

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1396 of 2019

- Ravi Kumar Agrawal, S/o Vijay Kumar Agrawal, Aged About 38 Years, R/o. New Sadak Ke Pass, Subhash Chowk, P.S. City Kotwali, Raigarh, District-Raigarh, Chhattisgarh.....(Accused).

---- Applicant

Versus

- State of Chhattisgarh Through Police House Officer, P.S. City Kotwali, Raigarh, District-Raigarh, Chhattisgarh.

---- Respondent

For Applicant : Mr. M.P.S. Bhatia, Advocate.

For Respondent/State : Mr. Devendra Pratap Singh, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/03/2020

Heard.

1. The petition has been brought against the order dated 5.10.2019 passed by the Court of learned Special Judge (Atrocity), Raigarh (CG) in Special Case No.29/2019 thereby framing charges against the applicant under Sections 341, 294, 323, 354 of the Indian Penal Code (for short 'IPC') and Section 3 (2) (va) & 3 (1) (w) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989').
2. It is submitted by learned counsel for petitioner that the material placed on record in the present case does not disclose *prima facie* case for framing of charges against the applicant, especially charge under Section 3(2) (va) & 3 (1) (w) (i) of the Act, 1989. It is submitted that there are some persons behind this complaint, who have made use of the victim to falsely implicate the applicant in the crime in question. It is submitted that though in the complaint,

which was submitted by the victim on 7.3.2016 in the police-station, it has been mentioned that the victim belongs to 'Sanwar' caste, but allegation against present applicant herein is to the limited extent that he used to stalk her and pass comments on her with an intention to outrage her modesty. The incident occurred on 5.3.2016 when the applicant had stopped the victim on the path and tried to outrage her modesty by use of force. Allegations regarding threatening and abusing the victim are also there. But, there is no such whisper in the complaint that the applicant and the victim were known to each other, particularly the fact that the applicant had knowledge that the victim is a member of 'Scheduled Tribe' community. There is no change in the statements of the victim recorded under Section 161 CrPC and 164 of CrPC. Other prosecution witnesses have also not stated in their statements recorded under Section 161 CrPC that the applicant had knowledge that the victim is a member of Scheduled Tribe community. Section 3(2) (va) and 3(1)(w)(i) of the Act, 1989, very clearly speak that whoever intentionally commits offence against a woman belonging to a Scheduled Caste or Scheduled Tribe, knowing that she belongs to a scheduled caste or scheduled tribe, then the offence is made out against such person. In the present case, there being no such evidence present in the whole charge-sheet showing that the applicant had knowledge that the victim belongs to Scheduled Tribe community, the framing of charge against the applicant under Section 3 (2) (va) & 3 (1) (w) (i) of the Act, 1989 is not at all sustainable. In support of aforementioned submissions, learned counsel for applicant places his reliance on the decision of Hon'ble Supreme Court in the matter of **Swaran singh & others Vs. State through Standing Counsel & another**, reported in **(2008) 8 SCC 435**.

3. I have heard both the parties and perused the documents on record.
4. Section 3(2)(va) and 3(1)(w)(i) of the Act, 1989 read as under:-

“3(2)(va):-commits any offence specified in the

Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code(45 of 1860) for such offences and shall also be liable to fine;"

"3(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;"

5. A bare reading of above provisions makes it clear that the 'knowledge' of accused is a common factor in both the above provisions, which must be present for charging and prosecuting any person under the above offences. In this particular case, in the complaint submitted by the victim there is no mention that the applicant knew the victim by her name and caste. FIR lodged by the victim is repetition of her complaint. The victim has reiterated in her statement recorded under Section 161 CrPC, almost similar to the statement made by her in her complaint. Although it appears that she knew the applicant by his name, but there is no mention that the applicant knew her by her name & caste. Statement of victim recorded under Section 164 CrPC is also on similar lines.
6. On perusal of the statements of other witnesses namely-Anil Sharma, Surendra Singh Sidar, Smt. Suman Singh, Khushi Sidar, Kishan Agrawal, it is found that there is no statement that the applicant had knowledge about the caste of the victim. Although there are statements that the applicant had abused the victim with filthy words, but the words mentioned do not indicate anything about the caste of the victim. Hence, the argument submitted by the counsel for applicant cannot be brushed aside only for the reason that the applicant had been following the victim since a few days before the date of incident. The knowledge of applicant that the victim belongs to Scheduled Tribe community must have been shown specifically in the investigation made, which is not at all

shown. Regarding the alleged act of the applicant, the offences under the Indian Penal Code are definitely made out against him, but without there being any *prima facie* reason to believe that the applicant had knowledge of the caste of the victim, the offences under Section 3(1)(va) & 3(2)(w)(i) of the Act, 1989 cannot be said to be *prima facie* established against him. Thus, the trial Court has committed an illegality in framing charge under Section 3(1)(va) & 3(2)(w)(i) of the Act, 1989 against the applicant, which is liable to be set aside.

7. In view of above, this revision is allowed in part. The charge of Section **3(1)(va) and 3(2)(w)(i)** of the Act, 1989 framed against the applicant by the trial Court is hereby set aside and he is discharged from that charge. However, other charges framed against the applicant under the Indian Penal Code are hereby affirmed. The trial against the applicant for those charges shall continue before the Court having jurisdiction.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha