

(2009) 04 CHH CK 0037
In the Chhattisgarh High Court
Case No : Criminal Revision No. 95 of 2007

Nageshwar Mandal and Others

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173
Penal Code, 1860 (IPC) — Section 149, 366, 376, 376(1), 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1), 3(2)

Citation : (2009) 2 CGLJ 424

Hon'ble Judges : D.R. Deshmukh, J

Bench : Division Bench

Advocate : Shrawan Agrawal, for the Appellant; N. Naha Roy, Panel Lawyer for State and Manoj Paranjpe, for Non-applicant No. 2, for the Respondent

Final Decision : Allowed

Judgement

D.R. Deshmukh, J.—This criminal revision is directed against the framing of charge against the applicants No. 1 to 6 by Special Judge (Atrocities), Raipur by order dated 11.1.2007 passed in Sessions Trial No. 138/2006.

2. By the impugned order, charge u/s 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "the Act") and Section 149 of the I.P.C. was framed against applicants No. 1 to 5, while charge u/s 366, 376(1) and 506 part-II of the IPC and Section 3(1)(x) and 3(2)(v) of the Act read with Section 149 of the IPC was framed against the applicant No. 6.

3. Admittedly, applicant No. 6 is the son of applicants No. 1 and 2, brother of applicants No. 3 and 5 and brother-in-law of applicant No. 4.

4. Brief facts are that on 1.9.2005 at 1:00 pm., non-applicant No. 2 lodged written FIR in Mahila Thana, Raipur stating therein that while studying in Chhattisgarh College, Raipur, she fell in love with applicant No. 6. On the

suggestion of her relatives, she left for Mehendi Bada, Balaghat Applicant No. 6 repeatedly telephoned her to come to Raipur. Later, applicant No. 6 came to Mehendi Bada and lured non-applicant No. 2 to accompany her to Raipur. There, he married non-applicant No. 2 in a temple and also promised her for Court marriage.

5. On the date of lodging FIR, two years had elapsed and non-applicant No. 2 had a son aged 1 year, who was borne out of her relationship with applicant No. 6. Despite repeated requests, applicant No. 6 did not marry non-applicant No. 2 either before a Court of law or in the Arya Samaj Mandir. The non-applicant No. 2 had again conceived from the applicant No. 6 and had pregnancy of three months which was got aborted with their consent. In the meanwhile, Sachin Mandal, brother of applicant No. 6 started making efforts to compel non-applicant No. 2 to leave applicant No. 6. Applicant No. 2 used to threaten the non-applicant No. 2 that she would not let her son i.e. the applicant No. 6 live with a low caste girl. Later, applicant No. 6 asked non-applicant No. 2 to attend the marriage of a near relative and while she had gone to attend the marriage, applicant No. 6 left the house lock, stock and barrel. Non-applicant No. 2 suspected the involvement of applicants No. 1 to 5 in separating the applicant No. 6 from her. It was further stated that the applicant No. 6 had threatened the non-applicant No. 2 that if she lodged a report against him, he would eliminate her entire family.

6. On such FIR being lodged, statements of non-applicant No. 2 and witnesses Chandrakala, Suresh Chandani, Amar Bajaj and Sunita Wasnik were recorded u/s 161 of the Code of Criminal Procedure. After completion of investigation, the applicants were prosecuted for the offences mentioned in para-2 (supra).

7. Shri Shrawan Agrawal, learned Counsel for the applicants argued that even if the entire prosecution story, as revealed by the documents u/s 173 of the Code of Criminal Procedure, is to be accepted, it did not disclose even prima facie the existence of any of the offences for which the applicants were charged. Reliance was placed on Mehendi Lal Yadav Vs. The State of Chhattisgarh, .

8. On the other hand, Shri Manoj Paranjpe, learned Counsel for Respondent No. 2 and Shri N. Naha Roy, Panel Lawyer for the State argued in support of the impugned order and placed reliance on Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, , Swam Singh and Ors. v. State through Standing Counsel and Anr. AIR 2008 SCW 5758 and Pradeep Kumar Verma v. State of Bihar and Anr. AIR 2007 SCW 5532.

9. Having considered the rival submissions, I have perused the annexures i.e. documents u/s 173 of the Code of Criminal Procedure. The law is well settled that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not

expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

10. Testing the prosecution case on the above touchstone it is seen that neither in the FIR nor in the statement of non-applicant No. 2 u/s 161 of the Code of Criminal Procedure, there is any material to indicate the actual utterances on the ground of caste made by the applicants No. 1 to 6 to the non-applicant No. 2. There is also no material to show that utterances, if any, by the applicants No. 1 to 6 were made in any place within public view. Thus, there is no material whatsoever on the record to justify the existence of a prima facie case against the applicants No 1 to 6 u/s 3(1)(x) of the Act read with Section 149 of the IPC. Framing of charge under those Sections against the applicants No. 1 to 5 is thus contrary to law and liable to be set aside.

11. So far as applicant No. 6 is concerned, the FIR as also the statement of non-applicant No. 2 u/s 161 of the Code of Criminal Procedure shows that applicant No. 6 had married non-applicant No. 2 in a temple by filling sindur in her maang. The FIR shows that non-applicant No. 2 had lived with the applicant No. 6 as his wife and had also borne a son out of their relationship. Not only this, the second pregnancy of three months was also got aborted with mutual consent. There is no material whatsoever to indicate that the applicant No. 6 had at any time or place refused to keep the non-applicant No. 2 as his wife or denied the relationship of husband and wife. In this view of the matter, the case law cited by learned Counsel for the non-applicant No. 2 being clearly distinguishable on facts does not help the prosecution in any manner. From the facts divulged by the FIR and the statement of witnesses u/s 161 of the Code of Criminal Procedure, consent of the non-applicant No. 2 in the sexual intercourse committed with her by the applicant No. 6 can readily be inferred. To reiterate, there is material to show that the applicant No. 6 had married the non-applicant No. 2 in a temple, and had, at no point of time denied the marital relationship with the non-applicant No. 2. There is absolutely no material to show that sexual intercourse with the non-applicant No. 2 was committed by the applicant No. 6 on the ground that she belonged to the scheduled caste. Thus there is no material available to show the existence of a case u/s 3(1)(x) or Section 3(2)(v) of the Act against the applicant No. 6.

12. As regards the charge u/s 506 part-II of the I.P.C., the statement of non-applicant No. 2 u/s 161 of the Code of Criminal Procedure shows that since long duration, the applicant No. 6 had neither contacted her nor visited her or even telephoned her. Therefore, the allegation that he had threatened the non-applicant No. 2 to eliminate her entire family if she lodged a report with the

police appears even prima facie to be false.

13. Thus, in the facts and circumstances of the case, even if the entire prosecution case is accepted on its face value, there are no grounds for framing of charge u/s 3(1)(x) and 3(2)(v) of the Act and Sections 366 and 376 of the IPC against the applicant No. 6.

14. For the forgoing reasons, charge framed by the learned Special Judge (Atrocities), Raipur against the applicants, cannot be sustained in law.

15. Accordingly the revision is allowed. Order dated 11.1.2007 framing charges against the applicants as mentioned in para-2 (supra) is set aside. The applicants are discharged.