

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

CRM-M-28465-2023
Reserved on: 14.12.2023
Pronounced on: 19.12.2023
2023:PHHC:162983

RAVINDER @ MONU

. . . . Petitioner

Vs.

The State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Anshuman Dalal, Advocate, for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays to set aside impugned order dated 25.01.2023 passed by ld. Additional Sessions Judge, Rohtak, whereby petitioner has been charge-sheeted under Sections 363, 323, 325 & 506 IPC; and Section 3(1)(s) & 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short 'the SC/ST Act'] in a case arising out of FIR No.79 dated 03.03.2021 registered at Police Station Purani Sabzi Mandi, Rohtak, under Sections 148/149/323/363/379B/506 IPC and Section 3(1)(s) of the SC/ST Act.

2. On 28.08.2023, ld. counsel for the petitioner made a statement, confining his prayer to set aside the impugned order only to the extent that petitioner is not liable to be charge-sheeted under the provisions of the SC/ST Act.

3. (i) FIR was lodged on the complaint of Prabhu Ram s/o Sawarmal, as per which he belongs to Scheduled Caste (Chamar community). It was stated that about one year back, complainant had agreed to sell a plot to Ravinder Sharma (petitioner), who did not get the sale deed registered. Though, normally earnest money is forfeited, still the complainant had returned the earnest money of ₹3 lakhs to the petitioner. It was alleged that on 03.03.2021 at about 11:30 am, complainant was present near the chowk of his house, when petitioner-Ravinder Sharma came there and forcibly kidnapped him from the chowk, took him towards his house, taken out an amount of ₹1 lakh, cheque book and some important documents from his pocket and beaten him badly with dandas, outside his house alongwith his family members, namely, Virender, Monu, Anuj and Ravinder's wife and mother. When his (complainant's son) came to rescue him, he was also badly beaten. Both of them were kidnapped with intention to kill. Their motorcycles were also snatched. Somehow, they got themselves saved and fled away. It was alleged further that while giving beatings, the assailants were hurling caste based derogatory remarks and insulting him by addressing him as '*Dedh, Chamar, Kamin, Gandi Nali Ka Kida*'. They also threatened to kill his entire family in the same way as murders are committed in the Rohtak Akhara, as he (petitioner) was having a licensed revolver.

(ii) FIR was registered. After conducting necessary investigation, Sections 379 and 363 IPC were deleted. Anita w/o Ravinder, Sushila w/o Sisram, Virender s/o Sisram and Sumit s/o Virender were found innocent and so, Sections 148 & 149 IPC were deleted. After completion of

investigation, final report under Section 173 Cr.PC was filed to prosecute the petitioner under Sections 323, 506 & 325 IPC and Section 3(1)(s) of the SC/ST Act.

(iii) After hearing both the sides, ld. Additional Sessions Judge, Rohtak ordered framing of the charge against the petitioner under Sections 363/323/325/506 IPC besides Sections 3(1)(s) & 3(2)(va) of the SC/ST Act. Ld. Court also observed that accused-petitioner was not liable to be charge-sheeted under Section 379B IPC, because complainant had not disclosed the registration number of the motorcycles, which were allegedly snatched and besides, it was found during investigation that motorcycles were recovered from the spot in the broken condition and there was no allegation that accused-petitioner had broken the same.

4. Challenging the above order, contention of ld. counsel for the petitioner is that no offence under Section 3(1)(s) and 3(2)(va) of the SC/ST Act is made out, as there is no allegation that derogatory words in the name of caste, as is alleged in the FIR, were used in any place within the public view. Ld. counsel has referred to a decision of Hon'ble Supreme Court rendered in *Hitesh Verma Vs. The State of Uttarakhand and another*, (2020) 10 SCC 710.

(ii) Ld. counsel also contended that in fact complainant had borrowed an amount of ₹3 lakh from the petitioner in March 2013 vide a pronote (Annexure P2), which he refused to pay and when petitioner demanded the money, son of the complainant Mahender, had entered into an agreement to sell a plot vide agreement dated 05.02.2020, in lieu of

money due and the amount of ₹ 3 Lacs was adjusted in the sale price. However, as the petitioner found that plot was in an unauthorized colony and registry could not be done, he demanded back his money from the complainant and his son. Instead of paying the money, present false FIR has been lodged against the petitioner and his family members.

(iii) Ld. counsel for the petitioner has also drawn attention towards number of cases as mentioned in para-No.13 of the petition, so as to contend that petitioner is a chronic-litigant, who has even been convicted in two cases under Section 138 of the Negotiable Instruments Act, 1881 [for short ‘the NI Act’] and that story put forth in the FIR is not at all probable. Ld. counsel contends that without looking into these aspects, impugned order has been passed so as to charge-sheet the petitioner.

5. Opposing the petition, ld. State counsel submits that at the stage of framing of the charge, only *prima facie* material is to be seen and that evidence collected during investigation is not required to be evaluated in such a manner that it will lead to conviction or not. Ld. State counsel contends further that on the basis of evidence collected, ld. trial Court has rightly framed the charge.

6. I have considered submissions of both the sides and appraised the record.

7. It is a settled preposition of law that at the time of framing of charge or taking cognizance, the accused has no right to produce any material or even to seek the aid of Section 91 CrPC, as has been held by

Hon'ble Supreme Court in the *State of Orissa Vs. Debendra Nath Padhi*, 2005(1) RCR (Criminal) 297. Although, High Court has the power under Section 482 CrPC and under Article 226 of the Constitution of India, which is unlimited, to make such orders as may be necessary to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, but to exercise the said power, the accused should be in a position to produce material of unimpeachable character of sterling quality. Same view has also been taken by the Hon'ble Supreme Court in *Rukmini Narvekar Vs. Vijaya Satardekar & others*, 2008(4) RCR (Criminal) 924.

8. Since, Id. counsel for the petitioner has confined his prayer qua charge under the SC/ST Act only, let the relevant provisions be examined.

9. Sections 3(1)(s) and Section 3(2)(va) of the SC/ST Act, read as under: -

“3(1) Whoever, not being a member of a Schedule Caste or a Schedule Tribe, -
 xxxxxxxxxxxxxxxx
(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;
 xxxxxxxxxxxxxxxx
shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

“3(2) Whoever, not being a member of a Schedule Caste or a Schedule Tribe, -
 xxxxxxxxxxxxxxxx
(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”

10. By referring to Section 3(1)(s), it is contended by Ld. Counsel for the petitioner that there is no material that complainant was abused in any public place within the public view.

10. In the case of *Hitesh Verma (Supra)*, Hon'ble Supreme Court examined the provision of Section 3(1)(r) of the SC/ST Act, which also uses the words '*in any public place within public view*'. It was held as under: -

*“Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as **Swaran Singh & Ors. v. State through Standing Counsel & Ors.** (2008) 8 SCC 435. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.”*

11. In the present case, as per the allegations in the FIR, complainant was abused in the name of his caste, while being given beatings, and when he was being kidnapped from chowk of his house towards the house of the petitioner. It will be a matter of adjudication during trial as to exactly at what place the abusive words in the name of caste were used, but there is no such material of sterling quality, so as to come to the conclusion that abusing was not made at a public place within the public view.

12. As far as Section 3(2)(va) is concerned, the mere fact that accused committed any offence specified in the Schedule, against a person or property knowing that such person is a member of Scheduled Caste or Scheduled Tribe or the property belongs to Scheduled Caste or Scheduled Tribe, is sufficient to attract the provision.

13. In this case, apart from others, offences under Sections 323/325/363/506 IPC are also alleged to have been committed, all of which fall in the Schedule attached with Section 3(2)(va) of the SC/ST Act. It is not the case of the petitioner that he did not know that complainant was a member of a Scheduled Caste.

14. In the aforesaid circumstances, ld. Trial Court was justified in coming to the conclusion that there was a *prima facie* case, so as to frame the charge against the accused – petitioner under Section 3(1)(s) and 3(2)(va) of the SC/ST Act, apart from the other provisions of IPC. Thus, this Court finds no merit in the present petition and as such, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

19.12.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No