

(1999) 09 PAT CK 0164

In the Patna High Court

Case No : Criminal Miscellaneous No. 1379 of 1999

Chandrama Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4), 17
Criminal Procedure Code, 1973 (CrPC) — Section 202, 348, 482
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 503
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 18, 2(1)(a), 2(1)(f), 3

Citation : (2000) 1 PLJR 571

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Rana Pratap Singh and Nagendra Kumar Singh, for the Appellant;
Kameshwar Prasad Singh for the State of Bihar and M/s. Ram Balak Mahto, Tej
Narain Singh, S.P. Singh and A.K. Singh for the O.P. No. 2, for the Respondent

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the parties. This is an application u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for quashing the order dated 25.9.1998 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur, whereby he has taken cognizance for offences under sections 147, 148, 323 and 307 of the Indian Penal Code and section 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") on a complaint petition filed by opposite party no. 2 against the petitioners.

2. The gist of the allegations in the complaint petition is that on 27.8.1998 at about 9.00 A.M. the alleged occurrence took place in village Chakiyaz (Desari) in the district of Vaishali. The complainant has claimed that he is servant of petitioner, Chandrama Singh, since about one year at a monthly salary of Rs. 500/- besides food and clothes. It has further been alleged in the complaint that the complainant on the date and time of occurrence demanded from accused

Chandrama Singh, his six months salary amounting to Rs. 3,000/- which was due, for repairing his house and also wanted leave for going to his home, upon this allegedly Chandrama Singh said that he had no money at that time and he was not prepared to grant leave to the complainant. The complainant then offered to quit the work and asked for his entire dues and upon this all other accused persons who are all family members of accused Chandrama Singh abused the complainant using the term Harijan and upon orders of Chandrama Singh, he was assaulted by all accused persons. Chandrama Singh is alleged to have used a Hasua causing injury below the neck and other accused persons used Lathi on back and other parts of complainant's body. During the assault, the villagers are said to have arrived and saved the complainant, who somehow came to Hajipur and got himself treated by a private doctor with the help of one Sanjay Singh of neighboring village. It was further alleged that complainant is a member of Scheduled Caste and the accused persons do not belong to Scheduled Caste. It was further alleged that local police was under the influence of the accused persons. Hence, the complaint petition was filed on 28.8.1998 along with injury report given by a private doctor.

3. It appears that the complainant was examined on solemn affirmation and thereafter in an inquiry u/s 202 of the Code, three witnesses were examined including Dr. Ashok Kumar Singh, who opined that injury no. 1, incised wound 3"x1/4" muscle deep just below neck left side, was dangerous to life caused by a weapon like Hasua and rest injuries were caused by hard and blunt substance and were simple in nature. After inquiry u/s 202 of the Code, learned Chief Judicial Magistrate by the impugned order took cognizance as aforesaid and directed for issuing summons against the accused persons for appearance and commitment.

4. On behalf of the petitioners the impugned order was challenged on three grounds. Firstly that in a case under the Act the power of trial by virtue of section 14 of the Act is vested in a Special Court which is a specified court of session for each district and hence even the power to take cognizance or to hold inquiry etc. shall vest in the Special Court notified u/s 14 of the Act. Secondly, it was submitted that in the facts of the case, the allegations did not make out any offence u/s 307 of the Indian Penal Code and thirdly it was argued in some detail that in fact no offence is made out u/s 3(x) of the Act and hence, the case should not be committed to Special Court under the Act for trial.

5. So far as the first contention is concerned, it is an admitted position that at least in two Division Bench judgments- Jhagru Mahto Vs. State of Bihar and Another, and 1997 (1) PLJR 334(Haresh Kumar Singh vs. Union of India), this Court had held that since the Act does not provide for any procedure to be adopted by the Special Court for trial of offences under the Act, therefore, the general procedure laid down under the Code have to be followed and further that as no power has been conferred upon Special Court to take cognizance of an offence, hence all the provisions of the Code with regard to investigation, inquiry

and trial will be applicable to cases under the Act, except with regard to the matter for which specific provisions have been made under the Act and further that only those provisions of the Code which have been excluded from application shall not be applicable with regard to the offences under the Act.

6. Learned counsel for the petitioners submitted that in the aforesaid judgments of this Court it was not canvassed and considered that the word "try" and "trial" can have a different meaning than what is usually understood. Usually the word trial in criminal cases means a post inquiry stage but it was submitted that since the word "trial" has not been defined, hence, in different context it may have different meaning and the context in which it has been used in section 14 of the Act, it should be given a wider meaning so as to include even the stage of inquiry and cognizance. For this proposition, reliance was placed upon a judgment of Supreme Court reported in *The State of Bihar Vs. Ram Naresh Pandey*, specially paragraph 6 of the said judgment where the court, by considering the provisions of section 494 of the Criminal Procedure Code of 1898 which related to power and procedure of withdrawal of prosecution by a public prosecutor, held that there is no reason as to why these words where they are used in another context in the Code should necessarily be limited in their connotation and consequence. In that background, it was held that they are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provisions under consideration.

7. The aforesaid decision of the Supreme Court was rendered in the context of provisions of the Code and not with regard to the provisions of any special Act. In the present case, the special Act does not give any power of taking cognizance to the special Judge whereas such power can be found in some other special Acts such as Prevention of Corruption Act. In the Prevention of Corruption Act, by specific provision Special Judge under the said Act has been conferred with power to take cognizance of offences under that Act. Learned counsel for the petitioners, in my view, wrongly placed reliance upon judgment of the Supreme Court in the case of *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, . In that case, the Supreme Court after examining the provisions of the Prevention of Corruption Act as amended by Criminal Law Amendment Act (46 of 1952) came to a conclusion that the Special Judge under that Act is a court of original criminal jurisdiction and as such, it shall have all the powers as any court of original criminal jurisdiction has under the Code, except those specifically excluded. So far as the provisions of the Act are concerned, they do not vest the Special Judge with powers of original criminal jurisdiction and hence, the judgment of the Apex Court in the case of *A.R. Antulay* (supra) can be of no help to the proposition advanced on behalf of the petitioners in this case. The context in which the word "trial" and "try" have been used in section 14 of the Act do not require giving any wider meaning to these terms so as to vest the Special Judge with powers of original criminal jurisdiction specially when the legislature has made its intention clear by not vesting the Special Judge with the power of taking cognizance.

8. Thus, in spite of taking note of the aforesaid Supreme Court judgments, it is clear that the law laid down by this Court in the case of Jhagru Mahto vs. State of Bihar (supra) and Haresh Kumar Singh vs. Union of India (supra) is correct and requires no further consideration.

9. With due respect to learned Judges of Kerala High Court I am not persuaded by their views in the judgment reported in 1993 Cr. L.J. 760 (In Re: Director General of Prosecution) on which reliance was placed on behalf of the petitioners.

10. So far as the contention that section 307 of the Indian Penal Code is not made out on the allegations made in this case is concerned, in my view, it is not appropriate to examine this submission at this stage because it can be more properly appreciated by the concerned court at the stage of framing of charges. Hence, this submission is left undecided with observation that the petitioners shall have liberty to raise the same at the stage of framing of charges.

11. The third and the last submission which has been most strenuously canvassed on behalf of the petitioners is that provisions of section 3(x) of the Act have been wrongly applied in this case and they are not at all attracted in the facts of the case. It has further been submitted that since this question is directly related to jurisdiction of the court which shall try the case, hence, this is the appropriate stage at which this issue needs to be decided.

12. With regard to the aforesaid contention it has first been submitted that the Act is a penal statute and provides enhanced punishment than what is normally provided for similar offences under the Indian Penal Code and contains stringent provisions such as forfeiture of property of certain persons (section 7), presumption to offences (section 8), extenuation (Chapter 111) and making section 348 of the Code non-applicable to persons accused of having committed an offence under the Act (section 18). Therefore, section 3 of the Act requires strict interpretation and unless an offence described u/s 3 which alone amounts to "atrocities" as defined under the Act, is strictly made out, no cognizance should be taken of any offence under the Act.

13. Before examining the aforesaid contention it is relevant to note that historically the scheduled castes and scheduled tribes in India had suffered social discrimination, the most reprehensible aspect of which was practice of untouchability and, therefore, in the Constitution of India, the scheduled castes and scheduled tribes were given a special protection as is apparent from Article 15(4) of the Constitution of India. Article 17 of the Constitution of India abolished "untouchability" and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" was made an offence punishable in accordance with law. In order to effectively check the practice of "Untouchability" and its resultant disabilities, the Parliament enacted The Untouchability (Offences) Act, 1955" and the said Act was renamed as the Protection of Civil Rights Act, 1955 and is a modified version of the earlier Act. The term "Untouchability" was not defined in the Constitution or even in the

Protection of Civil Rights Act and for various reasons it could not be effective in its purpose. Moreover, it appears that instead of evil of untouchability the evil of atrocities upon the scheduled castes and scheduled tribes became very noticeable and hence, the Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the Act atrocity has been defined in section 2(1) (a) to mean an offence punishable u/s 3. Section 3 provides punishment for offences of atrocities whenever such an offence is committed by the person not being a member of a scheduled caste or scheduled tribe upon a person who is such a member. An offence u/s 3(1) (x) reads as such:

Who-ever, not being a member of a scheduled caste or a scheduled tribe intentionally insults, or intimidates with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to 5 years and with fine.

14. Section 2(1) (f) provides that words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code shall have the meanings assigned to them respectively in the Code, or as the case may be in the Indian Penal Code. However, section 503 of the Indian Penal Code defines criminal intimidation and as per section 506 of the Indian Penal Code, the punishment of criminal intimidation is imprisonment of either for a term which may extend to 2 years, or with fine or with both.

15. As noticed above section 3(1) (x) has a minimum punishment of six months which may extend to 5 years and with fine. Thus, it has been rightly submitted on behalf of the petitioners that the Act contains more stringent provisions and carries higher punishment than for similar offences under the Indian Penal Code. This is more clear from the offences and punishments mentioned in section 3(2) of the Act. Hence, in my view, the courts while taking cognizance under the Act have to be more careful in examining the allegations as well as the materials in support of such allegations with a purpose to find out whether all the ingredients of the offences described under the Act have been made out or not. This view of mine also gets support from a Division Bench judgment of this Court in the case of Haresh Kumar Singh vs. Union of India (supra) wherein after holding the provisions of the Act intra vires, in last paragraph of the said judgment, it was observed that no doubt the Act has been enacted primarily to protect the scheduled caste and scheduled tribe members from atrocities committed by the persons who are not such members but it does not mean that the prosecution under the Act should be launched by the police in a casual manner. It was further observed that unless a prima facie case is made out under the provisions of the Act, the cases should not be registered under the Act.

16. The aforesaid observation meant for the police at the time of registering of cases, in my view, will be applicable with greater force with regard to the complaint cases and at the stage of cognizance whereafter as a result of such cognizance the case in which cognizance is taken for any offence under the Act,

the provisions of the Act have to be followed in all rigour. In this case, it has been strongly argued that upon reading of the whole complaint, it is clear that the alleged insult or intimidation was allegedly with intent to avoid paying the due wages and with intent to refuse the leave asked for by the servant-complainant and hence, on the allegations made in the complaint, there was no intent to humiliate the complainant. Secondly, it was submitted that to attract the offence in question the alleged intentional insult or intimidation with necessary intent to humiliate a member of scheduled caste or scheduled tribe must take place or occur in any place within public view. It has been submitted that as appears from the complaint petition the occurrence took place at the house of the complainant's master where he had allegedly gone to ask for due salary and leave and even the witnesses are said to have arrived only at the stage of alleged assault so as to save the complainant from further assault. On these facts it has been submitted that no case of intentional insult or intimidation along with necessary intention of humiliation had occurred in any place within public view.

17. From a careful reading of the complaint petition I find that the place of occurrence as given out at the top of the complaint petition is merely the name of the village and even in the body of the complaint there is no specific mention as to where complainant had actually gone and met the accused Chandrama Singh. The deposition of two witnesses of the alleged occurrence as made during the course of inquiry has also not been annexed with this application. In such circumstances, in my view, it is not possible for this Court to come to a definite finding as to whether on the allegations made and materials produced for the purposes of cognizance the alleged occurrence occurred at any place within public view or not. However, so far as the alleged intent is concerned, in this case from the complainant's version itself it is clear that the intention of the accused persons was not to pay his due wages and to deny him leave. The entire occurrence allegedly took place for this reason and intent and not with an intention to humiliate the complainant, a member of scheduled caste. Hence, in my view, on the aforesaid consideration even prima facie no offence u/s 3(1) (x) of the Act is made out against the accused persons although on the allegations, the offences of assault etc. under the Indian Penal Code are made out at least prima facie.

18. In the result, this application succeeds in part only. The impugned order is accordingly quashed only to that extent by which cognizance has been taken u/s 3(x) of the Act. Rest of the order taking cognizance, in my view, does not suffer from any illegality so as to warrant interference at this stage. However, as observed earlier, it will be open for the petitioners to raise question regarding applicability or otherwise of section 307 of the Indian Penal Code at the stage of framing of charges. With the aforesaid observations and directions, this application is disposed of.