

(2012) 07 AP CK 0089

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5519 of 2012

Mohammad Saleem

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 290, 323
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1), 3(1)(x)

Citation : (2012) 2 ALD(Cri) 505 : (2012) 3 ALT(Cri) 256

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : C. Ramesh Sagar, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The petitioner is accused of offences punishable under Sections 290, 323 I.P.C and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the Act). The 2nd respondent gave report to the police on the basis of which the police issued F.I.R in this case against the petitioner. It is alleged that on 30.03.2012 at about 8.00 A.M in the temporary absence of her husband in the house, the accused who is residing at some distance from her house came to a vacant site near her house and called her as Erukula bitch and questioned her as to why she reported to her master about the accused being responsible for burning of motor because of washing of clothes by him. It is further alleged that the accused abused her and women belonging to her caste as Erukula bitches and also abused them in most filthy language and that when one Manemma intervened and questioned the accused as to why he was abusing all of them in the name of their caste, the accused came upon her and the 2nd respondent for beating her and that wife of the accused also came along with the accused and beat the 2nd respondent with

hands. It is contended by the petitioner's counsel that necessary ingredients u/s 3(1)(x) of the Act are not attracted in this case as the place of offence is not a public place and that there were no other public who witnessed the offence as per allegations in F.I.R. He placed reliance on *Mahesh Sakharam v. State of Maharashtra*, 2009 CrI.L.J. 3831 (Bom) of the Bombay High Court in support of his contention. The Bombay High Court held therein that "public" referred in Section 3(1)(x) of the Act do not include family members and residential attender of the complainant and that the said term includes members of the public already in the locality as residents as well as visitors from outside and that presence of such public is essential to attract the said offence.

2. In my opinion, ratio of the Bombay High Court in *Mahesh Sakharam* (supra), with due respect, does not interpret the provision u/s 3(1)(x) of the Act in correct perspective. Section 3(1)(x) of the Act reads as follows:

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, (x) intentionally insults or intimidates with intend or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view-----

The term "public" occurring in the above provision cannot be read in isolation. The said term is used with reference to the place of occurrence, the relevant phrase being "in any place within public view". The said phrase cannot be equated with a public place though the said term includes public place also. In order to attract the offence, it should have occurred at any place whether a public place or a private place, but the said place should be within public view. Clause (x) of Section 3(1) of the Act does not speak about presence of any public or witnesses at the time of the intentional insult or intimidation which was done with an intend to humiliate the victim who is a member of Scheduled Caste or Scheduled Tribe. In the absence of stipulation as to presence of public or witnesses at the time of offence and in the absence of stipulation as to commission of the said offence in the presence of public or in the presence of outside witnesses, it is not for the Courts to impose the said stipulation by introducing language into the provision, which language the parliament did not intend to include in the provision. In my considered opinion, giving such restricted interpretation on the offence covered by the above provision would only defeat the purpose for which the Act was enacted, viz., that the Act is intended to prevent commission of offences of atrocities against members of the Scheduled Castes and Scheduled Tribes. One cannot say that it is an offence only when the insult or intimidation to humiliate the victim was made in the presence of any outside public and that it is not an offence in case the same is committed in the absence of general public, even though it occurred in any place of public view. Therefore, reasoning of the Bombay High Court in *Mahesh Sakharam* (supra) fails to persuade this Court to accept the same. The said pronouncement does not lay down good law by adopting golden rule of interpretation statutes viz., letter or language of the provision has to be interpreted in the plain sense as it was enacted by the Parliament or legislature.

3. In the case on hand, apart from the 2nd respondent some others like Chilumardi Manemma belonging to the same scheduled caste was present and witnessed the alleged utterances of the petitioner and she also intervened and questioned the petitioner about his alleged irresponsibility and provocative utterances. In that view of the matter, I am of the opinion that there are sufficient allegations in F.I.R to attract the ingredients of the offence u/s 3(1)(x) of the Act. By description of the petitioner's name and his father's name, it is evident that he does not belong to scheduled caste or scheduled tribe as he is a muslim by religion. Intention of the petitioner is a matter which has to be gathered from the surrounding circumstances together with the utterances said to have been made by the accused in a place within public view. Therefore, I do not find any valid reasons to quash F.I.R in this case. Accordingly, the Criminal Petition is dismissed.