
(1998) 05 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 218 of 1996 (Against order of R. S. Madan, Special Judge, Jind, D/- 22-12-1995)

Raj Mal

APPELLANT

Vs

Rattan Singh and another

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201
Penal Code, 1860 (IPC) — Section 323, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 2, 3

Citation : (1998) CriLJ 3922 : (1998) 2 RCR(Criminal) 791

Hon'ble Judges : K.S. Kumaran, J

Bench : Single Bench

Advocate : Hari Om Sharma, for the Appellant; R.S. Surjewala and Subhan Bhatti, for the Respondent

Judgement

1. Petitioner Raj Mal preferred a complaint before the Special Judge, Jind (Sessions Case No. 46/4-10-1995) under Sections 323/506, I.P.C. and under Sections 3(1)(x), 2(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). Apart from the other allegations, he has mainly alleged that on 17-9-1995 at about 8 p.m., when he (complainant) and Satbir were coming out their workshop of Bus stand, Narwana, the respondent-accused were standing outside in a drunken state and they called the complainant as follows :-

"You dedh, Chamar Kamin ought to have done work of making and repairing shoes, chappals etc. what is your work at workshop. Either you may resign your post and to start work chamaras Kamins Gittals or you will be killed."

2. The complainant has also alleged that while the first accused Rattan Singh gave him a slap on his right cheek, the second accused Pritam Singh gave a fist blow on his neck and threatened to kill him.

3. The complainant has also alleged that this occurrence was reported to the senior officers of the roadways where they work, but with no result. According to the complainant, on the next day, he went to the police station to lodge the complaint, where, though he was assured that action would be taken, he was assured that action would be taken, he later on informed that the senior officers of the Haryana Roadways are not allowing them to take any action. With these allegations, the complainant has lodged the complaint before the Special Judge, Jind, on 4-10-1995.

4. The learned Special Judge recorded the preliminary evidence. The complainant - Raj Mal examined himself as PW 1. His evidence relevant for our purpose is as follows :-

"When I came out of the workshop after the duty hours, both the accused were seen standing outside in a drunken position. They started giving me fists and slaps blows and also abused me Pritam Singh gave me fists blow on my neck. Satbir PW intervened in the matter and save me from the clutches of the accused. I brought this fact to the notice of Krishan Chander, Supervisor. But no action was taken against the accused. On the following day, I went to the police station and moved an application for the registered of the case, but no case was registered. Therefore, I filed the present complaint."

5. The learned Special Judge, taking into consideration the preliminary evidence of the complainant held that the same is not consistent with the averments made in the complaint, so as to bring the case within the ambit of Sections 3(1)(x), 2(vii) of the Act and, therefore, held that he had no jurisdiction to entertain the complaint and dismissed it accordingly with the observations that the complainant should seek his remedy before the Court of competent jurisdiction.

6. Aggrieved by the same, the complainant has filed this criminal revision. The learned counsel for the petitioner contends that the order passed by the learned Special Judge is cryptic and does not show as to how the preliminary evidence is not consistent with the complaint. He also contends that although the complainant had not mentioned in his evidence the words used by the respondent-accused, he has clearly stated about the words used by the respondent-accused, in the complaint and, therefore, the complaint should not have been dismissed. The respondents, apart from contending that there is no illegality or infirmity in the order passed by the Special Judge since the complainant had not let in any preliminary evidence to support his complaint, also contended that the complaint itself should not have been taken cognizance of by the learned Special Judge. According to them, the complaint should have been presented before a Magistrate of competent jurisdiction who, after collecting the necessary materials, should have committed the case to the Special Judge, and this not having been done, the complaint itself is not maintainable.

7. I have heard the counsel for both the sides and have also perused the records

on the file of this Court, as also the records of the trial Court which were summoned.

8. The main contention of the petitioner-complainant is that the respondents used the words as extracted above, in contravention of the provisions of the Act and, therefore, they are liable to be punished under the Act. But though he had reproduced the words allegedly used by the respondents in his complaint in the preliminary evidence led in support of the complaint, the complainant has not mentioned even a single word about these objectionable words allegedly used by the respondents. I have already extracted the relevant portion of the evidence of the complainant and it is seen that the complainant has not stated therein that the respondents-accused used the words as alleged by the complainant in his complaint. The other portion of his evidence does not relate to this alleged incident. Therefore, the allegations in the complaint stand only as allegations and there is no evidence whatsoever to support these allegations. That is why the learned Special Judge has observed that the evidence is not consistent with the averments made in the complaint so as to bring the case within the ambit of Section 3(1)(x), 2(vii) of the Act. What the learned Special Judge meant by this was only that the complainant has not established even by prima facie evidence the allegation found in the complaint with regard to the commission of offence under the Act. Therefore, the petitioner complainant cannot contend that the learned Special Judge has not given reasons as to how he found the evidence as not being consistent with the complaint. It is clear from the evidence of the complainant that he has not mentioned a single word about the words allegedly used by the respondent-accused. So, the learned Special Judge was right in holding that he had no jurisdiction to entertain this complaint.

9. The learned counsel for the respondent-accused of course, contends that the Special Judge had no jurisdiction to take cognizance of the complaint directly. According to him, though he has been constituted as a Special Judge to punish offences punishable under the Act, he could take cognizance of only such offences as are committed by the Magistrate in accordance with the provisions of the Code of Criminal Procedure. In this connection, he relied upon a decision of Single Judge of Allahabad High Court in Mangli Prasad v. Additional Sessions Judge IIInd (1996) 3 Rec Cri R 768 : 1996 Cri LJ 3596 which supports this contention of the learned counsel for the petitioner. But a single Judge of this Court in Davinder Singh Sarpanch v. State of Punjab (1997) 3 RCR 575, has taken the view that the Judicial Magistrate has no jurisdiction to entertain the complaint under this Act whereas the Special Court constituted u/s 14 of the Act can entertain the complaint and take cognizance and that it is not necessary that the case must be committed to the Special Court by Magistrate as in other Sessions cases. This Court has held accordingly after taking into consideration various provisions of the Act, with which I respectfully agree. There is also the Full Bench decision of the Kerala High Court in Hareendran v. Sarada (1995) 2 RCR 19 wherein also, the same view as has been taken by this Court, has been taken. Agreeing with the view of this Court and the Kerala High Court, with

respect, I disagree with the view taken by the learned single Judge of the Allahabad High Court in Mangli Prasad v. Additional Sessions Judge IInd (1996) 3 RCR 768 : (1996 CriLJ 3596), and I hold that it is not necessary that the case should be committed to the Special Court by a Magistrate to entitle the Special Court to take cognizance of the offences under the Act.

10. In view of my findings above, the complaint, in so far as it relates to the offences under the Act has to fail. But, I find that in the complaint, the complainant has alleged that he was abused by the accused and that the first accused slapped him on his cheek, while the second accused fisted him on his neck. In his preliminary evidence also, the complainant has stated that the accused gave him fists and slaps and also abused him. Therefore, though the Special Court was not competent to take cognizance of the offences arising under the Indian Penal Code alone, it should not have dismissed the complaint, but should have ordered the complaint to be returned to the complainant for presentation to the proper Court u/s 201, Cr.P.C. with regard to the offences arising under the Indian Penal Code, while dismissing the complaint with regard to the alleged offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11. Therefore, this revision is dismissed with the observation that the Special Court should return the complaint to the complainant for presentation to the Court of competent jurisdiction with regard to the offences arising under the Indian Penal Code.

12. Revision dismissed.