
(2010) 08 UK CK 0029

In the Uttarakhand High Court

Case No : Criminal Application No. 568 OF 2004

Sushma Sharma and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 323, 504, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2010) 2 UC 1343

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—This criminal application, preferred u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed for quashing the proceedings of Crl. Case No. 4729/2004, State v. Ashotosh Sharma and Ors., pending before the J.M. CBI, Dehradun, u/s 323/504/506 IPC and one punishable u/s 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter to be referred as the SC/ST Act].

2. Heard learned Counsel for the parties and perused the material on record.

3. In nutshell, the prosecution case is that the Petitioners had thrown the soil on the way as a result of which the rainy water came inside the house of complainant and when she enquired about the same from the Petitioners, on 13.8.2004 at about 7.30 PM, the Petitioners beaten the complainant Smt. Simlesh Singh by fists and kicks and also uttered caste indicated words and at that time Ved Prakash Sharma and his wife were standing, who intervened in the matter and the Petitioners while going also threatened the complainant to his life. Thereafter the matter was investigated and after completing the investigation, the charge sheet was filed against the Petitioners, on the basis of which learned J.M. CBI, Dehradun vide order dated 25.11.2004 took cognizance

and summoned the Petitioners u/s 323/504/506 IPC and 3(1)(x) of the SC/ST Act. Hence this petition assailing the entire proceedings.

4. Learned Counsel for the Petitioner argued that the provisions of the SC/ST Act are not attracted in this case as in the entire FIR, it was nowhere mentioned that the Petitioners were not the members of Scheduled Caste or a Scheduled Tribe and they intentionally insulted or intimidated with intent to humiliate the Respondent No. 2 within public view, hence the offence punishable under the SC/ST Act is not made out. I find force in this argument put forth on behalf of the Petitioners. On a bare perusal of the FIR itself, there is no mention whatsoever that the Petitioners were not the members of Scheduled Caste or a Scheduled Tribe community and they intentionally insulted or intimidated with intent to humiliate Respondent No. 2 within public view. It is settled law that when the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the Petitioners to face the criminal trial under the SC/ST Act would be totally unjustified leading to abuse of process of law. Reliance is placed upon a Hon'ble Supreme Court verdict in the case of "Gorige Pentaiah v. State of Andhra Pradesh and Ors. reported in (2009) 1 SCC 446". Paragraph 6 of the said judgment is reproduced as below: -

In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.05.2004, the Appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the Appellant- accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the Appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the Appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law

5. Perusal of the FIR lodged by the Respondent No. 2 shows that the complainant has nowhere alleged that the Petitioners are not the member of the Scheduled Caste of Scheduled Tribe community and they intentionally insulted or intimidated with intent to humiliate the Respondent No. 2 within public view. As such, the Court is of the view that as against the Petitioners, since the ingredients of the offence punishable u/s 3(1)(x) of the Act are not made out, as such the criminal trial with respect to the said offence is liable to be quashed.

6. So far as the rest of the offences are concerned, it transpires that the same involves absolutely disputed questions of fact which cannot be decided at this stage by this Court. The trial court will decide the case after recording the evidence of the complainant as well as of the accused and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising

jurisdiction u/s 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the complaint are taken at their face value and accepted in their entirety, I am of the view that the Petitioners have rightly been summoned by the trial court to face trial u/s 323/504/506 IPC as the said offences are prima facie made out against the Petitioners at this stage. However, the trial court will decide the case after recording the evidence adduced before it.

7. For the reasons recorded above, the C482 petition is partly allowed with the observation that the proceedings against the Petitioners u/s 3(1)(x) of the SC/ST Act are quashed. However, so far as the rest of the offences are concerned, the trial court shall proceed as per law. Interim order dated 09.12.2004 is vacated.