

(2010) 10 AHC CK 0097

In the Allahabad High Court

Case No : Criminal M. Application No. 31263 of 2010

Brijendra Gupta alias Pappu and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 342, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 1 ACR 1000 : (2011) 7 RCR(Criminal) 760

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Judgement

Ravindra Singh, J.—Heard Sri S.D. Kautilya, learned Counsel for the applicants, learned A.G.A. for the State of U.P.

2. This application has been filed by the applicant Brijendra Gupta alias Pappu, Rahul and Rajiv with a prayer to quash the proceedings of Criminal Case No. 2766 of 2009 arising out of Case Crime No. 569 of 2009 under Sections 323, 342 and 506, I.P.C. and 3(1)(ix), S.C./S.T. Act, Police Station Sadar Bazar, district Meerut, pending in the court of learned Additional Chief Judicial Magistrate, VI Ith Meerut.

3. It is contended by learned Counsel for the applicants that in the present case, the allegation has been made against the applicants that the first informant went to the house of the applicant Brijendra Gupta alias Pappu at his Green Farm House, near Abulen to realize his labour charges, he was beaten and he was asked to leave the place, about two months prior to the commission of the alleged offence, he again went to the Farm House on 5.9.2009 alongwith his friend Sanjay Gautam, he was called by the applicant Brijendra Gupta alias Pappu inside the Farm house, he alongwith his son Rahul and

gunner Rajiv did the marpeet with the first informant and asked to disclose his caste then the first informant disclosed his caste as Jatav, thereafter he was

abused by caste name and by saying that he was calling the name of Km. Mayawati, he was beaten and illegally detained since 5 p.m. to 8.00 p.m. then the friend of the first informant, namely, Sanjay Gautam shouted loudly at the gate, he came in his rescue, then he was released from the clutches of the applicants prior to that, he was called to rub the nose on the earth and he was extending the threats of committing his murder. The alleged occurrence has taken place inside the Farm House, it does not attract the provision of Section 3(1)(x) of S.C./S.T. Act in which the applicants have been charge-sheeted because the place where the alleged occurrence has taken place was not within the public view, Section 3(1)(x) of S.C./S.T. Act read as under:

Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

Only on account of submitting the charge-sheet u/s 3(1)(x) of S.C./S.T. Act, the offence has become triable by the Court of Sessions, it shall be tried by Special Judge, S.C./S.T. Act whereas the other offences punishable under Sections 323, 342 and 506, I.P.C. in which the applicants have been charge-sheeted are triable by the court of Magistrate, therefore, the charge-sheet submitted against the applicants may be quashed.

4. In reply of the above contention, it is submitted by learned A.G.A. that there is no dispute in respect of submission of the charge-sheet under Sections 323, 506 and 342, I.P.C., the charge-sheet in part cannot be quashed on the basis of the material collected by Investigating Officer prima facie the offence has been committed. So far as the constitution of the offence punishable u/s 3(1)(x) of S.C./S.T. Act is concerned, it shall be considered by learned Magistrate concerned at the time of committal of the case to the court of Special Judge and it shall be again considered in strict sense at the time of framing of the charge only on the basis of the submission made by learned Counsel for the applicant that no offence u/s 3(1)(x) of the S.C./S.T. Act is made out, the charge-sheet may not be quashed as well as the proceedings arising out of the charge-sheet submitted by the Investigating Officer.

5. Considering the facts, circumstances of the case, submission made by learned Counsel for the applicant, learned A.G.A. and from the perusal of the record it appears that in the present case, the charge-sheet has been submitted under Sections 323, 342, 506, I.P.C. and 3(1)(x) of S.C./S.T. Act, the submission made by learned Counsel for the applicant is that no offence u/s 3(1)(x) of S.C./S.T. Act is made out whereas there is no dispute with regard to the constitution of the offence punishable under Sections 323, 342 and 506, I.P.C. The first informant of this case has been medically examined on 9.9.2009. According to the medical examination report, he had sustained six injuries, all the injuries were caused by hard and blunt object. So far as the submission made by learned Counsel for the applicant with regard to the constitution of the offence u/s 3(1)(x) of S.C./S.T. Act is concerned, it shall be considered by the Special Judge at the time of framing of the charge or it may be considered in case the applicants move the

discharge application before the Court concerned, even if the submission made by learned Counsel for the applicant is accepted, the charge-sheet cannot be quashed because it has been submitted under Sections 323, 342 and 506, I.P.C. also, therefore, the prayer for quashing the charge-sheet as well as the proceedings arising out of the charge-sheet submitted by Investigating Officer is refused.

6. However, considering the facts and circumstances of the case, it is directed that in case the applicants appear before the Court concerned within 30 days from today and apply for bail, the same shall be heard and disposed of in view of *Amarawati and Another (Smt.) Vs. State of U.P.*, which has been approved by Hon"ble Apex Court in *Lal Kamendra Pratap Singh Vs. State of U.P. and Others*, and for a period of 20 days from today, no coercive steps shall be taken against the applicants.

7. It is further directed that in case the applicants move the discharge application at the appropriate stage or raise objection at the time of framing of the charge, the same shall be heard and disposed of in accordance with the law.

With the above directions, this application is finally disposed of.