

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8532-2017 (O&M)
DATE OF DECISION:-01.03.2019

KRISHAN KUMAR @ KRISHAN RAM
AND ORS.

...PETITIONERS...

V.

STATE OF PUNJAB AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sumeet Singh Brar, Advocate,
for the petitioners.

Mr. A.S. Gill, DAG, Punjab.

Mr. Arun K. Bakshi, Advocate,
for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing criminal complaint No.78 dated 08.12.2012 (P-1), titled as "*Chet Ram vs. Krishan Kumar and others*", under Sections 3(2) (4)(5)(10)(15) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 (for short, "Act") and under Sections 427, 430, 447, 448, 451, 323, 506, 504, 34 IPC filed by respondent No.2 and all proceedings arising thereto as well as summoning order dated 18.05.2016 (P-3).

Briefly, respondent No.2 filed a complaint under aforesaid sections against the petitioners and three more persons that on 04.09.2012, they in conspiracy with each other, illegally made a hole in the wall of his

house, so that it may fall. As a result thereof, rainy water entered into the house of the complainant, causing damage to his household articles worth ₹3.00 lakhs. After recording preliminary evidence, petitioner No.1 was summoned under Section 3(1)(x) of the Act and 427 IPC, whereas petitioners No.2 and 3 were summoned only under Sections 427 IPC along with three other accused, which are not before this Court, either as petitioner or respondent.

Learned counsel for the petitioners contends that all the three petitioners belong to the same community and category, to which, the respondents belong. Therefore, petitioners could not have been summoned and tried under the Act.

On the other hand, learned counsel for respondent No.2 vehemently opposing the above submissions contends that the fact as to whether petitioners belong to schedule caste community requires appreciation of evidence. Therefore, at this stage, the impugned summoning order cannot be quashed.

After giving thoughtful consideration to the rival submissions, this Court finds instant petition merits acceptance for the reason to follow:-

According to certificate (Annexure P-2), all the petitioners belong to schedule castes category. Therefore, prima facie, they could not have been prosecuted under the provisions of SC/ST Act, which is applicable only to the person, who is not a member of schedule caste.

In view of above, impugned complaint (P-1) qua the petitioners and summoning order (P-3) are not maintainable under the provisions of SC/ST Act. Consequently, their summoning under SC/ST Act is liable to be quashed.

Ordered accordingly.

However, the petitioners shall face trial for the offence under Indian Penal Code, for which also they have been summoned. In case, caste certificates obtained by petitioners are found forged and fabricated at any stage of the trial, the trial court shall be at liberty to reframe the charge and prosecute the petitioners under the SC/ST Act also.

01.03.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No