

(2023) 05 DEL CK 0068

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 439 Of 2013

Mukesh Sharma & Ors.

APPELLANT

Vs

State Nct Of Delhi & Anr

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 133, 482
Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(v), 3(1)(x)

Citation : (2023) 05 DEL CK 0068

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

Advocate : K.K. Manan, Luv Manan, Ajit Singh, Komal Vashist, Jatin Singh, Vishu Raj, Mehul Anand, Utkarsh, Satya Narayan Vashishth

Final Decision : Dismissed

Judgement

Amit Sharma, J

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.PC.') seeks quashing of FIR bearing number 262/2012 dated 07.09.2012, registered at P.S. Palam Village, for offence under Section 3(1)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 ('SC & ST (POA) Act'), and all other proceedings emanating therefrom, including the chargesheet pending before the Court of learned Additional Sessions Judge, Dwarka.

2. This Court, vide order dated 08.08.2013 stayed the trial Court proceedings.

3. The case of the prosecution, as per the status report dated 14.09.2013 authored by Rajeev Kumar Ambasta, Assistant Commissioner of Police, Sub Division, Najafgarh, South West Distt., New Delhi, is as below:

"1. That on 5.7.2012 Ms. Nidhi daughter of Shri Nihal Chand r/o WZ-15M, Raj Nagar-II, Palam Colony New Delhi-110045 submitted a complaint to DCP/South

West Distt. and on 30.7.2012 to ACP/Dabri. In both complaints she alleged that she is residing with her parents and pursuing M.A. Journalism. In her neighbourhood there are two temples known as Pracheen Bada Hanuman Mandir and Sankat Mochan Mandir. Virender is the owner of Pracheen Hanuman Bada Hanuman Mandir whereas Ram Niwas is the owner of Sankat Mochan Mandir. Ram Niwas and Virender used to play loudspeakers, dholaks and harmoniums in loud voice in their Mandirs as a result of which she was unable to concentrate on her studies. On several occasions she and her parents requested Ram Niwas and Virender to reduce the sound level of loudspeakers so that they can study properly but in spite of several requests they did not adhere to their requests. Thereafter she and her sister Rashmi filed a complaint with SDM/Najafgarh and on that complaint the Ld. SDM, Najafgarh passed an order that no vehicle of the devotees should be parked in the Gali and the loudspeakers should not be played at his decibel. After this, Ram Niwas started troubling with her family and started insulting and using caste based words. On 3.7.2012, When she and her sister Rashmi, objected to the car owner, being parked in front of their house, Ram Niwas, his wife Savita, son Mukesh, Mukesh's wife Anju, Ram Niwas's daughter Chanchal and Seema, Ram Niwas's brother Surender and his son Mannu and Satish s/o Paras Ram, who belongs to Brahmin caste, gathered in front of their house and started calling her and her sister 'CHAMAR' AND HURLED ABUSES. They said that you Chamaar tried to close down their temple. They distribute BHABHOOT in their temple and treat the general public, what you have the problem. She will do anything but they will not allow you Chamaar to live in this Gali/here. She belongs to Jaatav caste. Ram Niwas, Savita, Mukesh, Anju, Surender, Manu and Satish called them and her sister Rashmi as Chamaar and insulted with the caste based words in the public view and in General Public. Rajeev Verma, who belongs to sunaar caste was present at the spot and other of other caste also present at the spot and requested to take action against them. Both complaints were enquired by Shri Mahender Singh, ACP/Dabri and after conducting enquiry he submitted his report to Addl. CP/SWD upon which Addl. CP/SWD directed SHO/Palam Village to register a case under relevant section of law and Shri Narayan Singh, the then ACP/Najafgarh was nominated as Investigation Officer of the case vide order No. 9455-57/AC-II/SO-Addl. CP/SWD dated 7.9.2012. On receipt of order SHO/Palam Village registered a case vide FIR No. 262/12 under section 3 (I)(x) SC & ST (POA) Act at PS Palam Village and the investigation handed over to Shri Narayan Singh, the then ACP/Najafgarh, in compliance of order.

2. That during the investigation Shri Narayan Singh, the then ACP/Najafgarh recorded the statement of complainant's sister Rashmi u/s 161 Cr.P.C. In her statement, she fully corroborated the statement of complainant Ms. Nidhi and further added that Ram Niwas, owner of temple giving BHABHOOT to the general public and this BHABHOOT used to give on Tuesday, Sunday, Ekadashi, Dwadshi, Tryodashi, Holi, Diwali and Dussehra days and to take this BHABHOOT, thousands of followers use to come in this temple and they used to park

their vehicles in the street because there is no parking facilities in these mandirs and the followers standing in this street and used to pass urine and also sitting between the vehicles use to toilet. They also requested to Ram Niwas and Virender but they did not adhere and at last they filed complaint to SDM/Najafgarh, who after conducting enquiry pleased to pass condition order under section 133 Cr.P.C. dt. 16.6.2012, in which he has banned drum, harmonium, loudspeaker, shop and parking, but Ram Niwas and Virender not obey the orders of SDM/Najafgarh and on 3.7.2012, on the day of Tuesday, they continuing his programme, for which they opposed and informed the PCR. Local police and traffic police also reached at the spot but they did not take any action and went away from the spot. Thereafter all the alleged persons came in front of their house and saying CHAMAR-CHAMAR and start abusing filthy languages to them. The alleged persons insulted them and their family members in full public view and in general public being they belong to lower caste.

3. That during investigation, investigating officer recorded the statement of two independent witnesses namely Rajiv Kumar Verma s/o Shri Krishan Chand Verma r/o H-86, RajNagar-II, Palam Colony, New Delhi and Shri Ishwar Singh Dabas s/o Shri Desh Ram Dabas r/o house No. 65, Gali No. 3, Raj Nagar II, Palam Colony, New Delhi, u/s 161 Cr.P.C. Both independent witnesses belong to Sunaar and Jat caste and they fully corroborated the statement of complainant Ms. Nidhi and her sister Rashmi.

4. That during investigation, the photo copy of caste certificate of complainant Ms. Nidhi was taken as a proof of caste of Ms. Nidhi through seizure memo, in police custody and got verify from the concerned issuing agency.

5. That on the basis of investigation and statement of witnesses and after verification of caste certificate of complainant Ms. Nidhi and sufficient grounds of arrest came on file, all accused persons were arrested by investigation officer on 31.10.2012. After completing the investigation, charge sheet u/s 173 Cr.P.C. was filed in the Court and presently case is pending trial in the Court of Shri Vijay Kumar Dahiya, ASJ, Dwarka Court and next date of hearing is fixed for 31.10.13."

4. Learned Senior Counsel for the petitioners submitted that the present FIR had been registered without taking into consideration the fact that none of the allegations mentioned therein had been satisfactorily proved against the accused persons. He further urged that the said FIR had been registered without conducting due verification of the caste certificate of respondent no. 2. Learned Senior Counsel for the petitioners, in this context, submitted that the said caste certificate provided by the respondent no. 2, was found to be false and forged. It was submitted that the report from the concerned Sub-Divisional Magistrate demonstrated that no caste certificate had been issued from their office in the name of respondent no. 2.

5. It was also the submission of learned Senior Counsel for the petitioners that

the said FIR was registered on 07.09.2012, i.e., after a delay of more than two months from the date of the alleged incident, i.e., 03.07.2012, which created a grave suspicion with regard to the respondent no. 2's allegations. He further submitted that the aforesaid delay with regard to the registration of the FIR sufficiently indicated that the said act was an afterthought on part of respondent no. 2 with a view to maliciously malign the reputation of the present petitioners.

6. Learned Senior Counsel for the petitioners further submitted that the alleged caste certificate submitted by respondent no. 2 was a mere photocopy of the alleged original which was provided to the Investigating Officer only on 21.09.2012. He further submitted that a subsequent caste certificate as prepared by the Tehsildar Palam, was not in accordance with the law. Moreover, the said subsequent certificate was never presented by the respondent no. 2 when the FIR was lodged.

7. It was also the submission of learned Senior Counsel that the testimony of the alleged eye witness, Rajeev Verma, cannot be relied upon as he was a notorious criminal who had several complaints of cheating and theft pending against him.

8. Learned counsel for respondent no. 2 submitted that the petitioners had intentionally insulted and used derogatory caste related remarks with respect to respondent no. 2 and her sister, within public view and therefore, were liable to be punished under Section 3(1)(x) of the SC & ST (POA) Act. In furtherance of his submission, the learned counsel for the Respondent No. 2 relied on *Swaran Singh and Ors v. State*, (2008) 8 SCC 435 and *Arumugam Servai v. State of Tamil Nadu*, (2011) 6 SCC 405.

9. It was also the submission of the learned counsel for respondent no. 2 that there had been no intentional delay on part of the latter in filing the FIR. The alleged delay had been caused by reason of procedural technicalities, as prescribed under the SC & ST (POA) Act and Rules.

10. With regard to the veracity of the caste certificate, learned counsel for respondent no. 2 submitted that the aforesaid caste certificate had been issued by the office of Deputy Commissioner, Delhi Administration, Caste Certificate Department-II, however the concerned Investigating Officer was conducting verification of the same at the SDM Headquarters, wherein the records would naturally not be available. It is pointed out that Para C of the Status Report dated 14.09.2013, authored by Rajeev Kumar Ambasta, Assistant Commissioner of Police, Sub Division, Najafgarh, South West Distt., New Delhi records as under :

"C) Para C of the Criminal Misc. is not admitted and false. The photocopy of caste certificate of complainant Ms. Nidhi duly signed by her was seized by the investigating officer through seizure memo, and taken into police possession and was sent to SDM/HQ(III) 5 Sham Nath Marg for verification being issuing authority. As per report sent to Investigating Officer by Shri D.K. Saini, Sub Divisional Magistrate -II (HQ), office of Govt. of NCT of Delhi, Revenue Department, CCS, Room No. 206, B-Block, 5, Sham Nath Marg,

Delhi-54, the record of caste certificate No. 052154 dt. 26.8.1994 issued in favour of Ms. Nidhi D/O Shri Nihal Chand is not available in the office and he further requested to SDM-Najafgarh to conduct a fresh enquiry in respect of Certificate No. 052151 dt. 26.8.1994 and send the report directly to Shri Narayan Singh, ACP-Sub Division Najafgarh, 1.O. of the case. After that a fresh enquiry was conducted by Executive Magistrate- Palam on the directions of SDM-Najafgarh and after conducting the enquiry and sent his report vide No. 052151 dated 26.8.1994 enumerating therein that Nidhi daughter of Shri Nihal Chand resident of WZ-153, Raj Nagar Part-1, Palam Colony Delhi belongs to Jatav Chamar Caste and the same has been recognized by the constitution as scheduled caste. The plea taken by the petitioner that the caste certificate dated 26.8.1994 issued from Delhi Administration was found false and forged and no such caste certificate has ever been issued from their office in the name of complainant, is fully wrong, baseless and has no merits. As per report of SDM/HQ-II, Delhi Administration, only the record of caste certificate of complaint Ms. Nidhi was not found and in this report SDM/HQ-II, never been reported that the caste certificate has never issued. As per procedure of the revenue department, Govt. of NCT of Delhi, caste of complaint Nidhi was again verified and in this regard nothing is wrong. However, Shri Surat Singh, Patwari, Palam, New Delhi posted in the office of SDM/Najafgarh has already been cited as a P.W. in the list of witnesses in the Charge sheet filed in this case at Serial No. 8, who will prove the caste verification report No. F.IO/Teh/Palam/2012/346 dated 15.10.12. All the accused persons were arrested only after the verification of caste certificate of the complainant Ms. Nidhi"

11. It was also the submission of learned counsel for respondent no. 2 that in the present case, the chargesheet has already been filed and the learned Trial Court has already taken cognizance of the offence under Section 3(1)(x) of SC & ST (POA) Act, therefore, the present petitioners have an alternate and appropriate remedy to argue their case at the time of consideration on charge, rather than invoking the inherent powers of this Hon'ble Court under Section 482 of Cr.P.C.. He further urged that at this point, this Hon'ble Court may not delve in the question of correctness of the allegations in the FIR. In support of his submissions, the learned counsel for respondent no. 2 relied on the following judgments:

- (i) Indian Oil Corporation vs. NEPC India Ltd & Ors, (2006) 6 SCC 736.
- (ii) State of Orissa & Anr vs. Saroj Kumar Sahoo, (2005) 13 SCC 540.
- (iii) Ashabai Machindra Adhagale vs. State of Maharashtra & Ors, (2009) 3 SCC 789.

12. Learned counsel also submitted that the present petitioners were misusing the interim stay granted by this Court vide order dated 08.08.2013, by constantly harassing and threatening respondent no. 2 and her family, and had also filed several false and frivolous cases against the witnesses in this present

case.

13. Heard the learned counsel for the parties and perused the record.

14. Learned Senior Counsel for the petitioners urged four grounds in support of the petition; (a) previous enmity between the petitioners and respondent no. 2; (b) no independent witnesses; (c) caste certificate of the respondent no. 2 and (d) no evidence regarding prior knowledge of the petitioners about the caste of respondent no. 2.

15. The contention of learned Senior Counsel for the petitioners was that there were prior disputes between the petitioners and respondent no. 2, which was an admitted case of the latter, as recorded in the FIR. It had been contended that the incident is alleged to have taken place on 03.07.2012, but the FIR was registered on 07.09.2012. It was contended that the aforesaid delay further indicated that the allegations made therein were an afterthought on part of respondent no. 2 on account of their previous dispute.

16. Per contra, learned APP for the State, alongwith learned counsel appearing on behalf of respondent no. 2 submitted that the incident on 03.07.2012 was reported by respondent no. 2 by a PCR call which is part of the chargesheet. It was further pointed out that respondent no. 2 had also made a complaint to the Deputy Commissioner of Police on 05.07.2012. As per the status report dated 14.09.2013 authored by Rajeev Kumar Ambasta, Assistant Commissioner of Police, Sub Division, Najafgarh, South West Distt., New Delhi, both the complaints were enquired by Assistant Commissioner of Police, Dabri and on the basis of the report pertaining to the same, SHO, PS Palam Village registered a case vide FIR 262/12 under Section 3(1)(x) SC & ST (POA) Act.

17. In view thereof, it was submitted that the delay had been sufficiently explained, so far as the registration of FIR was concerned. A perusal of the aforesaid documents demonstrated that respondent no. 2 had in fact made a complaint about the alleged incident on 03.07.2012 on the very same day itself. It is further pertinent to note that the statement of respondent no. 2 itself shows that the incident had occurred on account of some dispute between the parties relating to playing of loudspeakers as well as on account of some parking issue. In these circumstances, at this stage it cannot be presumed, at this stage, that the aforesaid FIR is false and is needed to be quashed in the interest of justice by invoking the inherent power under Section 482 of the Cr.PC.

18. The chargesheet in the present FIR had been filed after completion of investigation. It is the case of the prosecution that enough evidence has been brought on record to substantiate the allegations made in the FIR and the petitioners are at liberty to urge the aforesaid grounds before the learned Trial Court at the stage of consideration on charge, as well as during the course of evidence.

19. Learned Senior Counsel further contended that no independent witnesses

were present at the spot when the alleged incident had taken place. It was urged that the so-called eye-witnesses were interested witnesses and with the passage of time, they have passed away. The only other witness who remains to support the allegations of respondent no. 2 is her own real sister, who cannot be considered as an independent witness.

20. It is pertinent to note that the allegation made by respondent no. 2 was to the effect that the petitioners made derogatory remarks against both of them with respect to their caste in public view, thus, satisfying the basic ingredient of Section 3(1)(x) of the SC & ST (POA) Act.

21. The contention of learned Senior Counsel that the alleged witnesses were not independent is again a disputed question of fact which cannot be examined by this Court while exercising its inherent powers under Section 482 of the Cr.PC.

22. So far as the issue of the caste certificate is concerned, learned APP for the State pointed out that during the investigation, the caste certificate of respondent no. 2 which was issued by Executive Magistrate (Palam) SDM (Complex), Najafgarh and was verified from the concerned competent authority. The veracity of the said certificate again cannot be gone into by this Court. The competent authority issuing the said certificate will come and testify before the concerned learned Trial Court and the petitioners would get an opportunity to challenge the veracity of the same by cross-examining the official witnesses. At this stage, there is a certificate placed on record by the Investigating Officer forming part of the chargesheet filed before the Court of competent jurisdiction.

23. Finally the contention of learned Senior Counsel with regard to the fact whether the petitioners had knowledge with regard to the respondent no. 2's caste is not tenable. Section 3(1)(x) of the SC & ST POA Act, reads as below:

"3. Punishment for offences of atrocities -

1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

xxx

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.."

A bare reading of the aforesaid Section implies that it is sufficient for the purposes of aforesaid provision that a person belonging to the Scheduled Castes/ Scheduled Tribes community had been intentionally insulted or humiliated by referring to his caste in public view. It is pertinent to note that on a complaint made by respondent no.2, SDM Najafgarh after conducting an enquiry, passed a conditional order dated 16.06.2012 under Section 133 of the Cr.P.C. This fact demonstrates that petitioners knew about respondent no.2 before the date of incident, i.e., 03.07.2012. It is further noted that the knowledge is implicit in allegations made in the complaint with regard to respondent no. 2's caste.

24. The Hon'ble Supreme Court in Swaran Singh and Ors vs. State (2008) 8 SCC

435 has held as under:

"24. In our opinion, calling a member of the Schedule Caste "chamar" with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word "chamar" will of ofcourse depend on the context in which it was used.

34. The High Court in the impugned judgment has observed (in para 16) that the question whether the appellants indeed uttered the offending words with the intention to humiliate the complainant, are matters of evidence. We fully agree with this view. Hence, we find no merit in the appeals of appellants 2 and 3, and they are accordingly dismissed. However, the appeal of Appellant 1 is allowed, and the proceedings against him are quashed. There will be no order as to costs."

25. The reliance placed by learned Senior Counsel on B. Venkateshwaran & Ors vs. P. Bakthavat Chalam, SLP (CRL) No. 3411/2021 is misplaced. It is pertinent to note that the Hon'ble Supreme Court, while disposing of the aforesaid appeal, was considering the provisions of Section 3(1)(v) of the SC & ST POA Act.

Section 3 (1) (v) of the SC & ST POA Act provides as under:

"3. Punishment for offences of atrocities

1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

XXX

v. wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water"

Considering the aforesaid provision, Hon'ble Supreme Court, in Para 3 held as under:

"3....In the entire complaint, there are no allegations that the complainant is obstructed and/ or interfered with enjoyment of his right on his property deliberately and willfully knowing that complainant belongs to SC/ST..."

26. It is further pointed out that the present petition is in the nature of second petition seeking quashing of the present FIR. In the first round of litigation, the petitioners had filed a writ petition bearing number W.P.(CRL) 1405/2012. The said petition was disposed of with a direction to the police to investigate the defence of petitioners therein, before filing the chargesheet. The chargesheet in the present FIR stands filed and is pending in the Court of competent jurisdiction. The grounds taken in the present petition, as examined hereinbefore are disputed questions of fact which cannot be examined by this Court under Section 482 of the Cr.PC.

27. The aforesaid findings of this Court are limited to purpose of disposal of the present petition under Section 482 of the Cr.PC. and nothing stated hereinabove

will have any bearing on the merits of the case pending trial before the Court of competent jurisdiction.

28. The petition is dismissed and disposed of accordingly.

29. Pending applications, if any, also stand disposed of.

30. Interim order dated 08.08.2013 stands vacated.