

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17414-2015 (O&M)

Date of Decision: 17.04.2023

Pandit Jai Narain & Ors.

... Petitioners

VS.

Ramesh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Ghangas, Advocate for the petitioners

None for the respondent

Sandeep Moudgil, J.

1. This petition under Sections 482 CrPC has been filed by the petitioners seeking quashing of the criminal complaint No.746/2008 dated 12.11.2008 (Annexure P1) filed by the complainant-respondent Ramesh, under Section 3(1)(ii)(v)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, 'the Act') read with Section 323/506 IPC and all the consequential proceedings arising therefrom and also for setting aside the summoning order dated 28.01.2015 (Annexure P4) vide which the petitioners have been summoned to face trial.

2. Brief facts of the case are that on 11.09.2008, the petitioners came to the *bara* of the complainant/Ramesh where the complainant and his mother were sitting. It is stated in the complaint that the complainant is in possession of the *bara* which has been in use by them for tying cattle. The petitioners started hurling abuses in filthy language lik "Dhade, Kamin and Shansi" and all the petitioners started beating the complainant and his mother. Thereafter, on raising hue and cry, Balbir s/o Bhane Ram came and rescued

the complainant from the clutches of the petitioners. Hence the present complaint.

3. Learned counsel for the petitioners contented that prima facie no case is made out against the petitioners under the SC&ST Act. Neither the complainant alleged that his image/prestige was lowered down by the petitioners in public nor there is any mention in the complaint whether the petitioners knew that the complainant belonged to the SC community. It is averred that petitioner No.1 is owner in possession of the bara and the complainant has no concern with the said bara and is trying to interfere in its peaceful possession with the petitioners.

4. It is further submitted that the mother of the complainant/respondent even filed a civil suit for permanent injunction regarding the said bara against the present petitioners on 02.09.2008. The said civil suit was dismissed by the Civil Court, Panipat vide judgment and decree dated 14.12.2011. The appeal so preferred against the said judgment has also been dismissed as withdrawn vide judgment dated 28.07.2012. In addition, the petitioner No.1 also filed a civil suit against the complainant and his family members and the said civil suit has been decided judgment and decree dated 03.05.2012. It is thus contended that the present complaint has been filed by the complainant just to put pressure upon the petitioners and to grab the bara of the petitioners.

5. Learned counsel further argued that from the contents of the criminal complaint, it is established that the occurrence has not taken place at a public place and in a public view. So no offence under SC and ST Act 1989 is made out. Merely because the petitioners hurled abuses would not mean

that it was used in order to intentionally insult or intimidate or with intent to humiliate the complainant who belongs to Schedule Caste. Mere utterances of offending words would not constitute an offence under the SC & ST Act in absence of intention or *mens rea* to humiliate the member of Schedule Caste in public view. It is also submitted here that both the parties were challaned by the police u/s 107/151 CrPC.

6. Besides, it is contended that no specific allegation has been leveled against the petitioners in the criminal complaint. It has not been mentioned in the complaint that which of the petitioners abused the complainant and even no specific injuries have attributed to the petitioners. Even in the civil suit filed by the mother of the complainant, on 02.09.2008 before the Civil Judge, Panipat, she has nowhere mentioned regarding the incident dated 30.08.2008, which is mentioned in the criminal complaint. Similarly, it is nowhere mentioned in the complaint that the petitioners ever tried to dispossess the complainant and his family from the suit property on 25.08.2008 whereas the same has been mentioned in the civil suit filed by mother of the complainant. This shows that the complainant has filed a false criminal complaint against the petitioners just to grab the Bara.

7. Further, learned counsel for the petitioner contended that the summoning order dated 28.01.2015 passed by Ld. JMIC is a non-speaking order and has been passed in a casual manner. The complainant beside examining himself, examined his mother and one Balbir Singh in his evidence. The said Balbir Singh is not a resident of that village and is resident of other village and so his presence at the place occurrence is doubtful. The complainant has not examined the doctor to prove the injuries received by

them. Moreover, from the contents of the criminal complaint no offence under SC and ST Act 1989 is made out.

8. It is the contention raised on behalf of the petitioners that since all the essential/basic ingredients of the offence punishable under Section 3(1)(x) of the Act, are not made out against the petitioners, *strict sensu*, therefore, the petitioners cannot be prosecuted. Reliance is placed on **Gorige Pentaiah vs. State of AP & Ors. (2008) 12 SCC 531** where the Hon'ble Supreme Court held that inherent power can be exercised when a prosecution at the initial stage, is asked to be quashed and the test to be applied by the Court is as to whether the uncontroverted allegations, as made, *prima facie*, establish the offence and where the allegations in the FIR or complaint, taken at their face value, and accepted in their entirety, do not constitute the offence alleged.

9. Notice of motion was issued in this case on 26.05.2015 and this Court stayed the proceedings before the trial court. Records that the service was complete but the way counsel for the respondent has been conducting this case is self-evident as the respondent has remained unrepresented on umpteen number of occasions nor any reply has been filed by the respondent to counter the assertion made by the petitioners. This Court thus proceeds to decide the case on merits.

10. I have heard learned counsel for the petitioner and gone through the record.

11. As per the averments made by learned counsel for the petitioners, at the time of alleged occurrence, the complainant and his family members were present at the *bara* and as such, even if the averments made in

the complaint are taken to be true, the place of occurrence i.e. *bara* cannot, at any rate, be categorized as ‘public place’. It is submitted that clause (x) of sub-Section (1) of Section 3 of the Act envisages that whoever, intentionally insults a member of the Scheduled Caste, in any place, within public view, shall be liable to be punished.

12. In the instant case, the allegation of the respondent in the entire complaint is that the petitioners abused them with the name of their caste. The ingredients of Section 3(1)(x) of the Act are the basic ingredients to make out a case against the petitioners for intentionally insulting or intimidating the complainant with intention to humiliate in a place within public view. Section 3(1)(x) of the SC & ST Act, reads as under:-

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

xxxx xxxx xxxx

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

xxxx xxxx xxxx

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

xxxx xxxx xxxx

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

13. In **Gerige Pentaiah** (supra), the Hon'ble Supreme Court held that the inherent powers of the High Court under [Section 482](#) CrPC is to act *ex debito justitiae* to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the court, to give effect to an order under the Code or to secure the ends of justice. Such inherent powers, though wide, ought to be exercised sparingly, carefully and cautiously and only when such exercise is justified by the tests specifically laid down in this Section itself. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court, for the advancement of justice, would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the Statute.

14. In [State of Haryana & Others v. Bhajan Lal & Others, \(1992\) Supp. \(1\) SCC 335](#), the Hon'ble Supreme Court categorized the nature of cases, reproduced below, wherein the High Court can exercise its inherent powers under Section 482 CrPC either to prevent abuse of the process of the court, or otherwise, to secure the ends of justice:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. Thus, this Court is bound to scrutinize the fact of the present fact in the light of the mandate of the Apex Court, reproduced above. It has been alleged in the complaint that respondent and his mother was insulted by the petitioners by calling them by words indicating their caste. Certainly, the occurrence took place in a bara which cannot be said to be a place within 'public view'. It would have been a different matter had the alleged offence been committed outside in public place which could be seen by someone from the road or lane outside the house or building. Also, even if the casteist

remarks are made inside a house, but some members of the public are present there (not merely relatives or friends), then also, it would be an offence since in those circumstances, the said premise would fall within the purview of 'public view'.

16. There is a very wide distinction between the expression "place within public view" vis-à-vis "public place". A place can be a 'private place' yet within the 'public view'. On the other hand, a 'public place' would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gram sabha and/or is an instrumentality of the State/private or public institution which is accessible by general masses but not by any private person or private bodies.

17. A bare perusal of the contents of the complaint would show that the allegations leveled against the petitioners are general, absurd and improbable, as the basic ingredients of the offence are missing in the FIR. The complainant has not mentioned the specific words which can be said to be 'casteist' nor is there any reference to the place for stretching it to connect with the provisions of Clause (x) of Sub-Section (1) of Section 3 of the Act which unambiguously says that the offence of atrocity should be in a place within the 'public view'. In my considered view, the bara cannot be said to be a place within public view. Meaning thereby that the basic ingredient of a place within 'public view' is undoubtedly not made out as from a bare reading of the complaint, *prima facie*, does not constitute any offence or make out a case against the petitioners.

18. Coming to the issue of forceful dispossession from the property, in order to constitute an offence under Section 3(1)(v) of the SC&ST Act i.e.

of atrocities of dispossessing or interfering with the enjoyment of a member of SC or ST from his land premises of water, following ingredients are essential which must be alleged and proved to seek the conviction of the accused:

- (i) Victim is Scheduled Caste
- (ii) Accused is Non Scheduled Caste or Scheduled Tribe
- (iii) Accused had Prior Knowledge of Caste of Victim
- (iv) Accused Offended the sensibilities of the Victim in relation to his Caste or Offence was committed because the Victim was Scheduled Caste
- (v) The Accused persons either have wrongfully dispossessed the victim or they wrongfully interfered with the enjoyment of any right of the victim.

19. On careful examination of the record, it becomes abundantly clear that respondent was not even in possession of the bara on the date of incident and this fact has not been disputed by the respondent in the complaint itself since the civil suit filed by the mother of the respondent seeking permanent injunction was dismissed by the trial court on 14.12.2011 and the judgment of the trial court was affirmed by the appellate court vide judgment dated 28.07.2012. Meaning thereby that the respondent was not in owner in possession of the bara in question. When respondent was not even in possession of the bara in question, the allegation made in the complaint, that the petitioners tried to interfere in the peaceful possession of the respondent, could not arise. The allegations are totally baseless and without any foundation.

20. On the other hand, it is nowhere the case of the respondent that the petitioners were in the prior knowledge of the respondent being member of SC community. Neither, it is the case of the respondent that the petitioners tried to dispossess them only because the respondent is a member of the SC community. On the face of it, it looks that the criminal complaint filed by the respondent was totally false and frivolous and has been filed with an oblique motive.

21. In such circumstances, the allegation of dispossession from the bara in question to attract Section 3(1)(v) of the SC/ST Act could not be proved in view of the fact that the civil dispute was already going on between the parties which the respondent admittedly lost. That being so, it is evident that a civil dispute has been sought to be given criminal colour and that too under the garb of invoking Section 3(1)(v) of the SC/ST Act. When the basic ingredients of the offence including utterance allegedly made, should be in public view and at a public place are missing in the complaint, then permitting such a complaint to continue and to compel the petitioners to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

22. Similarly, this Court finds that the ingredients of Sections 323/506 of the Indian Penal Code are totally absent in the complaint. In the complaint it is not even mentioned that the accused had intimidated or threatened the complainant or anyone else. In absence of basic ingredients of the section in the complaint, no case under sections 323/506 IPC can be sustained.

23. Accordingly, this petition is allowed and the criminal complaint No.746/2008 dated 12.11.2008 (Annexure P1) filed by the complainant-respondent Ramesh, under Section 3(1)(ii)(v)(x) of Act read with Section 323/506 IPC as well as the summoning order dated 28.01.2015 (Annexure P4) vide which the petitioners have been summoned to face trial, stand quashed.

17.04.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No