

(2016) 07 RAJ CK 0121

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2855 of 2014.

Lal Das and Another - Petitioners @HASH State of Rajasthan and Another

Date of Decision : 06-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 303, Section 354, Section 447, Section 527
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2016) 168 AIC 573 : (2017) 1 RajCriC 412 : (2016) 4 RLW 2763 :
(2016) 4 WLC 785

Hon'ble Judges : P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. Sheetal Kumbhat, Advocate, for the Petitioner; Mr. J.P. Bhardwaj, Public Prosecutor, for the State; Mr. Narpat Singh Charan, Advocate, for the Respondent No. 2/Complainant

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J. - Accused-petitioners by the instant petition under Section 482 Cr.P.C. have prayed for quashing FIR No. 152/2013 of Police Station Sadar, District Pali and further proceedings in furtherance thereto. That apart, the petitioners have also prayed for quashing order dated 10th of November 2014 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Cases, Pali, dismissing his revision petition against order dated 5th of March 2014 passed by Addl. Chief Judicial Magistrate, Pali.

2. Succinctly stated, the facts of the case are that second respondent-complainant lodged an FIR on 2nd of August 2013 against the accused-petitioners that at about 1:30 PM they made an attempt to set at fire boundary fence of his house and when his aunt (uncle's wife) and other aunt (father's sister) resisted them from doing so, both were given beatings and insulted with verbal utterances with specific imputation to their caste as they belong to scheduled caste. The complainant has substantiated his allegation as mentioned in the FIR by asserting that he belongs to caste "Garuda" and a resident of

Dayalpura. On the basis of report, a case under Section 323, 436, 447 IPC and Sections 3(1)(v), (x), (xi) and 2(4) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Act") was registered against petitioners. After completion of investigation, a charge sheet against the petitioners for offence under Sections 303, 354, 527, 447 IPC and Section 3(1)(x), (xi) of the Act is submitted before Addl. Chief Judicial Magistrate, Pali (for short, "learned trial Court").

3. As per version of the petitioners, learned trial Court took cognizance for the aforesaid offences under the Act against the petitioners despite objection by the petitioners that complainant belongs to Garuda caste, which is not mentioned/enlisted in the notification issued by the Government, as scheduled caste. By relying on the Government notification, petitioners urged before the learned trial Court that cognizance for the offence under the Act cannot be taken against them. However, their effort proved abortive.

4. Being aggrieved by the order of cognizance dated 5th of March 2014, petitioners preferred a revision petition before the Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Cases, Pali (for short, "learned revisional Court). As the revision petition was filed belatedly on behalf of petitioners, an endeavour was also made for seeking condonation of delay by filing application under Section 5 of the Limitation Act. The learned revisional Court, by its order dated 10th of November 2014, dismissed the revision petition on the ground of limitation. It is in that background the petitioners have assailed the revisional order as well as the order of the trial Court taking cognizance against them by this petition.

5. Learned counsel for the petitioners, Mr. Sheetal Kumbhat, has vehemently argued that as per notification issued by the Central Government caste "Garuda" is not a scheduled caste in the State of Rajasthan and even in terms of latest revised list of Scheduled Castes (1978) caste "Garuda" is not enjoying the privileged status, i.e. scheduled caste within the State. Learned counsel, therefore, submits that the order of the learned trial Court taking cognizance against the petitioners for offence under Section 3(1)(x), (xi) of the Act as well as revisional order is vitiated in law. Learned counsel for the petitioners would contend that Court is not empowered to alter or amend the Presidential Orders so as include or exclude a particular caste as scheduled caste or scheduled tribe. Learned counsel has urged that as per the Presidential Order in State of Rajasthan only Garo, Garura, Gurda and Garoda are included in the revised list of scheduled castes and therefore by treating "Garuda" as scheduled caste for taking cognizance against the petitioners for offence under Section 3(1)(x), (xi) of the Act, the learned trial Court has committed a manifest error of law, which has resulted in abuse of the process of the Court. Learned counsel has strenuously urged that the learned revisional Court has also not examined this aspect of the matter while dismissing the revision petition of the petitioners in a perfunctory manner solely on the ground of limitation. Lastly, Mr. Kumbhat

submits that the order of cognizance and the revisional order are liable to be annulled by exercising inherent powers of this Court to secure the ends of justice. In support of his arguments, learned counsel has placed reliance on a decision of Supreme Court in case of *State of Maharashtra v. Milind and others* [(2001) 1 SCC 4].

6. Per contra, learned Public Prosecutor submits that no interference with the order of cognizance and impugned order passed by the revisional Court in exercise of inherent powers of this Court is called for. Learned Public Prosecutor has urged that competent authority has issued caste certificate to the petitioners wherein "Garuda" caste is shown as scheduled caste and Sarpanch of Gram Panchayat Dayalpura, Panchayat Samiti Pali has also endorsed the caste of the complainant, which speak volumes about the fact that contentions of the petitioners are hyper technical and bereft of any merit. Learned Public Prosecutor, in this behalf, has also placed reliance on Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, wherein according to him, "Garuda" is shown as scheduled caste in the State of Rajasthan. While dilating on the scope of judicial review under Section 482 Cr.P.C., learned Public Prosecutor would contend that reliability or genuineness or otherwise of the allegations made in the FIR or the complaint cannot be examined by this Court while exercising inherent powers. Learned Public Prosecutor submits that the learned trial Court has simply taken notice of an offence on the basis of materials available on record which cannot be categorized as infirm warranting interference of this Court while exercising extraordinary and inherent powers under Section 482 Cr.P.C.

7. Learned counsel for the complainant, Mr. Narpat Singh Charan, has reiterated the arguments advanced by the learned Public Prosecutor. In support of his contentions, learned counsel for the complainant has placed reliance on List of Scheduled Castes and Scheduled Tribes in State of Rajasthan as per Census of India 2001 wherein caste "Garuda" is shown as scheduled caste in the State.

8. I have heard learned counsel for the parties, perused the impugned order of cognizance by learned trial Court as well as the order passed by learned revisional Court and also scanned the materials available on record.

9. The pivotal question, which has emerged in the instant petition, is to examine the legality and propriety of the order of cognizance by the learned trial Court against the petitioners for offence under Section 3(1) (x), (xi) of the Act. While impugning the order of cognizance and the revisional order, petitioners have made an attempt to enlarge the scope of judicial scrutiny in this petition by questioning the status of the complainant as scheduled caste. Undeniably, a Court cannot alter or amend Presidential Notifications/Orders issued under Article 341 and 342 of the Constitution. In *State of Maharashtra v. Milind* (supra), respondent sought admission in MBBS Degree Course by producing a caste certificate showing his caste as "Koshti" and the authority concerned in the certificate shown that caste as belonging to "Halba/Halbi" under entry 19 of the

Constitution (Scheduled Tribes) Order, 1950. By afflux of time, he completed his MBBS Course and also started practise. In that background, the Supreme Court held:

11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Casts or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 *mutatis mutandis* applies to Article 342. The laudable object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Article 366 (24) and 366(25) . In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some Orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament.

12. Plain language and clear terms of these articles show (1) the President under Clause (1) of the said articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) under clause (2) of the said articles, a notification issued under clause (1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under clause (1) of the said articles. In including castes and tribes in Presidential Orders, the President is authorised to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. The States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to

entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution.

Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 is to be determined looking to them as they are. Clause (2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/tribe (A) alone is mentioned in the Order but caste/tribe (B) is also a part of caste/tribe (A) and as such caste/tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only the Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the entries in the schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Schedule Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of the said articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or courts or Tribunals are vested with any power to modify or vary said Orders. If that be so, on enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in clause (2) of Articles 341 and 342 would be futile, holding any inquiry or letting in any evidence in that regard is neither permissible nor useful.

10. While examining the lis involved in the matter, the Court has recorded finding against the respondent by relying on report of the inquiry Committee, Appellate Authority and inconsistency in the stand of State of Maharashtra as to whether "Halba/Koshitis" were "Halba/Halbi" to consider them as scheduled tribes. The Court held:

"The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that respondent 1 belonged to "Koshti" caste and has no identity with the "Halba/Halbi", which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to the State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh

and in coming to the conclusion that "Koshtis" could be treated as "Halbas". In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction. Hence, we have to essentially answer Question 2 also in the negative. Hence it is answered accordingly."

11. The factual position in the instant case is quite different inasmuch as in the Presidential order Garo, Garura, Gurda and Garoda are shown as scheduled caste. The technical objection of the petitioners, that Garuda is not shown, is per se superfluous. When caste "x:Mk" is spelled in English, its spelling may be Garura or Garuda depending on how an individual is conceiving the spelling of that particular word. It is also noteworthy that the State in its written submissions has not disputed caste of the respondent-complainant "Garuda" as scheduled caste and the List of Scheduled Castes and Scheduled Tribes for Rajasthan is also clear in this behalf. As per Census of India 2001 also, word "Garuda" is translated in Hindi as "x:Mk". That apart, in case of Milind (supra), Supreme Court had examined as to whether "Halba/Koshti" was included in "Halba" or "Halbi" tribe and in that background, the Court recorded its finding that including "Halba/Koshti" as scheduled tribe by treating it subtribe of "Halba" or "Halbi" amounts to amending the Presidential Notification by the Court issued under Article 342(1) of the Constitution, which is not permissible. As such, the said judgment cannot render any assistance to the petitioner. Therefore, while reiterating the ratio decidendi in Milind (supra) that no Court is empowered to alter or amend the Presidential Notification under Article 341 and 342 of the Constitution, in my considered opinion the judgment as such is not applicable in the backdrop of facts and circumstances of the instant case and the same is clearly distinguishable.

12. Upon perusal of the caste certificate Annex.R/1 and certificate issued by the Sarpanch of Gram Panchayat in conjunction with the other materials available on record, I am at loss to say that petitioners have miserably failed to make out a case for interference with the order of cognizance. The word "cognizance" has no esoteric or mystic significance in criminal law and procedure. It merely means "become aware of" and when used with reference to a Court or Judge "to take notice of judicially".

13. True it is that revisional Court has not examined the matter on merits and has simply rejected the revision petition as barred by limitation but then this Court has made endeavour to examine the legality and propriety of the order of cognizance. Therefore, even if the revisional order is found to be laconic, it is not desirable to upset the same by remanding the matter back to the revisional Court. In totality, the remand order would not serve any fruitful purpose for securing ends of justice.

14. After examining the matter threadbare and in view of findings recorded by the Court here in above, there is no semblance of proof that the learned trial Court while taking cognizance has abused the process of the Court or otherwise it is necessary to upset the same for securing ends of justice. Therefore, I feel

dissuaded to interfere in the matter.

15. Resultantly, the petition fails and same is hereby dismissed.