

(2012) 02 GAU CK 0058
In the Gauhati High Court
Case No : Criminal Petition No. 347 of 2010

Shri Manik Kalita and another	Vs	APPELLANT
State of Assam and another		RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(3), 482
Penal Code, 1860 (IPC) — Section 120(B), 147, 148, 149, 153(A)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1), 3(1)(x), 3(ix), 3(x)

Citation : (2012) 2 GLD 356

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : D. Das and Mr. N.N.B. Choudhury, for the Appellant; B.S. Sinha, Addl. PP, Assam, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—Invoking the jurisdiction, filed u/s 482 of the Criminal Procedure Code, 1973 (in short, "the Cr PC"), the petitioners, who are accused persons in Golakganj P.S. Case No. 453/2010, registered under Sections 153A/342/323/506/34 of the Indian Penal Code (in short, "the IPC") read with Section 3(ix) & (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, "the Act of 1989"), have prayed for quashing the FIR, dated 08.08.2010 and the investigation in the said case. I have heard Mr. D. Das, senior advocate, assisted by Mr. N.N.B. Choudhury, learned counsel, appearing for the petitioners. Also heard Mr. B.S. Sinha, learned Additional Public Prosecutor, appearing for the State respondent and Mr. B. Benerjee, learned counsel, appearing for the private respondent.

2. The petitioner Nos. 1 and 2, who are police officers, were posted at the Golakganj Police Station at the relevant time.

On 28.04.2004, Smti Kalyani Rai filed an FIR against the opposite party No. 2,

alleging that, on 07.03.2004, the opposite party No. 2 assaulted her, her son and other family members. The said FIR was registered as Golakganj P.S. Case No. 97/2004, under Sections 325/384/ 294/506/34 of the IPC. On the basis of the said FIR, the petitioner No. 2, who was a police officer of Golakganj Police Station, alongwith his staff, visited the opposite party No. 2's house. Upon their arrival, the opposite party No. 2 assaulted the said police officer and the members of his staff compelling them to retreat.

On being so assaulted, the petitioner No. 2, lodged an FIR on 24.07.2004, against the opposite party No. 2 and the same was registered as Golakganj P.S. Case No. 184/2004 under Sections 147/148/149/ 120(B)/341/353/384/204/307 of the IPC. Accordingly, on the basis of the said FIR, opposite party No. 2 was arrested.

3. In Golakganj P.S. Case No. 97/2004 aforesaid, the accused persons were acquitted by the Court and, on being so acquitted, Shri Baidyanath Rai filed Money Suit No. 18/2010 claiming damage for malicious prosecution.

4. On 08.08.2010, the opposite party No. 2, who is the son of Shri Baidyanath Rai, lodged an FIR with the Golakganj Police Station, alleging therein that Smti Kalyani Rai had filed false criminal case against the innocent family members of the respondent No. 2 including his father and that Shri Manik Kalita, S.I., in-Charge of Chagolia Out Post, i.e. the petitioner No. 1, misusing his power, arrested the informant and his father, Shri Baidhyath Rai and despite the offences being bailable forwarded them to the Court without granting bail. It was also alleged, in the said FIR, that on 24.07.2004, during the investigation in the said case, the investigating officer, namely, Luthfur Rahman, i.e. the petitioner No. 2 alongwith Smti Kalyani Ray, Mihir Kumar Das, Adhir Ray, Lipika Ray, Radhika Ray and Sudhir Ray went to the residence of Shri Baidya Nath Ray, and apart from abusing him and members of his family in filthy language and publicly insulted and humiliated calling them schedule caste, sons of fisherman, boatman and uncivilized.

5. On receipt of the said FIR, police registered the same as Golakganj P.S. Case No. 453/2010, under Sections 153A/342/ 323/506/34 of the IPC, read with Section 3(ix) & (x) of the Act of 1989 and initiated investigation into the matter.

6. Being dissatisfied with the registration of the said FIR, and the proceeding thereof, the petitioners, who are the accused Nos. 7 and 8 in the said FIR, have come up with the present criminal petition, filed u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr PC").

7. Mr. D. Das, learned senior counsel, appearing for the petitioners, has submitted that the said FIR, being lodged on 08.08.2010 i.e. after about 6 (six) years from the date of occurrence in respect of the offences under Sections 153(A)/342/323/ 506/34 of the IPC, read with Section 3(ix) & (x) of the Act of 1989, the registration of the case for the offences under the IPC is hit by Section 468 of the Cr PC and that there being no allegation committing offences, under

the Act of 1989, present criminal proceeding can't continue against the petitioner No. 1.

The learned senior counsel has also submitted that no ingredients of the offences, u/s 3(ix) and (x) of the Act of 1989 has been disclosed against the petitioners, indicating that the alleged insult or humiliation was committed in public view.

8. In view of the above, learned senior counsel has submitted that continuance of the investigation, against the petitioners, would be an abuse of process of the Court and that the same would cause unnecessary harassment to the petitioners. Therefore, it is submitted that the FIR, registered against the petitioners and the investigation initiated against them are liable to be set aside and quashed.

9. Mr. Benerjee, learned counsel, appearing for the private respondent has submitted that, though the FIR was registered belatedly, i.e. after 6 (six) years, there is sufficient materials to show that the petitioners, more particularly, petitioner No. 2 committed the offence u/s 3 (x) of the Act of 1989 and as such the proceeding is not hit by Section 468, Cr PC. It is also submitted that as the matter involves finding of facts, to unearth truth, the investigation, initiated against the petitioners, is required to be continued. Therefore, it is contended that a prima facie case having been made out in the FIR, there is no sufficient ground for closing the investigation, at this stage.

10. In tune with the argument, advanced by Shri Benerjee, learned counsel, appearing on behalf of the private respondent, Mr. Sinha, learned Additional Public Prosecutor, appearing for the State respondent, has submitted that in the FIR it has been clearly stated that the informant and his family members were publicly humiliated insulting them in the name of their caste (schedule caste). Therefore, it is submitted, by the learned Additional Public Prosecutor that whether the informant has humiliated in public view and whether the petitioners committed the alleged offence would be revealed from investigation and as such, this is not a fit stage to quash the FIR as well as the investigation.

11. The first point raised by the learned senior counsel, appearing for the petitioners is that, in view of the bar prescribed by Section 468, Cr PC, no cognizance could be taken in respect of the offences under Sections 153A/342/323/ 506/34 of the IPC, due to delay in filing the FIR and such continuance of the investigation would amount to the abuse of process of the Court and harassment to the petitioners.

Section 468, Cr PC prescribes the bar in taking cognizance after lapse of the statutory period of limitation reads as follows :

468. Bar to taking cognizance after lapse of the period of limitation.--(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years

12. Admittedly, the case has been registered for committing offences under Sections 153A/342/323/506/34, IPC, read with Section 3 (ix) and (x) of the Act of 1989. The maximum punishments for the offences under Sections 153A, 342, 323 and 506, IPC are 3 (three) years, 1(one) year, 1 (one) year and 2 (two) years respectively. Punishment for the offences under all the said sections is less than 3 (three) years. As provided by Section 468, Cr PC in view of lodging the FIR after 6 (six) years from the date of the occurrence, ordinarily, no cognizance could be taken in respect of the said offences under the Penal Code. But Section 468(3), Cr PC, which reads as follows, is an exception to the said bar :

(3) For the purpose of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

13. Therefore, Section 468(3), Cr PC provides that, in respect of offences which may be tried together, the period of limitation shall be determined with reference to the offence, which is punishable with more severe punishment.

14. As provided by Section 3 of the Act of 1989 punishment for the offences, u/s 3 (1) to (xv) shall not be less than 6 (six) months, but which may extend to 5 years with fine. Therefore, the maximum punishment for the offences u/s 3(ix) and (x) Act is up to 5 (five) years. The limitation prescribed by Section 468 of the Cr PC extends to the case, where punishment is not more than 3 (three) years. Therefore, the bar of limitation will not be applicable if the trial includes, amongst others, an offence for which the prescribed punishment is more than 3 (three) years.

15. The allegations made in the FIR, dated 08.08.2010, lodged by the respondent No. 2, which has given rise to this case, in brief, is that on 07.03.2004, Smti Kalyani Ray had lodged a false criminal case against the said informant and members of his family 53 days after the occurrence. Accordingly, Golakganj P.S. case No. 97/2004 was registered under Sections 325/384/294/506 and 34, IPC. Though, all the offences were bailable, the petitioner No. 1, who was the in-charge of the Police Station did not release the informant (a student), his father, Shri Baidyanath Ray (aged person) and the petitioner misusing his power arrested the said persons, applied third degree and forwarded them to the Court, because the informant and members of his family refused to pay any illegal gratification and, thus, they were harassed by the

petitioner No. 1.

The second part of the allegation is that, on 24.07.2004, during the investigation of the said case, the petitioner No. 2, in his capacity as the investigating officer, alongwith Ms. Kalyani Ray and others (private persons) visited the house of the father of the informant, publicly insulted and humiliated using filthy language uttering that they were scheduled caste, fishermen, sons of boatman and uncivilized persons. On the basis of the said FIR, police registered a case against the petitioners and others u/s 153A/342/323/506/34 of the IPC, read with Sections 3(ix) and (x) of the Act of 1989 and this FIR and investigation has been challenged in this criminal petition.

16. A careful reading of the said FIR, reveals that no allegation of committing offence, under the Act of 1989, has been made against the petitioner No. 1. The allegation made against the petitioner No. 1 is that he did not grant bail and applied third degree. The allegations made against the petitioner No. 1, at best, may constitute a prima facie case under the IPC, but, not a case under the Act of 1989. That apart, the occurrence with regard to the allegation made against the petitioner No. 1 and petitioner No. 2 are different nature and the same have been alleged to be committed on two different dates. Therefore, in view of the failure prima facie to establish the existence of the ingredients of the offence under the Act of 1989, the continuance of the proceeding against the petitioner No. 1, in respect of the offences, u/s 3 (ix), (x) of the Act of 1989 amount to unnecessary harassment to the petitioner No. 1 and misused of law.

17. From the said FIR, it appears that the offences under the IPC and the Act of 1989 aforesaid have been alleged to be committed by the petitioner No. 2, in the same transaction, i.e. on 24.07.2004. Therefore, it is permissible to try all the said offences together. As the case has been registered for the offences under the IIC as well as the Act of 1989, with a view to try the said offences, together in the same proceeding, the maximum punishment, prescribed for the offences u/s 3 of the Act of 1989 being 5 (five) years, the provision of Section 468(3), Cr PC would be applicable, in the present case, except the petitioner No. 1. Therefore, the bar of limitation, prescribed by Section 468, Cr PC will not be applicable in respect of petitioner No. 2.

18. Mr. D. Das, learned senior counsel also submitted that no allegation of committing an offence u/s 3 of the Act of 1989 has been made out against the petitioners in the FIR.

19. I have already noticed that there is no allegation of committing offence, under the Act of 1989 against the respondent No. 1. Carefully reading the FIR reveals that the allegations have been made against the petitioner No. 2 and other private persons alleging he alongwith Ms. Kalyani Rai and others had publicly insulted and humiliated using filthy language and uttering that they were scheduled caste, sons of fisherman, boatman and uncivilized, calling them to be uncivilized as because their person belongs to a particular caste, prima facie

appears to be humiliation and insult.

20. The learned senior counsel, relying on the decision, held in the cases of Karan Singh and Others Vs. The State of M.P., and Chandra Poojari Vs. State of Karnataka, has submitted that the provision of Section 3(x) of the Act of 1989 will be applicable in the cases, where the humiliation of a member of the Scheduled Caste or Scheduled Tribe is made within the public view. It is also submitted that though the case has been registered u/s 3(ix) of the Act of 1989, no ingredients of the said provision has been disclosed in the FIR. Section 3(ix) and (x) of the Act provides that whoever, not being a member of a scheduled caste or scheduled tribe.-

3(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or Scheduled Tribes;

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

21. A reading of the said provision makes it clear that the provision of Section 3(ix) of the Act of 1989 will be applicable in the case of giving frivolous information to any public servant to cause injury or annoyance of a member of a Scheduled Caste or Scheduled Tribes. Here both the parties, being police officials are public servants. The allegation is that the petitioner No. 2 insulted and humiliated the informant and his father and members of his family publicly. The FIR does not reveal that any frivolous information was given by the petitioners to a public servant for using lawful power of the public servant to cause injury or annoyance to the informant or members of his family. Therefore, in the absence of any ingredient of Section 3 (ix) of the Act of 1989, no prima facie case u/s 3(ix) of the Act has been made out.

22. The Section 3 (x) of the Act of 1989 would be applicable in a case, where humiliation of a member of Scheduled Caste or Scheduled Tribes is committed in a place within "public view".

23. The term, "public view" has not been defined in the Act aforesaid. In the case of Chandra Poojari (supra), the Karnataka High Court held that to attract the provision of Section 3 of the Act of 1989, the occurrence should be in a place, where the public could view the incident. In the case of Karansingh and others (supra), a learned single Judge of the High Court of Madhya Pradesh observed that in order to make out a case u/s 3 (1) and (x) of the Act, it must be shown that the place, where the incident took place, was a place which could be viewed by public, i.e. the incident should take place in view.

24. In view of the above, a careful reading of Section 3(x) of the Act indicates that one of the essential ingredients of the offences u/s 3(1) (x) of the Act is that the place of the incident should be within the visibility of the public and public must have viewed the same. In the FIR, it has been alleged that on 24.07.2004,

the petitioner No. 2 alongwith other persons (private) had publicly insulted/humiliated the informant and the members of his family. Whether the place, where the incident took place, was within the public view or not is a question involving finding of facts. Therefore, whether the alleged incident constituted an offence u/s 3(1)(x) of the Act can be determined on the basis of an enquiry, or trial relying on the facts revealed during the investigation or trial. Therefore, as the matter requires determination of fact, it will not be appropriate, at this stage, to hold that, no case u/s 3(1)(x) Act has been made out to proceed with the investigation. The term "public view" used in the FIR prima facie indicates the existence of the said essential ingredient of Section 3(1)(x) of the Act of 1989.

25. In view the above discussion, it is found that the FIR disclosed commission of a cognizable case, against the petitioner No. 2, justifying an investigation by the police.

26. In view of what has been discussed above, I do not find it to be a fit case to interfere with the investigation, except against the petitioner No. 2, by exercising the jurisdiction u/s 482 of the Cr PC.

27. As discussed above, there being no allegation against the petitioner No. 1 regarding commission of any offence u/s 3(1)(x) of the Act of 1989, there is no sufficient reason to proceed against the petitioner No. 1. That apart, the statutory bar prescribed by Section 468, Cr PC would be applicable in respect of the petitioner No. 1.

28. Therefore, exercising the jurisdiction u/s 482, Cr PC, I find it to be a fit case to set aside and quash the FIR so far the same relates to petitioner No. 1. Accordingly, the impugned FIR and the investigation, in respect of the petitioner No. 1 is set aside and quashed.

However, no interference is made, in respect of the petitioner No. 2.

With the above observations and directions, this criminal petition is closed.