

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.9160 of 2013

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in Cr.No.558 of 2013, against the petitioners, who are A1 to A4, on the file of the Station House Officer, Kancharapalem Police Station, Visakhapatnam. The offences alleged are under Sections 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Section 323 read with 34 of the Indian Penal Code.

2. Heard the counsel for the petitioners, the counsel for the second respondent and the learned Public Prosecutor, appearing for the first respondent.

3. The complaint is filed stating that the petitioners have abused the second respondent in his caste name, when he went to the Court to attend the case and questioned him as to how he would construct a compound wall in the disputed land. The names of all the petitioners are identified as the persons, who abused the complainant in his caste name.

4. The counsel for the petitioner submits that there are civil disputes between the parties and that the complainant filed a civil suit and obtained ad interim injunction but the same was vacated, after considering the counter and arguments of the defendant therein, by virtue of the order of the I Additional Senior Civil Judge, Visakhapatnam in IA.No.509 of 2013 in OS.No.1118 of 2013 dated 25.04.2016. The complainant went in appeal, in CMA.No.16 of 2016,

against the said order but the appeal was dismissed by the VII Additional District Judge, Visakhapatnam vide judgment dated 08.08.2017. The counsel for the petitioner submits that the petitioners were roped in only in order to see that they are harassed. The counsel further submits that the fourth petitioner is a student and that the first petitioner is working in Defence department. The counsel also relies on the certificate showing that the first petitioner was present in office, on the date of the said incident.

5. The counsel for the respondent does not deny the fact of the civil case being filed but he relies on a judgment of the Supreme Court in NATHIA LAL v. STATE OF UP¹, which is to the effect that each case has to be set aside on the basis of the evidence placed on record without being influenced by the evidence or arguments urged in cross case. There is no clarity for the said proposition and there is no relevance to the said proposition in this case. The counsel also relies on a judgment of this Court in MOGANTI SRINIVASA RAO v. STATE OF AP², which is to the effect that in a petition filed seeking for quashing of the FIR on the ground that the complainant does not belong to either SC or ST, the said fact has to be decided in trial and FIR cannot be quashed on the said ground. The petitioners did not make any allegation that the complainant does not belong to SC or ST, hence, the said decision does not help the respondent. The counsel for the respondent relies upon another decision of the Supreme Court in STATE OF HARAYANA v. BHAJAN LAL³ which is on the exercise of

¹ 1990 (SUPP) SCC 145

² 2003 (1) ALD (CRL.) 80 (AP)

³ 1992 SUPP (1) SCC 335

powers under Section 484 of the Criminal Procedure Code and Article 226 of the Constitution of India while quashing the proceedings. This Court does not propose to ignore the proposition laid down therein.

6. Be that as it may, the facts of the case would reveal that there are earlier civil disputes between the parties and the same would suggest that this complaint might have been filed based on false allegations.

7. In support of the above, the counsel for the petitioners relies on a decision of this Court in *PARSA SOMAIAH v. STATE OF AP*⁴ wherein this Court observed as under:

“6. In the instant case admittedly, a civil suit in respect of the land has been pending between the *de facto* complainant and petitioners and the utterances in the name of caste were allegedly made by the petitioners in connection with the land dispute. Whenever there is a dispute between the parties in relation to the property and a complaint has been made alleging commission of offence under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989, the Court is under a duty to scrutinize the allegations with great care and circumspection. The reason is; there is every possibility for the accused being implicated in the case on account of civil dispute.”

8. The Supreme Court in *GORIGE PENTIAIAH v. STATE OF ANDHRA PRADESH*⁵ 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

⁴ 2015 (1) ALD (CRL.) 143

⁵ (2008) 12 SCC 531

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.”

In the light of the above, the criminal petition is allowed and the further proceedings in Cr.No.558 of 2013, against the petitioners, who are A1 to A4, on the file of the Station House Officer, Kancharapalem Police Station, Visakhapatnam, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

September 4, 2018
DSK

T. RAJANI, J

