

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.672 of 2013

ORDER:

The petitioners/A2 and A3 are challenging the order dated 18.03.2013 in CrI.M.P.No.240 of 2013 in Cr.No.39 of 2011 passed by Judicial Magistrate of First Class, Bichkunda, allowing the petition filed by *defacto* complainant under Section 190(1)(a) Cr.P.C. and taking cognizance against A1 to A3 for the offence under Section 3(2)(vi) and (vii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC & ST Act").

2a) Brief facts of the case are that *defacto* complainant filed private complaint alleging that he is holding agriculture land admeasuring Ac.1.35 gts. in Sy.No.117 situated at Siddapur Village Shivar, Jukkal Mandal, Nizamabad District and obtained Pahani Patrik for the year 2010-2011 from the VRO, Siddapur (A3) on 20.05.2011 and on the strength of the same, he filed a suit—O.S.No.13 of 2011 before the Junior Civil Judge, Bichkunda and obtained injunction order on 30.05.2011.

b) It is submitted that in the Pahani Patrik issued by VRO, Siddapur the name of one Javed Khan Sab was shown as possessor in possession column and when he went to Tahsil Office to enquire about the same, A1, who was the Tahsildar, abused him in the name of his caste and told he passed correct order and there is no necessity to alter the same and advised to file appeal before the RDO, Bodhan.

c) The said complaint was referred to Jukkal PS for investigation. Basing on the said complaint, the police registered a case in Cr.No.39 of

2011 against A1 to A3 and after investigation filed charge sheet under Section 10 of Protection of Civil Rights Act, 1955 and Section 3(2) (vi) and (vii) of SC & ST Act against A1 while deleting the names of A2 and A3. Then, the *defacto* complainant filed protest petition—Crl.M.P.No.240 of 2013 under Section 190(1) (a) Cr.P.C. The learned Magistrate allowed the said petition. Aggrieved, A2 and A3 filed the instant Criminal Revision Case.

3) Heard arguments of Sri K.Durga Prasad, learned counsel for petitioners; Sri M.Rajamalla Reddy, learned counsel for 2nd respondent and learned Additional Public Prosecutor (TS) for 1st respondent.

4) Learned counsel for petitioners fulminating the order of learned Magistrate, would argue that the complainant made no whisper of allegation against petitioners/A2 and A3 in FIR and 161 Cr.P.C. statement. However, in his 164 Cr.P.C. statement made before the Magistrate, for the first time he made an allegation as if A2 and A3 along with A1 abused him in the name of his caste. In view of material discrepancy in his successive statements, the Investigating Officer has rightly deleted the names of A2 and A3 from the array of accused and filed charge sheet against A1 alone. However, learned Magistrate committed grave error in placing reliance on the 164 Cr.P.C. statement of the complainant alone and taking cognizance against petitioner/A2 and A3 along with A1. Learned counsel strenuously argued that when the version of the complainant is glaringly inconsistent as regards the culpability of petitioners/A2 and A3, learned Magistrate ought to have disbelieved the same sofaras the petitioners/A2 and A3 are concerned. He thus prayed to set aside the impugned order and discharge the petitioners.

5) Per contra, learned counsel for 2nd respondent would argue that Magistrate has power to take cognizance against the accused who are deleted by the Investigating Officer in the charge sheet, and therefore, the order of Magistrate taking cognizance against the petitioners/A2 and A3 cannot be found fault. He argued that in 164 Cr.P.C. statement and also in the statements recorded by the Magistrate in connection with protest petition filed by the complainant, the participation of petitioners/A2 and A3 along with A1 in the offence was specifically deposed by the complainant and considering the same the learned Magistrate has rightly took cognizance against the petitioners/A2 and A3 along with A1 and his action cannot be deprecated. Regarding the power of the Magistrate, he relied upon the judgment of the Apex Court in *Rajinder Prasad vs. Bashir and others*¹.

6) In the light of above respective arguments, I gave my anxious consideration to the material on record. The FIR in the case is the earliest version regarding the manner of occurrence of the incident and about the culprits who perpetrated the offence. Therefore, FIR assumes vital importance in adjudication of criminal case. In the instant case, as per *defacto* complainant, incident was occurred on 03.06.2011 and he promptly gave report to the police of Jukkal PS on the very same day. His earliest version in FIR was that on 03.06.2011, when he went to Tahsil Office, Jukkal, A1 who was the Tahsildar, stood in front of Tahsil office and complainant accosted him and enquired as to how in the possession column in Pahani Patriks the name of the Javed Khan Sab was recorded as possessor without giving notice and conducting enquiry, on that A1

¹ 2001 (8) SCC 522

allegedly irked and abused him in the name of his caste and proclaimed that he passed correct order and who the complainant was to question and asked him to prefer appeal before the RDO, Bodhan.

7) Be that it may, it is pertinent to note that *defacto* complainant did not make any iota of allegation about the presence and participation of petitioners/A2 and A3 in the said offence. Curiously, in the statement given before the IO i.e. Sub-Divisional Police Officer on 18.07.2011, he stated as if on 03.06.2011 when he went to the Tahsil Office and questioned A1 as to how in his proceedings he mentioned one Javed Khan Sab as being in possession of the land without informing to the complainant, A1 gave a prevaricate answer and asked him to go to RDO, Bodhan and make an appeal. At that time, some witnesses named in his statement were also present. Thereafter, when he informed this fact to his advocate, he advised that since he belongs to Lambada Caste (ST), he can file a case as if he was abused in the name of his caste and he signed on some papers. He stated that the accused have not abused him in the name of his caste. This is the version of the complainant in his 161 Cr.P.C. statement before the Sub-Divisional Police Officer on 18.07.2011, which is self-explanatory.

8) While so, the IO got recorded the 164 Cr.P.C. statement of complainant on 15.09.2011 i.e. three months after lodging FIR. In this statement, for the first time, the complainant stated as if A1 to A3 in one voice abused him in the name of his caste. Needless to emphasize that the stand of complainant is fickle and volatile sofaras the culpability of petitioners/A2 and A3 is concerned. In that view of the matter, the learned Magistrate ought to have been more vigilant before taking cognizance of offence against the petitioners/A2 and A3.

9) It is true that as held in ***Rajindra Prasad***'s case (1 supra), Magistrate has power to take cognizance against such persons who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were *prima facie* guilty of the offence alleged to have been committed. However, the power and jurisdiction must be exercised by the Court with utmost circumspection. In the instant case, the consistency is the casualty in the version of complainant. Therefore, in my considered view, learned Magistrate should have turned down the protest petition of the complainant.

10) In the result, this Criminal Revision Case is allowed by setting aside the impugned order dated 18.03.2013 in CrI.M.P.No.240 of 2013 in Cr.No.39 of 2011 passed by learned Judicial Magistrate of First Class, Bichkunda and consequently petitioners/A2 and A3 are discharged from the offence.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 26.12.2018
Murthy