

(2008) 03 CAL CK 0065
In the Calcutta High Court
Case No : C.R.R. No. 3960 of 2007

S.K. Devanath @ Sampangi and Others APPELLANT
Vs
The State of West Bengal and Another RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 193, 209
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2008) 3 CHN 474 : (2008) CriLJ 2831

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Sekhar Basu and Soubhik Mitra, for the Appellant; Tulsi Das Roy, Indrajit Chatterjee, Arabinda Mondal and Debabrata Roy, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—In the instant criminal revisional application invoking inherent jurisdiction of this Court the petitioners sought for quashing of the Siliguri Police Station FIR No. 279/2007 relating to the offences punishable u/s 3(2)(i)(ii) and (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the following grounds.

(a) The order u/s 156(3) of the Code of Criminal Procedure passed by the Learned Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pursuant to which the impugned FIR was registered, is wholly illegal and without jurisdiction.

(b) On the face of the allegations contained in the impugned FIR no offence has been made out.

2. Mr. Sekhar Basu, the learned advocate appearing in support of this application firstly contended that the Special Court constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, being a Sessions Court and

not an original Court has no jurisdiction to take cognizance of any offence punishable under the said Act unless the case is committed to it u/s 209 of the Code of Criminal Procedure and thus not being empowered to take cognizance of such offences u/s 190 of the Code of Criminal Procedure on a police report is not empowered to pass any order u/s 156(3) of the Code of Criminal Procedure in respect of any complaint relating to such offence. Accordingly, Mr. Basu submitted since the impugned FIR was recorded pursuant to an order which is patently illegal and without jurisdiction the same is liable to be quashed. In this connection Mr. Basu relied on the decision of the Apex Court in the case of Gangula Ashok and Another Vs. State of A.P., . Mr. Basu next contended that taking the entire allegations made in the impugned FIR and accepting the same to be true on its face value, no offence punishable under the said Act having been made out the impugned FIR is liable to be quashed. According to Mr. Basu since there was no allegation that the defacto-complainant was either tried or convicted in a criminal trial for any capital offence or for an offence which is not capital but punishable with imprisonment for a term of 7 years or upwards where the petitioner gave and fabricated false evidence intending thereby to cause or knowing it to be likely that they will thereby cause conviction of the complainant for such offences, no case for commission of offences punishable u/s 3(2)(i) and 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be said to have been made out against them. He further submitted that in absence of any allegation that the petitioner committed any offence under the Indian Penal Code punishable with the imprisonment for a term of 10 years or more against a person or property on the ground that such person is a member of a Scheduled Castes or Scheduled Tribes or such property belong to such member, no offence punishable u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be said to have been made out. Mr. Basu further submitted that the entire allegations made in the FIR against the petitioners is that in connection with a departmental proceeding in the statement of imputation and article of charges, the petitioner being the disciplinary authorities made various false allegations against the opposite party No. 2, the defacto-complainant and took various disciplinary action against him and strenuously urged those allegations, even accepting to be true on its face value, by itself cannot be the foundation of the alleged offences.

Besides the above decision Mr. Basu further relied on the decisions related to the case of Subash Chandra v. State of U.P. and Ors. reported in 2000 Cal CLR(SC) 171, Abdul Rasheed Siddiqui and Another Vs. State of Madhya Pradesh and Others, , State of Karnataka Vs. L. Muniswamy and Others, .

3. On the other hand, Mr. Saswata Gopal Mukherjee, the learned advocate appearing on behalf of the defacto-complainant strongly repudiated the argument of Mr. Basu. According to Mr. Mukherjee the Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been constituted with the object for speedy disposal of the trial for any offences committed under the said Act. The Special Court constituted under the said Act

cannot be equated with the ordinary Sessions Court and the Special Court is very much empowered to take cognizance of offence committed under the said Act directly on the police report. In support of his contention Mr. Mukherjee relied on the decisions of Punjab & Harayana High Court in the case of Dara Singh @ Darbara Singh and Ors. v. Tej Kaur and Ors. reported in 2000 CLJ 3145, a decision of Andhra Pradesh High Court in the case of A.S. Damodar Reddy v. State of Andhra Pradesh reported in 1996 CLJ 3271.

4. Mr. Mukherjee further submitted in the complaint giving rise to the First Information Report the opposite party No. 2, the defacto-complainant clearly depicted the role played by each of the accused persons. According to him the petitioner Nos. 1 and 2 collusively on the basis of false and fabricated evidence and grounds placed the defacto-complainant under suspension and then issued charge-sheet on the self-same materials. The such order of suspension was issued on the basis of a report containing all false and fabricated materials submitted by the petitioner No. 4. The petitioner Nos. 1 and 2 also on the strength of those false and fabricated evidence and grounds framed charge against the defacto-complainant and initiated departmental proceeding. The petitioner No. 3 illegally transferred the petitioner to a far away place in complete violation of the transfer policy of the bank and the said petitioner No. 3 visited the Suparigola Branch of the Bank when the petitioner was on leave and instigated the customer to lodge complaint against him. It is his further submission that the petitioner Nos. 5, 6 and 7 also gave and fabricated false evidence against the opposite party No. 2, the defacto-complainant and on the basis of such false and fabricated evidence the charge has been framed against him in the departmental proceeding and that was also the basis of issuance of order of suspension against him. It is the further submission of Mr. Mukherjee that according to the Banking Service Law major penalty means major punishment and major punishment means capital punishment. The petitioner Nos. 1 and 3 started harassing the opposite party No. 2 mentally by issuing said purported articles of charge containing false and fabricated evidence to inflict and impose major punishment and thereby to remove and/or dismiss him from service and such removal or dismissal from service is obviously a capital punishment inasmuch as the same would ultimately deprived the petitioner of his livelihood and necessarily his life, as life includes livelihood and accordingly the alleged offences punishable u/s 3(2)(I)/3(2)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are very much attracted.

He further reiterated that from the facts the opposite party No. 2, the defacto-complainant has been forced to face a departmental proceeding on the basis of article of charges based on false and fabricated evidence at the instance of the accused/petitioners and thereby taking steps for imposing capital punishment like removal from service and already he was placed under suspension it cannot be said that no offence for which the FIR has been registered has been made out against them.

5. Mr. Debobrata Roy, the learned advocate appearing on behalf of the State produced the Case Diary and having supported the contention raised by Mr. Mukherjee, who appeared on behalf of the opposite party No. 2, the defacto complainant submitted that this is not a fit case for quashing and urged for dismissal of the instant criminal revisional application.

6. I have given my anxious and thoughtful consideration to the rival submissions of the parties as well as to the materials on record and those appearing from the Case Diary.

7. So far as the first submission in support of this application for quashing of this case is concerned it would be sufficient to refer and rely on the principle of law laid down by the Hon"ble Apex Court in the case of Gangula Ashok and Anr. v. State of A.P. reported in 2000 C Cr LR (SC) 162, subsequently endorsed and reaffirmed by the Apex Court in its two decisions viz. in the case of Vidyadharan v. State of Kerala reported in 2004 SCC 260 and in the case of Moly and Anr. v. State of Kerala reported in 2004 SCC (Cri) 1348, where the Apex Court held,

Hence, we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act. We are reiterating the view taken by this Court in Gangula Ashok v. State of A.P. and in Vidyadharan v. State of Kerala in above terms with which we are in respectful agreement. The Sessions Court in the case at hand, undisputedly has acted as one of original jurisdiction, and the requirements of Section 193 of the Code were not met.

8. Thus a Special Court constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 essentially being a Sessions Court and not an original Court is not empowered u/s 190 of the Code of Criminal Procedure to take cognizance of any offence punishable under the said Act without the case being committed to it. Consequently as the Special Court has no jurisdiction to take cognizance u/s 190 of the Code of Criminal Procedure in respect of any offences punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and is not empowered to pass any order u/s 156(3) of the Code of Criminal Procedure in respect of any complaint made to it on the allegations of commission of such offences. Accordingly, the order passed u/s 156(3) of the Code of Criminal Procedure by the learned Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in respect of the complaint alleging commission of offences punishable under the said Act cannot be sustained in the eye of law.

9. Only other point left for consideration in this matter as to whether on the face of the allegations contained in the First Information Report any offence punishable u/s 3(2)(i)/3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for which the impugned FIR has been

registered has been made out or not.

10. The allegations made in the impugned FIR are as follows;

(a) The complainant has been harassed and discriminated and mentally tortured by the accused Nos. 1, 2 and 3 on false and fabricated evidence.

(b) The accused persons are dishonest, unfair and malicious conspirators suspicious character and unbeliever.

(c) The complainant has been illegally suspended by the accused No. 2 on false fabricated grounds and false fabricated evidence as the final order was passed by the accused No. 1 maliciously and unilaterally without giving reasonable opportunity to defend him.

No other officers were punished on the same cause subsequently the accused Nos. 1 and 2 issued charge-sheet on the same false fabricated grounds and false fabricated evidence though the accused No. 1 revoked suspension order in view of the appeal made by the complainant.

(d) The complainant states that he has sustained irreparable loss and injuries in social life due to this illegal suspension.

(e) The accused No. 4 mischievously and maliciously made false and fabricated evidence against the complainant and on receipt of such materials the accused Nos. 1 and 2 mischievously and unilaterally issued the order of suspension without giving reasonable opportunity to the complainant to defend himself.

(f) Due to frequent power cut computer systems of Jorhat Branch in Assam was abnormally shut down on August 13, 2007 when Sri Pratap Chandra Nayak, Staff Officer was doing day end activities. Due to this power cut some files of computer systems were corrupted so Mr. Nayak could not complete day end activities on 13.8.2007 while the complainant was acting as Branch Manager on that day.

Previously Jorhat Branch suffers such type of problems though not identical on several occasions sometime it happens many program files of computer systems were lost but no one was punished like the complainant such type of incident in computer systems occurred in other branches. But no action was taken by the Zonal Authority of Siliguri Zone against the branch officials.

(g) The aforesaid incident was communicated to the Zonal Officer, Bank of India, Siliguri Zone. When the accused No. 4 over telephone commanded the complainant to restructure the corrupted files but the complainant being a General Officer was unable to restructure the files. The similar command was issued to Sri Nayak for restructuring the corrupted files of computer systems at Jorhat Branch, Assam. But Sri Nayak could not able to restructure those corrupted files of the computer systems when the computer systems of Jorhat Branch shown critical error.

(h) The accused Nos. 1, 2, 4 and 5 intentionally could not depute any I.T. Officer to rectify the computer system at Jorhat Branch on August 16, 2007 because August 15, 2007 there was an Assam Bandh and August 15, was a National Holiday.

(i) The job of restructuring corrupted files in the computer system are assigned to the I.T. Officer and not generalist officer.

(j) The accused Nos. 1 and 2 maliciously and unilaterally framed and fixed up allegation and charges on false fabricated grounds to harass discriminate and mentally torture.

(k) The accused Nos. 1 and 2 issued order of suspension on August 17, 2007 and on the very next day it was served upon the petitioner but till date no original copy was served on him. The accused Nos. 1 and 2 were in hurry which shows they are dishonest conspirators unfair and malicious. The complainant was denied reasonable opportunities to defend himself.

(l) The accused Nos. 1 and 2 carried out detailed investigation but nothing against the complainant was found but the said accused persons framed and fixed up maliciously and unilaterally false fabricated allegations and charges based thereupon.

(m) The complainant submitted detailed statements before the Investigating Officer but the accused Nos. 1 and 2 did not pay any attention to such statement intentionally and maliciously.

(n) The accused No. 3 illegally transfer the complainant from Suparigola Branch, Murshidabad to far away place Jorhat Branch in Assam which is 1500 kilometers away within 4 months office posting without any reason violating the banks transfer policy to harass discriminate and torture mentally and also mischievously initiated disciplinary proceedings on false fabricated grounds and false fabricated evidence on the basis of castes.

(o) The complainant also achieved the deposit target and other targets but no other officers who did not achieve such target was transferred.

(p) The accused No. 3 visited Suparigola Branch when the complainant was on leave and he dishonestly instigated the customers to lodge complaint against him.

On return from leave the complainant was released from Suparigola Branch. The accused No. 3 mischievously shifted his responsibility to the complainant.

(q) The internal Audit report of Suparigola Branch was pending before the complainant joined the branch but the accused No. 3 did not take any steps for getting the same ready and kept the same pending and mischievously shifted his responsibility to the complainant.

It appears after making the aforesaid allegations the complainant merely quoted his replies to the statement of imputation against each of article of charges.

11. A plain reading of the provisions of Section 3(2)(i) and 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 it is abundantly clear although the basic ingredients of the offences punishable under the aforesaid provisions are same but depending on the nature and extent of false evidence given or fabricated and the consequent evils brought or sought to be brought thereby i.e. the severity of the law prescribed two different kind of punishments and the punishment so prescribed is more harsh in case of former than that of the later. While Section 3(2)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted in a case where by giving and fabricating false evidence the accused intended to cause or knowing it to be likely that he will thereby cause any member of the Scheduled Castes or Scheduled Tribes to be convicted for a capital offence i.e. one which is punishable with death, on the other hand the Section 3(2)(ii) of the said Act is attracted when by giving and fabricating false evidence the accused intended thereby to cause or knowing it to be likely to cause any person who is a member of Scheduled Castes and Scheduled Tribes be convicted for a non-capital offence punishable with imprisonment for a term of 7 years or upwards.

12. To constitute an offence punishable under the aforesaid penal provisions it is absolutely essential that the false evidence, intending thereby to cause or knowing it to be likely the accused will thereby cause any member of the Scheduled Castes or Scheduled Tribes to be convicted for any capital offence or non-capital offence which is punishable with imprisonment for 7 years and upwards, must be given or fabricated in a criminal trial before a competent court of justice, as without a criminal trial the question of bringing any such conviction of a member of the Scheduled Castes or Scheduled Tribes for the aforesaid offences does not at all arise. In the instant case, since in the four corners of the First Information Report there is no allegation that the opposite party No. 2 is facing any criminal trial before a competent court of law for the commission of capital offence or any offence punishable with imprisonment for 7 years or upwards and far less in such trial he has been convicted for such offences on the evidence given or falsely fabricated by the petitioners, the accused herein it must be held that the basic ingredients of the offence punishable under the said provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is explicitly absent and no offence punishable thereunder has been made out. In any event, on the allegations as have been made in the impugned First Information Report that the accused/petitioners have illegally suspended the opposite party No. 2, the defacto-complainant by fabricating false evidence and without giving them any reasonable opportunity of hearing, submitted charge-sheet against them in connection with a departmental proceeding on the basis of the self-same false and fabricated materials and such false and fabricated materials are the basis of statement of imputation in support of the article of charges and the complainant was transferred from his place of posting without following the transfer policy, no offence for which the impugned FIR has been registered can be said to have been made out.

Having carefully gone through the entire allegations made in the First Information Report, I found besides the allegations that the defacto complainant has been transferred and suspended illegally by fabricating false evidence, the only other allegations are this the substance of accusation and statement of imputation made in support of article of charge against the defacto complainant in connection with a departmental proceeding are based on false and fabricated evidence and grounds. I have no doubt that in order to attract the aforesaid penal provisions the false evidence, if any, must be given and fabricated in course of a criminal trial and in consequence thereof a conviction and sentence is warranted but not in a case where allegedly the statement of imputation submitted in support of article of charge content false and fabricated evidence. In the instant case, the departmental proceeding in which the petitioners have allegedly gave and fabricated false evidence has not yet reached its logical conclusion and those statements of imputation are false is mere a defence of the delinquent officer. Furthermore the allegation that the statement of imputation made in support of article of charges in a departmental proceeding contained false and fabricated evidence even assuming to be true would not make out any offence punishable u/s 3(2)(i) and 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the simple reason that by giving and fabricating such false evidence no conviction for capital offence or for any offence punishable with imprisonment for 7 years or upwards is legally possible in such departmental proceeding.

13. In this connection it would be most profitable to refer to the observation of the Hon'ble Supreme Court in the case of State of Karnataka Vs. L. Muniswamy and Others, , where in Paragraph 7 amongst other the Apex Court as follows;

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

In the result this criminal revisional application stands allowed and the impugned FIR is quashed.

Let an urgent xerox certified copy of this order be supplied to the parties, if applied for, as early as possible.