

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1316 of 2018

Rajaram Patel and Another

Applicant

Versus

State of Chhattisgarh

Respondents

Post for pronouncement of the order on 04.10.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 29.08.2019****Order Delivered on :04/10/2019****CRR No. 1316 of 2018**

1. Rajaram Patel S/o Shri Mohit Ram Patel Aged About 43 Years
R/o Nawapara, Chowki- Bhatgaon, District- Balodabazar-
Bhatapara, Chhattisgarh
2. Uchit Ram Patel S/o Sukalu Patel Aged About 66 Years R/o
Nawapara Chauki- Bhatgaon District- Balodabazar - Bhatapara
Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through District Magistrate Balodabazar-
Bhatapara District Balodabazar - Bhatapara Chhattisgarh.,

---- Respondent

For Applicants	: Shri Pawan Kesarwani and Shri G.R.Burman, Advocates
For Respondent/State	: Ms. Reena Singh, PL.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****04/10/2019**

Present revision is directed against the order dated 24.10.18 passed by the Special Judge (Atrocities), Baloda Bazar, district Baloda Bazar in S.T. No. 16/2018 whereby the trial judge has framed charges against the applicants under Section 3(1)(r) of the SC/ST (Prevention of Atrocities) Act (hereinafter referred to as the 'Act') and Sections 186, 294, 506 Part II read with Section 34 IPC.

2. As per prosecution case, complainant is the Patwari of Patwari Halka No. 31 at village Dhangaon. On 11.09.15, when complainant along with Revenue Inspector N.R.Bhosle was doing the work of land acquisition at village Nawapara, at that time, present applicants came on the spot and abused the complainant in filthy language and also in the name of caste with an intention to humiliate him within public view and when the complainant asked him as to why they are abusing, the applicants tried to assault him however some of the villagers intervened and they came back without finishing the work. Complainant lodged a report against the applicants on the basis of which Crime No. 295/2015 was registered against the applicants under Sections 186, 294 and 506/34 IPC. After completion of investigation, charge sheet was filed against the applicants and after considering the arguments, the trial judge framed charge under Section 3(1) (r) of the Act and Sections 186,294 and 506/34 IPC. Hence, the present revision.

3. Counsel for the applicants submits that the order passed by the trial court is contrary to the facts and circumstances of the case. The trial court has erred in not considering the fact that the FIR has been lodged by the complainant after 48 days of the incident and no explanation has been given by him in the FIR therefore, no charges are made out against the applicants. It has been submitted that the complainant has not submitted the caste certificate during the entire investigation therefore the police has not mentioned the SC/ST Act against the applicants. On 12.04.17, the District Prosecution Officer filed application for taking documents on record and submitted the caste certificate of the complainant. The trial judge has failed to

appreciate the fact that the entire charge sheet does not disclose the offence under Section 3(1)(r) of the Act. The impugned order has been passed in a mechanical manner. Learned trial court has not applied its judicial mind and therefore the charges framed against the applicants deserve to be set aside. Reliance has been placed in the matter of **Boda Rakesh Naik Vs. State of Telangana in Cr.A. No. 1115 of 2016** vide its judgment dated 21.12.2016 (High Court of Andhra Pradesh); **Ravinder Singh Vs. State of Himachal Pradesh** reported in **AIR 2010 SC 199** and **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Another** reported in **(2018) 6 SCC 454**.

4. On the other hand, State counsel supports the impugned order.

5. Heard counsel for the parties and perused the material available on record.

6. It is clear from the FIR that the incident had taken place on 11.09.15 at 1.30 p.m. whereas the complainant has reported the matter on 28.10.2015. The trial court by the order impugned framed charges against the applicants under Section 3(1) (r) of the Act. This Section has been amended in this Act w.e.f. 26.01.16 vide SO 152 (E) dated 18th January 2016. It is clear from the charge sheet that the incident had taken place on 11.09.2015 prior to the amendment of this section. Hon'ble the Apex Court in the matter of **Ravinder Singh Vs. State of Himachal Pradesh** has observed thus:

10. It is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This position is clear even on a bare reading of Article 20(1) of the Constitution of India, 1950 (in short, 'the Constitution'). The said provision reads as

under:

“20. Protection in respect of conviction for offences.- (1) No person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

11. Wills in his Constitutional Law of United States (at page 516) brought out a lucid classification of the penal law which are ex post facto:

- (i) when they make criminal an act which was innocent when done;
- (ii) when they make a crime greater than it was when it was committed;
- (iii) when they make the punishment greater than the punishment was at the time the act was committed;
- (iv) when they change the rule of evidence as to deprive a defendant of a substantive right; and
- (v) when they make retrospective qualifications for an offence which are out of a proper exercise of the police power.

Under Article 20(1) of the Constitution what is prohibited is the conviction and sentence in criminal proceedings under ex post facto law.

7. The SC/ST (Prevention of Atrocities) Act, 1989 is a Special Act and under this Act, Rule 7 provides as under :

7. Investigating Officer.-(1) an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest

possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.

8. In the present case, investigation was done by Head Constable as shown in the final report and during trial prosecution filed application under Section 91 Cr.P.C. along with caste certificate of complainant and learned trial court without considering the legal provisions, has framed charges under this Act. The impugned order dated 24.10.2018 framing the charges u/Ss.3(1)(r) of the SC/ST (Prevention of Atrocities) Act and Sections 186, 294, 506 Part II read with Section 34 IPC and the charges framed under these Sections, as such, are quashed and the matter is remitted to the concerned court for framing the charges under appropriate sections against the applicants in accordance with law.

Sd/-

(Rajani Dubey)
Judge

