
(2010) 02 JH CK 0076
In the Jharkhand High Court

Girinath Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 307, 323, 341
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2010) CriLJ 4006

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed for quashing the entire criminal prosecution of Garhwa P.S. case No. 58 of 2007 (G.R. No. 232 of 2007) including the order dated 6.1.2009 passed by the learned Chief Judicial Magistrate, Garhwa whereby and whereunder cognizance of the offence under Sections 147, 504, 342 and 323 of the Indian Penal Code and also u/s 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act which in place of Section 3(i)(x) of the Act seems to have been wrongly recorded, was taken against the accused persons including all the petitioners.

2. The facts giving rise this application are that the informant, a member of the Scheduled Caste community, lodged first information report alleging therein that while he was coming from his village along with his friend, he was accosted in the way by number of accused persons including the petitioners and was brought in a room where he was intimidated, assaulted, insulted and was abused. On the said allegation, he lodged a first information report which was instituted under Sections 147, 149, 323, 307, 341 and 342 of the Indian Penal Code and also u/s 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The police in course of investigation did not find allegation to be true and hence, submitted final report exonerating all the accused persons. However, learned

Chief Judicial Magistrate, Garhwa, vide his order dated 6.1.2009 did record that sufficient materials are there showing commission of the offence by the accused persons and thereby, took cognizance of the offences under Sections 147, 504, 342 and 323 of the Indian Penal Code and also u/s 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in spite of the fact that the informant did place on the record before taking cognizance that the matter has been compromised in between the parties.

3. Being aggrieved with that order, this writ application has been filed.

4. Learned Counsel appearing for the petitioners submits that though the court took cognizance of the offences u/s 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act besides offences under Sections 147, 504, 342, 323 of the Indian Penal Code but the provision of law seems to have been wrongly recorded as Section 3/4 in place of Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, taking the allegation made in the first information report to be true, no offence is made out u/s 3(i)(x) or any other provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as it is not the case of the informant that the informant was insulted or intimidated within the public view rather it is the case of the prosecution that he was abused insulted and intimidated in a room and as such, the court erred in law in taking cognizance of the offence under the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. Learned Counsel appearing for the petitioners further submits that the court should not have taken cognizance of the offence under Sections 147, 504, 342 and 323 of the Indian Penal Code, firstly on account of the fact that the Investigating Officer did not find allegation to be true and secondly, the matter had been compromised in between the parties. However, since the cognizance has been taken, there was no option for the petitioners but to move to this Court for quashing the entire criminal proceeding as the matter has already been compromised in between the parties despite one of the offences e.g. Section 147 of the Indian Penal Code being non-compoundable but as the offences under the Indian Penal Code can be said to be a personal in nature and that no offence is made out under any of the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the question of involvement of any public policy does not arise and, hence, the entire case in view of the ratio laid down in a case of Madan Mohan Abbot Vs. State of Punjab, is fit to be set aside.

6. Learned Counsel for the informant has also admitted that the matter has been compromised in between the parties.

7. Having heard learned Counsel appearing for the parties, I do find that though the police after investigating the case did not find allegation to be true, still the court took cognizance of the offences under Sections 147, 504, 323, 342 of the Indian Penal Code besides the offence u/s 3 of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act but taking the allegation relating to the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to be true, it does not constitute any offence under the said Act as the accused persons are alleged to have intimidated and abused the informant in a room and not within the public view and; therefore, the offence u/s 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would not be attracted.

8. In that view of the matter, cognizance taken under the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is quite bad and hence, it is set aside.

9. Going further in the matter, I do find that parties have compromised the case relating to the offence under Sections 147, 504, 342 and 323 of the Indian Penal Code which offences appear to be personal in nature not involving any public policy and, therefore, it would be wastage of the time to prosecute the petitioners as there would be no possibility of any result in favour of the prosecution.

10. Under this situation it would not be in the Interest of justice to allow the petitioner to be prosecuted, rather the proceeding would be fit to be quashed as no public policy is involved in the nature of the allegation made by the informant.

11. The aforesaid proposition has been laid down by the Hon''ble Supreme Court in a case of Madan Mohan Abbot v. State of Punjab (supra) wherein it has been observed as follows:

We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

12. In view of the facts and circumstances, the entire criminal prosecution of Garhwa P.S. case No. 58 of 2007 including the order taking cognizance is hereby quashed so far the petitioners are concerned.

13. In the result, this application is allowed.