

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1793-2023

Date of Decision: 25.08.2023

Pawan

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Nitin Sansanwal, Advocate, and
Mr. Baljit Beniwal, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Prayer in this petition is to quash order dated 12.06.2023 passed by Id. Additional Sessions Judge, Palwal, whereby respondents No.2 and 3 have been directed to be charge-sheeted under Sections 323, 325 and 506 read with Section 34 IPC; and not under Section 307 IPC and Sections 3(2)(v) and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short 'the SC/ST Act'] in case FIR No.41 dated 07.02.2020 registered at Police Station Gadpuri, Palwal. Petitioner is the complainant of the FIR.

2. (i) It is contended that it was alleged in the FIR lodged on 07.02.2020 that complainant and his cousin Dhan Singh were present outside their house on 05.02.2020 at about 10.00 AM, when respondents No.2&3 along with others came there armed with sticks and *fawada*, used derogatory language in the name of their caste and caused injuries to Dhan Singh. As complainant tried to save him, respondents & one Gaurav attacked him.

(ii) It is contended that Police filed Challan under Sections 323, 325 and 506/34 IPC, beside Section 3(2)(v) of the SC/ST Act, though offence under Section 307 IPC was also made out. The Court of Id. ASJ, Palwal framed charges under Section 323, 325, 307/34 and 506 IPC and Section 3(2)(v) of SC/ST Act on 13.02.2021, but that order was challenged by respondents No.2&3 by filing CRR-363-2022 before this Court, which was disposed of vide order dated 10.02.2023 with the direction to the Court below to give reasons for framing the charges and thereafter, Id. ASJ, Palwal deleted the charge under Section 307 IPC and Section 3(2)(v) of the SC/ST Act, vide impugned order dated 12.06.2023 and ordered framing of the charges only under Sections 323, 325 and 506 read with Section 34 IPC.

(iii) It is contended by Id. counsel that the impugned order is illegal, as it was the murderous assault, which was made by the respondents fully knowing that complainant party belonged to the Scheduled Caste community and had abused them in the name of their caste and therefore, framing the charges for lesser offence was disproportionate to the gravity to the situation. It is further contended that only *prima facie* case was required to be seen at the stage of framing of the charge, as has been held by Hon'ble Supreme Court in the numerous authorities.

(iv) With these submissions prayer is made for setting aside the impugned order and to direct the Court below to frame the charge also under Section 307 IPC and 3(2)(v) & 3(1)(x) of SC/ST Act.

3. Perusal of the paper-book reveals that as per the allegations made in the FIR (Annexure P1), respondents No.2 & 3 along with others

having sticks and *fawada* in their hand, threatened to kill the complainant party and used caste denoting words. Naresh gave spade blow to Dhan Singh and when complainant Pawan tried to save him, Ashok caused injuries on his shoulder, hand and feet. They were saved by their uncle Parkash.

4. Order dated 10.02.2023 earlier passed by this Court in CRR-363-2022 (Annexure P3), reveals that as per the MLR of the injured, two injuries were caused on the person of Dhan Singh - one on scalp and other on thigh. As per the opinion given by the Medical Board on 13.03.2020, though the injury in question is grievous in nature but not dangerous to life and it is because of this reason that report under Section 173 Cr.P.C. was not filed to prosecute the accused under Section 307 IPC. However, as the trial Court had also framed charge under Section 307 IPC, so the order was challenged before this Court and the Court below was directed to give reasons for framing the charges under various provisions of law including the provisions attracting SC/ST Act.

5. 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”

6. Thus, necessary ingredients to attract the above provision are:

- a) Accused should not be member of Scheduled Caste or a Scheduled Tribe

- b) While committing the offence, accused should have knowledge that the person concerned belongs to Scheduled Caste or a Scheduled Tribe.
- c) Accused commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more.

7. Section 3 (1) (s), regarding abusing a member of Scheduled Caste or a Scheduled Tribe, is as under:

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

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view”

8. As it is clear from the abovesaid provision, the basic ingredients of the offence under Section 3(1)(s) of the Act can be classified as

“1) abusing any member of a Scheduled Caste or a Scheduled Tribe by caste name and

2) in any place within public view”

9. In present case, while passing the impugned order dated 12.06.2023, ld. Additional Sessions Judge, Palwal reasoned as under: -

“6. From the bare perusal of the complaint made by Pawan before the police on 07.2.2020, it transpires that he alleged that when he and his cousin Dhan Singh were standing outside, Naresh son of Indraj, his brother Sukhdev, Deepak, Ashok, Shanti and Gaurav came armed with cudgle and spade and started beating them. He alleged that they even used caste remarks. He was saved by his uncle Parkash. He and Dhan Singh suffered injuries. Dhan Singh was initially taken to Government Hospital Palwal and thereafter referred to Higher Centre and was admitted in D.M. Hospital, Faridabad and prayed that action be taken against the accused persons. It is pertinent that statement of Parkash was also recorded by the DSP on 07.2.2020. Statement of Dhan Singh and other injured was recorded on 22.2.2020. These are three eye

witnesses-cum-injured. I perused the statements of all these three witnesses, they have not uttered a single word that any abusive language was uttered by them, in case any caste remarks were made what are those words. Further there is no averment that many persons were present at the scene of the crime or they were beaten because they belong to SC category. Thus, the basic ingredients for public view are missing. Therefore, a prima facie case under SC/ST Act are not made out. Mere calling of a person by caste, does not attract the provisions of the SC/ST Act.

7. Further, it is observed that injured Dhan Singh who suffered grievous injuries was examined by the medical board comprising of three doctors namely Dr. Deep Kishore, Dr. Mukul and Dr. Naveen, wherein they have opined those injuries sustained by Dhan Singh was grievous in nature and not dangerous to life. The opinion of the board prevails upon the opinion of the Surgeon of a private hospital. Thus, even the offence under 307 of IPC is not made out. Further, as per the MLR, injuries suffered by Pawan is simple. Similarly, Dhan Singh who also suffered two injuries one on vertex of skull stated to be inflicted by some blunt weapon. The prima facie offence punishable under Section 323, 325 and 506 read with Section 34 of IPC are made out, which are triable by the Court of Judicial Magistrate, Ist Class pertaining to P.S. Gaddpuri. Further the offence under Section 307 IPC and Section 3(2) (v) (a) of SC/ST Act are not made out. Hence, file be put up before Learned Chief Judicial Magistrate Palwal on 03.07.2023 with a direction that the Court of Learned CJM may try the case herself or assigned to any other Court of competent jurisdiction. Both the parties are directed to appear before the court of Learned CJM, Palwal on date fixed. Ahlmad is directed to send the case file immediately.”

10. On perusal of the contents of the FIR as well as the impugned order passed by Ld. ASJ, Palwal, it is evident that there was no allegation to the effect that the accused-respondent knew that complainant party belongs to Scheduled Caste. Besides, FIR did not disclose any specific caste related words used by the accused. Not only this, there was no allegation that the alleged words were used in public view. Still further, there was no medical opinion to the effect that the

injury suffered by Dhan Singh was grievous in nature. To the contrary, the opinion of the medical board was that injury was grievous in nature.

11. Having regard to the facts and circumstances, this Court does not find any illegality in the impugned order dated 12.06.2023 passed by ld. ASJ, Palwal.

Dismissed.

(DEEPAK GUPTA)
JUDGE

25.08.2023

Vivek

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

Yes/No
Yes/No