

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.5348 OF 2011

ORDER:

This Criminal Petition, under section 482 of Cr.P.C., is filed by the Petitioner/A-1, seeking to quash the proceedings in P.R.C. No.45 of 2010, on the file of the Court of Additional Judicial First Class Magistrate, Gudivada, Krishna District (for short, 'the trial Court'), registered for the offences punishable under Sections 353 and 506 of I.P.C. R/w. Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard learned counsel for the petitioner and learned Public Prosecutor, appearing for the 1st respondent - State. None appears for the 2nd respondent – *de-facto* complainant, in spite of service of notice.

3. Originally, the complaint was filed stating that the incident occurred on 10.04.2006, in which A-1 and A-2 abused the complainant touching her caste name.

4. After due investigation, the Police filed final report stating that, on 10.04.2006, A-2 was on leave and that there are no allegations against A-1. The statement of the complainant, however, shows that some allegations are made against the Petitioner/A-1. But, when the allegations are common against A-1 and A-2, and A-2 is not found to be present on the date of alleged incident, the entire incident, as alleged by the complainant, suffers from doubt. Moreover, against the final report, a protest petition was filed by the complainant and the Court took cognizance of the case, based on the protest petition, and the order does not reflect any application of mind and it is a cryptic order. Questioning the said order of taking cognizance, the petitioner is before this Court.

5. Learned counsel for the petitioner submits that, prior to filing of this complaint, a departmental enquiry, based on the complaint lodged by the *de-facto* complainant, was ordered against the Petitioner/A-1 and A-2, and the enquiry report is to the effect that no such incident occurred. There was also an

enquiry made by the Tahsildar, Gudivada, at the instance of the District Collector, Krishna, which is subsequent to filing of the complaint, and in the enquiry report dated 23.09.2006, it was opined that the complaint is false. Apart from that, the learned counsel for the petitioner submits that, even if the allegations are taken to be true, the incident did not occur within the public view and has occurred within the four corners of the office room of A-1.

6. Learned counsel for the petitioner relies on a judgment of this Court in ***Parsa Somaiah and others Vs. State of Andhra Pradesh and another***¹, wherein it was held that unless the utterances in the name of caste are made with an intention to humiliate or intimidate persons belonging to Schedule Caste/Tribe, in public view, offence punishable under Section 3(1)(x) would not be attracted.

7. The Supreme Court in ***Gorige Pentaiah Vs. State of Andhra Pradesh***² held at Para 6 as under:

“6. In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of [Section 3\(1\)\(x\)](#) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No.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 accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 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.”

8. In this case also, no such averment is found in the entire complaint.

¹ 2015 (1) ALD (Crl.) 143

² (2008) 12 SCC 531

9. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioner would only be an abuse of process of law.

10. Accordingly, the Criminal Petition is allowed and all further proceedings against the Petitioner/A-1 in P.R.C. No.45 of 2010 on the file of the Court of Additional Judicial First Class Magistrate, Gudivada, Krishna District, are hereby quashed.

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

T. RAJANI, J

Date: 04.10.2018.
Dsh



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Date. 04.10.2018

DSH