

(2011) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : C.R.M. No. M- 6269 of 2010

Jai Parkash and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 216, 323, 482
Penal Code, 1860 (IPC) — Section 323, 325, 326, 34, 452
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1), 4

Citation : (2011) 3 RCR(Criminal) 217

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—This is a petition u/s 482 Cr.P.C seeking quashing of the order dated 15.02.2010 passed by the Court of learned SDJM, Naraingarh (P9) adding the offence u/s 3/4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 under the provisions of Section 216 Cr.P.C as well as order dated 15.02.2010 committing the case to the Court of Sessions for trial under the provisions of Section 323 Cr.P.C for afresh trial in case FIR No. 178 dated 01.12.2003 under Sections 325, 323, 326, 452, 506, 34 IPC, Police Station Naraingarh.

2. Facts, in short, are that a cross fight took place in the area of police Station Naraingarh on 30.11.2003 at 1.30 pm, in which, Ram Lal (from the side of now complainant party) and Jai Parkash (petitioner No. 1) from the accused party received injuries. The statement of Ram Lai was recorded by ASI Deepak Kumar on 01.12.2003 at 12.00 pm prima facie disclosing the offence u/s 323, 452, 506, 34 IPC against the accused party i.e. petitioner Nos. 1 to 4 on the basis of which the present case was registered vide FIR No. 178 dated 01.12.2003. Since during the course of same occurrence, Jai Parkash (petitioner No. 1) also received grievous injury as per MLR No. SKS/03/09 dated 30.11.2003, conducted at

General. Hospital, Naraingarh and after X-ray examination, injury was declared as grievous disclosing prima facie offence u/s 325, 323, 34 IPC against Ram Lal complainant on the basis of the statement made by Jai Parkash before ASI Deepak Kumar at G. H Naraingarh Rapat No. 12 dated 30.11.2003 was incorporated with regard to the statement of Jai Parkash disclosing the offence u/s 325, 323, 34 IPC against the complainant party. However, no separate FIR was registered against the complainant party but investigation was carried out in the same FIR No. 178 being across version of the incident. The police prepared the report u/s 173 Cr.P.C for offences u/s 325, 323 IPC against Ram Lal complainant dated 14.03.2004 which was presented in the Court on 23.03.2004. Similarly, the police presented the report u/s 173 Cr.P.C against the petitioners for offences u/s 326, 325, 323, 452, 506, 34 IPC, vide challan sheet dated 14.03.2004 i.e. of the same date. The learned Trial Court proceeded to frame charge for offences under Sections 326, 325, 323, 506, 34 IPC against the petitioners after hearing the prosecution as well as the complainant on the question of charge. Similarly, in the cross case, charges under Sections 325, 323 IPC was framed against Ram Lal complainant for voluntarily causing grievous hurt to Jai Parkash-petitioner. Thereafter, the petitioner moved an application u/s 216 Cr.P.C for amendment of the charge. The trial Court vide order dated 15.02.2010 framed the charges u/s of SC/ST Act and in exercise of the power under the provisions of Section 323 Cr.P.C committed the case for trial to the Sessions Court i.e. the District and Sessions Judge, Ambala.

3. While praying for quashing of the impugned order-dated 15.02.2010, learned counsel for the petitioner contended that Ram Lal had approached this High Court vide CRM M 11305 of 2004 by way of petition u/s 482 Cr.P.C for addition of offence punishable under the provisions of SC/ST Act. However, the aforesaid petition was disposed of vide order dated 23.04.2004 with a direction to the Superintendent of Police, Ambala to consider the application dated 11.12.2003 and to dispose of the same one way or the other in accordance with law. The Superintendent of Police, Ambala, thus, carried out an independent inquiry with regard to addition of offence punishable under the provisions of SC/ST Act and came to the conclusion that in compliance of the order dated 23.04.2004 passed by this High Court an inquiry was conducted with regard to the addition of offences under the provisions of SC/ST Act. However, the provisions of SC/ST Act were not found to be applicable in this case. Thus, no challan was filed u/s 3/4 of the SC/ST Act. Even, charges were not framed under the said offence. The Superintendent of Police, Ambala who conducted an independent inquiry in pursuance to the direction of this Court given in CRM M 11305 of 2004 came to the conclusion that the provisions of SC/ST Act were not even to be applicable in the present case. Further, the trial /Court has wrongly interpreted the words "Sale Chamar Churon Ko Jan Se Mar Do " by reading it to attract the provisions of Section 3(1)(x) of the Act. Moreover, a period of more than six years have passed from the filing of the challan, framing of the charge under the SC and ST Act at this stage is nothing but an abuse of law.

4. Reply has been filed by respondent No. 2. As per the reply, the order of the Sub Divisional Judicial Magistrate is perfectly legal, valid and in accordance with law and no interference is warranted. It is further stated in the reply that these words were there in their statements recorded under Sections 161, Cr.P.C by the Police, but the Local Police Sent the challan without adding provision of Sections 3 and 4 of SC/ST Act. The statements of the complainant were further fortified by the other PWs.

5. Besides, it was a well settled law that after recording of the statement of the complainant and other witnesses before the trial Court, charges can be amended. Thus, the charges were amended at the appropriate stage. The fact that as to whether the offence under the SC/ST Act is made or not is the subject matter of the trial and the proceedings for the same should not be quashed without allowing the respondent an opportunity to prove it.

6. Respondent State too made similar submissions. Heard.

7. The FIR was registered in the year 2003. Challan was filed on March, 2004. Charges were framed on 17.05.2004. Respondent/ complainant had filed CRM M 11305 of 2004, praying for addition of the offence punishable under the provisions of SC/ST Act. However, the same was disposed of with direction to the Superintendent of Police, Ambala to consider the application dated 11.12.2003 and dispose of the same one way or the other in accordance with law. After inquiry, the Superintendent of Police found that no offence under the provisions of SC/ST act was made out. Hence, no charges under the SC/ST Act were framed. Respondent/ complainant made a statement on 20.12.2004 before the Court. Subsequently, on the basis of the same, the application u/s 216 Cr.P.C was moved as late as on 08.01.2007. Thereafter, the charges were framed u/s 3(1)(x) of the SC/ST Act after six years of the filing of the challan as well as framing of the charges.

Besides the above facts, the words on the basis of which offence u/s 3(1)(x) of the SC/ST Act were added read as under :-

Sale Chamar Churon Ko Jan Se Mar Do.

8. These words have been construed by the learned trial Court as "Bastard Chure Chamar be Taught lesson.

9. There is no dispute that the word "Sale" does not mean "bastard". Thus, the only question herein is as to whether the words "chure Chamar" can be termed as castist and whether a simply addressing a person by his caste without any insult or intimidation would constitute an offence under the SC/ST Act.

10. The Single Judge of the Delhi High Court, while dealing with the precise question in the case of Mukesh Kumar Saini v. State (Delhi Administration), reported as 2002(1) RCR (cri) 242, after discussing the law on the subject observed in para 7 as under :-

7. The basic ingredients of offence u/s 3(1)(x) are:-

a) that there must be an "intentional insult" or "intimation" with "intend" to humiliate SC/ST member by a non-SC/ST member;

(b) and that insult must have been done in any place within the "public view"

c) The use of expression "intentional insult or intimation" with "intention" to humiliate, makes it abundantly clear that the mens rea is an essential ingredient of the offence;

d) it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason;

e) Merely calling a person by caste would not attract the provisions of this Act. There must be specific accusation alleged against each of the accused. Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. This being a penal provision has to be given a strict interpretation. If any of the ingredients is found lacking, it would not constitute the offence. Reference in this regard can be made to the various decisions referred to at the bar, reported in *Satya Narain v. State of Rajasthan*, 1991(1) RLW 573, *Chandra Poojari Vs. State of Karnataka*, , *Haridas Shinde Vs. State of Maharashtra*, , *Ramesh Prasad Bhanja and Others Vs. State of Orissa*, , *Munir Khan v. State of Rajasthan*, 1991(2) RLW 309, *Pankaj D. Suthar Vs. State of Gujarat*, and *Karan Singh and Others Vs. The State of M.P.*, .

11. Similar view was also expressed by the Allahabad High Court in the case of *Pappu Singh Vs. State of U.P.*, which reads under:-

7. The other witnesses Ram Nandan Prasad (PW2) stated that two or three persons accompanying Pappu Singh (applicant) had used words: Chamariya when they proceeded near the garage of uncle of Pappu Singh. Accused Pappu Singh again started beating but he could not identify at that place. He did not use ugly words relating to his caste. Assuming that the applicant had used word "chamariya and addressed the complainant with the said words, it cannot make out the offence punishable u/s 3(1)(x) of the Act is simply addressing a person by his caste without any intention to insult or intimidate does not constitute the offence under the said Section. Moreover, this witness had stated that the applicant had not used ugly words relating to the caste of the complainant. In this way, there was no evidence on record to make out offence punishable u/s 3(1)(x) of the Act against the applicant and the finding recorded by the learned Special Judge was without evidence and was thus perverse. A perverse finding of fact can be interfered with in the revision. As such, there was no justification in convicting and sentencing the applicant u/s 3(1)(x) of the Act. Thus, the revision succeeds.

Section 3(1)(x) of the Act reads as under :-

3. Punishments for offences or atrocities.

(1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.

i) to (ix) xxx

(x) intentionally insults or intimidates with intent to humiliate a member of a Schedule Castes and Scheduled Tribe in any place within public view.;

12. Thus, for the aforesaid ingredients to be satisfied, allegations in the complaint must show that a person was called by his caste in order to humiliate, insult and intimidate as also that the said person must have knowledge that he belongs to Schedule Castes and Scheduled Tribe.

13. Coming back to the present case, there is not an iota of suggestion that the petitioner knew that respondent/complainant belongs to said caste. Moreover, the entire incident has occurred in a fit of anger. It is a cross case. Both the sides have received injuries. FIR against the present petitioners side was registered u/s 325, 323, 326, 452, 506, 34 IPC at P.S. Naraingarh. Report u/s 173 Cr.P.C was prepared against Ram Lal and others also and charges have also been framed against them. The trial Court has proceeded to frame charges against Ram Lal u/s 325, 323 IPC. As such, fight was equal. As of now, it is not clear as to who was the aggressor party. Therefore, even if the allegations are accepted to be true, the same have been said in a fit of anger where both the parties appear to have assaulted each other. Under no circumstances, in the facts of the present case, the words "Chure Chamar" were used with an intention to humiliate, insult or intimidate a persons on account of his belonging to SC/ST caste. The complainant cannot be allowed to use or gain unfair advantage just because of his caste in a cross fight, in which, he too is facing trial along with the petitioner and both parties appear to be equally aggressive.

14. Thus, it is evident from the entire statement if read out as a whole that there is no intention to insult the person just because of his caste. Hence, the aforesaid offence u/s 3(1)(x) of the SC/ST act is not made out against the present petitioner.

15. In view of the aforesaid discussion, the present petition is allowed and the order dated 15.02.2010 passed by the Court of learned SDJM, Naraingarh (P9) adding the offence u/s 3/4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act under the provisions of Section 216 Cr.P.C as well as order dated 15.02.2010 committing the case to the Court of Sessions for trial under the provisions of Section 323 Cr.P.C for afresh trial in case FIR No. 178 dated 01.12.2003 under Sections 325, 323, 326, 452, 506, 34 IPC, Police Station Naraingarh is hereby quashed.