

(1992) 06 MP CK 0018
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 2378 of 1991

Karan Singh and Others

APPELLANT

Vs

The State of M.P.

RESPONDENT

Date of Decision : 30-06-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 148, 17, 323, 342, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (1992) CriLJ 3054

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : Sanvatsar, for the Appellant; Desai, for the Respondent

Judgement

V.S. Kokje, J.—This is an application u/s 482 of the Code of Criminal Code for quashing the investigation started on a First Information Report on a charge u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"), as also for grant of Ad Interim Anticipatory Bail.

2. In the F.I.R. lodged by one Rama s/o Chhitar Bhil it is alleged that on 27-6-1991 the complainant along with Morsingh, Dhannalal, Nathu, Sama Bhil, resident of village Gularziri went for fishing in a tank in the village Nai Baroda at about 8.00 p.m. While they were fishing at about 11.00 O'Clock in, the night, Karasingh, Vijay, Munnalal, Babloo and another Karansingh Deshwali came on the spot and abused them, challenged them to come out, asking them their identity. They also threatened the complainant party not to try the escape else they would kill them. To threaten the complainant party, the accused party also fired in the air. On this, the complainant party told them that they were residents of Gularziri and had come for fishing. On this, the accused party exclaimed that these are "Bhilalas" (Bhilade). According to the F.I.R. the accused persons caught hold of the complainant party and took them forcibly to the place of the accused

persons. There they were tied with a rope and were assaulted. When they were released, at the instance of Sarpanch Karansingh of Gularaziri, they went to their homes and thereafter reported the matter. On this F.I.R. the police registered the crime under Sections 17 148 342 504 506 323 of the Indian Penal Code and 3(1)(x) of the Atrocities Act, 89.

3. The applicants herein, who are the accused-persons in the F.I.R. have challenged the registration of a crime u/s 3(1)(x) of the Atrocities Act, 89. The aforesaid Section is reproduced hereunder for ready reference :--

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

... (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.

4. A reading of the First Information Report clearly shows that the incident took place because of fishing in the tank. When the accused party came on the spot, they did not even know, who were the persons fishing in the tank. When they showed the identity all the complainant party after accosting it, alleged to have exclaimed "BHILADE HAI". This is all that is alleged in the first information report. In the statements recorded by the police of complainant Rama on 6-7-91 Nathu s/o Kalu, Morsingh s/o Gopiya, Dhannalal s/o Ambaram, Karansingh s/o Anarsingh, Surjibai w/o Rama, Kalibai w/o Tolaram, Sorambai w/o Kalu and Shivalal s/o Apsingh, nothing beyond the allegation that the accused party Called the complainant party "Bhilade" has come. There is absolutely no material on record to show or even suggest that the accused party called the complainant party "Bhilade" with intention of insulting or humiliate them as members of Scheduled Tribe. There is nothing on record to show that all this was done in a place within public view. The quarrel took place because of rival claims on the fishing rights in the tank. Communal or cast considerations did not arise at all as the accused persons did not know who was encroaching upon their right of fishing in the tank. It is only after the complainant party was accosted by the accused persons and made to divulge their identity that the accused persons came to know that the complainant party belongs to Scheduled Tribe. On this they exclaimed that "BHILADE HAI". In the circumstances of the case, only calling a person belonging to Scheduled Tribe by the name of his tribe would not be sufficient to make out an offence u/s 3(1)(x) of the Atrocities Act. In our society the cast system has not yet been eradicated and in the villages people are identified by their cast. Many a times when the identity of a particular person or a group is not specifically established to village folk are prone to describe the group with reference to the cast of its members or the village of their residence. If per chance the complainant party had been Rajputs, Gujars, Brahmins etc., it is almost certain that on knowing of their cast, the accused party would have exclaimed they are Rajputs, Gujars, Brahmins etc. It cannot, therefore, be said that the exclamation BHILADE HAI was for the purpose of intentional insulting or intimidating with intent to humiliate the members of the complainant party

because of their being members of a Scheduled Tribe.

5. From the material on record in the case diary, further it cannot be said that the incident took place at place within public view. The words used in the provision are in place within "public view" and not in a "public place". There is clearly a distinction between an incident taking place within public view and incident taking place in a public place. The incident took place at about 11.00 p.m. and the accused party only was present on the spot and what transpired between them has not been alleged to have taken place within public view. In these circumstances, it cannot be said that all the ingredients of offence u/s 3(1)(x) of the Atrocities Act have been made out. There is absolutely no material to proceed against the accused persons for a charge on that count. The charge is groundless and deserves to be quashed at the investigation stage itself.

6. Before leaving this case, I consider it to be my duty to point out that these days several cases are being registered by the police under the Atrocities Act without carefully considering whether the offence under the Act is made out or not. As special and stricter provisions have been made in the Act, it is the duty of the prosecution to examine the case more carefully. They have to be vigilant for avoiding any possibility of the Act being misused for harassment of the citizens, who have not committed an offence under the Act. In the present case it appears that the offence under the Act was registered only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste. Such a mechanical exercise of authority has to be deprecated. The Courts have to see immediately after a case is brought to it whether an offence under the Act is purely made out prima facie on the material available in the case diary. If no such material is available, the Court should not hesitate in refusing to entertain such cases and in making appropriate directions for their disposal in the normal course.

7. In the aforesaid circumstances, the investigation u/s 3(1)(x) of the Atrocities Act is quashed. The Investigating officer may proceed to investigate the case and to put up a challan on other counts. However, since the offence under the Atrocities Act is not made out and as there is a clear case for grant of anticipatory bail on other counts. It is, therefore, directed that the applicants, in case of their arrest for a non-bailable offence, shall be released on furnishing a personal bond in the sum of Rs. 5,000/- (Five Thousand) each with one surety in the like amount to the satisfaction of the arresting officer on the following conditions :

(1) that the applicants shall make themselves available for interrogation by a police officer as and when required :

(2) that the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the Court or to any police officer.

A certified copy of this order be given today on payment of usual charges.