

(2015) 07 CAL CK 0081
In the Calcutta High Court
Case No : C.R.R. No. 2485 of 2014

Subal Chandra Ghosh and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 323, 324, 325, 34, 341
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x), 9

Citation : (2015) 07 CAL CK 0081

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Prabir Mitra, Pinaki Mitra and Ujjaini Chatterjee, for the Appellant;
Ayan Basu, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Shib Sadhan Sadhu, J—The petitioners by filing this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C. for the sake of brevity) seek to quash the entire proceedings of the G.R. Case No. 1225 of 2014 arising out of Barabani P.S. Case No. 91/14 dated 17.05.2014 under Sections 341/323/447/506/34 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the S.C./S.T. Act) pending before the Court of Learned Additional Chief Judicial Magistrate, Asansol.

2. The case of the petitioners as made out in the petition is that petitioner No. 1 and petitioner No. 2 are brothers and rest petitioners are the sons of petitioner No. 1. They are the owners of the disputed plot of land of which the father of the O.P. No. 2 is also a co-owner. The petitioners 1 & 2 filed a suit being T.S. No. 93 of 2014 against the family members of O.P. No. 2 which is pending before the Court of Civil Judge (Senior Division), Asansol and in which an order of injunction

has been passed in favour of the petitioners. The O.P. No. 2 and his associates have been illegally excavating mine and minerals from the disputed property without taking any consent from the petitioners. The petitioners lodged complaints before the various authorities against such illegal activities of the O.P. No. 2 and his associates. The Revenue Inspector issued notice to both the parties for spot enquiry on the disputed land on 28.02.2014. When the petitioners appeared there on 28.02.14 in pursuance of such notice the O.P. No. 2 and his associates assaulted them for which they lodged a complaint in Barabani Police Station but the police only made a diary being G.D. Entry No. 1293 dated 28.02.2014. Thereafter police filed a report which was registered as N.G.R. Case No. 7488 of 2014.

3. Afterwards as a retaliatory measure the O.P. No. 2 filed a complaint before the Court of Additional Chief Judicial Magistrate, Asansol alleging that on 28.02.2014 at about 12.10 P.M. the accused/petitioners came to the disputed land and forcefully entered into the surrounded area of the complainant/O.P. No. 2 being armed with lathi, hockey stick and other weapons and assaulted him and his witnesses causing serious injury and they also snatched Rs. 1800/- from the complainant and threatened them to kill and abused him by calling his caste name and thereby intentionally lowered his social prestige before the villagers. The Learned Magistrate forwarded the said complaint to the Officer-in-Charge, Barabani Police Station who on receipt of the complaint registered Barabani P.S. Case No. 91/14 dated 17.05.14 which was investigated by Assistant Commissioner of Police (E.B.) and after completion of investigation charge sheet was submitted against the present petitioners under Sections 341/323/447/506/34 IPC and under Section 3(1)(x) of the S.C./S.T. Act. The petitioners have challenged the continuation of the proceeding by filing the instant Revisional Application.

4. I have heard Mr. Prabir Mitra, Learned Senior Counsel appearing on behalf of the petitioners and have given a close and critical look into the written note of argument submitted by him. I have also heard Mr. Ayan Basu, Learned Counsel representing the State. I have perused the entire materials available on record and the case diary meticulously.

5. Mr. Mitra, Learned Senior Counsel appearing for the petitioners submitted that the written complaint turned FIR does not bear any whisper that the petitioners do not belong to Scheduled Castes or Scheduled Tribes community and that the Opposite Party No. 2 was insulted or intimidated or humiliated only because the complainant belongs to Scheduled Caste community or in a place within public view. Therefore, it cannot be said that any offence under Section 3(1)(x) of the S.C./S.T. Act is attracted. He further contended that the investigation was not conducted in terms of the mandatory provisions as laid down under Section 9 of the S.C./S.T. Act and Rule 7 of the S.C./S.T. Act (Prevention of Atrocities) Rules, 1995. There was no notification nor there is anything on record to show that the Investigating Officer who conducted the investigation has got the requisite

eligibility to conduct investigation in terms of the Rule 7. Also the investigation was not completed within 30 days nor the report was submitted to the superior Authority. As such the proceeding is liable to be quashed for conducting the investigation in violation of the provisions of Section 9 of the said Act and Rule 7 of the said Rules.

6. Mr. Mitra contended further that the facts stated in the written complaint do not satisfy the ingredients of Sections 341 or 323 or 447 & 506 of the Indian Penal Code. Moreover, the fact that there has been long standing property dispute between the parties tends to indicate that the instant prosecution was launched by the Opposite Party No. 2 on false allegation to wreck vengeance. Therefore, according to him, the institution of the instant criminal proceeding is a sheer abuse of process of law and it is liable to be quashed. He relied on the decisions reported in *Ravinder Singh Vs. Sukhbir Singh and Others*, (2013) 1 AD 549 : AIR 2013 SC 1048 : (2013) CriLJ 1123 : (2013) 1 Crimes 125 : (2013) 1 JT 515 : (2013) 1 RCR(Criminal) 1020 : (2013) 1 SCALE 166 : (2013) 9 SCC 245 : (2013) AIRSCW 634 : (2013) 1 Supreme 257 ; *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp ; *Gorige Pentaiah Vs. State of A.P. and Others*, (2008) CLT 1305 : (2009) CriLJ 350 : (2008) 9 JT 543 : (2008) 11 SCALE 715 : (2008) 12 SCC 531 : (2008) 18 VST 247 ; *State of M.P. Vs. Chunnilal @ Chunni Singh*, (2009) 6 JT 241 : (2009) 12 SCC 649 : (2009) 7 SCR 145 : (2009) 5 UJ 2061 ; *Asmathunnisa Vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another*, AIR 2011 SC 1905 : (2011) CriLJ 2594 : (2011) 2 JCC 1318 : (2011) 4 JT 195 : (2011) 2 RCR(Criminal) 571 : (2011) 4 SCALE 101 : (2011) 11 SCC 259 : (2011) 3 SCC(Cri) 159 : (2011) AIRSCW 2285 and *Bhaskar Chatteraj Vs. State of West Bengal*, AIR 1991 SC 625 : (1991) CriLJ 429 : (1991) 2 SCC 574 Supp . He also cited one unreported judgment of this Court passed on 16.05.2014 in CRR No. 2486 of 2011 (*Ruma Raha Dutta & Ors. V. The State of West Bengal & Anr.*) in support of his contention.

7. On the other hand Mr. Ayan Basu, Learned Counsel appearing on behalf of the State argued that from the contents of the written complaint and the case diary statements a prima facie case of an intentional insult, humiliation and intimidation to the complainant who is a member of Scheduled Caste in a place within public view and also a case of wrongful confinement, hurt, criminal trespass and criminal intimidation is made out. He further contended that non-mention of the caste of the accused in the FIR/complaint is not a sine-qua-non for offence under Section 3(1)(x) of the S.C./S.T. Act nor it can be a ground for quashing the FIR. He contended yet further that the investigation was conducted by a competent police officer of the rank of Deputy Superintendent of Police from the very beginning and the report in final form was submitted within the statutory period as laid down in the Cr.P.C. Therefore, there was substantial compliance with the provisions of Section 9 of the S.C./S.T. Act and Rule 7 of the S.C./S.T. Act (Prevention and Atrocities) Rules, 1995. According to him the S.C./

S.T. Act is meant for the protection and welfare of the underprivileged persons of the society and therefore, the entire proceeding cannot be quashed only for some technicalities as have been raised by his learned Adversary specially when a charge-sheet has been submitted and cognizance has been taken and no miscarriage of justice has been caused. Mr. Basu further contended that although while considering the application for quashing of the charge-sheet, the allegations made in the First Information Report and the materials collected during the course of investigation are required to be considered but truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Therefore, no interference is warranted and the petitioners would be at liberty to raise defences available to them under the law in the Trial Court. He relied on the decision of the Hon''ble Supreme Court reported in Ashabai Machindra Adhagale Vs. State of Maharashtra and Others, AIR 2009 SC 1973 : (2009) CLT 756 : (2009) 2 JT 441 : (2009) 2 SCALE 697 : (2009) 3 SCC 789 : (2009) 2 SCR 382 : (2009) AIRSCW 1605 : (2009) 1 Supreme 732 to strengthen his contention.

8. Having regard to the rival contentions advanced by the Learned Counsel appearing for the parties in the light of the decisions placed by them, I would like at the very outset to refer to some decisions of the Hon''ble Supreme Court laying down certain principles in respect of exercise of jurisdiction under Section 482 of Cr.P.C.

9. In its well-known decision in the case of the State of Haryana & Ors. V. Ch. Bhajan Lal & Ors. (supra) the Hon''ble Supreme Court after having surveyed the entire case law on the point has laid down certain indicia with reference to which, a High Court may in exercise of powers under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. may interfere in proceedings relating to cognizable offence to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

10. In State of Karnataka Vs. L. Muniswamy and Others, AIR 1977 SC 1489 : (1977) CriLJ 1125 : (1977) 2 SCC 699 : (1977) 3 SCR 113 the Hon''ble Supreme Court observed that the wholesome power under Section 482 Cr.P.C., entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings 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.

11. A Three Judge Bench of the Hon''ble Supreme Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 , after examining the scope and ambit of Section 482 of the Criminal Procedure Code, observed that inherent powers under Section 482 should be exercised for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be fully justified in preventing injustice by invoking the inherent powers of the Court.

12. In Amit Kapoor Vs. Ramesh Chander and Another, (2012) 4 JCC 2885 : (2012) 9 JT 329 : (2012) 9 JT 312 : (2012) 9 SCALE 58 : (2012) 9 SCC 460 , the Hon"ble Supreme Court has laid down that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave errors that might be committed by the Sub-ordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine where there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice. If the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings would not be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its original jurisdiction.

13. In Rajiv Thapar and Others Vs. Madan Lal Kapoor, (2013) 2 AD 69 : (2013) CriLJ 1272 : (2013) 1 Crimes 169 : (2014) 1 DMC 644 : (2013) 2 JT 209 : (2013) 1 RCR(Criminal) 911 : (2013) 1 SCALE 665 : (2013) 3 SCC 330 : (2013) AIRSCW 784 : (2013) 1 Supreme 435 , The Hon"ble Supreme Court has been pleased to observe that:-

"The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the

prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held."

14. Let me now examine the contentions raised by the Learned Counsel appearing for the parties in the light of principles enumerated in the aforesaid decisions, in order to find out whether a case of quashing criminal proceedings constituted upon FIR is made out so as to warrant interference by this Court invoking inherent power under Section 482 of the Code.

15. On the basis of the written complaint a case under Sections 323/324/325/379/447/448/506/34 of the IPC was registered by the police against the petitioners. However, on conclusion of investigation, the charge sheet was submitted under Section 341/323/447/506/34 IPC and under Section 3(1)(x) of the S.C./S.T. Act.

16. Section 3(1)(x) of the S.C./S.T. Act reads as follows:

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

(i) _____ (ix) xxx xxx xx

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

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."

17. Thus, to bring home an offence punishable under Section 3(1)(x) of the Atrocities Act, the prosecution is to prove following ingredients:

(i) "that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe.....";

(ii) the complainant "was intentionally insulted or intimidated by the accused";

(iii) such intentional insult or the intimidation was "with intent to humiliate" such member; and

(iv) this intentional insult or intimidation with an intent to humiliate must be in a place within "public view".

18. Now in order to see whether a prima facie case under Section 3(1)(x) of the

S.C./S.T. Act is made out I think it proper to have a quick look of the statement in the written complaint, particularly Paragraph 6, made by the complainant Paltu Bouri (O.P. No. 2 herein) which is reproduced here:--

"6. That finding no alternative the complainant and the witnesses No. 1 and 2 and 3 raised hulla and hearing such hulla, the village people rushed to the spot and on seeing them the accused persons fled away by threatening the complainant by saying that "Sala Bouri Chotolok, Jomi kine nijeke khub Baro Bhahchis, ei Jomi amra todar kach theke thik kere nebo na dile toder sobaike Jane mere debo, bouri hoye tora gosh det songe parbi na" thus intentionally lowered down the social prestige of the complainant before the people."

19. From the perusal of the aforesaid statement of the complainant, it would appear that the petitioners have abused him simply without there being any intention, insult or to humiliate him as a member of Scheduled Caste.

20. The words "intentional", "insult" and "humiliation" have not been defined in the Act, which have been employed in Section 3(1)(x) of the S.C./S.T. Act. To constitute an offence under Section 3(1)(x) of the S.C./S.T. Act, it is necessary that whoever, not being a member of a scheduled Caste intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. The words "intentional", "insult" and "humiliation" have been used in this Section but they have not been defined in the Act. As per Webster Dictionary, the word "intent" means having the mind bent on an object, "intentional" means done purposely. The term "intentional" has been used in relation to act done by or with intention, which means to do wrong with intent. As per law Lexicon, a person who, by his declaration, act or omission, had caused another to believe a thing to be true and to act upon that belief, must be held to have done so "intentionally" within the meaning of the Statute. As per Webster, "to insult" is to treat with abuse, insolence, or contempt; to commit an indignity upon, as to call the man liar. A gross indignity offered to another whether by act or by word is known as "insult". An insult is an indolent attack. It is more easy to imagine an affront where none was intended than an insult. As per Webster, in common Parlance the word "humiliation" means to lower the dignity of, painfully humbling, the state of being humble and free from pride. As per Oxford dictionary "humiliate" means to cause a person to feel disgrace, humble condition or attitude of mind. In the background of the definition of the aforesaid words, to prove the offence under the aforesaid section, it is necessary that there must be an element of intentionally committing the insult or intimidating with intent to humiliate a member of Scheduled Caste and for that the evidence of the witness should be consistent and reliable.

21. On perusal of the statements of the witnesses recorded under Section 161 Cr.P.C. I find that none of the witnesses has corroborated the statement made by the complainant in his written complaint and they simply stated that the accused persons abused them. Thus it cannot be said that in the instant case merely calling the complainant by the accused persons from his caste (Bouri) does

constitute an offence under Section 3(1)(x) of the S.C./S.T. Act as there is nothing to show that there was any intention of insulting or humiliating the complainant by the accused persons.

22. However, in respect of the alleged offence under Sections 341/323/447/506/34 IPC I find that the allegations against the petitioners as stated in the written complaint and the case diary statements as placed on record reveal that the accused/petitioners entered into the land of the complainant, assaulted him and threatened him to kill and when the witnesses came the accused persons fled away. Therefore, it is evident that there are sufficient materials which establish prima facie commission of an offence punishable under the IPC.

23. It is needless to mention that the defence taken by the petitioners relates to disputed facts truthfulness of which cannot be determined at this stage and it is for them to establish such defence by leading cogent evidence at the time of trial.

24. It is settled law that the factual controversy need not be gone into by this Court in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C. Since the foundation of criminal offence is laid against the accused/petitioners for the offence complained of against them under the Indian Penal Code, therefore, this Court is of the opinion that, prima facie, offence under the Indian Penal Code is made out against the petitioners, but the offence under Section 3(1)(x) of the S.C./S.T. Act is not made out.

25. Inherent jurisdiction under Section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

26. Application under Section 482 of Cr.P.C. is, therefore, partly allowed to the extent of exclusion of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 only. In other words, the petitioners will face the trial for the offences for which charge-sheet was submitted against them, but not under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Application under Section 482 of Cr.P.C. is, therefore, dismissed so far the summoning of accused persons/petitioners under different Sections of the Indian Penal Code is concerned.

27. The Revisional Application is thus disposed of. The existing stay order stands vacated.

28. Let a copy of this judgment be sent to the Learned Court below forthwith for information and action.

29. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.