
(2016) 01 JH CK 0249
In the Jharkhand High Court
Case No : Criminal M.P. No. 247 of 2011

Shiv Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 34, Section 347, Section 452, Section 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2017) 1 JLJR 291

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : None, for the State; Mr. Devesh Krishna, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Rongon Mukhopadhyay, J. - In this application the petitioners have prayed for quashing the entire criminal proceedings in connection with Manjhiaon P.S. Case No. 45 of 2009 including the order dated 29.03.2010 passed by the learned Chief Judicial Magistrate, Garhwa whereby and where under cognizance has been taken for the offences punishable under Sections 323, 347, 452, 504/34 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The allegations made in the complaint petition which was initially filed by the complainant-opposite party No. 2 which was subsequently referred to the police under Section 156(3) of the Code of Criminal Procedure is to the effect that in the night of 28.02.2009 the petitioners armed with Lathi entered into the Fair Price Shop of the informant and abused him in the name of his caste. On refusal of the informant to give one quintal of rice as demanded by the petitioners he and his wife were assaulted and were also abused in the name of their caste.

3. Heard Mr. Devesh Krishna, learned counsel appearing for the petitioners. No

one appears on behalf of the State.

4. Mr. Devesh Krishna, learned counsel appearing for the petitioners, has submitted that the petitioners have been falsely implicated in the present case as although the occurrence is alleged to have taken place on 28.02.2009 but there has been considerable delay in instituting the case. It has been submitted that in fact prior to the institution of the First Information Report an application was made to the Sub Divisional Officer, Garhwa by the villagers with respect to various irregularities committed by the informant in his capacity as Fair Price Shop Dealer. It has been submitted that only on account of the said fact the First Information Report has been instituted against the informant. Learned counsel for the petitioners has also submitted that the allegation of abusing the informant in the name of his caste was not within public view in terms of the Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and, therefore, it further fortifies the claim of the petitioners with respect to their false implication.

5. Submission has also been advanced that even as per Rule 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules on being refused by the officer-in-charge of the Police Station to record information it was a mandatory requirement on the part of the informant to send the substance of such information in writing to the Superintendent of Police who after investigation shall direct the officer-in-charge to institute a case and since statutory requirement in terms of Rule 5 of the Rules have not been followed the entire criminal proceedings as against the petitioners deserves to be quashed and set aside.

6. The complaint petition initially filed contains the allegations to the effect that the informant was abused in the name of his caste in public view. Learned counsel for the petitioners has relied upon the averments made in Paragraph 5 of the complaint petition to sustain his argument that the entire incident had taken place within closed walls and not within public view but the preceding paragraph of the complaint petition reveals otherwise.

7. Mr. Devesh Krishna, learned counsel appearing for the petitioners in order to substantiate his contention with respect to his submission that Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been violated has referred to the case of Rupam Akhouri & Anr. v. State of Jharkhand & Anr. reported in, 2011 (4) East Cr.C. 321 (Jhr). In the judgment referred to above it was observed that mere occurrence taking place in a public place does not mean that it has been committed within public view. The essence is whether the informant has disclosed as to whether the entire occurrence had taken place within public view. Reference has also been made to the case of Pradeep Kumar Choubey v. State of Jharkhand reported in [2010 (3) JLR 359] with respect to the question as to what would constitute public view. The facts of the case in the judgment under reference suggests that it was the case of the prosecution that no other persons were present when utterances had taken place

in the official chamber.

8. As has been reiterated above the complaint petition specifically discloses that a part of the incident had taken place in public view and in such circumstances the judgments which have been cited by the learned counsel for the petitioners are not applicable. So far as Rule 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules are concerned, upon which much stress has been laid by the learned counsel for the petitioners, for better appreciation of the case the sub-rule 3 of rule 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules is quoted here in under:-

"5. Information to Police Officer in-charge of a Police Station ? (1)-----

(2)-----

(3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that police station."

9. Sub-rule 3 does not mandate that in all cases of refusal on the part of the officer-in-charge of Police Station to record the information the informant is required to send the substance of such information in writing or by post to the Superintendent of Police who shall subsequently get the incident investigated upon and direct the officer-in-charge to institute the case. The wording of the rule under reference does not include "shall" or "must" with respect to the duty of the informant on refusal on the part of an officer-in-charge of a police station to record the information in terms of sub-rule (1) but the word used is "may" which cannot be construed to be mandatory in nature. In such circumstance, therefore, the contention of the learned counsel for the petitioners with respect to Rule 5(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules gets negated.

10. The learned counsel for the petitioners has contended that the First Information Report was instituted after a considerable delay but as would appear from the complaint petition the last incident is said to have taken place on 28.02.2009 and the complaint case was instituted on 04.03.2009. Therefore, it cannot be concluded that there has been inordinate delay in filing a criminal case against the petitioners.

11. As cumulative result of the discussions made here in above, there being no reason to cause interference in the criminal proceedings, this application being devoid of any merit is, hereby, dismissed.