valid grounds as no prima facie case had been made out to summon the accused for offence under Sections 3 and 4 of the SC/ST Act.

The instant petition is devoid of merit and is dismissed.

09.01.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |