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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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Date of decision: 12.10.2022**

SUSHIL @ JONY & ORS.

...Petitioners

Versus

STATE OF HARYANA & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Atul Pratap, Advocate for
Mr. Bijender Dhankar, Advocate
for the Petitioners.
Mr. Surender Singh, AAG, Haryana.
Mr. Aditya Verma, Advocate for Respondent No. 2.

SANDEEP MOUDGIL, J. (Oral)

Present revision petition has been filed against the order dated 03.02.2018 passed by Additional Sessions Judge, Ambala (for short 'Revisional Court') in Criminal Revision No. 27 of 2017 preferred by the complainant-respondent No. 2 herein for assailing the order dated 11.04.2017 passed by learned JMIC, Ambala (for short 'trial Court') dismissing the application under Section 216 Cr.P.C. for alteration of charge filed by complainant-respondent No. 2, has been allowed and matter remanded back to decide afresh.

Hence the present criminal revision petition has been filed by the complainant-respondent No. 2.

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The brief facts of the present case is that an FIR No. 304 dated 05.12.2014 under Sections 148/149/323/452/506/325 of IPC registered at Police Station Parao, Ambala was got registered by complainant-respondent No. 2, Joginder Singh son of Shri Jeetu Ram, Caste Harijan, R/o Dukheri, Police Station Parao, District Ambala aged 65 years by making statement to the effect that: The relevant extract thereof are reproduced as under;

“Stated, that I am resident of aforesaid address and retired from the post of Postman. Today on dated 05.12.2014, there was marriage of our neighbor Shamsher Singh’s daughter that the guests of Shamsher Singh were staying in my house. It was around 11 O’Clock during the day that a relative of Shamsher Singh was standing in the street, in the meantime, Johny son of Lal Ram, Caste Rajput, R/o Village Dukheri came with his bullock cart and started abusing the guests standing in the street, due to which they both had little argument, he started saying that you ‘Chamars’ wait, he would come within 5 minutes and by leaving his bullock card, he went to his house. After about 5/4 minutes, Johny along with Gopal son of Lala Ram and Lala “Ram son of Jabar Singh, Bhura son of Jabbar Sngh, Chintu son of Bhura Ram and other 4-5 persons came in front of door of my house by boarding in Scorpio vehicle No. CH-01AZ-1980, who were armed with dandas and lathis. Who by entering into my house and by going on the second floor of my house started abusing the guests. When I tried to stop them, then Johny gave a danda blow on my face on the left side and Lala Ram and Bhura caught my arm and Gopal inserted danda in my anus. Due to which, my anus started bleeding and Gopal and Johny made me to fell down and my neck was pressed. That I raised the noise of ‘mar-diya-mar-diya’ then by hearing my noise, my son Subhash and Rishipal and my wife Laxmi Devi came to the spot. Who got me rescued from

them with great difficulty and had my sons and my wife not got me rescued from them, then they would have caused me many injuries. That in this quarrel, minor injuries have been suffered by my son Rishipal and other guests, while getting me rescued. That the aforesaid all the accused went away from the spot by boarding the vehicle with their dandas and lathis. Who while going said that today he has escaped, in future if the problem is invited them, then they would kill us the 'Chamars'. That later I was got admitted in G"H, Ambala City by my sons Subhash and Rishipal. Where I am undergoing the treatment. That the aforesaid persons have caused injuries to me without any reason. Legal action be taken against them. I have got recorded my statement to you. Heard., same is correct. Sd/- Joginder Singh 05.12.2014, 94160-92502. Attested Rajbir Singh, PP Mohra, P.S. Parao dated 05.12.2014"

After registration of the FIR., the matter was investigated and no evidence was found with regard to using of caste related words hence, the offence under the provisions of SC & ST Act was not added and finally the challan was presented only under Sections 148, 149, 323, 325, 452 and 506 IPC.

On presentation of the challan, the charges were framed by the learned trial Court against the petitioners, vide order dated 16.03.2015.

The complainant-respondent No. 2 preferred an application under Section 216 of Cr.P.C for alteration or amendment of the charges to add offence under the provisions of SC/ST Act and Section 307 IPC, before the Court of learned JMIC, Ambala, which was dismissed vide order dated 11.04.2017, which was set aside in the above referred Revision Petition by

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the learned Court of Additional Sessions Judge, Ambala, vide order dated 03.02.2018, which is now being impugned in the present petition.

Learned counsel appearing on behalf of the petitioners contends that the complainant-respondent No. 2 had projected false story because as per the version of the F.I.R., the complainant had stated the Petitioner No. 1 had abused to a guest of his neighbour Shamsheer Singh and had used caste related words. Such allegations are prima facie falsified as the said persons had not lodged the FIR. Further, no offence under the provisions of SC & ST Act is made out because no such words were found and even otherwise, it was within the house of the complainant and the alleged occurrence, if having taken place, had not taken place in the public place. Hence, the offence under the provisions of SC & ST Act cannot be said to be made out. So far as the offence under Section 307 is concerned, the learned Counsel relied upon the medical report of the petitioners and denied the allegations completely. Furthermore, the learned counsel for the Petitioners submitted that if any alleged bleeding was found from the anus of the complainant-respondent No. 2, the same could be due to various reasons i.e. piles, constipation etc. on account of age factor.

On the other hand, learned counsel appearing on behalf of the complainant-respondent No. 2 argued that the trial Court had failed to appreciate the facts, circumstances of the case and that the material available on record is incorrect perspective and also failed to appreciate that allegations leveled by the complainant-respondent No. 2 qua insertion of wooden rod in the anus has found support from the MLR which prima facie attracts provisions of SC/ST Act and Section 307 IPC.

Further reference is made to the following discussion/observations recorded by the Court of learned Additional Sessions Judge, Ambala, while setting aside the order dated 11.04.2017 of learned JMIC, Ambala to seek dismissal of the order of present petition.

Para Nos. 8 and 9 recording such observations are reproduced below for reference:-

***“8. Hence, in his statement under Section 161 of Cr.P.C., revisionist-complainant has leveled specific allegations against respondents/accused qua passing of remarks about his caste and insertion of wooden danda in his anus. Immediately after the incident revisionist-complainant was medico-legally examined vide MLR and in the MLR three injuries have been shown. Injury no. 3 is the abrasion at the posterior side of anus which is red in colour and C/o putting of stick inside the anus by assailant was also mentioned. The treatment record filed by the revisionist-complainant alongwith application for alteration/amendment of charge also shows that at the time of medical examination bleeding in the anus was present. During investigation opinion of the doctor was taken wherein it was mentioned that as per file record patients per abdominal examination was tender with sluggish bowel sounds and digital rectal examination had tear at 12 O'clock position and tender. Besides it during investigation the statement of son of the complainant namely Rishi Pal was also recorded wherein he supported the said allegations of the complainant. Therefore, allegation of the revisionist/complainant qua insertion of rod in the anus and passing of remarks about has caste by the respondents/accused is supported by his son and medical record.*”**

9. A careful perusal of the impugned order shows that trial court has failed to appreciate the medical record in the light of allegations of complainant and wrongly held that medical report do not show any such injury while infact medical record shows that there was injury on the anus and it was bleeding. Besides it doctor opined that rectal examination further shows that it had tear at 12 O'clock position and tender as discussed above. Impugned order is only influenced by the findings of the investigating agency. Trial court has failed to appreciate that the findings of the investigating agency is not binding on it. Hence trial court has failed to appreciate aforesaid vital aspects of the case and came to a wrong conclusion."

I have heard learned counsel for the parties and also gone through the facts of the case and am of the considered view that the learned Court of Additional Sessions Judge, Ambala had rightly observed that the trial Court had failed to appreciate the medical record in the light of allegations of complainant-respondent No. 2 and wrongly held that medical report do not show any such injury whereas the medical record shows that there was injury on the anus and it was bleeding. Besides that doctor had opined that rectal examination shows that it had tear at 12 O'clock position. As such, the learned Court of Additional Sessions Judge, Ambala, vide its judgment dated 03.02.2018, rightly observed that the trial Court has failed to appreciate the vital aspects and accordingly set aside the order dated 11.04.2017 of trial Court.

I do not find any reason to interfere with the findings recorded by learned Additional Sessions Judge, Ambala, in its judgment dated 03.02.2018.

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In view of the above, the present petition is dismissed and the judgment dated 03.02.2018 passed by learned court of Additional Sessions Judge, Ambala stands affirmed.

Further-more, vide this Court’s order dated 23.02.2018, the trial Court was directed to adjourn the case beyond the date fixed in the matter which stands vacated. The trial Court is at liberty to proceed with the matter further in accordance with law.

October 12, 2022
Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No