
(2019) 11 JH CK 0033

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 721 Of 2019

Md. Sarifuddin Ansari @ Sarifuddin Ansari And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 295, 295(A), 323, 341, 504
Schedule Caste And Schedule Tribe (Prevention Of Atrocities) Act, 1989 — Section 3, 3(x), 3(1)(r), 3(1)(x)

Citation : (2019) 11 JH CK 0033

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Jitendra Shankar Singh, Randhir Kumar, P.D. Agarwal, Ramchander Sahu, Tejo Mistri

Final Decision : Dismissed

Judgement

1. Heard Mr. Jitendra Shankar Singh, counsel appearing on behalf of the appellants along with Mr. Randhir Kumar, Advocate.
2. Heard Mr. P. D. Agarwal, counsel appearing on behalf of the State.
3. Heard Mr. Ramchander Sahu, counsel appearing on behalf of the opposite party No. 2 along with Mr. Tejo Mistri, Advocate.
4. Counsel for the appellants has filed deposition of the enquiry witnesses by way of supplementary affidavit in this case, which is taken on record.
5. Counsel for the O. P. No. 2 has filed a counter affidavit in this case, which is taken on record.
6. Counsel for the appellants submits that the present appeal is directed against the order dated 03.06.2019 passed in A.B.P. No. 562 of 2019 arising out of aforesaid complaint case which was numbered as Complaint Case No. 272 of 2018 and T.R. No. 07 of 2018 by the learned 1st Additional Sessions Judge-cum-

Special Judge, Bokaro, whereby the prayer for anticipatory bail of the appellants has been rejected on the ground that the anticipatory bail itself is not maintainable.

7. Upon perusal of the complaint petition, this Court finds that the case has been instituted on 17.03.18 u/s 147, 148 295 295(A), 323, 341, 427, 452, 504, 506 IPC & 3 of SC/ST Act by Pradeep Turi (complainant) against altogether five accused namely (1) Md Sarifuddin Ansari, (2) Jamil Ashraf Ansari, (3) Jamil Akhtar, (4) Gulam Mustafa and (5) Nayeem Akhtar @ Dablu in which complainant has alleged that he himself and accused persons are co-villagers and they are litigating terms with respect to land. Mother of complainant namely Smt. Sushila Turin had purchased 09 decimals of under Mouza-Chas, Mouza No. 30, Khata No. 136, Plot No. 271 through registered Sale Deed No. 9162 dated 04.11.1978 and she is in peaceful possession by constructing house, grainery and Bari and paying rent to the government. On 16.03.18 at about 4:00 p.m. all the accused persons having armed with lethal weapons after entering into her house abused by calling their caste name threatened to relinquish their claim over the land. Accused persons abused and assaulted complainant and his members with kicks, shoes and sleepers. It is further alleged that thereafter the accused persons went to the government road adjoining to the land of the complainant and started abusing the complainant in caste name and assaulted the complainant with fist, shoes and slippers. When Shekhar Turi, Kailash Turi, Rekha Devi came to save the complainant, the accused persons again assaulted the complainant by saying caste name and also started spitting on the complainant. It also alleged that the accused persons also obstructed the ladies of the family of the complainant from worshipping in the temple and threatened them.

8. The learned counsel submits that in the instant case, cognizance has been taken under Sections 323, 341 and 504 of Indian Penal Code read with Section 3 (x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act of 1989), although the correct provision of law would be Section 3 (1) (r) of the Act of 1989 when read with the amendment of the year 2015. He further submits that the language of Section 3 (1) (x) of the Act of 1989 is identical as that of Section 3 (1) (r) as amended vide amendment Act of 2015. The learned counsel further submits that the sections of the Indian Penal Code under which cognizance has been taken against the appellants, are bailable except the allegations made under the provisions of the Act of 1989 and there is hindrance with regard to maintainability of the anticipatory bail under the provisions of the Act of 1989. He submits that the anticipatory bail is maintainable, considering the facts and circumstances of this case. He submits that no prima facie case under the provisions of the Act of 1989 has been made out against the appellants, in as much as, the alleged incident had taken place in 'public place', but not in 'public view'. He also submits that as per the statements made in the complaint petition at Para 6, all the witnesses, namely, Shekhar Turi, Kailash Turi and Rekha Devi who are the family members of the complainant, are also the victims to the alleged incident. He further submits that from perusal of

the complaint petition read with solemn affirmation of the complainant and the statements made by the enquiry witnesses, there is no independent witness or any person belonging to public. Accordingly, prima facie no case under the provisions of Section 3 (1) (r) of the Act of 1989, is made out against the appellants and therefore, the learned court below has erred in law in not entertaining the application for anticipatory bail of the appellants.

9. The learned counsel for the appellants in furtherance of his argument has relied upon a judgment passed by Hon'ble Delhi High Court in the case of Daya Bhatnagar and Ors. Vs. State reported in 109 (2004) DLT 915 and submits that the term "public view" has been interpreted in Para-19 thereof, wherein it has been held that looking to the aims and objects of the Act, the expression "public view" in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small in number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.

On this basis, the learned counsel submits that in the present case, all the witnesses have been said to be closely related to the complainant, therefore, prima facie case under the provisions of Section 3(1) (x) of the Act of 1989, is not made out and this aspect of the matter has not been properly considered by the learned court below.

10. Counsel appearing on behalf of the State as well as opposite party No. 2 has submitted that as per the complaint petition and the statements made by the enquiry witnesses, the place of occurrence is at the courtyard of the house belonging to the complainant and also the government road as well as the temple. They submit that merely because there is no witness belonging to the public at large amongst those who have deposed as enquiry witnesses, namely, Shekhar Turi, Kailash Turi and Rekha Devi, who are also the victims of the alleged incident, it cannot be said that the provisions of Section 3 (1) (r) of the Act of 1989, is not attracted. They also submit that in the complaint petition apart from the named witnesses it has been stated that there are other witnesses also.

11. Counsel appearing on behalf of the State has referred to Para 3 of the enquiry witness No. 1 (Shekhar Turi) as well as Para 4 of the enquiry witness No. 2 (Kailash Turi) and enquiry witness No. 3 (Rekha Devi) to submit that these enquiry witnesses have fully supported the case of the prosecution. He relied upon a judgment passed by Hon'ble Kerala High Court in the case of E. K. Nayanar vs. M.A Kuttappan reported in 1997 (2) Crimes 119: 1997 CrLJ 2036 and submits that in view of this judgment, the contention of the appellants that no prima facie case is made out under the provisions of Section 3(1)(r) of the Act of 1989, is fit to be rejected.

12. In response, counsel for the appellants submits that there is a marked

distinction between 'public place' and 'public view' and merely because the alleged incident had taken in public place, the same cannot be said to be in public view in absence of any witness to that effect from the public. He submits that admittedly there is land dispute between the parties.

13. At the outset, it is put on record that this case is being examined at this stage only for the purposes of considering the point of maintainability of anticipatory bail petition by the appellants which has been rejected by the learned court below as not maintainable.

14. After hearing the counsel for the parties and considering the materials on record, this Court finds that as per the allegations made in the complaint petition, the place of occurrence is the courtyard of the house belonging to the complainant, the Government Road as well as the Temple and there is no dispute at this stage that in the present case the Government Road as well as the premises of the Temple are public places, which ordinarily can be seen by the public. The specific case of the appellants is merely because the alleged incident is at public place, the same cannot be said to be within public view as there is no independent witness to the alleged incident.

15. This Court finds that in the judgment passed by the Hon'ble Supreme Court reported in (2008) 8 SCC 435 (Swaran Singh and Ors. Vs. State Through Standing Counsel and Another), the Hon'ble Supreme Court, while considering the scope and meaning of the terms "in any place within public view" has held in Para-27 that Section 3(1)(x) of the Act of 1989 does not use the expression "public place", but instead the expression used is "in any place within public view". The Hon'ble Supreme Court in the said judgment was of the view that there is a clear distinction between the two expressions. The Hon'ble Supreme Court, while dealing with the facts of the case, found that as per the allegation made in the F.I.R., the incident of insult had taken place when the complainant stood near the car which was parked at the gate of the premises and held that the incident being outside the private premises was a place within public view.

The Hon'ble Supreme Court rejected the appeal of two of the accused and allowed the appeal of one of the accused, namely, Swarn Singh by holding that on the perusal of the FIR, Swarn Singh did not use offensive words in public view as the allegation upon Swarn Singh was different and was at private premises and there was nothing on record to show that any member of the public was present when Swarn Singh uttered the objectionable words or that the place where he uttered such words ordinarily could be seen by public and it was held that no prima-facie was made against one of the appellants, namely, Swarn Singh.

The Hon'ble Supreme Court also cited examples to show as to how incidents in private place can still be in public view to bring home the offence under the aforesaid Act of 1989. The Hon'ble Supreme Court while dealing with the example of commission of such offence within a building has held that such

offence can be committed even inside a building if some members of the public are there (not merely relatives or friends).

Thus, this Court is of the considered view that the requirement of persons other than relatives or friends/victims is only when the alleged offence is committed inside a building which ordinarily cannot be said to be in public view. For commission of such offence in other places, there is neither any prerequisite to have an independent witness nor there is any requirement to be necessarily viewed by public and it is sufficient if the place of occurrence ordinarily could be seen by public.

It would be useful to quote para 25, 27, 28 and 34 of the aforesaid judgment reported in (2008) 8 SCC 435, which are as follows: -

"25. A perusal of the FIR clearly shows that, prima facie, an offence is made out against Appellants 2 and 3. As already stated above, at this stage we have not to see whether the allegations in the FIR are correct or not. We only have to see whether treating the FIR allegations as correct an offence is made out or not. In our opinion, treating the allegations in the FIR to be correct an offence under Section 3(1)(x) of the Act is prima facie made out against Appellants 2 and 3 because it prima facie seems that the intent of the appellants was to insult or humiliate the first informant, and this was done within the public view.

27. Learned Counsel then contended that the alleged act was not committed in a public place and hence does not come within the purview of Section 3(1)(x) of the Act. In this connection it may be noted that the aforesaid provision does not use the expression public place, but instead the expression used is 'in any place within public view'. In our opinion there is a clear distinction between the two expressions.

28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a 'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaonsabha or an instrumentality of the State, and not by private persons or private bodies.

34. However, a perusal of the F.I.R. shows that Swaran Singh didn't use these offensive words in the public view.

There is nothing in the F.I.R. to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence, in our opinion no prima facie offence is made out against the appellant No. 1.

(emphasis supplied)

16. In view of the aforesaid judgement passed by the Hon'ble Supreme Court, this Court is of the considered view that offence under Section 3(1) (x) of the aforesaid Act of 1989, inter alia, can take place:-

a) In a private place but yet within public view

b) In a public place within public view.

c) In a place (public or private) which ordinarily could be seen by public is to be treated as a "place within public view"

d) In a private place, inside a building, but some members of the public are there (not merely relatives or friends)

17. This Court is of the considered view that presence of independent witness or the incident actually being viewed by public is not a *sin-qua-non* for constituting an offence under Section 3(1) (x) of the aforesaid Act of 1989, if the place of incident ordinarily could be viewed by public, which appears to be so in the present case as the alleged place of occurrence, inter alia, is government road and temple.

18. Further, the specific case of the appellants before this Court is that the incident was actually not viewed by public. This Court is of the view that it is irrelevant as to whether the incident was actually viewed by public or not, and what is relevant is as to whether ordinarily the place of occurrence could be seen by public or not. It is not the case of the appellants before this Court, at this stage, that the place of occurrence ordinarily could not be seen by public. In aforesaid view of the matter, this Court does not agree with the submissions of the counsel appearing on behalf of the appellants that no case against the appellants is made out under Section 3(1) (x) of the aforesaid Act of 1989. This Court is of the considered view that prima-facie case under section 3(1) (x) is made out against the appellants and therefore, the learned court below was right in holding the anticipatory bail application filed by the appellants as not maintainable under the facts and circumstances of this case.

19. In the judgment relied upon by the opposite party-State passed by the Hon'ble Kerala High Court in the case of E. K. Nayanar vs. M.A Kuttappan reported in 1997 (2) Crimes 119: 1997 CrLJ 2036, the issue which was decided by the Hon'ble Kerala High Court was as to Whether in order to attract sub-section (x) of Section 3 of the Act of 1989, the person insulted must be present

at the time when the words are uttered or otherwise no offence is made out in view of the expression within public view as found in the sub-section.

The Hon'ble Kerala High Court in the said judgment held in the aforesaid background that the words used in sub-section are public place, but "place within public view" which means that the public must view the person being insulted for which he must be present.

Thus, this Court finds that the judgment passed by Hon'ble Kerala High Court reported in 1997 CrLJ 2036 (supra) also does not apply to the facts and circumstances of this case, as it was specifically dealing with the situation where the person insulted was not physically present so as to attract the offence under Section 3(x) of the Act of 1989. In the present case, admittedly the persons insulted was present at the place of occurrence.

20. So far as the judgment passed by the Hon'ble Delhi High Court in the case of Daya Bhatnagar and Ors. Vs. State (supra) is concerned, it does not apply to the facts and circumstances of this case, in view of the fact that the incident in the case before Hon'ble Delhi High Court had taken place in a flat and the issue which fell for decision by the Hon'ble Court has been recorded at Para-10 of the said judgment as under: -

"What is the true meaning and scope of the expression "public view" used in Section 3(i)(x) of the Act? Is it necessary that the derogatory or humiliating words to constitute an offence, should be uttered in the presence of the independent persons? Or would it be sufficient, if these are used, in the presence of any one or two members of the public, whether they are relatives, friends, associates or otherwise connected with the complainant? These are questions which require determination."

While deciding the case against the petitioner of the said case, the Hon'ble Delhi High court was of the considered view that merely because, a witness, who is otherwise neutral or impartial and who happens to be present at the house of the victim, by itself, cannot be disqualified. In the said case the place of occurrence being in a flat (i.e. private place), even as per the aforesaid judgement passed by the Hon'ble Supreme Court offence under Section 3(1) (x) of the aforesaid Act of 1989 could be made out if some members of the public are there (not merely relatives or friends).

The present case does not relate of incident inside a house or a flat, but it relates to place of occurrence being government road and temple which are within public view. The place of incident has an important bearing in the matter as explained above. The judgement passed by the Hon'ble Delhi High Court does not apply to the facts and circumstances of this case.

21. Accordingly, the impugned order passed by the learned court below does not call for any interference, the present appeal is hereby dismissed.

22. Considering the facts and circumstances of this case, the appellants are

directed to surrender before the learned court below by 06.12.2019 and the appellants are at liberty to make prayer for regular bail before the learned court below and also make prayer for disposal of the bail application on the very same day and if such request is made, the learned court below shall consider the same and pass appropriate order in accordance with law.

23. It is observed that learned court below will not be prejudiced by the dismissal of the present appeal. It will be open to the appellants to put their defence and the trial court may not accept the correctness of the allegations in the complaint. However at this stage, anticipatory bail application filed by the appellants cannot be said to be maintainable.

24. Let a copy of this order be communicated to the concerned court through 'FAX'.