
(2015) 09 JH CK 0091
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 360 of 2015

Ramesh Khemka and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 34, 341, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(x), 4

Citation : (2015) 4 JLJR 161

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : R.S. Mazumdar, for the Appellant

Judgement

Prashant Kumar, J.—This application has been filed for quashing the part of the criminal proceeding in connection with Bariatu P.S. Case No. 112/2015 under Sections 323 , 341 , 504 , 307 , 34 of the Indian Penal Code, whereby petitioners have been arraigned under Sections 3 & 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that from perusal of F.I.R., it is clear that the accused persons had abused and assaulted informant's mother inside the house. Thus, aforesaid offences have not been committed in public view. Thus, offence under Sections 3 & 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 not made out. It is also stated that in the F.I.R., the informant has not stated that petitioners are not a member of Scheduled Castes and Scheduled Tribes. Thus, in view of judgment of Hon''ble Supreme Court in Gorige Pentaiah Vs. State of A.P. and Others, , offence under the above Act is not made out.

2. Learned counsel appearing for the State and the informant opposed the aforesaid submission.

3. Having heard the submissions, I have gone through the F.I.R.

4. In the F.I.R., it is clearly mentioned that when the informant's mother went to the house of accused persons for demanding her dues, she had been abused by taking her caste name and then assaulted by the petitioners. Thus, from the said allegation, it is clear that the occurrence took place inside the house. The Hon''ble Supreme Court in Swaran Singh and Others Vs. State through Standing Counsel and Another, had interpreted public view at paragraph No. 28, wherein it has been clearly stated that if occurrence took place inside the house, then it cannot be said that the same is in public view. As noticed above, in the instant case, occurrence took place inside the house. Under the said circumstance, I find that offence has not been committed in public view, thus, the offence under Section 3(x) of the Act is not made out. I found one more discrepancy in this case i.e. in the F.I.R. the informant has nowhere stated that the petitioners are not the members of scheduled caste or scheduled tribe. The aforesaid averment is an essential ingredient of the offence. The Hon''ble Supreme Court in Gorige Pentaiah vs. State of Andhra Pradesh and Others (supra) at paragraph No. 6 had held that if in the complaint petition it not mentioned that the accused persons are not a member of the scheduled caste or scheduled tribe, then the accused persons cannot be compelled to face trial.

5. In the instant case aforesaid ingredient is missing, because informant has not stated that petitioners are not the members of scheduled caste and/or scheduled tribe.

6. In view of the aforesaid fact and circumstance, I find that offence under Section 3 /4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out. Thus, acquisition of the petitioners under the aforesaid section cannot be sustained. Accordingly, the F.I.R. by which petitioners have been made accused under Section 3 /4 of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed.

7. However, petitioner has not pressed his application so far offence under the Indian Penal Code is concerned, therefore, I am not giving any opinion with that regard and the investigation will continue for the said offences. With the aforesaid observation and direction, this application is disposed of.