

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R.1434 of 2021

***Nivedita Talai*
versus
The State of West Bengal and another**

For the Petitioner : Mr. Milon Mukherjee,
Mr. Sandip Chakraborty,
Mr. Kaustav Das.

For the State : Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

For the Opposite Party No.2 : Mr. Mrityunjoy Chatterjee.

Heard On : 10.04.2023, 02.05.2023.

Judgement On : 02.05.2023

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the proceedings of Bantra Police Station Case No.55 of 2021 dated 07.03.2021 under Sections 341/323/506/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

On the basis of letter of complaint addressed to the Officer-in-Charge, Bantra Police Station by one Subhajit Talai, the instant case being Bantra

Police Station Case No.55 of 2021 dated 07.03.2021 was registered for investigation.

The allegations made in the letter of complaint were to the effect that the complainant's aunt (father's elder brother's wife) Mrs. Nivedita Talai goes to the red light area and is involved in flesh trade. The complainant and his father Arup Talai protested against such acts and for the said reasons on 07.03.2021 at about 5.00 p.m., Nivedita assaulted his father with fist and blows and with wooden stick. When Nivedita was beating his father, complainant recorded the same in his mobile camera. Thereafter, when the complainant and his father were passing through Parboti Cinema Hall at about 7.45 p.m., they saw Nivedita Talai and Ramakant Surelia were sitting there and they started hurling abusive language towards them stating that as they belong to Scheduled Caste and Scheduled Tribe community they and their family have no right to stay in the family and they should go and live in the jungle, the said abuse was followed by further scurrilous, vulgar and foul aspersions. The complainant, therefore, requested the police authorities to take steps against Mrs. Nivedita Talai and Ramakant Surelia.

Mr. Milon Mukherjee, learned senior advocate appearing for the petitioner submits that the present petitioner was the widow of the complainant's uncle and because of a long sanding dispute relating to the property/building wherein they were residing jointly, the parties are at logger-head and many complaints have been filed before the Police Station by either of the parties over issues relating to property dispute. In fact, the present

petitioner (Nivedita Talai) complained against Subhajit Talai and his father Arup Talai which were registered as GDE No.998 dated 18.08.2017, GDE No.1143 dated 19.03.2019, GDE No.1299 dated 23.12.2020 and lastly as Bantra Police Station Case No.99 of 2021 dated 03.05.2021 under Sections 448/323/354B/509/506/34 of the Indian Penal Code. It has been reiterated that after demise of the husband of the petitioner, the complainant and his father were trying to oust her along with her children from the joint property and are creating immense mental pressure.

Learned senior advocate appearing for the petitioner emphasised that the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been invoked with an ulterior object of foisting such a criminal case where the petitioner may not be released on bail, she may be detained in prison as she did not belong to the Scheduled Castes and Scheduled Tribes community by birth although she was married to the uncle of the complainant. Learned senior advocate questions the authority of the investigating officer in view of Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. It has also been submitted that in this case that during pendency of the revisional application, the investigating agency submitted charge-sheet under Sections 341/323/506/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Attention of the Court was drawn to Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads as follows:

“3. Punishment for offences of atrocities-

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

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;”

Mr. Mrityunjoy Chatterjee, learned advocate appearing for the opposite party no.2 submits that the allegations made in the letter of complaint and charge-sheet cannot be challenged on the foundation of truth or falsity of the allegations. According to him, the accused/petitioner has committed an offence by abusing the complainant and his father with the aid of their caste, as such the provisions of Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 applies. By incorporation of a wrong sub-section of Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 under no circumstances do create a cause of action for quashing of the proceeding particularly at the stage at which the petitioner has approached this Court. Additionally, it has been submitted that the present application is premature and as charge-sheet has already been submitted, no interference should be made in respect of the continuation of the proceedings before the learned trial court.

Mr. Ranabir Roy Chowdhury, learned advocate appearing on behalf of the State has submitted that the investigating authorities have submitted the charge-sheet and the special court has taken cognizance of the offence. It has

been submitted that the charge-sheet reflects prima facie offence being made out under Sections 341/323/506/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, no interference should be made by this Court at this stage.

I have perused the case diary produced by the State and I find that the prosecution has relied upon 8 witnesses to prove its case, they are complainant, Subhajit Talai; Arup Talai (father of the complainant); Chandranath Sen, neighbour; Tarun Singh, neighbour; rest of the four witnesses who have been relied upon are Tarun Bhattacharyya, SDO, Sadar, Howrah; Debabrata Mukherjee, OC Bantra Police Station; Ms. Alaknanda Bhowal, IPS and Mritunjay Bandyopadhyay, second Investigating Officer.

On an analysis of the list of witnesses, it is found that four of the witnesses are acquainted with the facts of the case and rest of the witnesses are from the different government departments. So far as CSW 1 and CSW 2 are concerned, that is, the complainant and his father they have spoken in the same tune. However, the neighbouring witness being CSW 3 and CSW 4 who are independent witnesses and who happen to be neighbours in the locality associated with both the complainant and the accused have a different version.

I have considered the statement of CSW 3 and CSW 4 namely, Chandranath Sen and Tarun Singh. CSW 3 stated that he happens to be the neighbour of the complainant as well as that of the accused, and that there were recurrent family disputes in respect of the properties. Many a times the local inhabitants tried to settle the same but he is not aware of any person

named Ramakanta Surelia nor is he aware of any abuse being hurled by the petitioner to the complainant which involved or referred to caste of the complainant.

CSW 4, Tarun Singh is also a neighbour of the complainant and the accused/petitioner, who stated that after the demise of the petitioner's husband, the complainant and his father regularly quarreled with the petitioner. He was not aware regarding any abuse being hurled involving caste. On the other hand, he stated that the complainant and his father regularly abused the petitioner and her children.

These are witnesses on whom prosecution intends to rely upon to prove its case. The witnesses have categorically stated that there was a property dispute between the complainant and the petitioner and records reflect that the petitioner also lodged Bantra Police Station Case No.99 of 2021 dated 03.05.2021 under Sections 448/323/354B/509/506/34 of the Indian Penal Code.

In **Rajiv Thapar Vs. Madan Lal Kapoor** reported in **2013 (3) SCC 330** the Hon'ble Supreme Court in paragraph 30 has laid down the steps to determine the veracity of a prayer for quashment raised by the accused by way of invoking the power of the High Court under Section 482 of the Cr.P.C. Paragraph 30 which is relevant in the case is set out as follows:

***“30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:*

30.1.*Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

30.2.*Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

30.3.*Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

30.4.*Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

30.5.*If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

In view of the prosecution relying upon Chandranath Sen and Tarun Singh as supporting witness to establish its case and the said witnesses in the statements before the investigating officer did not support the prosecution, rather they highlighted on the factum of family dispute, I am of the opinion that the manner in which the provisions of Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 has been invoked for wrecking vengeance for private and personal gain do satisfy the clauses referred to in the case of **State of Haryana Vs. Bhajanlal** reported in **1992 Supp (1) SCC 335**. As the initiation of the present case was with an oblique motive, the further continuation of this proceeding would be an abuse of process of law, thereby warranting the exercise of powers under Section 482 of the Code of Criminal Procedure.

In view of the observations made above, all further proceedings arising out of Bantra Police Station Case No.55 of 2021 dated 07.03.2021 under Sections 341/323/506/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 including the charge-sheet filed therein as also the order of cognizance is hereby quashed.

Accordingly, CRR 1434 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

Case diary be returned to the learned advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

