

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-995-2022

Reserved on 14.11.2022

Date of Decision: 18.11.2022

Rajbala and another

.... Appellants

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Abhishek Sethi, Advocate for
Mr. Deepender Singh, Advocate for the appellants.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Mr. D.D. Sharma, Advocate
for respondent No. 2-respondent No. 2-complainant.

ASHOK KUMAR VERMA, J. (ORAL)

The appellants, namely, Rajbala and Raghbir Singh, have filed the present appeal under the provisions contained in Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short-'the SC & ST Act') read with Section 482 Cr.P.C., against the impugned order dated 23.05.2022 passed by the learned Additional Sessions Judge, Hisar, whereby the application filed by the appellants for grant of anticipatory bail in case FIR No. 158 dated 13.04.2022 (Annexure A-1) registered under Sections 323, 452 and 506 read with Section 34 IPC and Section 3 of the SC & ST Act, at Police Station Urban Estate, Hisar, was dismissed.

As per prosecution story, the present FIR was registered

against the appellants, on the basis of statement made by respondent No. 2-Suresh Kumar (complainant) on the allegations that on 13.04.2022, at around 1.30 PM, when respondent No. 2-complainant left his house at Govind Nagar and entered Urban Estate, Hisar, the appellants told him that he had parked his vehicle on their stone floor. At this the respondent No. 2-complainant, replied to them that if, there is any loss or damage, he will get it repaired. Even prior to this, whenever the respondent No. 2-complainant used to park the vehicle, the appellants used to abuse him. Thereafter, appellants, namely, Rajbala and Raghbir Singh, have started abusing respondent No. 2 in the name of his caste and attacked upon him. The appellants inflicted injuries upon the respondent No. 2-complainant with their respective weapons i.e. 'danda' and 'gandasi', respectively and threatened to kill him. Rakesh and Arun sons of respondent No. 2-complainant have saved him from the clutches of the accused and his son Rakesh got him admitted in Civil Hospital Hisar. After that Saku-daughter of the respondent No. 2-complainant had informed him telephonically that the daughters of the appellants and son-in-law Tinku, entered into their house and thrown bricks etc.

Learned counsel for the appellants *inter alia* contends that appellants have falsely been implicated in the instant case. This is a case of version and cross-version. The complaint/cross-version made by appellant No. 1-Rajbala is still under investigation. There are only general and vague allegations against the appellants and no specific role has been attributed to them. No offence under the SC & ST Act, is made out. Learned counsel for the appellants has further submitted that the

present case is abuse of the process of law. Learned counsel contends that none of the offences involved in the present case attract punishment more than seven years of imprisonment, therefore, the arrest can be effected only, if, the appellants do not co-operate in the investigation process. The appellants are ready and willing to join the investigation as and when called by the Investigating agency and shall abide by any condition which may be imposed by this Court. In support of his contentions, counsel for the appellants has relied upon judgments in **(i) Prathvi Raj Chauhan Vs. Union of India and others, 2020 AIR (SC) 1036; (ii) Gorige Pentaiah Vs. State of A.P. and others, 2008 (4) RCR (Criminal) 171; (iii) Dr. Onkar Chander Vs. Union Territory, Chandigarh and another 2012 (1) RCR (Criminal) 931; (iv) Arnesh Kumar Vs. State of Bihar and another, 2014 (3) RCR (Criminal) 527; (v) CR. A. No. 10605/2019 Anil @ Arun and others Vs. The State of Madhya Pradesh and other, decided on 08.01.2020 and Criminal Appeal No. 3921 of 2022, Deshraj Vs. The State of Madhya Pradesh and another, decided on 05.05.2022.**

On the other hand, learned counsel for State assisted by learned counsel for respondent No. 2-complainant vehemently opposed the submissions made by learned counsel for the appellants. Learned counsel for respondent No. 2 contends that there are specific allegations levelled against the appellants in the FIR that they abused in the name of caste of complainant, inflicted injuries and threatened the complainant. Filing of cross-version/complaint by the appellants is only an afterthought. Thus, the instant appeal for grant of anticipatory bail to the

appellants is not maintainable under the provision of the SC & ST Act.

I have heard learned counsel for the parties and carefully gone through the relevant record.

In the instant case, the dispute between the parties is with regard to parking of vehicle by the respondent No. 2-complainant in front of the house of appellants. As per the FIR version as evident from the complaint is that on 13.04.2022, the appellants abused him with the name of his caste and also caused injuries to him which as per MLR are simple in nature. The complainant has sought to invoke the provisions of Section 3 of the SC & ST Act, against the appellants, which postulates that "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, shall be punished under this Section. In order to attract the penal provisions of Section 3 of SC & ST Act, it was incumbent upon the complainant to specifically mention in his complaint and the FIR should disclose that the accused were not the members of Scheduled Caste or Scheduled Tribe; they knew that he (complainant) was a member of Scheduled Caste or Scheduled Tribe; they intentionally insulted or intimidated with intent to humiliate him as a member of Scheduled Caste or Scheduled Tribe and in any place within public view. The words "intentionally insulted with intent to humiliate as a member of Scheduled Caste/Scheduled Tribe in any place within public view", have significant meaning. An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult,

the person insulted must be present in public view. In other words, the words "within public view" means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence as alleged under this Section is attracted.

In this case, it has nowhere been mentioned in the complaint, which formed the basis of FIR (Annexure A-1) that the appellants-accused are not the members of Scheduled Caste or Scheduled Tribe; they knew that the complainant was a member of Scheduled Caste or Scheduled Tribe; they intentionally insulted or intimidated with intent to humiliate him (member of Scheduled Caste or Scheduled Tribe) and at a place within public view. Not only that, the complaint/FIR should disclose the caste of the offenders alone, it should disclose that the appellants-accused were aware about the caste of the complainant as well. The element of intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in public view, should clearly be borne out from the FIR. Merely, the alleged utterance by the appellants appears to be the result of fit of anger and emotion and not with the intention to insult the complainant party as a member of Scheduled Caste or Scheduled Tribe. It is a matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act. That means, merely uttering such words in the absence of intention/*mens-rea* to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste & scheduled caste and if the imputations are grossly

vague and perfunctory, would not, *ipso facto*, constitute acts of commission of offence, which are capable of cognizance under the Act. Meaning thereby, all the essential/basic ingredients of the offence are deeply lacking in the complaint, which formed the basis of FIR (Annexure A-1).

Similar question has been decided by the Hon'ble Apex Court in case ***Gorige Pentaiah's case supra*** and it was ruled (para 6) as under:-

"6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

As strange as it may appear, but strictly speaking, the common tendency and frequency of the complainants of involving and roping the accused on vague & bald allegations under Section 3 of the SC & ST Act, have been tremendously increasing day-by-day in our society.

Even the plain and simple occurrence under the Indian Penal Code is given the colour of offence under Section 3 of the special Act by adding false and vague allegations as in the instant case. This tendency needs to be curbed. If not discouraged and in the wake of their over enthusiasm and anxiety to take revenge of civil dispute by involving the accused in such false criminal cases, in that eventuality, it will ultimately weaken those true cases of the prosecution as well even against the real culprits and the very object and purpose of the Act, would pale into insignificance in this relevant behalf.

Moreover, the Hon'ble Apex Court in *Arnesh Kumar's case (supra)* has held that in offences involving punishment up to seven years imprisonment the police may resort to the extreme step of arrest only when the same is necessary and the appellant does not co-operate with the investigation. The appellant should be first summoned to co-operate in the investigation and if, he co-operate with the investigation then the occasion of his arrest should not arise.

In view of the discussion made above, the present appeal is allowed. The appellants, namely, Rajbala and Raghbir Singh, are directed to join investigation and in the event of their arrest, they shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. The appellants shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) of the Cr.P.C.

It is made clear, in case the appellants fail to join the investigation, then the State shall be at liberty to move an application for cancellation of the present anticipatory bail granted to them.

Any observation made here-in-above is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

November 18, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No