

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

(i) CRR No.3324 of 2015 (O&M)

Surinder Pal Singh

...Petitioner

VERSUS

Jasbir Singh and another

...Respondents

(ii) CRR No.3709 of 2015 (O&M)

Jasvinder Pal

...Petitioner

VERSUS

Jasbir Singh and another

...Respondents

Date of Decision: October 10, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioner (in CRR No.3324 of 2015).

Mr.S.S.Sarwara, Advocate
for the petitioner (in CRR No.3709 of 2015).

Mr.Subhashish Kukreti, Advocate
for respondent No.1.

Mr.Ayush Sarna, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected
revisions as both have arisen from same order.

The above-mentioned revision petitions have been filed by

petitioners against respondents Jasbir Singh and State of Punjab, challenging the impugned order dated 12.08.2015 passed by learned Addl. Sessions Judge, Patiala, vide which the application filed by the petitioners for discharge from the charges was dismissed and they were charge-sheeted under Section 166 IPC and Section 3(1) and 3(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity 'the SC&ST Act').

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 a complaint was filed against Surinder Pal Singh, Chowki Incharge and Jaswinder Singh, Head Constable, Police Post Basantpura, Tehsil Rajpura under Section 166 IPC. The complainant stated in the complaint that accused No.1 is posted as Chowki Incharge at Police Post Basantpura and accused No.2 is the Head Constable at the same police post. As per the allegations, an accident was caused by one Sevi on 10.05.2011, qua which, FIR was not registered at the earliest and FIR No.53 dated 07.07.2012 under Sections 279, 337 and 427 IPC was registered after a long delay, after filing of representation etc. As per complainant, this delay has been done only to benefit the accused Sevi in that FIR.

The main allegations against the present petitioners are that they have not registered the FIR at the earliest and thus, have committed the offence under Section 166 IPC. It is further stated that accused No.2 Head

Constable Jaswinder Singh also abused the complainant and used the words

regarding his caste by way of saying *churha chamar* in the presence of panchayat members and he is liable to be prosecuted under the provisions of the SC&ST Act and the complainant reserves his legal right to file private complaint in due course of law.

Learned JMIC, Rajpura, on the basis of preliminary evidence, summoned the accused-petitioners under Section 161 IPC and Section 3(10) and 3(11) of the SC&ST Act.

After hearing the parties, I find that for not registering the FIR, Section 166(A)(c) IPC, provides that whoever, being public servant, fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

The perusal of the record show that in this case, FIR is under Sections 279, 337 and 427 IPC, therefore, non-registration of FIR at the earliest, does not fall under Section 166A IPC Clause (c), which specifically provides the punishment for non-registration of the FIR in certain cases. Section 166 IPC will not apply in the present case in view of the specific provisions under Section 166A (c) IPC. Furthermore, in this case, FIR has been registered, though, after delay.

Therefore, from the above discussion, I find that no offence under Section 166 IPC is made out.

As regarding offence under Section 3 of the SC&ST Act, I find

that no necessary ingredients have been mentioned in the complaint that on which date, in which month, the offence under Section 3 of the SC&ST Act has been committed. It is nowhere mentioned in the complaint as to which caste the accused belongs. Nothing has been pleaded in the complaint that those words were intentionally used to hurt the complainant, who belongs to scheduled caste and to insult him. Rather, in the complaint, it is written that the complainant reserves the right to file separate complaint under SC&ST Act.

Learned counsel for the petitioners cited judgment passed by the Hon'ble Supreme Court in *Asmathunnisa vs. State of A.P. and another*, **2011(2) RCR (Criminal) 571**, in which it is held as under:-

*“12. Learned counsel for the appellant has also drawn our attention to a judgment of this Court **Gorige Pentaiah v. State of Andhra Pradesh & Others** (2008) 12 SCC 531. The relevant paragraph of this judgment is as under:*

“6. .. According to the basic ingredients of Section 3(1) (x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within 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.”

I have gone through the above-cited judgment and the same fully applies to the facts of the present case.

In view of the above discussion, I find that necessary ingredients are not mentioned in the complaint. Therefore, neither the

accused can be summoned nor charges can be framed against them. Prima

facie, no charge is made out against the petitioners.

Therefore, finding merit in both the petitions, the same is allowed. The impugned order dated 12.08.2015 passed by learned Addl. Sessions Judge, Patiala is set aside and the accused-petitioners stand discharged.

October 10, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No