

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(134)

CRM-M-48857-2022
Date of Decision: 29.11.2022

Priyanka

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Jitender Dhanda, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

Petitioner has approached this Court by way of impugning the order dated 6.10.2022 (Annexure P-2), passed by the learned Additional Sessions Judge, Fatehabad, whereby, the revision petition filed by the petitioner against the order dated 29.9.2021 passed by the learned JMIC, Fatehabad, dismissing the application under Section 216 Cr.P.C for amendment of charge and all the consequential proceedings, has been dismissed.

Learned counsel for the petitioner has vehemently contended that the petitioner has lodged the FIR in question against respondent no.2, however, learned Trial Court framed the charges against accused under sections 354-A(1), 354-D, 341, 506 IPC but inadvertently charge under section 3(1)(xi) of SC/ST (POA) Act could not be framed. The petitioner-complainant belong to S.C community and the accused belongs to 'Nayak' caste and since the complainant belongs to S.C category the respondent should have been charged under Section 3 of SC/ST Act and hence the application filed under section 216 Cr.P.C for amendment of charge should have been allowed and the respondent-accused be also prosecuted for the

offence under SC/ST (POA) Act along with rest of the charges. Counsel submits that respondent-accused belongs to 'Nayak' caste which has been duly proved from the certificate dated 15.7.2002 issued by the S.D.O (Civil), Fatehabad. He submits that, however, respondent-accused produced the certificate dated 30.9.2016 which had been issued relying upon the wrong facts. It is submitted that State of Haryana vide letter No.749/SW(1) 2016 dated 29.7.2016 issued from the office of Chief Secretary, Department of Scheduled Caste and Backward Class Welfare, Haryana declaring Aheria, Aheri, Hari, Heri, Thori, Turi and Raisikh as Scheduled Caste. However the 'Nayak' caste does not find mention in this letter. It is further submitted that the Central Govt. vide notification dated 30.6.2016 had modified the list of OBCs in the State of Haryana therein existing entry of OBCs i.e. Aheria, Aheri, Hari, Heri, Nayak, Theri, Turi or Thori has been modified to Nayak, Theri because the other castes except these two castes mentioned in the OBC list has been declared as Scheduled Caste. Counsel submits that from the evidence produced by the petitioner, it is evident that the respondent-accused does not belong to the SC category but both the courts below have drawn a wrong conclusion in declining the well founded argument of the petitioner and thus arrived at a wrong conclusion in declining the application filed under section 216 Cr.P.C for amendment of the charge.

I have heard counsel for the petitioner and perused the record.

Having heard counsel for the petitioner and perusing the record, this court does not find any force in the arguments advanced by counsel for the petitioner. A perusal of the record would show that the complainant-petitioner had earlier filed an application in this regard before

the learned Trial Court and vide order dated 4.7.2019 the said application was dismissed. Resultantly, the Trial Court framed charges for the commission of offence under sections 341, 354A(1), 354D and 506 IPC on 10.1.2020. Petitioner never assailed this order dated 4.7.2019, however, again filed the application dated 28.2.2020 for the amendment of the charge. Thus the order dated 4.7.2019 attained finality as it was never challenged. The certificate issued by Tehsildar concerned dated 30.9.2016 reveals that Rohtash i.e. respondent no.2 belonged to Heri caste/tribe which is recognized as Scheduled Caste/Scheduled Tribe under the Constitution (Scheduled Castes) Order 1950. As per the letter bearing endorsement no.749-SW-(1) 2016 dated 29.7.2016 and as per notification no.2221 dated 28.6.2016 in the Constitution (Scheduled Castes) Order Amendment Act-2016 no.24/2016, Heri has been added at serial no.1A in the list of Scheduled Castes of the Haryana Govt. The certificate issued by S.D.O (Civil), Fatehabad copy of which is on the file is for the year 2002 at sr. no.1532 vide which Rohtash son of Nihal Singh belongs to Nayak Caste which has been declared as Backward Classes Block 'A' by the Haryana Govt. from time to time. This certificate is the oldest certificate whereas the certificate issued by the Tehsildar, Fatehabad is dated 30.9.2016 which also contains the photographs of the accused.

The above position has been observed by the revisional court while dealing with the revision petition. Counsel for the petitioner has failed to bring on record any further argument or material in order to nullify the findings arrived at by both the courts below.

In view of the attending circumstances and findings arrived at by the courts below, this Court does not find any infirmity in the conclusion drawn by the court below. The petition being devoid of any merits, is hereby, dismissed.

(RAJESH BHARDWAJ)
JUDGE

29.11.2022

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