

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2816 of 2012

DATE OF DECISION: APRIL 11, 2019

HARI KISHAN GARG

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. P.S. HUNDAL, SR.ADVOCATE
WITH MR. DINESH TREHAN, ADVOCATE
FOR THE PETITIONER.

MR. PARVEEN AGGARWAL, DAG, HARYANA
FOR THE STATE-RESPONDENT NO.1.

MR. T.S. SANGHA, SR. ADVOCATE
WITH MR. NARINDER SINGH, ADVOCATE
FOR RESPONDENT NO.2.

MANOJ BAJAJ, J.

Petitioner Hari Kishan Garg has preferred this criminal revision to challenge the order dated 16.8.2012 passed by Special Judge, Jind in Sessions Case No.2 dated 4.6.2012, arising out of FIR No.832 dated 29.11.2010, registered under Sections 174, 186, 189 IPC and Section 3 of SC & ST Act, Police Station City Jind, whereby he was ordered to be charge-sheeted under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act (for short 'SC & ST Act') and Section 186/189 of the IPC.

Brief facts leading to the present revision petition are that Anuj Garg son of Hari Kishan Garg was married to Sweety daughter of Madan

Lal Goyal on 7.12.2009. However, the relations between them got strained further resulting into lodging of complaint by Sweety wife of Anuj Garg through an application dated 22.10.2010. The said application was marked to Incharge, Women Cell for verification of facts and immediate necessary action by the Superintendent of Police, Jind on the same day. It was Inspector Bishni Devi who was handling the complaint and issued notice under Section 160 Cr.P.C. to Anuj Garg, his parents and brother, namely, Gaurav son of Hari Kishan Garg. As per notice dated 23.10.2010, they were called on 25.10.2010 at 10.00 a.m. in her office. On the said day, both the parties, i.e. Anuj Garg, his parents and brother as well as complainant Sweety, her parents and relatives attended the office of Incharge, Women Cell, Jind. However, the matter could not be finalized on that date. Accordingly, the parties were again directed by Inspector Bishni Devi to attend her office on 15.11.2010.

On 11.11.2010, the Superintendent of Police, Jind marked the case to the Protection Officer with the remarks to verify the facts and take necessary action. The said complaint dated 22.10.2010 alongwith endorsements is Annexure P-1. On 15.11.2010, complainant Sweety, her parents and relatives were present in the office of Protection Officer. However, the other side, i.e. Anuj Garg and his parents did not come for further proceedings. After waiting for sometime, the Protection Officer, namely, Krishna Devi (complainant) contacted the petitioner on his mobile phone No.09888562118. In response, the petitioner asked as to who was speaking on the other side, and then respondent No.2 apprised him that she

is the Protection Officer. At that time, petitioner Hari Kishan Garg responded in anger saying, “*sun meri baat meri madam se baat ho chuki hai*”. Thereafter, the complainant again redialed and told him that the matter was fixed for 15.11.2010 for counselling and the girl has already reached, but they have not come. The complainant again asked if it was Hari Kishan speaking from Panchkula. According to the complainant, at this stage, the accused became furious and uttered “*tu samajhati kya ho, dedhni dobara phone karne ki koshish mat karna mera High Court mein case chal raha hai, zyada mera dimag kharab karne ki koshish mat karna*”. It is this conversation which according to complainant allegedly amounts to commission of offence punishable under Section 3 of the SC & ST Act and Section 186/189 IPC. According to the complainant, when this conversation took place, speaker of her phone was 'On' and the utterances made by the accused were heard by Telu Ram S/o Mangal, Jang Bahadur S/o Ram Lal, Madan Lal S/o Nohar Chand, Ishwar Chand. On these allegations, a complaint dated 15.11.2010 was given by respondent No.2, whereupon FIR No.832 dated 29.11.2010 under Sections 174, 186, 189 IPC and Section 3 of SC & ST Act was registered at Police Station City Jind (Annexure P-5).

The petitioner had previously filed CRM-M-2373 of 2012 for quashing of the FIR, however, the same was withdrawn with an object to raise all the pleas before the Court at the time of framing of the charges.

A final report under Section 173(2) Cr.P.C. was submitted before the before the Special Court. At that stage, the Special Court vide order dated 16.8.2012, proceeded to frame charges against the petitioner for

the offence punishable under Section 3(1)(x) of SC & ST Act and Section 186/189 IPC. It is this order which has been impugned in the revision petition filed by the petitioner.

Heard learned counsel for the parties and with their assistance, I have gone through the case file as well as record of the case.

Learned Senior Counsel on behalf of the accused-petitioner has contended that necessary ingredient to constitute the offence punishable under Section 3(1)(x) of the SC & ST Act is missing. It is argued that there was no knowledge with the accused-petitioner regarding the complainant belonging to Scheduled Caste/Scheduled Tribe. Learned counsel for the petitioner has relied upon the judgement in *Jogender Singh and others vs. State of Haryana and another, 2009(2) RCR(Criminal) 100*, to contend that where the accused has no knowledge of the caste of the complainant, no offence under the said Act is alleged to be made out.

It is argued by learned senior counsel that originally, the complaint was entrusted to Smt. Bishni Devi to hold counselling on 25.10.2010 and thereafter, it was transferred to Protection Officer, Krishna Devi vide order dated 11.10.2010. On 15.11.2010, when the parties were to appear for further counselling, the alleged occurrence had taken place. According to the learned senior counsel, there is nothing on record to suggest that the petitioner ever knew this fact that the case stood transferred to Smt. Krishna Devi and also she belonged to the Scheduled Caste or Scheduled Tribe. In the absence of knowledge, no offence is made out against the petitioner.

This argument is opposed by learned senior counsel appearing on behalf of respondent No.2. According to him, a person can otherwise come to know about the officer who is supposed to handle the dispute between the parties. Learned counsel has submitted that at the time of framing of charges only *prima facie* case is to be seen and it would be a matter of evidence that the petitioner was not aware that the complainant belonged to Scheduled Caste.

A reading of the FIR would indicate that the complainant has mentioned the fact that the complainant belongs to a Scheduled Caste (Chamar by caste) and posted as Protection Officer under Superintendent of Police, Jind appointed under Protection of Women from Domestic Violence Act, 2005. Further, it was narrated that the accused persons belong to the Aggarwal Mahajan caste and had full knowledge that the complainant belongs to Chamar case which is a Scheduled Caste. The averment made in the FIR itself is not supported by any material in respect of the alleged knowledge to the accused about the fact that complainant belonged to a Scheduled Caste. It is not in dispute that the matrimonial dispute between Anuj Garg and Sweety was pending with Police Station, Jind and the parties were attending the counselling. The complaint (Annexure P-1) clearly reveals that it was Bishni Devi who was initially entrusted this complaint and conducted the counselling as well. The occurrence took place on 15.11.2010 and the alleged conversation is on mobile phone. The case was transferred on 11.11.2010 to complainant Krishana Devi, but there is nothing to indicate that said communication was sent to the accused as well.

It is apparent that the accused had no occasion to know about this fact that the case is to be dealt with by Krishna Devi. Even the telephonic conversation as described by the complainant herself clearly mentions that she asked the accused that '*Are you Hari Kishan Garg speaking*'. Since the complainant and the accused were not known to each other, therefore, it is clear that the accused was not aware of the status of the complainant belonging to a Scheduled Caste category. The argument of learned senior counsel that the accused can otherwise come to know about the Officer is without any force as the parties had already held the counselling on 25.10.2010 and were again called on 15.11.2010 and therefore, there was hardly any reason for them to apprehend that the Officer might have changed and the enquiry has been entrusted to a new Officer.

The relevant extract of the judgement in **Jogender Singh's case** (*supra*) relied upon by the learned counsel for the petitioner is as under:-

“5. *It has been repeatedly held by this Court as well as High Courts that unless and until there is specific averment in the complaint that accused had knowledge that the complainant belong to scheduled caste, the accused cannot be prosecuted. In this context, reference can be made to Chaman Lal Goyal vs. Kaur Singh, 2008(1) RCR (Crl.) 377. Similar is the ratio of the judgement of Rajinder Kumar v. State of Haryana, 2002 (4) RCR (Crl.) 245 where an accused had called the complainant by the name of his caste but there was no allegation in the complaint that the accused had knowledge that the complainant*

belonged to Scheduled Caste. The complaint under Section 3 (1)(x) of the Act was quashed by this Court. In Smt. Usha Chopra v. State and another, 2005(2) RCR (Crl.) 54, complaint under Section 3(1)(x) of the Act was quashed by Delhi High Court where the complainant did not disclose that the petitioner made objectionable remarks in public view. It was held in the said case that public view means that persons from public should be present howsoever small in number to attract the provisions of Section 3(1)(x) of the Act. In Gorkhi Ram and others v. State of Haryana and another, 2006(4) RCR (Crl.) 356, where the accused had gone to the house of the complainant who was scheduled caste and abused the complainant and his family using derogatory remarks against him by calling him by his caste name and the occurrence had taken place within the bounded area of the house of the complainant and not in any place within public view, it was held that no offence under Section 3 of the Act was made out as such the complaint under the Act was quashed. Besides this, I have carefully gone through the averments in the complaint. In para 1 of the complaint, respondent No.2 has submitted that he belongs to caste "Khatik" and earns his livelihood by doing labour work but it is not specifically mentioned in the complaint that caste "Khatik" is a Scheduled Caste. Besides this, there is no averment in the complaint that the petitioners

had knowledge about respondent No.2 being a scheduled caste.

It is the case of the petitioners that the occurrence had taken place in the house of complainant. One Varinder and brother of the complainant-Pawan were allegedly present in the house. It is also not averment of the complainant that they had been insulted in public view.”

A perusal of the above para as well as the facts of this case shows that the necessary ingredient of knowledge to the accused is missing, and it can safely be held that the accused-petitioner was not aware of the fact that the complainant belonged to a Schedule Caste.

Learned senior counsel appearing on behalf of the accused-petitioner has further argued that the said conversation had taken place on mobile phone and the same is not in a public view and therefore, no offence is committed.

This argument is again opposed by learned senior counsel appearing on behalf of the complainant, who has invited the attention of this Court to the FIR wherein it has been mentioned that when the conversation took place, speaker of the mobile phone was 'On' and the parents, mediator and other relatives of complainant Sweety Garg were present with the Protection Officer. They all heard the conversation.

As per the FIR, 4 persons, namely, Telu Ram S/o Mangal, Jang Bahadur S/o Ram Lal, Madan Lal S/o Nohar Chand, Ishwar Chand had heard the alleged conversation. The list of witnesses attached with the final report reveals that except for Telu Ram, none of the others who had

allegedly heard the conversation were shown as witnesses. At this stage, it is necessary to examine the statement of Telu Ram recorded by the police under Section 161 Cr.P.C.

The statement of witness Telu Ram reveals that he alongwith others had gone to attend the office of Protection Officer for counselling between both the sides on 15.11.2010. They all reached there at 10.00 a.m. and after waiting for 2 hours, they asked the Protection Officer Smt. Krishna Devi to enquire from the boy's side that where they have reached. In the meantime, a lady Constable entered the office to enquire about the file because that file was previously with Inspector Bishni Devi. At that time, Madam told that the file has been found and she asked that lady Constable to dial the number of boy's side. The lady Constable dialed the number and gave it to the Madam who started talking on a speaker.

The statement given by Telu Ram is at complete variance with the version given by the complainant. According to the contents of the FIR, there were two conversations between accused Hari Kishan and complainant Krishna Devi and on both these occasions, the number was dialed by Krishna Devi. Telu Ram's statement talks about only one conversation which amounts to the alleged commission of offence under Section 3 of the SC & ST Act and does not at all refer to the previous conversations whereby the accused had asked the complainant not to contact him again. Besides, there is no mention by Krishna Devi in the FIR/her complaint that she had asked the lady Constable to dial the number, as stated by Telu Ram. Since the material evidence that the alleged utterances were made in public view

are absent, therefore, the alleged offence punishable under Section 3(1)(x) of the SC & ST Act is not made out.

This Court in *Dr. Onkar Chander Jagpal and another vs. Union Territory, Chandigarh and another, 2012(1) RCR (Criminal) 931*, while dealing with the provisions of Scheduled Caste & Scheduled Tribe Act has held as under:-

“16. It is not a matter of dispute that the Scheduled Caste & Scheduled Tribe Act is a special enactment/statute and its provisions have to be strictly construed in the same manner as mandate by the Act and not otherwise. The element of intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in public view, should clearly be borne out from the FIR. Merely, the alleged utterance by the petitioners in the verandah of the house (not within public view) appears to be the result of fit of anger and emotion and not with the intention to insult the complainant party as a member of Scheduled Caste or Scheduled Tribe. It is a matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act. That means, merely uttering such words in the absence of intention/mens-rea to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste & scheduled caste and if the imputations

are grossly vague and perfunctory, would not, ipso facto, constitute acts of commission of offence, which are capable of cognizance under the Act. Moreover, during the course of investigation, the police has recorded the statements of Kamlesh wife of Sohan Lal and Constable Avtar Singh. They did not support the allegations contained in the FIR, wherein they have stated that they have only heard the verbal abuses.”

The stage of framing of charges is an important stage where the Court is supposed to form an opinion after considering the relevant material on record and to decide as to whether the trial is warranted or not. Of course, at this stage the Court is not supposed to hold a mini trial, but at the same time, it is incumbent upon the Court to examine the material carefully to build an effective opinion.

It is a settled law that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. It has been so held by the Hon'ble Supreme Court in “***Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao***” 2012 (4) R.C.R.(Criminal), relevant of which is as under:-

11) At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the

nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

Exercise of jurisdiction under Sections 227 and 228 Criminal Procedure Code

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court,*

any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

- (iv) *If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
- (v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
- (vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to*

common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Therefore, in view of the above, it is evident that the prosecution has failed to make out a *prima facie* case for commission of offence punishable under Section 3 of SC & ST Act.

Similarly, the offence punishable under Sections 186 and 189 IPC cannot be said to have been made out considering the allegations contained in the FIR. As per definition of Section 186 IPC, an obstruction by the accused to any public servant in the discharge of his public functions amounts to the aforesaid offence. In the present case, it was the complainant (Protection Officer) who made a telephonic call to the accused to know his whereabouts and the accused didn't answer the query put by the Protection Officer, therefore, the same cannot be construed as voluntary obstruction caused by the accused. Merely, because a person did not attend the counselling, it would not constitute an offence punishable under Section 186 IPC. As observed earlier, mere non-participation of the party in reconciliation/counselling proceedings cannot be construed as an obstruction on the part of non-participating party. At best, the officer being seized of counselling or reconciliation proceedings can arrive at a required conclusion, i.e. by examining the merits of the complaint, in absence of such

a party. The participation of a party in the proceedings for reconciliation/counselling is always voluntary and if someone has chosen not to participate, then it cannot be taken adverse to such a party. It is not disputed by both the learned senior counsel that on the basis of the complaint given by Sweety, FIR No.296 dated 18.12.2010 under Sections 498-A/406/323/201/506/34 IPC registered at Police Station Narwana City, Jind already stood registered and the trial against the accused progressed. Also, the ingredients of offence punishable under Section 189 IPC are also completely missing. It is not all the case, where any action, threat or injury to a public servant is extended, much less by the accused in this telephonic conversation. It is apparent that no *prima facie* case is made out for commission of offences punishable under Section 186 and 189 IPC.

In view of the above, the petition is allowed and the impugned order of framing of charges as well charge-sheet dated 16.8.2012, passed by the Special Judge, Jind are set aside and the petitioner (accused) is discharged. His bail bonds/surety bonds are also discharged.

April 11, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes