

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS.71/2017 & 18/2018.

CRIMINAL REVISION APPLICATION NO. 71 of 2017.

Lenin Viegas .. Petitioner

Versus

State & Another .. Respondents

Shri C. A. Ferreira with Shri Shane Gomes, Advocates the Petitioner.

Shri S. R. Rivankar, Public Prosecutor for the Respondents.

CRIMINAL REVISION APPLICATION NO. 18 of 2018.

Keshav Kunkolkar .. Petitioner

Versus

State & Another .. Respondents

Shri Kapil Kerkar, Advocate for the Petitioner.

Shri S. R. Rivankar, Public Prosecutor for the Respondents.

Coram :- C. V. BHADANG, J.

Date :- 9th April 2018

ORAL ORDER:

The limited challenge in this revision applications, is to the order directing framing of charge against the petitioner, for the offence punishable under Section 3(1)(j) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act of 1989, for short).

2. The petitioner, Lenin Viegas in Criminal Revision Application No. 71/2017 and the petitioner, Keshav Kunkolkar in Criminal Revision Application No. 18/2018, are the co-accused in Special Case (SC/ST) No. 2/2015, before the learned Special Judge at Panaji. The petitioner, Lenin Viegas is the owner of the Hotel by name Hotel Shell Top Inn, St. Cruz, while the petitioner, Keshav Kunkolkar is the Manager of the said Hotel.

3. According to the prosecution, there is a sewage treatment plant in the Hotel premises. On 15.01.2014, four workers, namely, Mahesh Majik, Vishnu Pradaver, Santosh Oli and Chandru Naik, were engaged to clean the underground septic tank of the sewage treatment plant. Out of the four, Chandru Naik, who hails from Karnataka, is said

to be belonging to “Bedar” caste, which according to the prosecution is notified as a scheduled caste. At about 12:00 to 12:30 hours, all the four workers entered the underground septic tank and died of asphyxia and drowning in the sewage material. It appears that initially, an offence at Crime No. 8/2014 was registered with Police Station Old Goa, for the offence punishable under Sections 304 and 338 of IPC and Section 9 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (Act of 2013, for short) and Section 3(1)(j) of the Act of 1989, as amended by ordinance no. 1/2014 i.e. on 04.03.2014.

4. Upon investigation, a chargesheet came to be filed, initially, only for the offence under Section 304 (part II) of IPC, being Sessions Case No. 33/2015. Subsequently, a chargesheet came to be filed for the offences punishable under Section 9 of the Act of 2013 and under Section 3(1)(j) of the Act of 1989, which is registered as Special Case No. 2/2015.

5. The learned Special Judge heard the parties on the issue of framing of charge and by a common order dated 02.02.2017, has directed framing of charge for the offence punishable under Section 304 (part II)

of IPC and Section 3(1)(j) of the Act of 1989 and Sections 7 and 9 of the Act of 2013.

6. The learned Counsel for the petitioner has confined the challenge to framing of the charge under Section 3(1)(j) of the Act of 1989, at this stage.

7. On hearing the learned Counsel for the petitioner and the learned Public Prosecutor for the respondent, I find that the revision applications are entitled to succeed. The incident happened on 15.01.2014, while Section 3(1)(j) of the Act of 1989 (as amended by ordinance no. 1/2014), came into force on 04.03.2014. It can thus be seen that the date on which the alleged incident occurred, there was no offence in terms of Section 3(1)(j) of the Act of 1989 as it stands today.

8. It was also submitted by the learned Counsel for the petitioner that “Bedar” caste, to which one of the deceased, Chandru Naik claims to belong is not notified as a scheduled caste in Goa. Considering the fact that the revision applications are entitled to succeed, on the ground as stated in para 7 above, it is not necessary to examine this ground.

9. The learned Public Prosecutor, in all fairness, does not dispute this position. In that view of the matter, the part of the order, directing framing of charge under Section 3(1)(j) of the Act of 1989, is hereby set aside. The criminal revision applications are disposed of in the aforesaid terms. It is made clear that the question whether, a charge can be framed under Sections 7 and 9 of the Act of 2013, is left open, to be considered in Criminal Revision Application Nos. 72/2017 and 19/2018.

C. V. BHADANG, J.

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