

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

CRR No.1089 of 2016 (O&M)
Date of Decision: November 13, 2017

Aman Kumar

...Petitioner

VERSUS

Tillu @ Narender and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurinder Pal Singh, Advocate
for the petitioner.

Mr.Parth Singh, Advocate
for respondent No.1.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision petition has been filed by petitioner against respondents Tilu @Narender and State of Haryana, challenging the impugned order dated 17.12.2015 passed by learned Sessions Judge, Jind vide which charge under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity the 'SC&ST Act' was not framed.

Notice of motion was issued. Learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that challan was presented against respondent No.1 Tillu @ Narender by the police of Police Station Alewa in case FIR No.63 dated 31.05.2015 under Sections 323, 452, 506 IPC and Section 3 of the SC&ST Act. At the time of framing of the charge, it was argued before the trial Court that offence under Section 3 of the SC&ST Act is also made out.

Learned trial Court after going through the record, discharged accused-respondent No.1 under Section 3 of the SC&ST Act and found prima facie case under Sections 323, 452 and 506 IPC and since all these offences are triable by Court of Magistrate, therefore, the case was sent to learned Chief Judicial Magistrate, Jind to proceed further in accordance with law, vide impugned order dated 17.12.2015.

Aggrieved from the above-said impugned order, present revision petition has been filed.

From the record, first of all, I find that on the complaint through post, DDR No.25 dated 22.05.2014 was recorded. The matter was investigated by Sub Inspector and case under Sections 323, 452 and 506 IPC was registered. During investigation, Section 3 of the SC&ST Act was added. Learned Sessions Judge, Jind, while passing the impugned order found that words regarding caste have not been stated in the public view.

As per the facts of the case, the complainant was in possession of the house since November 2013. On 20.05.2015 at about 7:00 A.M., he was present in his house. In the meantime, accused Narender @ Tillu having revolver, while threatening him with dire consequences, entered in his house and started abusing him by caste saying “*Tera Dusra Makan Khali Kar De*

raised noise, whereupon his family members reached there and the accused went in his other house and started breaking open the door.

Learned Sessions Judge, Jind, in the impugned order held that the words regarding the caste have been stated in the house of the complainant. No private person was present, therefore, these words cannot be held as to have been stated in public view.

Further, from the record, I find that it is the case of the complainant that accused gave him abuses in the name of caste. Nothing has been mentioned in the FIR as to what wording has been used by the accused qua the caste.

Learned counsel for respondent No.1 cited judgment passed by the Hon'ble Supreme Court of India in Swaran Singh and others vs. State through Standing Counsel and another, 2008(4) RCR (Criminal) 74, in which it is held as under:-

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a ‘Chamar’) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression ‘place within public view’ with the expression ‘public place’. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.

I have gone through the above-cited judgment and the same fully applies to the facts of the present case. As, in the present case the words have not been stated in public view, therefore, one of the necessary ingredient to frame the charge under Section 3 of the SC&ST Act, is missing and the accused has been rightly discharged under Section 3 of the SC&ST Act.

Therefore, finding no merit in the present revision petition, the same is dismissed.

November 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No