
(2006) 08 P&H CK 0464
In the Punjab And Haryana At Chandigarh

Gorkhi Ram and Others	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 150
Penal Code, 1860 (IPC) — Section 323, 452, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4, 5

Citation : (2006) CriLJ 4385 : (2006) 4 RCR(Criminal) 356

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Judgement

T.P.S. Mann, J.—Challenge has been Laid by the petitioners to the order dated 6.4.2001 passed by Chief Judicial Magistrate, Faridabad, whereby they have been summoned to be proceeded against as accused u/s 323/452/506, IPC and Sections 3, 4 and 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in short referred to as "the Act".

2. CompLainant Ram Par shad, present respondent No. 2, filed the compLaint with the allegations that he belonged to a scheduled caste, whereas accused Gorkhi Ram did not belong to either a scheduled caste or a scheduled tribe and proLaimed himself to be of a superior caste. The compLainant was threatened and beaten by accused Gorkhi Ram, his wife and two sons repeatedly. So much so, proceedings u/s 107/150, Cr.P.C. were taken up against the accused at the instance of the compLainant and they were directed to enter into a bond for keeping peace and be of good behavior. This annoyed the accused, who started saying that the compLainant shall be thrown out of the colony. A couple of days before, accused Gorkhi Ram said certain objectionable words in respect of the compLainant and further that he would not allow him to live in his neighborhood. On 1.3.2001 at 6.00 p.m., Sunil Kumar, son of the compLainant was listening to the music on T.V., when accused Gorkhi Ram trespassed into the house of the compLainant. While taking the T.V. with him, accused Gorkhi Ram proLaimed

that the persons belonging to scheduled caste had no right to listen to music in his neighbourhood. When the compLainant and his wife requested him not to do so, he got enraged and summoned his wife and two sons, who also came attracted to the scene and abused the compLainant by calling him by his caste in a derogatory manner. Further that the accused told the compLainant and his family that if any member of his family was seen in the morning or in day time, he shall be beaten up severely as it spoiled their entire day besides bringing bad luck to them. According to the compLainant, the comments passed by the accused hurt his sentiments. It was also alleged that though the compLainant had obtained an injunction against Gorkhi Ram accused restraining him from constructing the wall illegally and interfering in his peaceful possession, but the injunction order was not obeyed by the accused as they were still raising a wall by saying that they did not want to see the face of the compLainant.

3. When called upon to lead preliminary evidence in support of his case, the compLainant examined himself as P.W. 1, besides examining Smt. Pappi Devi as P.W. 2, Narender Singh as P.W. 3 and Narain Dass as P.W. 4.

4. After perusing the compLaint and going through the preliminary evidence the Magistrate summoned the petitioners for the offences as mentioned above.

5. The petitioners challenged the aforementioned order of summoning on the ground that the alleged act of insult must be shown to have been committed in any place within the public view and only then the offence under the Act could be said to be made out. Here in the present case, the allegations were that the petitioners entered the house and abused the compLainant and his family members. There was no mention anywhere in the compLaint that the act was committed in any place within the public view.

6. Notice of the petition was issued and respondent No. 2 appeared and filed his reply. It was submitted that all the ingredients of the relevant Sections of the aforementioned Act were made out and in any case it will depend upon the evidence which would be adduced before the trial Court, to find out as to whether offence was made out or not. At the time of the arguments, learned Counsel for the respondent No. 2 referred to the statement of Narender Singh recorded during the preliminary evidence as P.W. 3, wherein it was shown that upon hearing the commotion, he was also attracted to the house of the compLainant and he witnessed the accused abusing the compLainant and his family members by suing derogatory remarks in respect of their caste.

7. I have heard the arguments of the counsel representing the parties and gone through their pleadings.

8. Perusal of the compLaint shows that the entire occurrence had taken place within the four walls of the house of the compLainant. It was nowhere alleged that any person from the neighborhood was attracted. No reference was made that Narender Singh, who was residing in the neighbourhood of the compLainant came present and witnessed the occurrence or heard the accused using the

derogatory remarks.

9. The basic requirement of commission of an offence u/s 3(1)(x) of the Act is that the same should be done in any place within public view. The provision reads as under:

3. Punishment for offences of atrocities:

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,?

(i) xxx xxx xxx (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

10. In the present case, the basic ingredients of the offence is missing. The entire occurrence had taken place within the bounded area of the house of the complainant and not in any place within public view. The statement of Narender Singh recorded as P.W. 3 is clearly an after-thought as no reference was made about his presence by the complainant at the time when the alleged occurrence had taken place. When the complaint was filed it was not stated that said Narender Singh had witnessed the alleged occurrence.

11. In view of the above, no offence Under Sections 3, 4 and 5 of the Act, is made out. In fact, no allegation or reference is there in the complaint about commission of offences Under Sections 4 and 5 of the Act.

12. Counsel for the petitioners further contended that there was delay of seven days in filing the complaint and further that petitioners were being falsely implicated for offences Under Sections 323, 452, 506, IPC.

13. There is no material on the record to show that the petitioners have been falsely implicated for the aforementioned offences of IPC. It would be seen only at an appropriate stage when the parties lead their respective evidence before the trial Court that a finding could be given as to whether or not the petitioners had been falsely implicated.

14. In view of the above, the present petition is accepted to the extent that no offence Under Sections 3, 4 and 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out against the petitioners. However, the petition qua the remaining offences Under Sections 323, 452, 506, IPC is dismissed with liberty to the petitioners to take all the pleas available to them at an appropriate stage.