
(2016) 01 JH CK 0093
In the Jharkhand High Court
Case No : W.P.(Cr.) No. 27 of 2013

Annu Sharma and other

APPELLANT

Vs

State of Jharkhand and other

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2016) 2 ECrC 86 : (2016) 2 JBCJ 316

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Anil Kumar, Sr. Advocate, for the Appellant; Jalisur Rahman, J.C. to G.P.III, Navin Kumar Jaiswal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J. - In this writ application, petitioner has prayed for quashing of the entire criminal proceeding in connection with Patratu (Bhurkunda) P.S. Case No. 242 of 2012 dated 10.12.2012 corresponding to G.R. No. 4790 of 2012 pending in the court of learned S.D.J.M., Hazaribagh instituted under sections 341, 323, 504, 506, 500, 379, 34 of the Indian Penal Code and 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

2. It is alleged that the informant, namely, Manoj Kumar was passing through Bhurkunda J.M. College. The accused persons, namely, Annu Sharma and others came on two vehicles and abused the informant by saying "SALA CHAMAR" and threatened to kill him. It is also alleged that the accused persons caught hold the collar of the informant and torn his shirt. During that period itself, the chain of informant fallen in his hand. It is further stated that however, petitioner was rescued by other persons present there. Accordingly, the present case instituted under sections 341, 323, 504, 506, 500, 379, 34 of the Indian Penal Code and

3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and police took up investigation.

3. It is submitted by learned counsel for the petitioner that even if the statements made in the FIR are taken to be true, then also no offence under section 3/4 of the Atrocities Act made out. It is submitted that for constituting an offence under section 3 (1)(x) of the Atrocities Act, it is essential to show that the accused is not a member of scheduled castes or scheduled tribes and the victim is the member of scheduled caste and scheduled tribe. The learned counsel further submitted that it is also necessary that the accused was knowing from before that the victim belongs to the community of scheduled caste and scheduled tribe and even after knowing so if the accused abuse and insult the victim then only offence under section 3(1)(x) of the Atrocities Act made out. It is submitted that in the instant case, the victim is a Vice Chairman of Zila Parishad, Ramgarh. Under the said circumstances, it is not known to the petitioner that he belongs to scheduled caste and scheduled tribe community. In that view of the matter, even if accused had abused him, the offence under section 3(1)(x) of the Atrocities Act is not made out. In this respect, learned counsel for the petitioner relied upon a judgment of Hon''ble Karnataka High Court reported in 2001 Cr. Law Journal 3566.

4. On the other hand, J.C. to G.P. III submits that it is true that in the FIR, the caste of the victim as well as of the accused not mentioned, but the said omission is not fatal for the prosecution case at that stage. He submits that it is well settled principles of law that FIR is not the encyclopedia of entire prosecution case. It is also submitted that the Hon''ble Apex Court in (2009)3 SCC 789 has held that disclosure of the caste of the accused as well as of the victim is a matter of evidence which can be collected by the I.O. and/or Court during the investigation and/or trial. It is thus submitted that on the basis of said omission entire criminal proceeding can not be quashed before investigation and/or trial. Learned counsel further submits that other offences mentioned in the FIR are made out, therefore on that ground also, the entire criminal proceeding cannot be quashed.

5. Sri Navin Kumar Jaiswal, learned counsel appearing for respondent no. 2 submits that in fact the parties had settled their dispute out side the Court, therefore he has no objection if the criminal proceeding be quashed. However, on query, he frankly stated that in the instant case no joint compromise petition filed by the parties.

6. Having heard the submissions, I have gone through the record of the case.

7. In the instant case, in the FIR it is specifically alleged that the accused petitioner Annu Sharma abused the informant by uttering "SALA CHAMAR". However, in the FIR, the name of the caste of the victim and that of the accused has not been mentioned. But the intention of the accused is clear from the aforesaid utterances that he wants to insult the informant. It further appears

that the police had instituted the case under section 3/4 of the Atrocities Act. Therefore, it prima facie appears that the victim belongs to the community of scheduled caste or scheduled tribe, whereas the accused belongs to a community of higher caste. Therefore, the allegation is required to be investigated.

8. In a similar circumstances, three judges bench of the Hon"ble Supreme Court in Ashabai Machindra Adhagale v. State of Maharashtra and others reported in (2009)3 SCC 789 at paragraph no. 12 has held as follows:-

"12. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the court to either accept the same or taken cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe."

9. Thus in view of the above law laid down by the Hon"ble Supreme Court, omission of the caste name of the accused and/or of the victim in the F.I.R. is no ground for quashing the entire criminal case.

10. The next contention of the learned counsel for the petitioner that petitioner was not knowing that the victim belong to scheduled caste community, therefore, no offence made out under section 3/4 of the Atrocities Act, in my view, the said question can be decided by the trial court after collecting all the evidences. Therefore, FIR cannot be quashed at the initial stage and that too before completion of the investigation.

11. From perusal of the judgment of Hon"ble Karnataka High Court (supra), I find that the Karnataka High Court had decided the case in appeal i.e. after completion of trial. The present case has been filed before investigation and still the trial has not commenced. In that view of the matter, the judgment of Hon"ble Karnataka High Court has no application in the facts and circumstances of this case.

12. In view of the discussions made above, I find no merit in this writ application. Accordingly, the same is dismissed.

13. However, in view of the judgment of Hon"ble Supreme Court (supra), it is open for the petitioner to raise all the issue at the appropriate stage.