

24.03.2023

Court No.35
Item No. 9

CRR 379 of 2016

**Nanda Dulal Biswas
Vs.
State of West Bengal & Anr.**

Mr. Sekhar Kumar Basu,
Sr. Advocate
Mr. Soubhik Mitter,
Mr. Saryati Datta.

... For the petitioner

Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

... for the State

Mr. Tulsi das Ray,
Mr. Tirthankar Ray.

... For the Opposite Party No.2

The petitioner is the headmaster of a school, now superannuated, who have been arrayed as an accused person in the criminal proceeding connected with Chinsurah Police Station Case No. 395/2015 dated 19.8.2015 under section 3 (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The corresponding case is G. R. Case No. 1841 of 2015, pending in the Court of the Chief Judicial Magistrate at Chinsura, Hoogly. The petitioner has specifically assailed the order of the Magistrate dated 6.11.15, in the said case, by dint of which the Magistrate has taken cognizance of offence under section 3 (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The de facto complainant is an assistant teacher of the school where the present petitioner have been the headmaster. In his

nine page long first information report, the de facto complainant has laid down the incidents of the alleged atrocity, wreaked by the petitioner, due to the reason and vengeance allegedly for the de facto complainant belonging to a scheduled caste. It can be mentioned in a nutshell that the de facto complainant has alleged of verbal abuse by the petitioner in the name of his belonging to any scheduled caste, discriminatory treatment and conduct of the present petitioner against him for the self same reason, he having been allegedly directed to perform humiliating and derogating works and also that at the instance of the petitioner he being collectively spurned by all other staff members of the school, only on the ground of his belonging to any scheduled caste. Thus he has alleged the above offence against the present petitioner.

In this case, police has completed investigation and charge sheet has been submitted on 15.10.15, under the afore stated provision of law.

Petitioner's first and foremost contention to challenge the proceedings against him would be that the first information report is devoid of any specific allegation against him, to have hurled and subjected the de facto complainant with any derogatory remark, within the public view, naming his caste. It is stated that the basic requirement for an offence as above is the knowledge of the offender that the victim belongs to a scheduled caste and only for this reason the offender perpetrates the alleged offence. According to the petitioner the first information report in this case has not disclosed any act of the

petitioner, much less any criminal act, only on the premise that he belongs to a caste considered to be higher in societal strata than to what the de facto complainant belongs. According to the petitioner the first information report only contains certain bald allegations bereft of any specific material indicating the nature of insult, be it oral or physical. He says that the allegations made in the FIR could neither make a cognizable offence against him nor make out a case, even if those are taken at face value. According to him no material can be found, to show that discrimination, as alleged against the de facto complainant has been perpetrated to him only for the caste difference.

The other point argued on behalf of the petitioner is that the ingredient of offence as alleged would not be available against the present petitioner insofar as the de facto complainant has not been able to bring on record that any act of alleged atrocity, has been perpetrated to him at a place within public view. It is stated that this would have been a serious requirement, to fasten the present petitioner as to commission of any alleged act under the afore stated provision of law.

The other point canvassed on behalf of the petitioner is that of non-compliance of section 9 of the said Act, read with Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1955. It is stated that according to the said provisions the State government was to issue a notification conferring power of investigation of the case by a notified police officer, not below the rank of Deputy Superintendent of Police. It has been stated that any investigation, as in this case, carried on by a Deputy Superintendent of

Police, without being notified by the State government, in a manner as prescribed in law to do so, would be void ab initio and liable to be vitiated. The petitioner in this case has prayed for an order to quash the entire criminal proceeding against him.

On behalf of the petitioner, the following judicial pronouncements are relied on :

- (i) *Swaran Singh vs State through Standing Counsel and Another reported in (2008) 8 SCC 435;*
- (ii) *Hitesh Verma vs State of Uttarakhand and Another reported in (2020) 10 SCC 710; and*
- (iii) *Nanda Dulal Biswas vs The State of West Bengal & Another reported in 2017 SCC Online Cal 9767.*

On behalf of the de facto complainant/opposite party No. 2, vehement objections have been raised as to the contentions and prayer of the petitioner. Mr. Tulsi das Ray appearing for the said opposite party has taken this court through the first information report, to submit that the complainant has duly mentioned and attributed the cause of his being subjected to the atrocities for the reason of his belonging to a scheduled caste. On this ground he defies the argument advanced by the petitioner that the FIR is vague and non-specific, not mentioning specifically as to what utterance has caused an offence to have been committed, under the said statute. It is mentioned that for over a prolonged period of time, the petitioner has subjected the de facto complainant to atrocities, humiliation, discrimination in the name of his belonging to a scheduled caste. It has been pointed out that during

investigation the fact as above has also been brought on record. According to the said opposite party, strong prima facie materials against the petitioner are on record already, for which he must be subjected to trial in this case and his prayer is not at all legible to be allowed.

Mr. Arijit Ganguly has appeared on behalf of the State and submitted the case diary in Court. Though no argument is offered regarding the point of alleged non-compliance of section 9 of the said Act being read with rule 7 of the said Rules, it has been specifically submitted by relying on the materials in the case diary that during investigation sufficient materials are accumulated to suggest petitioner's involvement in the alleged crime. Hence he supports the opposite party No. 2 in urging that the present revision is liable to be dismissed.

It would be profitable to quote the applicable provision of the said Act⁸, as herein bellow:

“3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, –

(x) intentionally insults or intimidates with intent to humiliate a member of the Scheduled Caste or a Scheduled Tribe in any place within public view;”

Therefore it is imperative for the prosecution to spell out the intention of the perpetrator to humiliate member of any schedule caste, or to intimidate him, for the sole purpose of his belonging to the schedule caste and for no other purposes. Typical mens rea of the

offender as regards the same should bourn in the FIR and other materials available against him.

The de facto complainant has elaborately stated in the first information report as to how he has been subjected to humiliation, discrimination and atrocities by the present petitioner. It is however not denied that the present petitioner, being the headmaster of the school was the administrative head of the institution where he was engaged as an assistant teacher. He says that all he had to face was due to his belonging to a scheduled caste. However he is not specific as to what made him to understand like that. In other words, the complainant is not eloquent enough regarding the exact disposition of the petitioner which may lead to the understanding that the petitioner with the sole intention of offending the complainant for his belonging to any scheduled caste has subjected him to the alleged humiliation or discrimination. Such a preconceived intention of the petitioner along with his pre planned disposition as to the perpetration of atrocity towards the complainant, would have been a sine qua non to conceive any cognizable offence against the petitioner under the afore stated provision of law. This being so, the entire narration of the de facto complainant in the first information report leaves sufficient scope of doubt whether the acts as alleged against the petitioner in the said FIR, were done by the petitioner during discharging his administrative duty or with mens rea only to execute atrocities to the de facto complainant, for his belonging to the scheduled caste. This court cannot but take note of the fact as pointed out on behalf of the petitioner, that the de facto complainant has not practically alleged of any specific utterance

regarding his caste by the petitioner. The petitioner has not mentioned as to what were the abusive language, he confronted. It is also indistinct as to how he being posted at a particular place during examination times, would by itself constitute an offence by the headmaster, as above, who would after all, have to discharge the administrative duties.

Therefore, so far the offence alleged against the petitioner and the ingredients thereof are concerned, those are not prima facie on record against him. The allegations made against the petitioner in the first information report, if taken on its face value do not actually make out any case against him, so far as the afore stated provision of law is concerned, which would have been imperative to maintain a prosecution against the petitioner on the said allegations.

To the point raised by the petitioner regarding non-compliance of section 9 of the said Act read with rule 7 of the said Rules, there is actually no serious objection raised by any of the opposite parties in this case.

Section 9 of the said Act provides as follows :

“9. Conferment of powers.

(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,--

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases,

and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)".

Rule 7 of the said Rules, is as follows :

"7. Investigating Officer.-

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer".

It appears from the afore stated provisions of law that the legislature, according to its own wisdom, has promulgated for appointment specifically for the purpose of investigating an offence under the present statute with a vision that an officer specifically appointed for the purpose, with his experience and insight would be able to perceive the implications of the case and would be able to complete the investigation within a specified time, keeping in mind the very purpose for which the statute has been promulgated. Thus there are specific reasons as to why a case under this statute should have been investigated by a notified officer and none else. Investigation of a case like this, de hors the provisions of law as above, would only frustrate the object for which the said provisions were brought into

force. An investigation, not in terms of the afore stated provisions, is liable to be vitiated.

On the discussions as above, it is found in this case that proceedings against the present petitioner, would be an abuse of the process of court as well as the law. Hence this Court is inclined to invoke power under section 482 CrPC, and direct the said proceedings to be quashed and set aside.

Thus the revision succeeds and is disposed of. Connected application, if any is also disposed of. Case diary, which was earlier kept with the record, be returned immediately.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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(Rai Chattopadhyay, J.)