

(2015) 09 JH CK 0029

In the Jharkhand High Court

Case No : Criminal M.P. No. 3276 of 2013 and I.A. Nos. 1302 of 2014, 4374 of 2015

Bomshankar Jha and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 323, 504

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2015) 4 JLJR 56

Hon'ble Judges : Harish Chandra Mishra, J.

Bench : Single Bench

Advocate : Mahesh Tiwary and Onkar Nath Tiwary, for the Appellant

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State, as also learned counsel for the opposite party No. 2. The petitioners have filed this application for quashing the order dated 22.11.2012 passed by Sri A. Kumar, learned Judicial Magistrate, Madhupur, in T.R. Case No. 578 of 2012, arising out of P.C.R. Case No. 283 of 2010, whereby, the prima facie case has been found against the petitioners for the offence under Sections 323, 504 of the Indian Penal Code and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. The petitioners have also challenged the order dated 7.10.2013 passed by the learned 1st Additional Sessions Judge, Deoghar, in Criminal Revision No. 224 of 2012, whereby, the revision filed against the aforesaid order dated 22.11.2012, was dismissed by the Revisional Court below.

2. The facts of this case lie in a short compass. The complaint case was filed by the opposite party No. 2 against the accused persons in the Court of the learned S.D.J.M., Madhupur, in which, it is alleged that the accused persons assaulted the complainant and also abused her in the name of her caste. The complainant went to the police station to lodge the F.I.R. but no action was taken and thereafter,

she went to the SDPO, Madhupur, and narrated the whole situation, who also did not take any action and thereafter, the complaint was filed, which was registered as P.C.R. Case No. 283 of 2010.

3. The record shows that the statement of the complainant was recorded on solemn affirmation and four witnesses were also examined at the enquiry stage, who supported the case of the complainant and by order dated 30.5.2011, the learned Magistrate found the prima facie offence only under Sections 323 and 504 of the Indian Penal Code against the accused. No prima facie offence was found against the petitioners for the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. The said order was challenged by the complainant by filing revision in the Revisional Court below, which was allowed by order dated 10th July, 2012 passed by the learned 1st Additional Sessions Judge, Deoghar, in which, the Revisional Court gave a finding that on the basis of the materials on record, the offence under Section 3(1)(x), (xi) of the SC/ST (Prevention of Atrocities) Act was also attracted. Accordingly, the order dated 30.5.2011 passed by the learned Judicial Magistrate was set aside and the Court below was directed to pass the order afresh in accordance with law. Thereafter, by the impugned order dated 22.11.2012 passed by Sri A. Kumar, learned Judicial Magistrate, Madhupur, the prima facie offence has also been found for the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, following the order passed by the Revisional Court below. Aggrieved by the said order, the petitioners filed the revision in the Revisional Court below, which was dismissed by order dated 7.10.2013 in Criminal Revision No. 224 of 2012 and these orders have been challenged in the present application.

4. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below, finding the prima facie offence also under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, against the petitioners, is absolutely illegal, in view of the fact that in the complaint petition, it is only stated that after the occurrence, the complainant went to the police station to lodge the F.I.R., but no action was taken and thereafter, she went to the SDPO, Madhupur, and narrated the whole situation, who also did not take any action and thereafter, the complaint was filed. It is submitted by the learned counsel that the statutory procedure prescribed in Rule 5(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, was not followed by the complainant, by giving the information, in writing by post, to the Superintendent of Police, who was required to take action in the matter after making the investigation either by himself or by a Police Officer not below the rank of Deputy Superintendent of Police. It is further submitted that since this procedure has not been followed, the impugned orders cannot be sustained in the eyes of law.

5. Learned counsel for the State, as also learned counsel for the opposite party No. 2 have opposed the prayer, submitting that in the facts of this case, the offence is clearly made out against the petitioners also for the offence under the SC/ST (Prevention of Atrocities) Act.

6. Learned counsel for the complainant has also submitted that this is virtually the second provision of the petitioners, in view of the fact that earlier the revision was rejected by the Court below and in the garb of application under Section 482 of the Cr.P.C., the present application has been filed in this Court, which is not maintainable.

7. Learned counsel for the complainant has also submitted that the other co-accused had moved this Court in Cr. M.P. No. 1798 of 2012, which has been dismissed by the order dated 10.6.2013. Learned counsel accordingly, submitted that this application is only fit to be rejected.

8. Having heard the learned counsels for both sides and upon going through the record, I find force in the submission of the learned counsel for the petitioners that the procedure prescribed under Rule 5(3) of the SC/ST (Prevention of Atrocities) Rules, 1995, has not been followed by the complainant, and she has filed the complaint case without following the statutory requirement.

9. Rule 5(3) of the SC/ST (Prevention of Atrocities) Rules, 1995, reads as under:--

"5. Information to Police Officer in-charge of a Police Station.--(1) -----.

(2) -----.

(3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer-in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that police station."

10. A bare reading of this Rule clearly shows that in case of refusal on the part of an Officer-in-charge of a Police Station to record the information, the informant is required to send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who after investigation either by himself or by a Police Officer not below the rank of Deputy Superintendent of Police, shall direct an Officer-in-charge to institute the police case. The said Rule 5(3) of the aforesaid Rules is statutory in nature and is required to be followed.

11. This apart, Rule 7 of the said Rules also prescribes that the offences under the SC/ST (Prevention of Atrocities) Act has to be investigated upon by a Police Officer not below the rank of Deputy Superintendent of Police, to be appointed for that purpose.

12. In the facts of this case, I am of the considered view that since the procedure prescribed Rule 5(3) of the SC/ST (Prevention of Atrocities) Rules has not been followed by the complainant, the impugned order finding the prima

facie offence for the offence under the SC/ST (Prevention of Atrocities) Act, against the petitioners, cannot be sustained in the eyes of law.

13. The submission of the learned counsel for the opposite party No. 2 that the criminal miscellaneous petition No. 1798 of 2012 filed by the other co-accused has been dismissed, is of no consequence, in view of the fact that the certified copy of the said order produced by the learned counsel clearly shows that the said criminal miscellaneous petition was dismissed in limine by this Court without considering the point of law involved in the instant case.

14. Accordingly, the impugned order dated 22.11.2012 passed by Sri A. Kumar, learned Judicial Magistrate, Madhupur, in T.R. Case No. 578 of 2012, arising out of P.C.R. Case No. 283 of 2010, so far as it finds the prima facie offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, against the petitioners, is hereby, quashed. It is made clear that the other portion of the impugned order, whereby, the prima facie offence under Sections 323 and 504 of the Indian Penal Code has been found against the petitioners, is not being interfered with. Accordingly, the order dated 7.10.2013 passed by the learned 1st Additional Sessions Judge, Deoghar, in Cr. Revision No. 224 of 2012, is also hereby, quashed. This application is, accordingly, allowed. Consequently, both the aforesaid interlocutory applications also stand disposed of.