

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

CRR-1557-2022

Reserved on: 05.09.2023

Pronounced on: 11.09.2023

Pappan

.... Petitioner

Vs.

State of Haryana

.... Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Lalit Kumar Narang, Advocate, for the petitioner.

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

DEEPAK GUPTA, J.

By way of this revision, petitioner has assailed the order dated 02.05.2022 passed by Id. ASJ, Rohtak in case tilted "State Vs. Pappan", arising out of FIR No.304 dated 16.09.2019 under Sections 323, 324/34 & 506 IPC, registered at Arya Nagar, Rohtak, in which subsequently Sections 201 & 326 IPC and Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short 'the SC/ST Act'] have been added while filing the challan and in which charge has been framed under the aforesaid provisions of law.

2. During arguments before this Court, Id. counsel for the petitioner has confined his prayer only against the charge framed against the petitioner under Sections 3(2)(v) and 3(2)(va) of the SC/ST Act.

3. (i) Contention of Id. counsel for the petitioner is that neither in the initial statement made on 16.09.2019, which is the basis of FIR

(Annexure P1) nor in the supplementary statements dated 17.09.2019 (Annexure P4) and 27.09.2019 (Annexure P5), the complainant of the case Deepak @ Bholu made any allegation of the casteist remarks having been made by the petitioner. Similarly in their statements recorded under Section 161 CrPC, neither Shivam @ Shambhu, the brother of the complainant nor alleged eye witness Vikram made any such allegation. Later on, simply because of the production of a caste certificate by the complainant during investigation, the Investigating Agency has challaned the petitioner under Sections 3(2)(v) and 3(2)(va) of the SC/ST Act in addition to other provisions of the IPC.

(ii) Still further, it is contended that at the time of their medical examination on 16.09.2019, complainant-Deepak @ Bholu as well as his brother Shivam disclosed their caste as Brahmin as is evident from MLRs (Annexure P2 & P3). Not only this, earlier the complainant of the case Deepak @ Bholu had been arrested in case FIR No.07 dated 06.01.2018 registered at Police Station PGIMS, Rohtak under Sections 15 & 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'] (copy Annexure P8) and at the time of his apprehension, he had projected himself to be Brahman.

(iii) Ld. counsel contends that in the above circumstances, the petitioner-accused could not have the requisite knowledge that complainant was a member of the Scheduled Caste and that in the absence of any ingredient to attract Sections 3(2)(v) and 3(2)(va) of the SC/ST Act, the petitioner is not liable to be charge-sheeted under the said provisions and so, the impugned order is liable to be set aside to that extent.

4. Ld. State counsel has supported the impugned order on the ground that during investigation, complainant had produced his Scheduled Caste certificate (Annexure R8) as annexed with the status report filed by the police.

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

6. As per the FIR (Annexure P1) version, lodged on the statement of complainant-Deepak @ Bholu, on 15.09.2019, he and his brother were going to their home on foot. When they were on the way, a dog started barking in the street. His brother Shivam @ Shambhu hit a stone on the dog. It is at that time that Pappan (petitioner), Raju Khanna, Ishu and Pappan's wife came in the street. Pappan gave knife blow in the stomach of his brother i.e. Shivam @ Shambhu, whereas Raju Khanna gave knife blow on the left side of the thigh and Ishu & Pappan's wife inflicted multiple injuries to him (Deepak). On hearing their shouts, various mohalla residents came there and did the rescue act. It was further stated by Deepak that in the clash Monu and Kishan Lal also inflicted injuries to his brother and that Pappan and others also received injuries. On the aforesaid statement, FIR under Sections 323, 324/34 and 506 IPC was registered.

7. As is evident from the aforesaid version of the FIR, there is no allegation against the petitioner to have used any casteist remarks or that petitioner had the knowledge that complainant belongs to Scheduled Caste or that knowing the caste of the complainant, petitioner had assaulted him.

8. Annexures P4 & P5 are the supplementary statements made by the complainant on 17.09.2019 and 27.09.2019, wherein complainant gave changed version of the incident, but even therein, there is absolutely no allegation of having used any casteist remarks or that complainant belongs to the Scheduled Caste or that petitioner knew about the said fact. Similar is the situation with the statements of Shambhu (Shyam), brother of the complainant-Deepak @ Bholu and that of Vikram, the alleged eye witness, who in their statements under Section 161 CrPC recorded on 17.09.2019 (Annexure P6 & P7) respectively, did not disclose anything about any caste related remarks or that complainant or the other injured belonged to the Scheduled Caste or that petitioner had knowledge of the same.

9. Still further, Annexures P2 & P3 are the copies of MLRs prepared on the date of incident i.e. 15.09.2019, wherein complainant-Deepak @ Bholu as well as his brother Shivam @ Shambhu disclosed their caste as Brahman. Matter does not stop here. Earlier, case FIR No.07 dated 06.01.2018 (Annexures P8) was registered at Police Station PGIMS, Rohtak under Sections 15 & 20 of the NDPS Act, against the complainant-Deepak, in which at the time of his apprehension by the Police, he disclosed his caste as Brahman.

10. Prosecution relies upon caste certificate dated 26.09.2019 (Annexure R8), as per which complainant-Deepak belongs to the Scheduled Caste. The said certificate was handed over by the complainant to the police during his supplementary statement made on 27.09.2019 (Annexure P5).

11. No doubt that as per the certificate Annexure R-8, *prima facie*, complainant-Deepak is a member of Scheduled Caste but whether simply because the complainant or the other injured belongs to Scheduled Caste, is sufficient material for a Court to charge-sheet an accused under the provisions of the SC/ST Act.

12. Section 3 (2) (v) of SC/ST Act reads as under:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

*(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more 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 imprisonment for life and with fine”*

13. Thus, necessary ingredients to attract the above provision of Section 3(2)(v) are as under:

a) Accused commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person,

i) who is member of Scheduled Caste or a Scheduled Tribe;
or

ii) against property belonging to any member of Scheduled Caste or a Scheduled Tribe .

b) Accused should not be member of Scheduled Caste or a Scheduled Tribe; whereas, the person against whom crime is committed, is member of Scheduled Caste or a Scheduled Tribe;

- c) While committing the offence, accused should have knowledge that the person concerned belongs to Scheduled Caste or a Scheduled Tribe.

14. Section 3 (2) (va) of SC/ST Act reads as under:

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

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 for such offences and shall also be liable to fine.”

15. Thus, necessary ingredients to attract the above provision of Section 3(2) (va) are as under:

- a) Accused commits any specified in the schedule, against a person,
- i) who is member of Scheduled Caste or a Scheduled Tribe;
 - or
 - ii) against property belonging to any member of Scheduled Caste or a Scheduled Tribe.
- b) Accused should not be member of Scheduled Caste or a Scheduled Tribe; whereas, the person against whom crime is committed, is member of Scheduled Caste or a Scheduled Tribe;
- c) While committing the offence, accused should have knowledge that the person concerned belongs to Scheduled Caste or a Scheduled Tribe.

16. Thus, for an offence to fall either under Section 3(2)(v) or Section 3(2) (va) of the SC/ST Act, it is required that accused should not be member of Scheduled Caste or a Scheduled Tribe; whereas, the person

against whom crime is committed, is member of Scheduled Caste or a Scheduled Tribe. Not only this, while committing the offence, accused should have the requisite knowledge that the person concerned belongs to Scheduled Caste or a Scheduled Tribe.

17. In ***“Hitesh Verma v. State of Uttarakhand”***, 2020(4) RCR (Criminal) 868, it has been held by the Hon’ble Supreme Court that object of the Act is to punish violators, who inflict indignities, humiliations and harassment against the vulnerable section of the society and thus, the Act is intended to punish acts of upper caste against vulnerable section of society for reason that they belong to a particular community.

18. In ***“Gorige Pentaiah v. State of A.P. & others”***, 2008(4) R.C.R. (Criminal) 171, complaint was filed by number of scheduled castes that accused abused him with the name of his caste, without stating as to whether accused was not a member of the scheduled caste or a scheduled tribe or that he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view. Holding that basic ingredients of offence were missing, the complaint was quashed by the Hon’ble Supreme Court. Same view was taken in ***“Ishwar Pratap Singh v. State of Uttar Pradesh”***, (2018) 13 SCC 612.

19. In the present case, as noticed earlier, neither in the initial version of the FIR nor in any of the subsequently recorded supplementary statements of the complainant nor in the statements of the witnesses recorded under Section 161 Cr.PC, there is any allegation that the complainant Deepak @ Bholu or other injured were members of any scheduled caste or a scheduled tribe or that petitioner committed the

crime having knowledge that complainant belongs to Scheduled Caste or scheduled tribe. To the contrary, complainant Deepak @ Bholu as well as his brother disclosed their caste as Brahmin at the time of their medico-legal examination. Even earlier, when case FIR No.07 dated 06.01.2018 Annexures P8 was registered at Police Station PGIMS, Rohtak under Sections 15 & 20 of the NDPS Act, against the complainant-Deepak, he at the time of his apprehension by the Police, disclosed his caste as Brahman. Simply because of later production of certificate showing complainant-Deepak to be a member of Scheduled Caste, will not attract the penal provision under SC/ST Act, in the absence of any allegation that petitioner-accused committed the crime having knowledge that complainant belongs to Scheduled Caste or scheduled tribe

20. In view of the factual and legal position as discussed above, it is held that Id. ASJ, Rohtak went in error in charge-sheeting the petitioner under Sections 3(2)(v) and 3(2) (va) of the SC/ST Act and therefore, the impugned order dated 02.05.2022 is liable to be set aside to that extent only.

Present petition is disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

11.09.2023

Vivek

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

Yes/No
Yes/No