

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. 1395 of 2016

With

CRAN 9 of 2019 (Old No: CRAN 3798 of 2019)

With

CRAN 11 of 2021

Kaberi Dey alias Kaberi De

Versus

The State of West Bengal

For the petitioner

: Mr. Tarique Quasimuddin,
Mr. Sanchita Chaudhuri,

For the State

: Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

Hearing concluded on : 09/11/2022

Judgment on: 23/11/2022

Rai Chattopadhyay, J. :

1. In this revision the petitioner, being aggrieved of the criminal proceedings initiated against her, challenged the same and had prayed for quashing of the same.

- 2.** The proceedings were initiated with lodging of FIR being Hare Street Police Station Case No.516 of 2011 dated 28.07.2011 under Sections 341/353/506/34 of the IPC and Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. The corresponding G.R. Case No.2655 of 2011, pending in the court of the Metropolitan Magistrate, 5th Court at Calcutta.
- 3.** Fact leading to filing of the FIR and necessary for adjudication of this revision may be narrated, as below.
- 4.** Complainant's initial allegations are against employees of the department namely, Mr. Barun Chakraborty, Mr.Bipradas Chatterjee, Mr. Sumit Bhadra and Mr. Pradip Goswami. Allegedly while protesting certain decision of the authorities these employees abuse the complainant, particularly regarding and mentioning his status as a member of schedule tribe community by hurling offensive and belittling language. Consequently, the complainant sought redressal before the appropriate office as to his grievance against Sri Barun Chakraborty and according to the direction of the higher authority an in-house inquiry was conducted. The complainant also made general diary before the Hare Street Police Station concerning the incident. The in-house inquiry however did not reach to its finality.

- 5.** Subsequently and as a continuing offence, as alleged, the present petitioner along with other employees, while attending a conciliation meeting in the office of the complainant on 22nd July, 2011 at 2.30 p.m., have turned hostile. Instead of a peaceful dialogue they have under taken a violent attitude, threatened and intimidated the complainant. Allegedly he was pushed resulting into his fall and also he was addressed abusively and disdainfully and slanderously as a member of schedule caste community.
- 6.** All these facts have been informed by dint of the said FIR which was registered as Hare Street Police Station Case No. 516 of 2011 dated 28.07.2011 under Sections 341/353/506/34 of the IPC and Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- 7.** Petitioner has urged that the complaint as above has only frivolously and maliciously been lodged against her and thus no proceedings on the basis of the same could have been lawfully initiated against her.
- 8.** Notice has been duly served upon all the opposite parties. However, no one is representing of the opposite party no.2 in this case. It is learnt that the complainant himself has now retired from service. The department is not found to be represented in court at the time of hearing.

- 9.** Ld. Advocate Mr. Swapan Banerjee along with Ms. Purnima Ghosh appear for the state and submits that according to the materials collected during investigation as available in CD, prima facie case is apparent on record so far as the present petitioner is concerned. For the rest they have left the matter at the discretion of the court. The CD is submitted in the court.
- 10.** The petitioner has been alleged of the offence under Section 341 IPC which is providing for punishment for wrongful restraint, Section 353 IPC which makes provision for an offence of assault or criminal force to deter public servant from discharge of his duty and Section 506 which provides for punishment for criminal intimidation. Petitioner has also been alleged of an offence under Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, which provides for the atrocities and punishment for offence of atrocities against the person belonging to scheduled caste or scheduled tribe, committed by a person not being of scheduled caste or scheduled tribe community.
- 11.** Ld. Advocate for the petitioner has submitted by referring to the FIR that the FIR is divided into three parts and his client's name appears only in one part of the same. According to him, the allegations made against the petitioner to be a part of group to enter the office of the complainant, agitating there, exercising force, intimidation and threat against the complainant and also using abusive, slanderous and belittling language

indicating about complainant's caste and demeaning his prestige within public view – shall appear to be absent from the FIR itself. It is submitted that the FIR, so far as the present petitioner is concerned, is only vague and non-specific. According to him, the complainant has never specified a role of the petitioner in the entire incident which could have been implicated her being the prime facie material available against her. During the course of argument Ld. Advocate has referred to the relevant provision of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, to submit that the ingredients of offence as would have been satisfied the requirement of the concerned provisions of law to be applicable against his client, are not available against her.

- 12.** Furthermore, it has been submitted that to attract provisions under Section 353 IPC, the complainant should have been in the process of exercising his duty as a public servant when the alleged incident is said to have happened, which is not a fact in the present case.

On the facts and circumstances as above he has prayed for quashing of the proceeding initiated against the petitioner in the above police case.

- 13.** Heard submissions of the parties perusal material placed before the court.

14. In view of the nature of allegations made against the petitioner, so far as section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the same appears to fall within the purview of Section 3(1)(r) and (s) of the said Act. The provisions may be narrated down as follows :

3.(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

3.(1)(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

15. Ingredients of the said offence would be the act of insult or intimidation by the accused person, such act of insult or intimidation would be with the intent to humiliate and would be within public view and abuses by the accused person by caste name of the victim, in any place within public view.

16. Therefore FIR, which is the report of the alleged incident, by dint of which the criminal justice system is set in motion, must express, at least prima facie, the existence of such ingredients of offence against the accused person.

This proposition has also been upheld by the Hon'ble Supreme Court in its decision reported in 1992 Supp (1) SCC 335 (also AIR 1992 SC 604) (State of Haryana vs. Bhajan Lal)

17.In this case it is found that the name of the petitioner has been mentioned in the FIR in a bunch, along with the other allegedly erring employees, to have wrongfully entered into the office of the complainant, caused violence, used force and threatened to drop all the charges against Mr. Barun Chakraborty, another employee of the department, physically hurt him and also abused him with filthy language including comments relating to his caste. No doubt the FIR is non-specific regarding the exact comment which was made and by whom it was made. The complainant and the witnesses have merely made statement that the accused persons including the present petitioner have subjected the complainant with offending comment as to his cast.

18.When the court has consulted the CD, it is found that the witness had though stated about involvement of all the FIR named accused persons in commission of the alleged crime but has not specified role of any of them in commission of the offence, particularly that alleged under The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. Allegation of their having common intention to perpetrate the offence as alleged is also found to be unsubstituted by any cogent material.

19.One may profitably resort to a judgment of the Hon'ble Supreme Court reported in (2011) 11 Supreme Court Cases 259 [Asmathunnisa vs. State of Andhra Pradesh], wherein the Hon'ble Court has been pleased to direct for quashing of the criminal proceedings initiated against the accused person on the ground of non availability of any material showing utterance of offending words by the petitioner. Mere statement that the petitioner uttered offending words, was found insufficient to proceed against her. The ratio squarely applies in this case.

20.In the same judgment, the Court has further been pleased to hold that in case there is no material to justify common intention of the petitioner with the other accused persons, application of section 34 IPC is also vitiable.

21.Pursuant to the judicial pronouncement as discussed above and the ratio being applied to the factual background in this case, this court should hold that the prima facie material as regards the alleged offence particularly that of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not available in this case against the present petitioner, much less of any strong prima facie material to proceed against her in a criminal trial. Therefore, in my considered opinion the proceedings pursuant to Hare Street Police Station Case No. 516 of 2011 dated 28.07.2011 under Sections 341/353/506/34 of the IPC and Section 3 of The Scheduled Castes and The Scheduled Tribes

(Prevention of Atrocities) Act, 1989, against the petitioner, would only be an abuse of the process of court, if allowed to be taken forward and should not be allowed to be proceeded with. That same is liable to be quashed.

22. On the discussion as above the instant revision case being CRR 1395 of 2016 is allowed. The proceedings in connection with Hare Street Police Station Case No. 516 of 2011 dated 28.07.2011 connected GR case G.R. Case No.2655 of 2011 under Sections 341/353/506/34 of the IPC and Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, is hear by quashed and set aside.

23. Connected applications being CRAN 9 of 2019 (Old No: CRAN 3798 of 2019) with CRAN 11 of 2021 are disposed of. Case Diary be returned.

24. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

(Rai Chattopadhyay, J.)