

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3657-2017 (O&M)**Date of Decision: 10.01.2023**

Vikas Kumar @ Vikas & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhishek Sethi, Advocate for the petitioners

Mr. Gagandeep S. Chhinna, AAG Haryana

None for respondent No.2

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioners against the order dated 04.08.2017 passed by the Addl. Sessions Judge, Panipat to the extent vide which charge under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, 'the Act'), has been framed against the petitioners.

Brief facts of the case are that on 15.03.2017, the complainant-respondent No.2 presented an application for registration of FIR to the police alleging that on 13.03.2017, at about 6.40 pm, the complainant along with his family members was present in the house when someone knocked at the door and as soon as the brother of the complainant, Deepak, opened the door, his neighbor Ramesh, Suresh (petitioner), along with 6-7 other unknown persons entered their house by pushing aside the brother of the complainant and started giving beatings to the complainant, his brother and father, with wooden sticks and brick bats. All of them had consumed liquor. The

complainant received danda blow on his head due to which he fell down. The accused persons left the place of occurrence giving threats and calling us with words indicating our caste.

On the complaint of respondent No.2, FIR No.296 dated 16.03.2017 was registered under Sections 148/149/323/452/506 IPC, at Police Station City Panipat (Annexure P1) and during the course of investigation, Section 3 of the Act, was also added. The trial court vide order dated 04.08.2017 framed charges against the petitioners/revisionists under Sections 323/34/452/506 IPC & Section 3(1)(x) of the SC & ST Act, 1989. The petitioners are before this Court challenging the impugned order only to the extent charges under Section 3(1)(x) of the Act, 1989 have been framed against them.

As a counter-blast, petitioner No.4 Jagdeep also filed a complaint dated 07.07.2017 alleging that on 13.03.2017 at about 6.00 pm, he was celebrating the Holi festival by playing colours in the house of petitioner No.1 - Vikas. Suddenly, Kuldeep – respondent No.2, in an inebriated condition, entered the house of petitioner No.1 and started applying colours to him. Petitioner No.4 Jagdeep objected to the same and thereafter Kuldeep – respondent No.2 went back to his home while abusing and threatening petitioners No.1 & 4. Thereafter, at about 6.30 pm, respondent No.2 along with his brother Deepak and father Prem, returned at the house of the petitioner No.4 and started abusing petitioners No.1 & 4. Respondent No.2 and his brother Deepak were carrying wooden sticks in their hands. Respondent No.2 and his Deepak gave danda blows on the head of petitioner No.4 – Jagdeep, father Prem gave slap and fist blow to petitioner No.4.

Petitioner No.1 rescued petitioner No.4 Jagdeep from the assailants and they fled away from the spot while threatening them.

In pursuance to the complaint filed by petitioner No.4 Jagdeep, the trial court vide order dated 06.09.2017, summoned the Kuldeep, his brother Deepak and father Prem under Sections 323/452/506 read with Section 34 IPC.

Notice of motion was issued in this case on 09.10.2017 and this Court stayed the proceedings before the trial court. On 28.03.2019, learned counsel for the petitioners relied upon the judgment of this Court in **Rashmi @ Nandi & Ors. vs. State of Punjab & Anr. 2015(3) RCR (CrL.) 832**, upon which learned State counsel sought and was granted time to examine and counter the said ruling, if any. Thereafter, the case has been adjourned on one pretext or the other. No reply/response, either by the State or by respondent No.2, has been filed before this Court.

Learned counsel for the petitioners has contended that at the time of alleged occurrence, the complainant and his family members were present at their house behind the closed doors and as such, even if the averments made in the petitions are taken to be true, the place of occurrence 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.

It is further contended 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.

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

In the instant case, the allegation of respondent No.2 in the entire complaint/FIR 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. In the entire complaint/FIR, it is nowhere mentioned that the petitioners were not the members of the Scheduled Caste or Scheduled Tribe and they intentionally insulted or intimidated with intent to humiliate respondent No.2 in a place within public view. Section 3(1)(x) of the SC & ST Act, reads as under:-

“3. Punishments for offences of atrocities.—

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

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(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.

xxxx

xxxx

xxxx

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.”

In **Gorige 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.

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.

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 FIR that respondent No.2 was insulted by the petitioners by calling them by words indicating their caste and when the latter entered the house of the respondent No.2. Certainly, the occurrence took place in a house 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 the house 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'. Therefore, 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. The court below is not right in framing charges under Section 3(1)(x) of the Act against the petitioners without any valid, justifiable and evidentiary reasons.

A bare perusal of the contents of the FIR 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 the present case, the petitioners are alleged to have knocked at the doors of the respondent No.2 and the whole incident took place within the four corners of the house. In my considered view, the house 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 FIR *prima facie* does not constitute any offence or make out a case against the petitioners. The present being a cross-case, the criminal proceedings seems to have been initiated with *mala fide* intention for wreaking vengeance on the petitioners and with a view to spite them due to private and personal grudge.

Accordingly, this petition is allowed and the order dated 04.08.2017 passed by the Additional Sessions Judge, Panipat to the extent it framed charges under Section 3(1)(x) of the Act, is hereby quashed.

Nothing expressed in this order shall be taken to be an expression of views on the merits of the case.

10.01.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No