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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30.08.2019

+ CRL.M.C. 4867/2017

G.P. MUTHU & ORS

..... Petitioners

Through: Mr.Rakesh Wadhwa, Adv. with
Ms.Prarthana Singh, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr.M.S. Oberoi, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioners seek direction thereby setting aside Order dated 29.09.2016 passed by the learned ASJ-02/FTC, Patiala House Courts, New Delhi, in Criminal Revision Petition No. 81/2016, in FIR No.318/2015 dated 26.10.2015, registered in Inder Puri Police Station, New Delhi and all the consequential/incidental proceedings arising therefrom.

2. The case of the petitioner is that the aforesaid FIR was registered against the petitioners on the basis of complaint lodged by Respondent No.2 herein. In the said FIR, it is alleged by the Respondent No.2 that on

25.10.2015 at about 6 P.M., when the Respondent No.2 went to meet his brother Mohit, who used to run a Rehri/Stall in the locality, petitioner No.3 was abusing his brother and thereafter, a fight took place between three of them. Meanwhile, Petitioners No. 1 and 2 also reached at the spot and a scuffle took place. Thereafter, the Petitioner No.3 took the Respondent No.2 on one side whereas the Petitioner Nos.1 and 2 caught hold of the Respondent No.2 and Petitioner No.3 inflicted injuries to the Respondent No.2 with a sharp edge weapon and the Respondent No.2 sustained injuries on his left cheek and shoulder. Thereafter, respondent no.2 called at 100 number and the uncle of the Respondent No.2 took him to RML Hospital. At the time of leaving, the Petitioners threatened the Respondent No.2 for his life and also uttered caste related remarks/comments against the Respondent No.2. Thereafter, on the basis of the complaint of respondent no.2, initially FIR was registered under sections 323/341/506/34 of the IPC and the Petitioners were released on anticipatory bail by the police as all the offences are bailable in nature. Thereafter, the Respondent No.2 filed the complaint case u/s 156 (3) of Cr.P.C against the Petitioners and the said Complaint case was dismissed by the Ld. M.M. vide its order dated 06.04.2016.

3. Being aggrieved, the Respondent No.2 preferred Revision Petition vide Criminal Revision No.81/2016 and the said revision petition was disposed of vide order dated 29.09.2016 passed by Ld. ASJ-02/FTC, Patiala House Courts, New Delhi with the direction that the investigation for the offences under Section 3(1) (x) of the SC & ST Act must be conducted in the said case by the rank of the officer of ACP as per Rule 7(1) of SC & ST Rules, 1995.

4. On the basis of the said order, the Police further investigated and added the offence u/s 307 IPC and Section 3(1) (x) of the SC & ST Act in the said FIR after recording statement of Respondent No.2 u/s 161 of Cr.P.C.

5. Counsel for the petitioner further submits that the said statement is a case of complete departure from the FIR. Thereafter, the petitioners no.3 and 4 were arrested on 13.09.2017 and were released on regular Bail by the court of Ld. ASJ, vide its order dated 17.10.2017.

6. He further submits that petitioner nos.3 & 4 were arrested in the said case after almost two years after registration of the FIR and no police remand was sought by the police of the said petitioners and nothing incriminating has been recovered at the instance of the petitioners.

Thereafter, the Petitioner Nos.1 and 2 moved the anticipatory bail application and the same has been dismissed by the Court of Ld. ASJ, Patiala House Courts, New Delhi vide its order dated 09.11.2017.

7. Being aggrieved, the Petitioner Nos.3 and 4 approached this court and vide order dated 13.12.2017, anticipatory bail was granted to them.

8. The present petition has been filed on the ground that order dated 29.09.2016 passed by the learned ASJ is not sustainable in the eyes of law as the Petitioners were never given the opportunity of being heard by the said Revisional Court. The law is very well settled in this regard that no order to the prejudice of an accused or any other person can be passed by the Revisional Court, unless the Petitioners have been given an opportunity of being heard, however, none of the petitioners have ever been called or summoned by the said Court.

9. Counsel for the petitioner further submits that the Revisional Court has failed to appreciate that there is no public witness to support the allegation of the Respondent No.2 and the police have also failed to produce any witness (s) in support of allegations attracting provisions of SC & ST Act, 1989. The allegations levelled by respondent no.2 are false and fabricated and has been levelled against the petitioners in order to harass,

humiliate and blackmail the petitioners. The falsity of the story of the Respondent No.2 itself can be proved from the mere fact that in the said FIR, section 3 (1) (x) of SC & ST, 1989 was added after almost delay of two years i.e. after passing of the Order dated 29.09.2016 by the Court of learned ASJ-02/FTC, Patiala House Courts, New Delhi.

10. It is further submitted that in order to constitute offence under provisions of SC & ST Act, there should be an "*intention to insult*" with an "*intent*" to humiliate SC/ST member by a non-SC/ST member and the said insult should be done within "*public view*".

11. To strengthen his argument, learned counsel for the petitioner has relied upon the case of ***Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors.***: MANU/SC/0819/2012 decided in Criminal Appeal No.1577/2012 arising out of SLP(Crl.) No.446/2007 decided on 01.10.2012 by the Hon'ble Supreme Court whereby it held that "*.....on a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the*

Magistrate under Section 203 – although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation.”

12. To deal with the aforesaid cited judgment, it is pertinent to mention here that since police did not register a case against the petitioners based on serious injuries against respondent no.2, he moved a petition under section 156(3) of Cr.P.C. for a proper investigation. On the said application, learned MM vide order dated 06.04.2016 observed as under:

“IO/SI Sunder Singh has filed progress report in the form of status report.

Progress report reveals that MLC report has been obtained by the IO and section 325 of IPC has been added and the matter is being investigated.

Having gone through the materials on record and the status report, this court does not deem it fit to seek further report.

Further, this court does not deem it fit to pass any direction for addition or deletion of any provision of law in the police report before the final report.

Final report be awaited. Record be put up with final report when filed in the court.

Application is accordingly disposed off.”

13. Being aggrieved, respondent no.2 filed revision petition before the sessions court and the same was disposed of with the directions that the investigation for the offence under section 3(1) (x) of the SC & ST Act must be conducted and should be done so by an officer not below the rank of an officer as per Rule 7 (1) of the SC & ST Rules, 1995.

14. Since the learned Judge only directed the police to investigate for the offences mentioned above, therefore, he recorded in the impugned order that no notice of the revision petition was directed to be issued to the accused persons although they were made party therein.

15. Now the question before this Court is, whether before passing the order, the petitioners should have been given hearing?

16. In the present case, FIR was already lodged and the police did not investigate on the injury caused to the respondent no.2 and the offences arising therefrom and the learned Judge only directed the police to further investigate in the aforesaid FIR as per law.

17. It is not the case of the petitioners that the police did not register a case against them and the complainant filed petition under section 156(3) of Cr.P.C. and the same was dismissed by learned MM and thereafter revisional court allowed the same without hearing the petitioners/accused.

18. In the present case, complaint u/s 156(3) Cr.PC was filed for directing the police to conduct proper investigation on the incident of injury caused to respondent no.2 and for offences committed under the SC/ST Act. The complaint was dismissed by the learned Trial Court on the ground that Section 325 IPC has already been added to FIR and the case does not warrant further directions.

19. The case of *Manharibhai Muljibhai Kakadia & Anr.(Supra)* cited by the petitioners is not relevant for the reason that the observation of the Supreme Court was in a case when the FIR was not lodged and the complaint under section 156(3) of Cr.P.C. was filed. Application/complaint under Section 156(3) was at the stage of investigation and is a pre-cognizance stage. At this stage, accused has no substantive right of hearing and directions. Moreover, no prejudice seems to be caused to the petitioners, if they are not made party before Revisional Court, whereas such complaint/application was decided and further directions for investigation are passed.

20. On the applicability of Section 3(1) (x) of SC/ST Act and on the issue of a public view, counsel for the petitioners has relied upon the case of *Bharat Petroleum Corporation Limited, Mumbai vs. Union of India: 2000*

LawSuit (AP) 374 decided on 28.06.2000 of the High Court of Andhra Pradesh whereby the said court while setting aside the judgment of learned single Judge of Madhya Pradesh High Court, noted in **Karan Singh vs. State of M.P., 1992 Crl.LJ 3054**, wherein the distinction was drawn between public place and public view in Para 5 which is extracted below:

"From the material on record in the case diary, further it cannot be said that the incident took place at place within public view. The words used in the provision are in place within "public view" and not in a "public place". There is clearly a distinction between an incident taking place within public view and incident taking place in a public place. The incident took place at about 11.00 p.m. and the accused party only was present on the spot and what transpired between them has not been alleged to have taken place within public view. In these circumstances, it cannot be said that all the ingredients of offence under Section 3(1)(x) of the Atrocities Act have been made out. There is absolutely no material to proceed against the accused persons for a charge on that count. The charge is groundless and deserves to be quashed at the investigation stage itself".

21. In the present case, respondent no.2 has been attacked by the petitioners (4 accused) and consequent thereto, FIR mentioned above was lodged.

22. It is not in dispute that petitioners and respondent no.2 are neighbours and they know the caste of each other. Therefore, as per provision of SC & ST Act, if any offence of IPC is committed against the member of SC & ST

knowing well, he or she belongs to that category, provisions of SC & ST Act automatically get attracted.

23. In the present case, learned Revisional Court has only directed investigation for the offence under section 3(1)(x) of SC & ST Act. Therefore, in the present case, offence committed in public view is not applicable. The said provision will be applicable when there is no other offence and only caste remarks were made intentionally to insult or with intent to humiliate a member of SC & ST. Therefore, the judgments cited above by the counsel for the petitioners are not relevant in the facts and circumstances of the present case.

24. Be that as it may, after completion of investigation, charge sheet has already been filed before the Trial Court and further proceedings have taken place.

25. Moreover, even without directions of the Court, the police has power to add any provisions of law, during investigation, and file charge sheet accordingly. The impugned order was not passed after filing of charge sheet.

26. In view of above discussion and statutory position, I am of this considered opinion that there is no illegality and perversity in the impugned order.

27. Finding no merit in the present petition, the same is, accordingly, dismissed.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 30, 2019

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