

In the High Court of Punjab and Haryana at Chandigarh

1. CRR No. 1354 of 2019 (O&M)
Date of Decision: 14.5.2020

Pardeep KumarPetitioner

Versus

State of Haryana and anotherRespondents

2. CRR No. 1574 of 2019 (O&M)

Sandeep alias DeepaPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.P.Dhull, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Ashit Malik, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J.

This order shall dispose of above said petitions as these have arisen out of a common order.

The present petitions have been filed against the order dated 9.5.2019 passed by Additional Sessions Judge (Exclusive Court for Heinous Crime against Women), Kurukshetra, vide which the application was disposed of by observing that *prima facie* offence punishable under Section 506 read with Section 34 IPC and Sections 3 (i) (r), 3 (i) (s) of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Act' for

short) was made out and vide order of even date, charges were framed against the petitioners accordingly.

FIR No. 436 dated 26.10.2017 under Section 506/34 IPC and Sections 3(1) (r) and 3 (1)(s) of the Act was registered against the petitioners on the complaint of Rajinder Kumar-respondent No. 2 alleging that petitioners Sandeep Kumar and Pardeep Kumar used abusive language against him on mobile phone in the name of his caste and also gave threat to kill him.

Complainant-respondent No. 2, who is the Sarpanch of the village alleged that Sandeep Kumar under the influence of Pardeep Kumar said '*you sister fucker chamaar how dare you take possession from us and fill the firni with soil, we will kill you.*' The complainant asked them to stop and not to use derogatory words and later handed over the phone to one Devi Dayal, who also told them to stop abusing.

Learned counsel for the petitioners has argued that the allegations made against the petitioners do not fall within the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the telephonic call is not in a public view. Moreover, it is further alleged that when Devi Dayal and some other persons approached the petitioners and told them to respect Rajinder Kumar, who is the Sarpanch, the petitioners again uttered objectionable remarks and at that time, respondent No. 2-complainant was not present. Hence, the ingredients of offence under the SC/ST Act and Section 506/34 IPC are not made out.

Moreover, while summoning the accused the trial Court has taken into consideration statement of complainant-respondent No. 2,

Rajinder Kumar, Sarpanch recorded under Section 161 Cr.P.C. dated

29.12.2017 (Annexure R-2/1)

It is further argued that the present FIR is a counter-blast to the fact that construction work of Brahman Dharamshala was stopped on the application moved by the father of Sandeep alias Deepa (one of the accused) to the Deputy Commissioner and at the Chief Minister Window, and resultantly the grant of Rs. 7.00 lacs had to be returned back. Not only this, the father of petitioner Sandeep alias Deepa gave a complaint to the Executive Engineer, Panchayati Raj against respondent No. 2-Sarpanch and also to BDPO for preparing the record on the basis of forged and fabricated documents. A suit for recovery of Rs. 2.00 lacs, filed by Jasmer Singh-father of petitioner Pardeep Kumar, is also pending against Devi Dayal, witness in the present FIR, and the other persons had lodged FIR No. 356 dated 10.9.2014 under Sections 376-D, 365, 452, 506 IPC and Section 25 of the Arms Act, at Police Station Thanesar against Jasmer Singh father of petitioner Pardeep Kumar. Learned counsel for the petitioners has relied upon the judgment of the Co-ordinate Bench of this Court in the case of ***Dharambir versus State of Haryana 2018(3) R.C.R. (Criminal) 244*** wherein it has been held that supplementary statement cannot be treated as part of FIR. He has also relied upon the judgment of this Court in ***CRR No. 2816 of 2012*** titled '***Hari Kishan Garg versus State of Haryana and another***' decided on ***11.4.2019***.

Per contra, learned State counsel, assisted by counsel for respondent No. 2, has argued that the allegations made by respondent No. 2 fall within the provisions of SC/ST Act as specific allegations were made against the petitioners-accused. Learned counsel has drawn the attention of this Court to the statement of respondent No. 2-Rajinder Kumar, Sarpanch

recorded under Section 161 Cr.P.C. dated 29.12.2017 (Annexure R-2/1).

I have heard the learned counsel for the parties and with their able assistance have gone through the documents on record.

To constitute the offence under the Act, it must be alleged that the accused intentionally insulted or intimidated with intention to humiliate a member of Scheduled Caste or Schedule Tribe in any public place within public view. In the present case, it is alleged that the offence has been committed by the petitioners by using the caste based remarks over a mobile phone call to the informant, or a member of Scheduled Castes, of which there are no records. Once it is admitted that the alleged conversation over the mobile phone was not in a public gaze nor witnessed by any third party, the alleged use of caste words cannot be said to have been committed within the public view.

The allegations against the petitioners-accused are that caste based remarks were made by them on mobile phone and when Devi Dayal along with other persons went to the petitioners asking them to respect respondent No. 2, who is a Sarpanch, at that moment the complainant was not present. There is a lot of material on record to indicate that Jasmer Singh father of Pardeep Kumar (one of the accused) had raised finger towards the working of respondent No. 2 as Sarpanch and also against Devi Dayal and this cannot be ignored that on the application of said Jasmer Singh, grant of Rs. 7.00 lacs had to be returned by the Gram Panchayat.

Merely uttering such wrong words in the absence of any public view does not show any intention or *mens rea* to humiliate the complainant who besides being Sarpanch, belongs to Scheduled Caste community. It would not, thus, ipso-facto, constitute acts of commission of offence, which

are capable of being taken cognizance under the SC and ST Act, 1989.

It is a settled law that if two views are possible and one gives rise to suspicion only, as distinguished from grave suspicion the trial Judge will be empowered to discharge the accused and at that stage, it is not to be seen 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.

Moreover, the basic ingredients of the offence in the FIR are that there must be intentional insult, secondly the insult must be done in a public place within public view, which is not in the present case. Thus, the essential ingredients which must be fulfilled, are not found in the present case. Since these are the penal provisions, the same are to be given a strict construction and if any of the ingredients are found lacking, it would not constitute the offence under the SC/ST Act.

Since no offence under Section 3 of the SC & ST Act is found to be made out, the offence under Section 506 IPC read with Section 34 IPC, which stemmed out of the alleged offence under Section 3 of the SC and ST Act, is also not made out.

Keeping in view the above facts and circumstances, both the petitions are allowed. The impugned order dated 9.5.2019, passed by Additional Sessions Judge (Exclusive Court for Heinous Crime against Women), Kurukshetra of framing of charges as well as charge sheet dated 9.5.2019 and the FIR is hereby quashed.

(HARNARESH SINGH GILL)
JUDGE

May 14, 2020
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No