
(2012) 04 JH CK 0090
In the Jharkhand High Court
Case No : Criminal M.P. No. 4502 of 2001

Kumar Jitendra Singh

APPELLANT

Vs

State of Jharkhand and Rama Nand Chaudhary

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Penal Code, 1860 (IPC) — Section 323

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1)

Citation : (2012) 3 Crimes 443 : (2012) 3 JCR 388 : (2012) 2 JLJR 372

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : None, for the Appellant; S.S. Prasad, Assistant Public Prosecutor for the State and Mr. Bhaiya Vishwajeet Kumar, Advocate for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad

1. By Court Nobody appeared on behalf of the petitioner. Heard learned counsel for the opposite party no. 2 and learned counsel for the State. This application has been filed for quashing of the entire criminal proceeding of Sector-IV B.S. City P.S. Case No. 121 of 2000 registered u/s 323 of Indian Penal Code and also u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the petitioner. It does appear that complainant-opposite party no. 2 lodged a complaint case stating therein that he had joined the service of Bharat Refractories Ltd., Bokaro as Assistant Manager (Marketing and Services). Subsequently, he was promoted to the post of Deputy Manager (Marketing and Services) but unfortunately since he belongs to the Scheduled Caste Community, he was discriminated in the matter of promotion and was not promoted to the post of Manager (Marketing and Services) in the year 1997. Thereupon, he wrote a letter to the Chairman, National Commission for Scheduled Castes and

Scheduled Tribes, New Delhi on 16.1.1999 requesting therein for redressal of his grievance.

2. It has further been alleged that on 9.11.2000, the petitioner (accused no. 1) called upon the complainant in his official chambers and abused him in filthy language "SALA PASI-TASI HOKAR TUM APNA BAP SCHEDULED CASTE COMMISSION KO SHIKAYAT LIKHATA HAI, MAIN TUMHE SASPEND OUR CHARJSHIT KARUGA. TUM SALE MERA KUCHH NAHIN BIGARD SAKTA HAI, MERI BHI UPAR TAK PAHUNCH HAL PROMOTION KI BAT TO TUM BHUL HI JAO. MAIN TUMHE SALE AISI SAJA DUNGA KI JINDAGI BHAR YAD RAKHOGE. USNE MUJHE DHAKKA PETE HUE CHAMBER SE BAHAR KAR DIYA".

3. It has further been alleged that on 4.11.2000 while the complainant was returning back after attending the closing function of Vigilance Awareness Week in which he was one of the price winners, accused no. 2-R. Mukhopadhyay called him and abused him publicly "CHOUDHARY SALA TUM HARIJAN HOKAR HARISH CHANDRA OUR DHARMARAJ YUDHISHTHIR BANNE CHALE HO. OUR BHRASTACHAR MITANE KA BADA BHASLIAN DETA HAL MAIN MAR JUTA TERA MUNH TORD DUNGA. ABHI DEKHTA JAO MAIN TUMHARA KYA DURGATI KARTA HUN".

4. Thereafter, the complainant received a temporary transfer order on 8.11.2000 which was passed in order to harass and to victimize the petitioner.

5. Upon filing of the said complaint, it was sent u/s 156(3) Cr.P.C. before the concerned police station for its institution and investigation upon which, Sector-IV B.S. City P.S. Case No. 121 of 2000 was lodged u/s 323 of Indian Penal Code and also u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The said prosecution has been challenged to be bad as the same is actuated with malice.

6. It has been stated in the petition that on account of the administrative reason, the Competent Authority temporarily transferred the complainant to Raurkela office vide its order dated 8.11.2000. Upon it, the complainant was relieved and was directed to report to Chief Resident Manager, Raurkela. Against the said order, a representation was filed by the complainant on 20.11.2000 requesting the petitioner to withdraw his order of transfer. Since the petitioner was not the Competent Authority, he referred the representation before the General Manager (P & A) for consideration but when the said order of transfer was not withdrawn, complaint case bearing C.P. Case No. 372 of 2000 was lodged.

7. As against this, Mr. Bhaiya Vishwajeet Kumar, learned counsel for the opposite party no. 2, submits that the complaint does contain all the ingredients for constituting offence u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and hence the prosecution at this stage never warrants to be quashed. In this regard, it was further submitted that whether the allegation is false or true, it is not to be looked into at this stage, rather it becomes the matter of trial and that the ground on which this application is being sought to

be quashed can be raised at an appropriate stage and hence this application is fit to be dismissed.

8. Having heard learned counsel for the parties and on perusal of the record, it does appear that the criminal proceeding has been sought to be quashed on the ground that it is actuated with malice, as when the complainant was transferred, he made a representation to the petitioner requesting therein to cancel the order of transfer but when it was not done, complaint case bearing C.P. Case No. 372 of 2000 has been lodged.

9. It be recorded that it has been well settled that where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge a complaint or first information report can be quashed in view of the law laid down by the Hon''ble Supreme Court in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

10. As I have already stated that when a request made by the complainant before the petitioner to stay the order of transfer was turned down, a complaint bearing C.P. Case No. 372 of 2000 has been lodged and under the situation, it can certainly be said that the criminal proceeding was lodged maliciously with ulterior motive for wreaking vengeance. Further, from perusal of the complaint case, it does appear that whatever abusive languages constituting offence u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were used, it were used in the official chambers of the petitioner meaning thereby alleged abusive languages were never used in public hearing or within public view and if it is not so, no offence would be made out u/s 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the petitioner. The said provision reads as under :-

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

(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.

11. It is never the case of the complainant that he was abused by the petitioner in his official chambers in presence of others. Under the situation, the alleged abusive language never seems to have been made within public hearing or public view.

12. In that view of the matter, no offence is made out u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

13. Accordingly, entire criminal proceeding of Sector-IV B.S. City P.S. Case No. 121 of 2000, registered u/s 323 of Indian Penal Code and also u/s 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is hereby quashed so far this petitioner is concerned. In the result, this application is

allowed.