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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1684-2015 [O&M]

Date of Decision:- July 24, 2017

Satnam Singh and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. P.S.Ahluwalia, Advocate,
for the petitioners.

Mr. Raj Birinder Singh Chahal, Addl. AG, Punjab,
for the respondent State.

Mr. A.D.S. Sukhija, Advocate,
for respondent no.2.

SHEKHER DHAWAN, J.

Present petition, under Section 401 read with Section 482 Cr.P.C., is directed against order dated 02.02.2015 (Annexure P/2) passed by learned Additional Sessions Judge, Mohali, whereby charges have been framed against the petitioners for commission of offence punishable under Sections 452, 326, 324, 323, 427, 506, 148, 149 and 506 IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as “**the Act**”) in case bearing FIR No. 117 dated 5.7.2013 at Police Station Sohana, District S.A.S. Nagar.

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2. Learned counsel for the petitioners, *inter alia*, contended that the petitioners have been falsely implicated in this case and at least there is no material or legal ground to frame charge against the present petitioners under Section 3(2) of the Act, because the petitioners themselves belong to the Scheduled Caste category and sufficient material is also available on the file by way of order of learned Additional Sessions Judge, Mohali while granting bail to five petitioners vide order dated 24.07.2013 (Annexure P/13) and order dated 14.08.2013 (Annexure P/12) while granting anticipatory bail to ten petitioners. He has also referred to Scheduled Caste Certificates, [Annexure P/11 copy] wherein the petitioners have been shown to be belonging to Scheduled Castes [Ramdasia].

3. Learned counsel for the petitioners further contended that as per the provisions of Section 3 of the Act, it is clear that to constitute an offence under Section 3 of the Act, the accused should not be a member of Scheduled Caste or Scheduled Tribe. On this point, reliance was also placed on the decision of this Court in **Ajay Singh Parveen and another Vs. State of UT Chandigarh, 2011(2) RCR (Criminal) 405.**

4. Learned State counsel as well as learned counsel for private respondent have contended that the Court below has already applied its mind on the material available on the file and finding a *prima facie* case, framed charge against the present petitioners for the offence punishable under Sections 452, 326, 324, 323, 427, 506, 148, 149 and 506 IPC and Section 3(2) of the Act. Otherwise also, there is absolutely no material available on the file to show that the petitioners belong to Scheduled

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Caste category and as such, they cannot be prosecuted and tried for commission of offence punishable under Section 3(2) of the Act. More so, as per Sections 6 and 8 of the Act, the provisions of Indian Penal Code shall apply and there is presumption as per law as laid down under Section 8 of the Act. There is no ground to accept the present petition and the same be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned counsel for the petitioners has challenged the order dated 2.2.2015 (Annexure P/2) whereby charge has been ordered to be framed against the present petitioners along with other co-accused for commission of offence punishable under Sections 452, 326, 324, 323, 427, 506, 148, 149 and 506 IPC as well as Section 3(2) of the Act. The prayer in the present petition is that charge could not have been framed against the present petitioners qua offence punishable under Section 3 (2) of the Act as the petitioners themselves belong to Scheduled Caste category. For this purpose, provisions of Section 3 of the Act would be most relevant and the relevant part is extracted below:-

“3. Punishments for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe”

6. Such a view was also taken by this Court in **Ajay Singh Parveen's case [supra]** wherein it was observed as under:-

“9. From the perusal of Section 3 it is thus clear that to constitute the offence under Section 3, accused should not be a member of Scheduled Caste or a Scheduled Tribe.

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10. Since, petitioner No.1 undisputedly himself is a Scheduled Caste hence no offence under Section 3(1)(x) is made out against petitioner No.1.”

7. Now, the next question for consideration is, whether there was some material or evidence before the Court that the petitioners themselves belong to Scheduled Caste and as per provisions of Section 3 of the Act, charge under Section 3(1)(2) of the Act could not have been framed.

8. On this point, reply filed by the State is most relevant because even the State has not denied this fact in corresponding paragraph No. 8 of the reply. More so, this fact was admitted and observed by learned Additional Sessions Judge, Mohali in the orders, Annexure P/12 and P/13 and there is no contrary material on the file.

9. Apart from this, learned trial Judge in the impugned order, Annexure P/2, has not given any reasoning or detailed facts as to on what basis, charge was being framed against the petitioners under Section 3[2] of the Act and what were the actual words or the acts having been done by the accused persons, including the present petitioners, as detailed in Section 3(1)(zc).

10. In view of the above, the present petition is accepted and the order dated 2.2.2015 (Annexure P/2) whereby charges were framed against the petitioners and co-accused is set-aside and the trial Court is directed to continue with the trial after framing charge against the accused persons for commission of offence punishable under the Indian Penal Code and even offence under Section 3 of the Act against the accused persons. However, there is no ground to frame charge qua present

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petitioners under Section 3 of 'the Act', who themselves belong to the Scheduled Caste category.

July 24, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	No