

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 20.04.2017

Delivered on: 03.05.2017

+ CRL.REV.P.5/2016

STATE

..... Petitioner

versus

AMIT GUPTA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner/State : Mr. Arun Kumar Sharma, APP.

SI Ram Phal Singh, P.S.Bharat Nagar.

For the Respondents : Mr.Mrinal Madhav, Mr.Kaushikesh Kumar,

Mr.Amit Prakash Shahi, Mr.Dhanender

Sharma and Mr.Sandeep Kumar for R-1 to 4.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

Crl. M.A. No.120/2016

1. For the reasons stated in the application, the delay of 5 days in filing the revision petition is condoned.

2. The application stands disposed of.

Crl.Rev.P. No. 5/2016

1. The present revision petition has been preferred by the State against the order dated 31.08.2015 passed by Mr.Pankaj Gupta, ASJ-II,

North-West, Rohini Courts, New Delhi in FIR No.257/2012 (P.S.Bharat Nagar) instituted for offences under Section 341/323/34 of the IPC and Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the accused respondent Nos.1 to 4 were discharged for the offence under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. On 19.11.2012, on the occasion of Chat Puja, a programme was being arranged in J.J.Colony at the instance of a local body/association. It is alleged that one Rohit, while he was putting up a hoarding, was confronted by respondent Nos.1 & 3 with respect to some issue and a scuffle took place when respondent No.1 slapped Rohit. With the intervention of the local persons, the accused persons were separated from Rohit. At about 4.45 PM on the same day all the accused persons surrounded Rohit (victim) and assaulted him. When the complainant, Secretary of the local body, tried to intervene, he too was assaulted. A complaint thereafter was made to the concerned police station leading to registration of a FIR under Section 341/323 and 34 of the IPC.

3. After registration of the FIR, the IO recorded the statement of witnesses on the same day and a day after i.e. on 20.11.2012 as well. The investigation was completed and thereafter chargesheet was submitted on 14.12.2012 whereupon cognizance was taken. Charges also were framed under Section 323/341 and 34 of the IPC against the respondents and the case was fixed for the prosecution evidence. It was at that stage that a supplementary chargesheet was filed and cognizance of the same was

taken on 03.02.2014.

4. It may be relevant here to state that on 26.11.2012, the so called victim had made a complaint to the Lieutenant Governor with the allegation that on the day of the occurrence when he was assaulted, he was subjected to insult by taking his caste name. The aforesaid complaint was forwarded to the National Commission for SC and ST. A copy of that complaint was also sent to the Bharat Nagar police station and was marked to the investigating officer of the case. It is stated that the IO of the case recorded the statement of the victim on 19.04.2013.

5. The victim had also made a complaint on 19.02.2013 to the CP, Delhi and again on 27.05.2013 alleging that the local police was not taking any action under the SC/ST Prevention of Atrocities Act. A complaint under Section 200 Cr.P.C was also filed along with an application under Section 156(3) of Cr.P.C against the accused persons with an additional prayer to take cognizance under SC/ST Prevention of Atrocities Act. The complaint, therefore, was clubbed with Bharat Nagar P.S case No.257/2012.

6. Since offences under Section 3(i)(x) of the SC/ST Prevention of Atrocities Act is triable by a Court of Sessions, the case was committed to the Court of Sessions for trial.

7. The trial Court has taken note of the statement of victim and witnesses recorded at various stages; first at the time of lodging of the FIR, and then in the complaint before the National Commission for Schedule Caste and Schedule Tribes and thereafter before the

Commissioner of Police, Delhi.

8. On carefully analyzing the statement of the victim and the complainant, the trial Court was of the view that in the first statement followed by the further statement, there was no reference of any casteist remark against the victim by the accused persons. In two other complaints, one before the Commissioner of Police and the other before the National Commission, the contents of the casteist statement also varied and in successive complaints, additions were made in the so called statements of the accused persons for which they had to be tried.

9. The trial Court has also taken note of the fact that the respondents/ accused were not even aware of the caste of the victim which was evident from the statements made by the victim in the FIR. The trial Court has, rightly disbelieved the statement of the victim that the IO of the case was informed in the first instance about the casteist remark but the same was not incorporated in the first information report.

10. At para 27 of the order impugned, the trial Judge has gone on to record as hereunder:-

“27.Before proceeding further, it is mentioned that the complainant at whose instance the FIR was lodged nowhere stated that he mentioned about the casteist remarks to the police official but he did not record the same at the time of lodging the FIR or that his statements dated 19.11.2012 and 20.11.2012 were not complete and voluntary in nature. To this effect, the victim in his complaint dated 26.11.2012 stated that from the spot, the police took him to the hospital and once he was not fully conscious the police obtained his signatures on some papers. However, in his complaint

dated 19.02.2013 made to the CP, he stated that once on 20.11.2012, he was discharged from the Trauma Centre, he reached the PS, met the IO and got his statement recorded. That time, he also furnished his caste certificate and IO assured that he would invoke the provisions of SC/ST Act in the charge sheet on the basis of statement given to him. The said fact was reiterated by the victim in his statement dated 27.05.2013 also. In view thereof, it can be held that in the complaint dated 26.11.2012, the victim tried to give an impression as if the police official obtained his signature on some papers and then converted the same into the statement of the victim. However, there is no mention that he did not make any statement to the police on 20.11.2012 which was not signed by him. On the other hand, in the complaint dated 19.02.2013 and 27.05.2013, he admitted having made the statement at his own but his only grievance was that IO did not invoke the provisions of SC/ST Act while filing the charge sheet. Subsequently, the victim again changed his stand and in para 5 of the complaint u/s 200 Cr.P.C., stated that once he got discharged from the Trauma Center, he visited the PS and the police official obtained his signature in the inner diary at the bottom and assured that he would record every averment in his statement and would invoke the provisions of SC/ST Act in the charge sheet. As such, in the said statement, he tried to give an impression that he had not made the statement also. In view of the foregoing discussion, it can be held that firstly, the victim admitted having made the statement and pleaded his grievance only regarding non invocation of SC/ST Act in the charge sheet and then in the complaint u/s 200 Cr.P.C., he even backed out from his statement dated 20.11.2012 also. As such an adverse inference can be drawn against the victim.”

11. The trial Court, relying upon the judgment of **Smt. Deepa Bajwa vs. State and Ors**, 115 (2004) DLT 202; **Karamveer Singh vs. State** passed in Crl.R.P No.225/2004 and **Gorige Pentaiah vs. State of A.P**, 2008 (12)

SCC 531 found the allegations, for trying the accused/respondents, to be absolutely deficient and hence discharged them of the offence under Section 3(i)(x) of the SC/ST Prevention of Atrocities Act.

12. There can be no denying the basic postulate of law that if there are no materials, no charge can be framed. A charge can only be framed if the trial Judge is of the opinion, after considering all the documents submitted and hearing the prosecution and the accused, that the accused has committed the offence. True it is that it is not open to the Court to appreciate the evidence at the stage of framing of charge or meticulous examination of the statement of witnesses but it does not preclude the formation of an opinion of the trial Judge as to whether a prima facie case is made out or not.

13. An accused is bound to be discharged if the evidence produced is not sufficient and it appears that at all stages the case was being improved and new facts were being added.

14. The circumstances of the case also reveal that there was a petty fight between the persons of the same locality with respect to making preparations for an ensuing festival, which was later blown out of proportion by giving such dispute a different colour. The circumstances of the case, the divergent statement of the victim and the witnesses and a blatant attempt to embellish and improve upon the earlier statement regarding the occurrence go a long way in making the case doubtful at the threshold.

15. There does not appear to be any necessity for making the

respondents go through the rigors of a trial.

16. Considering the aforesaid facts and the evidence available on record, this Court is not inclined to interfere with the order impugned.

17. The revision petition is dismissed.

ASHUTOSH KUMAR, J

MAY 03, 2017

k

