
(2002) 11 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Crl.M. No. 6009-M of 1999

Pardeep Singh and another	Vs	APPELLANT
Amar Singh		RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Citation : (2003) 2 AICLR 562 : (2003) 1 CCJ 276 : (2003) 1 RCR(Criminal) 803

Hon'ble Judges : Nirmal Singh, J

Advocate : Mr. R.D. Bawa, Advocate. Mr. B.S. Jaswal, Advocate., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. Amar Singh filed a complaint against the petitioners under Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as "the SC/ST Act") on the allegations that he belonged to Mezbi caste and has been declared as scheduled caste. Manjit Kaur, wife of Jaswant Singh, daughterinlaw of the complainant contested the election of Sarpanch of village Jethu Nangal Block Majitha held on 21.6.1998 and Gurwant Kaur wife of Pardeep Singh was her opponent. It is further case of the complainant that the accused belonged to Jat caste. On 21.6.1998 at 8 a.m. the election had started at polling booth at village Jethu Nangal and at that time, accused persons started threatening and mandhanled the complainant and his daughterinlaw. When the complainant and his daughterinlaw resisted, accused remarked "that these Kute chuhra will not be allowed to contest the election of sarpanch and would not be allowed to cast vote." The matter was reported to the police, but no action was taken. Then complainant filed a complaint in the court of Illaqa Magistrate and the accused were summoned to face the trial Court under Section 3 of the SC/ST Act.

2. Petitioners have filed this petition under Section 482 Cr.P.C. for quashing the complaint and consequent proceedings.

3. Respondent has filed reply and raised preliminary objection that the petition under the Section 482 Cr.P.C. is not maintainable. On merits, all averments made in the petition were denied.

4. During the course of arguments, learned counsel for the petitioners did not address any argument on the point that Magistrate has no power to take cognizance of the offence committed under the SC/ST Act. He has confined his argument only to the point that it is a counter blast to the FIR, Annexure P2 which has been filed against the complainant and his family members. He submitted that in the election petition filed by Manjit Kaur, it has not been mentioned that the petitioners have used the derogatory language and if such remark would have been made a mention of it would have been made in the election petition also.

5. I have considered the submissions of learned counsel for the petitioners and perused the record.

6. Before considering the submission of the learned counsel for the petitioners, it will be appropriate to notice Sections 203 and 204 Cr.P.C., which reads as under :

203. Dismissal of complaint

If after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process :

(1) If in the opinion of a magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such magistrate or (if he has no jurisdiction himself) some other magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under subsection (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process fee or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87.

7. From a perusal of the Section it is clear that if the magistrate after perusing the complaint and the statements of the complainant and the witnesses is of the opinion that there are sufficient grounds for proceeding, he may issue the summons or warrants, as the case may be. As that stage, it is not to be seen whether the accused is to be convicted or to be acquitted. Only, the magistrate is to form a prima facie opinion that there are grounds for proceeding further. The case of the petitioners is that the complainant has improved his version in the complaint but prior to that, Manjit Kaur had filed an election petition in which no such ground has been taken.

8. From the perusal of complaint it is clear that on the day of polling i.e. on 21.6.1998, complainant and his daughterinlaw were not allowed to cast their votes and were forced to leave the polling booth with the remarks that these kute churas will not be allowed to contest the election of sarpanch and would not be allowed to cast vote. In the election petition, in paras 6 and 7 Manjit Kaur has pleaded as under :

"6. That the respondents and their supporters conducted the act of hooliganism and they came to the polling booth duly armed with deadly weapons and one of the supporters Gurmit Singh of the respondent party inflicted injuries on Veer Singh. Ranjit Singh one of the supporters of the respondent injured Hardev Singh, Lakhbir Singh one of the supporter of the respondent inflicted injuries on Pal Singh. Pal Singh is voter No. 521, Dhir Singh is voter No. 506, Hardev Singh is voter No. 405. The above said persons got themselves medically examined for the injuries sustained by him at PHC Thirewal on 22.6.1998 and

7. That the respondents have influence with D.S.P. Rachhpal Singh of Majitha and under the influence of D.S.P. Majitha they did not allow the voters to cast their votes in the polling booths and the petitioner and her agents were forcibly turned out from the polling booth by the police at the instance of Rachhpal Singh D.S.P. Majitha and no body or no voter was allowed to enter the polling booth and the respondents in connivance with the presiding officer and Asst. Returning officer got the seals affixed of the voters and got it stamped in connivance with the respondents."

9. In the election petition, only those grounds are to be mentioned on the basis of which the election can be set aside. Even from the election petition, a prima facie offence under the Act is made out. Clause (vii) of Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act provides that offence under this Section is made out if someone forces or intimidated a member of scheduled caste or scheduled tribe not to vote or to vote a particular candidate or to vote in a manner other than provided by law. So from the complaint coupled with the election petition, there was a prima facie case against the petitioners for which the learned magistrate has issued the process. The case of the petitioners is that it is a counter blast of the FIR lodged by the petitioners

against the complainant.

10. I have considered this aspect of the case. From the FIR and the present complaint, it is clear that there are disputed facts which can not be decided in a petition under Section 482 Cr.P.C.

11. For the reasons recorded above, there is no merit in this petition. Hence, the same is dismissed. However, the observations made in this order will have no effect on the merits of the case.