
(2017) 01 AHC CK 0335
In the Allahabad High Court
Case No : 21600 of 2008

SHIV PRASAD AND OTHERS

APPELLANT

Vs

STATE OF U P AND OTHERS

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 161](#) - Saving of inherent powers of High Court - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 147](#), [Section 379](#), [Section 323](#), [Section 506](#), [Section 427](#), [Section 504](#) - Punishment for rioting - Punishment for theft - Punishment for voluntarily causing hurt - Punishment for criminal ,intimidation - Mischief causing damage to the amount of fifty rupees - Intentional insult with intent to provoke breach of the peace
[Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#), [Section 3\(1\)\(10\)](#) - Punishments for offences of atrocities

Citation : (2017) 01 AHC CK 0335

Hon'ble Judges : Amar Singh Chauhan

Bench : Single Bench

Advocate : Ram Autar Verma, Yogendra Kumar

Final Decision : Dismissed

Judgement

1. Rejoinder affidavit filed on behalf of the applicants is taken on record.
2. Heard learned counsel for the applicants, learned counsel for opposite party no. 3, learned Additional Government Advocate and perused the material on record.
3. The applicants Shiv Prasad and six others through the present application under Section 482 Cr.P.C. have invoked the inherent jurisdiction of this Court with a prayer to quash the entire proceedings of Case No. 1474 of 2008 (State vs. Shiv Prasad and others) in Case Crime No. 18 of 2008 under Sections 147,

323, 504, 506, 427 and 379 I.P.C. and 3(1)(X) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Police Station- Utraon, District- Allahabad.

4. It is submitted by learned counsel for the applicants that F.I.R. was lodged on 02.02.2008 by opposite party no. 3 Sheetla Prasad with the allegation that he belonged to caste "Dhobi" and his father has obtained an agricultural lease of 18 biswa land of the plot no. 699 in the year 1976. After the death of his father, the applicants have formed a gang and broken the demarcation and looted his house and taken away whatever articles were found in the house. On making objection by opposite party no. 3 Sheetla Prasad, the applicants hurled abused and beaten with lathi and danda and also threatened that if he again tried to take possession of the land, his family would be finished. It is further submitted that F.I.R. was lodged with inordinate delay of six or seven days for which no explanation was given. It is stated that cancellation of allotment was also moved by one Jagdev. In this case, nobody sustained any injury which suggests the falsehood of the prosecution case.

5. It is further submitted by learned counsel for the applicants that on 28.07.2011, lease was granted in favour of father of the opposite party no. 3 has been cancelled, against which revision was also dismissed. It is further submitted that there is no averment to the effect that accused persons are not the members of Schedules Caste and Scheduled Tribe. Therefore, the very first requirement of Section 3(1)(X) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is not satisfied, and only on this very ground, proceedings are liable to be quashed. Learned counsel for the applicant relied on *Gorige Pentaiah v. State of A.P. and others* JT 2008 (9) SC 543 in which it has been held that "basic ingredients under Section 3(1) (X) that accused-appellant was not the member of Schedules Castes and Scheduled Tribes or that he intimidated or intentionally insulted complainant with intent to humiliate in public."

6. Per contra learned counsel for opposite party no. 3 as well as learned Additional Government Advocate contend that witness Smt. Indo Devi, wife of Amrit Lal, stated in her statement recorded under Section 161 Cr.P.C., that the accused persons belonged to the caste "Patel" assaulted with lathi and danda only to take possession of the land allotted to the father of the opposite party no. 3. It has come in the evidence that the alleged offence was committed with the intent to humiliate the opposite party no. 3 who belonged to Scheduled Caste "Dhobi."

7. In the case in hand, only the main ground for assailing the proceeding is that there is no averment to the effect that accused persons are not the member of Scheduled Caste and Scheduled Tribe, therefore, the very first requirement of Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not satisfied. Before adverting to the claim of the parties, it is necessary to correlate with the relevant part of Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads as

under:-

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe;

(X) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view."

8. Having gone through records and materials, I do find the averment to the effect that accused persons are not members of Schedules Caste and Scheduled Tribe and belonged to "Patel" community and therefore, the very first requirement of Section 3(1)(X) of the Act, 1989 is not applicable. It has also come in the evidence that accused applicants intimidated or intentionally insulted to humiliate the opposite party no. 3 who is a member of Scheduled Caste "Dhobi."

9. It transpires that material collected by the Investigating Officer, prima facie, case is made out. There is no illegality or irregularity in filing the charge sheet. Most of the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. Hon"ble Supreme Court in the case of Krishnan & Another vs. Krishnaveni & others [1997(4) SCC 241] held that only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedural sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice.

10. In view of the above discussion, I find no reason to interfere in the proceedings and, therefore, refuse to quash the proceedings in the aforesaid case.

11. The application under section 482 Cr.P.C. is hereby rejected.