

(2006) 07 CAL CK 0011
In the Calcutta High Court
Case No : C.R.R. No. 3119 of 2005

Ram Prakash Dwivedi

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 401, 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 22, 3(1), 7
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7, 7(1), 7(2)

Citation : (2007) 2 CALLT 203

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Milon Mukherjee and Sunirmal Nag, for the Appellant; Sk. Kasem Ali Ahmed and Udayan Chakravarty and Ranjan Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Sailendra Prasad Talukdar, J.—Petitioner, Ram Prakash Dwivedi, by filing an application u/s 401 read with Section 482 of the Code of Criminal Procedure sought for quashing of the proceeding brought against him u/s 156(3) of the Criminal Procedure Code being Miscellaneous Petition Case No. 39 of 2004 on the basis of false and fabricated allegation. This relates to Naxalbari Police Station Case No. 96 of 2001 dated 28.7.2004 u/s 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (G.R. No. 686 of 2004), now pending before the learned Court of Additional Chief Judicial Magistrate, Siliguri, Darjeeling.

2. Grievances of the petitioner, as ventilated in the application, may briefly be stated as follows:

One Narendra Nath Singh, a private security guard, filed a complaint u/s 156(3) of the Criminal Procedure Code before the learned Court of sub-Divisional Judicial

Magistrate, Siliguri. The learned Court after pursuing the said complaint passed an order dated 16.6.2004 directing investigation of the matter after treating the complaint as FIR u/s 156(3) of Cr. PC, though there is no ingredient of alleged offence u/s 3(i) of SC & ST (Prevention of Atrocities) Act, 1989. The allegations made in the said complaint are inherently absurd and improbable and, as such, there could be no ground for proceeding against the petitioner.

3. The complainant was not an employee of the Kendriya Vidyalaya but was deployed there for security purpose through Supreme Security Services having its office at Siliguri. The said agency is having contract with the Vidyalaya for providing security guards year to year -- subject to renewal. Service of the complainant was terminated by his employer. A theft took place in the computer room of the Vidyalaya and the in-charge of the computer lab lodged a written complainant about breaking of a lock and handle of the door and loss of two sound boxes. An enquiry committee consisting of three senior teachers headed by Shri R.C. Mishra submitted a detailed report and raised finger towards the complainant. Such activities of the complainant were detrimental to the larger interest of the Vidyalaya and, as such, the Supreme Security Service, as the employer of the complainant terminated his service on 4.2.2004. The petitioner herein being the Principal of Vidyalaya had no role to play in such termination of the said employee. The petitioner could never had any hatred towards the complainant for his background as a member of the Scheduled Caste community.

4. The said terminated employee did not lodge any complaint between 20.01.2002 to 04.02.2004 during his tenure of service as security guard. The case, which was filed, was with the mala fide intention to harass the present petitioner and to escape from the serious charge of theft or in order to take a lame defence. There had been inordinate delay of 4/5 months.

5. The case u/s 3(i) of the SC/ST (Prevention of Atrocities) Act, 1989 was started on 28.7.2004. Officer-in-Charge, Naxalbari P.S. directed S.I., Monoj Kumar Chakraborty of Bagdogra I.C. to investigate the case. This was in utter violation of the mandatory provision as contemplated under sub-Rule (1) of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Sub-Rule (2) of Section 7 postulates that the investigation shall be completed on top priority basis within thirty (30) days. A report is required to be submitted to the Superintendent of Police who in turn is required to forward the same to the Director General of Police. Non-compliance with such mandatory provision of law makes the case suffer from inherent technical lapse. No material could be found within a period of one month from the date of initiation of the proceeding. The matter was then dropped. But learned A.C.J.M., Siliguri by order dated 29.7.2005 reopened the case illegally. The petitioner is a Class-I Central Government employee holding respectable position. He has been discharging of his official duty in good faith, and provision u/s 22 of the said Act is applicable to the facts and circumstances of the instant case. Taking advantage of his status as a member of the Scheduled Caste community, the complainant cooked up the false

case.

6. In the circumstances, the present application was filed praying for quashing of the proceeding.

7. Mr. Milon Mukherjee, appearing for the learned Counsel for the petitioner, invited attention of the Court to the allegation made against the present petitioner in the case. It is his categorical assertion that such baseless allegations were made only in order to put the present petitioner, who has a highly respectable background, into inconvenience. Referring to Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it was submitted by Mr. Mukherjee that an offence under the Rules requires to be investigated by a Police Officer not below the rank of Deputy Superintendent of Police. According to him, the same having not been done in the case in question, the matter cannot be allowed to continue any further. It was further submitted by Mr. Mukherjee that the relevant Rule demands completion of investigation on top priority basis within 30 days and such report is required to be submitted to the Superintendent of Police, who, in turn, is required to forward the report to the Director General of Police of the State Government.

8. Mr. Mukherjee then submitted that the relevant Act is far too important so as to accommodate any undue flexibility. He contended that compliance of the Rules, as referred to earlier, is the demand of the statute and that too, are mandatory in nature.

9. In response to this, Mr. Kasem Ali, appearing as learned Counsel for the opposite party/state, refers to the materials in the case diary. It appears that the opposite party, Narendra Nath Singh, filed an application u/s 156(3) of the Code of Criminal Procedure before the learned Court of A.C.J.M., Siliguri, on 16.6.2004. Learned Court allowed the prayer but directed Officer-in-Charge, Naxalbari P.S. to investigate the matter after treating the said petition as FIR u/s 156(3) of the Cr. PC. It cannot be denied that such direction by itself was not in tune with the relevant Rule as mentioned earlier. From the materials available on record it appears that the complainant in the application filed before the learned Court alleged that during the period from 20.1.2002 to 4.2.2004 while he was working as a security guard at Kendriya Vidyalaya premises at Air Force Station, Bagdogra and also at the residence of the Principal, he was subjected to physical and mental torture. He used to be compelled to do menial jobs. He also used to be insulted and intimidated. According to allegations in the complaint, much of this was due to the caste bias of the accused/ petitioner who allegedly used to insult the complainant by referring to the fact that being a member of the Scheduled Caste community, he was untouchable.

10. The materials in the Case Diary reveal that case u/s 3(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was started on 28th July, 2004. From the certified copy of the relevant materials annexed to the present application it is found that on receipt of the complaint on 28.7.2004,

Naxalbari P.S. Case No. 96 of 2004 u/s 3(i) of the Act was started. The Officer-in Charge of the Naxalbari P.S., directed S.I. of Bagdogra I.C. to investigate into the matter. Thus admitted position is that investigation was not initially started by an Officer "not below the rank of Deputy Superintendent of Police" as required under Rule 7.

11. Before proceeding further it is perhaps necessary to mention that the said Act has very special significance in our society which for generations has suffered from cast discrimination and the resultant bias. This Act is to prevent the commission of offences of atrocities against the members of the Scheduled Casts and Scheduled Tribes. The statutory mandate to the effect that investigation must be held by an Officer not below the rank of Deputy Superintendent of Police emanates from appreciation of the facts as gathered from experience. The sense of ability and justice to pursue modification of the case and thereby to proceed with such investigation along the right lines are the relevant factors which were taken into consideration while such a measure was taken in the relevant Rules.

12. It also cannot be denied that non-submission of report within the prescribed period contributed to the impropriety, if not illegality, in investigation of the case.

13. Mr. Mukherjee drew attention of the Court to the fact that the complainant was in security service, having nothing direct to do with the present petitioner, during 20.01.2002 to 04.02.2004 but the complaint was lodged on 16.06.2004 i.e., long after expiry of four months. No doubt, in the backdrop of the present case such inordinate delay which could not be satisfactorily explained, assumes importance. This Court was again reminded of the fact that a Criminal case was started over alleged theft. According to Mr. Mukherjee, this Court cannot afford to be a passive onlooker when it finds that serious attempts are being made in order to put a respectable person into unnecessary harassment.

14. Learned Counsel for the petitioner expressed surprise over reopening of the case by the learned Court vide order dated 29.7.2005 and it was emphatically submitted that no regard was ever paid to the relevant Rules and the relevant provisions under the said Act.

15. No doubt, there had been violation of Rule 7 of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Rules 1995. The question now arises as to how far such violation could be fatal to the prosecution case. In this context it was contended that the entire object of the Act was to take care of the disparity and as indicated earlier, to respond to the need of a cast-ridden society.

16. On behalf of the O.P./State nothing concrete could be placed before this Court in order to respond to the challenge. Any subsequent attempt to take care of the inherent illegality, in my opinion, does not serve any fruitful purpose. In fact, the materials on record go a long way to indicate that very little was done in order to overcome the requirements of the relevant Rules.

17. After a consideration of relevant facts and materials, I find it difficult to

ignore such significant aspects which certainly stand in the way of further investigation of the case. In fact, the initial vice persists and that makes the proceeding suffer from the latent illegality. This naturally calls for interference by this Court and in exercise of this Court's power u/s 482 of Cr. PC, the further proceeding of the case under reference be quashed.

18. The present application being C.R.R. No. 3119 of 2005 be allowed. Interim order passed earlier be made absolute. Criminal proceeding being Naxalbari Police Station Case No. 96 of 2004 dated 28.7.2004 be quashed.

19. The present petitioner/accused person if on bail be discharged from the said bonds. Send a copy of this order to the learned Trial Court for information and necessary action.

Criminal department is directed to supply urgent certified copy of this Judgment, if applied for, to the learned Counsel for the parties, after due compliance with the legal formalities.