
(2012) 03 MP CK 0132

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Cases No. 8653 of 2008 and 1197 of 2009

K.S. Pandey

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 469, 471
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(ix), 3(1)(viii), 3(1)(x), 3(2)(i), 3(2)(ix)

Citation : (2012) 3 JLJ 284

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Manish Datt, for the Appellant; R.P. Tiwari, Government Advocate for State and A.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

N.K. Gupta, J.—This order shall govern the disposal of above mentioned two applications, as common question of fact and law are involved in these applications. The applicants have preferred the present applications u/s 482 of Cr.P.C. for quashing the FIR lodged by the respondent No. 2, which was registered vide Crime No. 5/2008 before the Police Station AJK Bhopal for commission of offence punishable under sections 505, 120B of IPC and section 3(1)(viii) and (x) of SC/ST (Prevention of Atrocities) Act, 1989 (for short "Special Act").

2. The facts of the case in a nutshell are that on 20.8.2008 the respondent No. 2 who was a Lecturer in Maulana Azad National Institute of Technology (for brevity "MANIT") had lodged an FIR that she had made some complaints on 30.5.2007 and 1.6.2007 before the SHO, Police Station AJK Bhopal, but no case was registered. Actually Dr. K.S. Pandey (applicant in M.Cr.C. No. 8653/2008), Director of MANIT Bhopal was harassing the complainant on the basis of the caste. A civil case was pending before the trial Court as well as Writ Petition No.

5224/2007 is pending before this Court in which stay was granted. It was also stated in the FIR that DPRC permitted the complainant to get admission for Ph.D. courses, but Dr. Pandey prohibited the complainant because the complainant was of Scheduled Caste. Under such circumstances, Dr. Pandey got the degree of Ph.D. to be cancelled on the basis of caste and though the matter is pending before the High Court and stay was granted, a report was lodged by Dr. Pandey before the Police Station Kamla Nagar, Bhopal, which case was registered vide Crime No. 155/2008 at Police Station Kamla Nagar, Bhopal. It is surprising that in the document Annexure P-4 date 29.3.2007 was manipulated to be 31.1.2008 and thereafter police took cognizance in a fresh manner. Thereafter the FIR was sent by the complainant and her husband. It was also mentioned in another FIR that Dr. Pandey was permitting so many persons to touch his feet and he was maintaining the difference between the persons on the basis of caste. Dr. Pandey harassed the complainant on the basis of caste. Also he confused Dr. Sushil Chand Shrivastava (applicant in M.Cr.C. No. 1197/2009) and obtained a note that thesis submitted by the complainant was a 90% copy of the thesis submitted by Shri J.M. Choubey, whereas the complainant got the reference from internet only and Shri Choubey also took reference from the internet. However, the thesis submitted by the complainant was cancelled, and therefore degree was also cancelled. Under such circumstances, she was terminated from her job. Ultimately, she was threatened so that she could leave her quarter. Dr. Pandey cancelled the allotment of quarter of the complainant and a fake case was also lodged for eviction before the competent authority. After due investigation, charge-sheet was submitted before the concerned Magistrate and the matter was committed to the civil Court under SC/ST (Prevention of Atrocities) Act, 1989, where it is pending.

3. Heard the learned counsel for the parties at length.

4. Learned counsel for the applicants have submitted that after receiving a complaint about the thesis of the complainant, a committee was constituted by the Director, comprising of six Deans of various departments including Dr. Ashutosh Sharma, Dr. H.K. Khaira, Dr. Sushil Kumar Mittal, Dr. G. Dixit, Dr. Saroj Rangnekar and Dr. M. Kumar. They submitted a report dated 19.12.2006 that 95.5% portion of the thesis submitted by the complainant was found to be the same as it was submitted by Shri J.M. Choubey, and therefore the thesis submitted by the complainant was nothing, but the copy of thesis of someone else. Thereafter, the Dean Committee's report was considered before the Senate of MANIT and it was resolved that degree awarded to the complainant in the year 2005 shall be withdrawn. The applicants have submitted the copy of minutes of the Dean Committee dated 19.12.2006 as well as the copy of resolution of the Senate meeting dated 22.3.2007 vide notification by which it was notified that degree given to Smt. Laxmi S.S. Kumre was cancelled and it was also directed that Director of the Institution shall take disciplinary action. Thereafter show cause notices were issued to the complainant. Since after cancellation of the degree of Ph.D., the complainant was not entitled to continue as a Lecturer, and

therefore she was removed from that job. The allotment order of official quarter was also cancelled due to complainant's termination. Since, she did not vacate the house, thereafter, the matter was referred to the disciplinary authority that the complainant had illegal possession over the public property. Because of such copying of thesis, a case of cheating was prepared, and an FIR was lodged against the complainant on 1.4.2008. Thereafter, the complainant had lodged an FIR against the applicants, which is nothing but a counter blast. The FIR lodged by the complainant is baseless, and therefore no prosecution can be done against the applicants on the basis of that FIR. This FIR is nothing but abuse of judicial process. Learned counsel for the applicants have placed his reliance upon the judgment of the Hon'ble apex Court in the case of M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another,

5. It is further submitted that the husband of the complainant is a social worker and he simply makes complaint against so many persons on the basis of caste. The applicants have done nothing against the complainant relating to her caste, and therefore no offence is made out against the applicants. Learned counsel for the applicants further submits that the FIR lodged by the complainant is nothing but a counter blast, because she was terminated from her job. Such a counter blast cannot be permitted to proceed. In this context, he has placed his reliance upon the various judgments of the Hon'ble apex Court, which are as under:

- (i) Anjani Kumar Vs. State of Bihar and Another,
- (ii) Eicher Tractor Ltd. and Others Vs. Harihar Singh and Another,
- (iii) Mahindra and Mahindra Financial Services Ltd. and Another Vs. Rajiv Dubey,
- (iv) State of Haryana and others Vs. Ch. Bhajan Lal and others,

It is also submitted that there was no specific role of applicant Sushil Chand Shrivastava (in M.Cr.C. No. 1197/2009). No allegation has been made by the complainant against applicant Sushil Chand Shrivastava, and therefore in the light of the judgment of the Hon'ble apex Court in the case of Chunduru Siva Ram Krishna and Another Vs. Peddi Ravindra Babu and Another, , no useful purpose would be served by allowing the prosecution to continue. Hence, it is prayed that the FIR lodged against the applicants by the complainant may be quashed.

6. On the other hand, learned counsel for the State has submitted that at present statements of complainant and other witnesses cannot be brushed aside, and therefore when charge-sheet is filed before the competent Court, then trial Court may be directed to decide the matter on merits.

7. In rebuttal, learned counsel for the respondent No. 2 has submitted that role of the applicants was offensive and the matter relating to cancellation of degree of the complainant is still pending before this Court in which there are fair chances to success. The applicants have managed that thesis may be declared to be a copy. At present allegations made by the complainant cannot be brushed

aside. It is a matter of evidence as to whether the degree awarded to the complainant could be cancelled or not, and therefore neither she could be terminated nor she could be directed to vacate the quarter allotted to her. However, it is established that the applicants have made an insult of the complainant on the basis of her caste, and therefore offences under the Special Act, 1989 are made out against the applicants, and therefore their applications may not be accepted.

8. It is a general rule that if after due investigation, charge-sheet is filed, then trial Court may consider the evidence adduced before it and to pass the order as to whether charges can be framed or not. If the accused persons are aggrieved, then they can file a revision before this Court. But in case if the accused persons have some documents which are unimpeachable, then such documents can be considered by this Court u/s 482 of Cr.P.C. Proceedings of the Senate and report of Deans Committee appear to be unimpeachable, and therefore the same may be considered in the present case. It is apparent from the minutes of the Deans Committee dated 19.6.2006, which was comprising of six Deans of various departments that none of the applicants was a member of the Deans Committee. They were the Deans of various subjects. They were experts to understand as to whether the relevant portion of the thesis submitted by the complainant was either the reference taken from internet or copy of the thesis submitted by another candidate. However, in that committee, it was resolved on 19.11.2006 that 95.5% of the thesis submitted by the complainant was copy of the thesis filed by Shri J.M. Choubey. Prima facie it cannot be said that six independent Deans were under pressure of the applicants.

9. The minutes of that committee are on record by which it would be clear that an authorized committee which was formed according to the rules had decided that thesis submitted by the complainant was nothing but a copy of another thesis. Thereafter the matter was sent to the Senate and in the meeting dated 22.3.2007 Senate found that on the basis of that thesis, no degree of M.Tech. could be awarded to the complainant and it was directed that a disciplinary action and a legal action may be taken against the complainant. The entire Senate was comprising of so many members, and therefore it cannot be said that the applicants were the persons, who captured all the members for that resolution. Consequently, it appears that the complainant was removed from her job, because she lost the qualification, which was required for that job. When she got quarter on the basis of that job, then certainly she had to vacate that quarter, as she lost the job. Consequently, various actions were taken by the applicants being office bearers of the MANIT.

10. Under such circumstances, it cannot be said that actions against the complainant were taken by the applicants on the basis of her caste. If the applicants were harassing the complainant since the year 2005, then there is no reason as to why no action was taken by the complainant, no FIR was lodged till the year 2008. It is apparent that the applicant Dr. K.S. Pandey had lodged an

FIR against the complainant about cheating and forgery in consequence of the resolution passed in Senate, and therefore the complainant lodged FIR against the applicants. There are multiple FIRs lodged by the complainant in the case, but only first document may be considered as an FIR, remaining documents may be considered as statements of complainant u/s 161 of Cr.P.C. When her degree was denied and she lost her job as a Lecturer, she initiated FIR against the applicants. Thereafter, when a case was filed for cheating etc., again she lodged another FIR. Similarly, multiple FIRs were lodged, but looking to the time period and various events of the case, it would be clear that each FIR was lodged after some event happened against the complainant. Under such circumstances, these FIRs should be considered as counter blast.

11. The charge-sheet was filed against the applicants for commission of offence punishable under sections 3(1)(viii), 3(1)(ix), 3(1)(x) and 3(2)(vii), (i) and (ix) of the Special Act, 1989. If FIR relating to Crime No. 5/2008 is perused, then it would be clear that the same was lodged because degree of M.Tech was denied and it was mentioned that applicant Mr. Pandey confused the applicant Mr. Sushil Chand Shrivastava. No direct allegation has been made against the applicant Mr. Shrivastava in the FIR. There is no allegation against the applicant Mr. Pandey that he insulted the complainant on the basis of the caste amongst anyone. Only one instance is quoted that the applicant Pandey provoked one Mr. Rajput to assault and abused the complainant on the basis of the caste, but that was a suspicion of the complainant. In the FIR, it is not a case against the applicant Mr. Pandey that he abused the complainant face to face at a public place, and therefore it cannot be said that any offence u/s 3(1)(x) of the Special Act is made out. Similarly, there is no any allegation against the applicant Mr. Shrivastava that he abused the complainant on the basis of the caste, and therefore it would be clear that prima facie no offence u/s 3(1)(x) of the Special Act is made out against the applicants.

12. Looking to the proceedings of Deans Committee and Senate, it cannot be said that the applicants have given any wrong information to the authorities and due to that false information various prosecutions were initiated against the applicants, therefore prima facie it cannot be said that offence u/s 3(1)(ix) of the Special Act is made out. If it was directed by the Senate that appropriate action be taken against the complainant, because her thesis was found to be 95% copy of the previous thesis submitted by Shri Choubey, therefore by lodging such FIR against the complainant, it cannot be said that any offence u/s 3(1)(viii) of the Special Act is made out. The police has submitted the charge-sheet for commission of offence punishable under sections 3(2)(i), 3(2)(vii) and 3(2)(ix) of the Special Act, whereas there is no section 3(2)(ix) in the Special Act, 1989. It appears that offence u/s 3(1)(ix) of the Special Act is repeated as offence u/s 3(2)(ix) of that Act. Offence u/s 3(2)(i) of the Special Act deals with the false and fabricated evidence against any person belonging to the Scheduled Caste and Scheduled Tribe to get conviction against that person who is a member of SC/ST. At present it is to be decided by the competent Court that whether the

applicants have fabricated false and frivolous evidence against the complainant or not. At present it is apparent that the applicants acted upon the decision of the Deans Committee and Senate, therefore it cannot be said at this stage that offence u/s 3(2)(i) of the Special Act is made out. On the similar ground, prima facie it cannot be said that offence u/s 3(2)(vii) of the Special Act is made out. It is true that the applicants are public servants, and therefore if any offence is done by them under the Special Act, then offence u/s 3(2)(vii) of the Special Act will be made out. But at present it cannot be said that any offence is made out against the applicants under the Special Act.

13. By considering the aforesaid discussions, the case of the applicants comes under the dictum laid down by the Hon'ble apex Court in the case of M.N. Ojha (supra). At present the FIRs lodged against the complainant are upon the various proceedings of Deans Committee and Senate and no Court has decided that those FIRs or proceedings lodged against the complainant are false, and therefore the present FIR lodged by the complainant is nothing, but abuse of judicial process, which cannot be permitted.

14. Similarly, there is no evidence on record to show that the applicants have made any forgery in getting the resolution of Deans Committee or resolution of the Senate. There is no specific allegation that these documents were forged by the applicants. At present report of the handwriting expert was not even collected by the Investigating Officer while submission of challan before the trial Court to show that which document was forged. Under these circumstances, if some action was taken by the applicants against the complainant, then it cannot be said that either cheating or forgery has been done against her by them. Therefore, no offence under sections 420, 467, 469, 471 of IPC is made out against the applicants.

15. Since, there is no evidence to show that the resolution passed by the Deans Committee was within the pressure of the applicants, and therefore it cannot be said that conspiracy has been done by the applicants. On the contrary, if it was found that some conspiracy took place to remove the complainant, then all the members of the Deans Committee must have been made accused in the case u/s 120B of IPC. But it appears that no such member is made accused in the case. In such circumstances, prima facie no conspiracy is established by the police after due investigation. Similarly, case was registered for commission of offence punishable u/s 506 of IPC, but no specific date was given by the complainant in any of the FIRs that on what date threatening was given by the applicants and what was the object of that threatening. On the contrary, it appears that omnibus allegations are made in the FIR. Under such circumstances, prima facie no offence u/s 506 of IPC is made out against the applicants.

16. After perusal of the entire evidence, it appears that since the complainant was removed from her job and no degree of M.Tech was awarded to her, in such circumstances, she had lodged so many FIRs under frustration. It is true that the matter is pending in civil side before this Court in which stay has been granted,

but whether that stay creates a bar to the applicants' action on the administrative side. Certainly, such actions cannot be said to be mala fide. The complainant did not take any action against the applicants upto the year 2008 and now she alleges that she was being harassed from the year 2005 to 2008. There is no reason shown as to why the FIR was not lodged in those three years, therefore, it appears that it is a case of counter blast. It appears that all the actions were taken by the applicants, because the complainant lost her qualification for her appointment as a Lecturer, and therefore prima facie it cannot be said that they have committed any offence. If the complainant succeeds in her writ petition, then she might get her degree of M.Tech and her job back, but at present she cannot retain the quarter which was allotted to her due to her job, and therefore at present it cannot be said that actions taken by the applicants were mala fide and without any legal basis. Under such circumstances, various FIRs lodged by the complainant appear to be counter blast in the eye of law. Hence, as per the ratio laid down by the Hon'ble apex Court in the case of Anjani Kumar (supra), Harihar Singh (supra), and Rajiv Dubey (supra), the FIR lodged by the complainant cannot be permitted to proceed. If such counter blasts have been done without any basis, then certainly such FIRs lodged by the complainant are clearly abuse of the process of law, and therefore such abuse cannot be permitted as per the ratio laid down by the Hon'ble apex Court in the case of Bhajan Lai (supra). The complainant could not establish prima facie that there was any mala fide intention of the applicants in initiating such proceeding against the complainant. On the basis of aforesaid discussions, it is a fit case in which inherent jurisdiction of this Court u/s 482 of Cr.P.C. may be invoked.

17. On perusal of entire documents available on record and various documents available in the case diary, it would be clear that in the entire proceeding lodged against the complainant, there was no role of the applicant Mr. Shrivastava, and therefore according to the ratio laid down by the Hon'ble apex Court in the case of Chunduru Siva Ram Krishna (supra), prosecution may not be permitted to continue against the applicant Mr. Shrivastava. No useful purpose would be served by allowing the prosecution to continue against him. Consequently, both the applications filed u/s 482 of Cr.P.C. by the applicants are hereby allowed. The FIR registered at Crime No. 5/2008 at Police Station AJK Bhopal is hereby quashed. Consequently, the proceeding initiated before the trial Court is also quashed. A copy of this order be sent to the learned Special Judge of SC/ST (Prevention of Atrocities) Act, Bhopal for information and compliance.