
(2008) 12 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc No. 10844-M of 2008

Jogender Singh and others	Vs	APPELLANT
State of Haryana and another		RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Constitution of India, 1950 — Article 366
Criminal Procedure Code, 1973 (CrPC) — Section 228
Penal Code, 1860 (IPC) — Section 323, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1)(x)

Citation : (2009) 2 RCR(Criminal) 100

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : Anshuman Dalal, for the Appellant; S.S. Goripuria, DAG, for the Respondent No. 1 and N.R. Dahiya, Advocate for the Respondent No. 2, for the Respondent

Judgement

M.M.S. Bedi, J.—The petitioners have invoked the inherent jurisdiction of this Court to quash the summoning order dated November 24, 2006 (annexure P-2) summoning the petitioners u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act), alongwith Sections 323 and 506 IPC passed by the Sub Divisional Judicial Magistrate, Meham.

2. As per the petition, respondent No. 2 had been arrested on the night of November 1, 2004 by Police party as he was indulging in gambling in a public street. The FIR No. 284 dated November 1, 2004 police Station Meham was registered against respondent No. 2. He was released on bail. Copy of the FIR has been placed on record as annexure P-3. Respondent No. 2 had instituted a complaint annexure P-1 on November 8, 2004 alleging that on the night intervening 1st and 2nd November 2004 at about 10.30/11.30 p.m., the petitioners visited the house of the complaint and assaulted him besides

demanding money from him on the occasion of Diwali. He was abused in the name of his caste calling him "Kameena Khatik" and "Khatik Dhaid" Respondent No. 2 examined himself as CW1, Virender CW2. Pawan-CW3 the eye-witnesses and PW4 Dr. Ravinder Ahlawat, to substantiate the allegations in the complaint. On the basis of preliminary evidence, the Sub Divisional Judicial Magistrate, Meham, vide order dated November 24, 2006 summoned the petitioners under Sections 323, 506 IPC and u/s 3 (1) (x) of the Act.

3. Counsel for the petitioners has submitted that the complaint is a counter-blast to the FIR registered against respondent No. 2 and that no offence is made out and the complaint is liable to be quashed having been filed with mala fide intentions by placing reliance on State of Haryana and others Vs. Ch. Bhajan Lal and others, , wherein the parameters for exercising jurisdiction for quashing of criminal complaint or FIR have been laid down. Counsel further submits that offence u/s 3 (1) (x) of the Act is not made out against the petitioners as the necessary ingredients of offence u/s 3 (1) (x) of the Act is not made out on the basis of the averments in the complaint. He was argued that there is no specific averment in the complaint that the petitioners had a knowledge that the complaint belong to scheduled caste. Merely calling respondent No. 2 "Khatik" is not sufficient enough to attract the penal provisions of Section (3) (1) (x) of the Section 3(1) (x) of the Act reads as follows :-

"3 Punishments for offences of atrocities :- (1) Whoever, not being a member of a Scheduled Caste a Scheduled Tribe -

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.

XXX XXX XXX

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

4. For attracting punishment u/s 3 (1) (x) of the Act, the following necessary ingredients should be alleged and established :-

i) that the accused is not a member of Scheduled a Caste or Scheduled tribe; complainant is member of Scheduled Caste/tribe;

ii) accused had intentionally insulted or intimidated a member of scheduled tribe;

iii) the accused had an intention to humiliate a member of scheduled caste or scheduled tribe and

iv) the act of intentionally insult or intimidation should be in a place within public view.

5. It has been repeatedly held by this Court as well as High Courts that unless and until there is a specific averment in the complaint that accused had

knowledge that the complainant belong to scheduled caste, the accused cannot be prosecuted. In this context reference can be made to Chaman Lal Goyal v. Kaur Singh, 2008 (1) RCR(Crl.) 377. Similar is the ratio of the judgment of Rajinder Kumar v. State of Haryana, 2002 (4) RCR (Crl.) 245 where an accused had called the complainant by the name of his caste but there was no allegation in the complaint that the accused had knowledge that the complainant belonged to Scheduled Caste. The complaint u/s 3 (1) (x) of the Act was quashed by this Court. In Smt. Usha Chopra v. State and another 2005 (2) RCR (Crl.) 54, complaint u/s 3(1)(x) of the Act was quashed by Delhi High Court where the complainant did not disclose that the petitioner made objectionable remarks in public view. It was held in the said case that public view means that persons from public should be present howsoever small in number to attract the provisions of Section 3 (1) (x) of the Act. In Gorkhi Ram and others v. State of Haryana and another 2006 (4) RCR (Crl.) 356, where the accused had gone to the house of the complainant who was scheduled caste and abused the complainant and his family using derogatory remarks against him by calling him by his caste name and the occurrence had taken place within the bounded area of the house of the complainant and not in any place within public view, it was held that no offence u/s 3 of the Act was made out as such the complaint under the Act was quashed. Besides this, I have carefully gone through the averments in the complaint. In para 1 of the complaint, respondent No. 2 has submitted that he belongs to caste "Khatik" and earns his livelihood by doing labour work but it is not specifically mentioned in the complaint that caste "Khatik" is a Scheduled Caste. Besides this, there is no averment in the complaint that the petitioners had knowledge about respondent No. 2 being a scheduled caste. It is the case of the petitioners that the occurrence had taken place in the house of the complainant. One Varinder and brother of the complainant-Pawan were allegedly present in the house. It is also not averment of the complainant that the had been insulted in public view.

6. In view of the above circumstances, the summoning of the petitioners u/s 3(1) (x) of the Act is an abuse of the process of the Court.

7. Counsel for the petitioners has not pressed the petition in the other offences for which the petitioners have been summoned i.e. under Sections 323 and 506 IPC, contending that the petitioners will availed the independent remedy of quashing/setting aside or acquittal in the said offences.

8. Counsel for respondent No. 2 has argued that it is known to every one that caste "Khatik" is a scheduled caste and that it can be presumed from the words used by the petitioners that "Khatik" is a scheduled caste and that the petitioners wants to respondents No. 2 by abusing him in the name of his caste.

9. I do not find any force in the said contention. The sine qua non for proceedings under the Act is that the complainant should be a member of scheduled caste. The said fact should also find mention in the complaint because the scheduled castes and scheduled tribes shall have the meanings assigned to

them respectively under clauses 24 and 25 of the Article 366 of the Constitution. Unless and until there is allegation in the complaint that caste of the complainant is scheduled caste the continuation of proceedings under the Act cannot be said to be valid and it will be an abuse of the process of the Act to continue with the proceedings. The complaint annexure P-1 and the summoning order so far it relates to offence u/s 3 (1) (x) of the Act is concerned, is quashed but it will be open for respondent No. 2 to continue with the complaint for the other offences in accordance with law. It has been informed that the matter has been committed to special Court constituted under the Act. If it is so, in view of the order passed by this Court, the proceedings will have to be reverted back to the Court of competent jurisdiction. It will be open to the Special Judge to advert to the provisions of Section 228 Criminal Procedure Code and direct the accused and the respondent to appear before the Court of competent jurisdiction after doing the needful as per law.