

(2013) 08 PAT CK 0045
In the Patna High Court
Case No : Criminal Writ No. 1079 of 2012

Satyendra Prasad Yadav @ Satyendra Yadav	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 341, 447, 448
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) 08 PAT CK 0045

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Gajendra Pratap Singh, for the Appellant; Subhash Prasad Singh and Mr. Shiv Kumar (A.C. to G.A. 7) (G.A. 7) for the State, for the Respondent

Final Decision : Dismissed

Judgement

Akhilesh Chandra, J.—This is an application seeking setting aside and quashing the Scheduled Castes/Scheduled Tribes Police Station Jehanabad Case No. 45 of 2012 dated 07th October, 2012 registered for the offence under Sections 448, 341, 323 and 504/34 of the Indian Penal Code as well u/s 3(i) (X) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989. Admittedly, Annexure-6 i.e. impugned First Information Report was lodged at the instance of one Girja Devi against the petitioner and his father, Girja Yadav on the basis of an application under pen of her husband, Mohim Nut Azad stating that on 05th October, 2012 at about 6.00 A.M. while she was sitting opposite her house, along with co-villagers Nand Kishore Prasad, Baleshwar Choudhary, Arvind Sapera, Rajnandan Mochi and others, the petitioner and his father arrived there at her door naming her husband started abusing and with evasive words stated her husband has lodged an affidavit in Jehanabad Court and when her husband came out of the house the petitioner hold color of his shirt and threatened him by using evasive words to get him and his family members into pieces if he dares to depose against the petitioner and the houses of all

suppressed class (Mahadalit) shall put under fire if anyone dares to depose against him, no one will survive. It is further stated that due to fear she lodged this information on 07th October, 2012 after putting her Right Hand Impression (R.T.I.). It is contended by learned counsel appearing on behalf of the petitioner that in fact the case has been instituted at the instance of police official since on the information given by the petitioner one Ghosi (Okri O.P.) Case No. 198 of 2011 was instituted on 02nd September, 2011 against some influential persons and some idols were recovered from stock of sand and some disturbance was caused by the villagers and the police personnel also sustained injury, wherein, the husband of the present informant is one of accused and in order to just harass the petitioner another case bearing Ghosi (Okri O.P.) P.S. Case No. 232 of 2011 was also instituted against the petitioner and others at the instance of one Sharan Paswan, whose relative is also an accused in earlier instituted case. The Investigating Officer in collusion with such accused persons just to harass and pressurize the petitioner has been getting the cases instituted against. It is also contended that no cognizable offence is made out against the petitioner even by calling caste name as none of provisions of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is attracted.

2. On the other hand, it is contended on behalf of the State that the investigation of the case has already been completed, finding material against the petitioner constituting offence both under Indian Penal Code and Special Act, but due to order of stay no final form has been submitted in spite of its being in readiness. Reliance is placed on decision of Hon'ble Apex Court in a case of AIR 1995 1198 (SC) .

3. So far as the question at whose instance the case has been instituted with any otherwise motive is a complicated question of fact and cannot be thrashed out and determined in writ application.

4. And as regards the allegations leveled in the written application forming basis of institution of instant case is concerned, it is not a case of the informant [who is not even made party (respondent) in this case] that she or her husband was for the purpose of abuse called by caste name rather it is the case that they belong to the suppressed class and not only were insulted and abused but also threatened for dire consequences, if they or any other member of such class dare to depose against the petitioner, who undisputedly does not belongs to the such suppressed class. Provisions as contemplated under Sections 3(1) (x) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, Chapter II reads as such:-

3. Punishments for offences of atrocities.-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(i)...(ix)...

(x) intentionally insults or intimidates with intent or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi)...(xv) ...,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

5. In view of the above decisions of this Court, in cases of (i) Mahesh Prasad Singh and Another Vs. The State of Bihar and Another, , (ii) Lalit Kumar and Others Vs. The State of Bihar, and (iii) "Sajjo & Ors. vs. State of Bihar" reported in "2010 (2) PLJR 690", whereon reliance has been placed are not applicable since in all the three cases, referred to above, the aggrieved were called only by caste name, which is not the case here.

6. The contention of learned counsel for the petitioner is that except Sections 341 & 504 of the Indian Penal Code, no other offence may be constituted against the petitioner and for the same without permission of court, investigation done is also not acceptable at this stage since as submitted by learned Additional Public Prosecutor that investigation has already been completed. Thus, the court competent to act thereon, may examine, whether the offences for which the case was instituted have been found true by the investigating agency or for any other offence including criminal trespass (Section 447 of the Indian Penal Code), final form is submitted and thereafter considering all such aspects, pass appropriate order, in accordance with law.

7. Further, it is also contended by learned counsel for the petitioner that during investigation as is evident from counter affidavit the case against co-accused, Girija Yadav (non-petitioner) has not been found true. So it may also be treated that the prosecution has not come with clean hands rather the petitioner has falsely been implicated, but this submission is not at all acceptable at this stage as finding the case not true against co-accused or even his acquittal itself cannot be a ground for holding co-accused is not an offender. Thus, finding no merit in this writ application, it is hereby dismissed.