

(2019) 07 GUJ CK 0134

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 6407 Of 2016

VITHALBHAI DEVKARANBHAI AMBANI And 1 Other(S)

APPELLANT

Vs

STATE OF GUJARAT And 1 Other(S)

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 202, 204, 482

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(X)

Citation : (2019) 07 GUJ CK 0134

Hon'ble Judges : A.S. SUPEHIA, J

Bench : Single Bench

Advocate : Ashish M Dagli, Hardik Soni

Final Decision : Allowed

Judgement

1. The present application has been filed seeking quashing and setting aside the order passed below Exh.1 dated 29.09.2015 by learned Additional Chief Judicial Magistrate, Morbi in Criminal Case No.3057 of 2015.

2. The brief facts of the case is that the complainant Arjanbhai Palabhai Rathod made an application by Registered Post AD to learned District & Sessions Judge, Rajkot whereupon, the District Judge, Rajkot asked the Superintendent of Police, Rajkot to do the needful, whereupon the Superintendent of Police, Rajkot city, vide communication dated 30.09.2011 informed the District Judge, Rajkot that the demand of the complainant for getting electricity connections appears to be illegal which has not been fulfilled by the authorities and being aggrieved and dissatisfied with the same, the application was moved before the District Judge, Rajkot. Further the complainant was also informed about the aforesaid fact.

2.1 Thereafter, Principal District Judge, Rajkot asked the 2nd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Morbi to look into the application made by the complainant, whereupon the said application moved by the complainant before the District Judge, Rajkot dated 16.06.2011 came to be

numbered as Exh.1 and, thereafter, Dy. S.P. Morbi was asked to conduct the inquiry and submit a report within 30 days under Section 202 of the Criminal Procedure Code, 1973 ("the Code"), whereupon Superintendent of Police, Morbi submitted a report vide Exh.9 informed / conveyed that statement of witnesses were recorded as well as documentary evidence were also collected, whereupon it was found that the complainant was not able to get electricity connection as well as water facility and keeping grudge of the same, the aforesaid private complaint has been filed which is not getting any support from any independent evidence on record.

3. Learned advocate Mr.Dagli appearing for the applicants has submitted that the principal District Judge, Rajkot asked the 2nd Senior Civil Judge and Chief Judicial Magistrate to look into the application filed by the respondent No.2, whereupon the said application moved by the complainant before the District Judge, Rajkot dated 16.06.2011, came to be numbered as Exh.1 and thereafter, Dy. S.P., Morbi was directed to conduct an investigation and to submit a report within 30 days under Section 204 of the Code, wherein, Dy. S.P., Morbi submitted report vide Exh.9 and informed that after recording the statement of witnesses as well as taking the documentary evidence, it was found that the respondent No.2 is not entitled to get any electric connection as well as water facility since the land belongs to the Government and it was also recorded that no offence regarding insult to his caste has been established.

3.1 It is also stated by the learned advocate Mr.Dagli that earlier also respondent No.2 - complainant had given an application dated 16.06.2011, to the District and Sessions Judge, District Court, Rajkot wherein the Superintendent of Police, Morbi had inquired the same and by a report dated 31.05.2012, it was submitted to the learned District and Sessions Judge, the complaint of the complainant dated 16.06.2011 was not entertained.

3.2 Learned advocate Mr.Dagli has further submitted that the Additional Chief Judicial Magistrate, Morbi has issued the summons below Exh.1 only on the statement of the respondent No.2 and on the sole fact that the applicants were found at their office. He has submitted that despite the aforesaid reports dated 30.09.2011 and 31.05.2012, learned Magistrate has fell in error and issued the summons vide order dated 29.09.2015 on the basis of the offence under Section 3(1)(X) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("the Atrocities Act"). He has submitted that the applicants were Government servants and were serving under the Paschim Gujarat Vij Company Ltd. and were doing their duties and they only asked the complainant to produce the documents indicating that he is the owner of the land for getting light connection. It is submitted by the learned advocate that in fact, the finding of the record reveals that the land on which the electric connection was sought by respondent No.2 - complainant, is a government site and hence, the complainant is not entitled to get any electric and any water connection. He has submitted that in light of the deposition of the complainant, Judicial Magistrate First Class

had issued the summons without appreciating the reports in which it is established that no offence is made out against the applicants under the Atrocities Act. Thus, he has submitted that the order passed below Exh.1 in Criminal Case No.3057 of 2015 is required to be quashed and set aside.

4. Learned Additional Public Prosecutor Mr.Soni, on the instructions of Investigating Officer, Banno Joshi, Dy. S.P., Morbi Department, Morbi, has submitted that it is established on record that the land on which the respondent No.2 is seeking electric connection belongs to the Government, however, learned Additional Public Prosecutor has submitted that the applicants could have consulted from the concerned Mamlatdar or the Collector about the ownership of the land instead of relegating the complainant to pillar and post. He has submitted that the complainant in his deposition has stated that the applicants have said the offending words to his caste and hence, at this stage the order of issuance of the writ under Section 203 of the Code may not be interfered.

4.1 Learned Additional Public Prosecutor, on instructions of the Investigating Officer, who is personally present before this Court, has submitted that the complainant has lodged various complaints alleging the offence under Atrocities Act which read as under:

Police

C.R. No.

Sections

Complainant

Accused

Station

Morbi Taluka

I-9/1997

506(2),

504

Shri

Arjanbhai

Bahgubhai

of the

IPC

Palabhai Rathod

Jutthabhai Bharwad

and
3(1)
(20)
of
the
Resident
of:
Atrocities
Rafadeshwar,
Act
Taluka:
Morbi,
District: Morbi
Morbi Taluka
II-3233/2017
504,
506(2)
Shri
Arjanbhai
Govindbhai Bijalbhai
of the
IPC
Palabhai Rathod
Bhumbharia
and
3(2)(R)
(S),
3(2)(5-
Resident of:
Lilapar

A)
of
the
Road, District: Morbi
Atrocities
Act
Morbi Taluka
II-63 of 1992
506(2)
and
Shri
Arjanbhai
1.Omprakash
114
of
the
Palabhai Rathod
Kishanchand
IPC
and
3(1)(20)
of
2.Bhagwanji
the
Kishanchand
Atrocities
Act
Both Resident of:
Morbi

5. In response to the aforesaid submissions, learned advocate Mr.Dagli has

invited the attention of this Court to the complaint dated 13.02.2011 filed by the complainant and has submitted that in fact the complaint does not reveal the allegations that the applicants have said the offending words towards the caste of the complainant, and it is absolutely a new case which has been made out by the respondent No.2 in the deposition and solely placing reliance on the aforesaid decision, Judicial Magistrate First Class has issued the summons observing that prima facie offence under Section 3(1)(X) of the Atrocities Act has been established by the applicants. Thus, he has submitted that the impugned complaint is required to be quashed and set aside.

6. This Court has perused the impugned order as well as the submissions of the witnesses and the complaint filed by the respondent No.2.

7. Though served with the notice, respondent No.2 has not chosen to appear either as party-in-person or through an advocate.

8. The fact which is not in dispute is that the complainant is seeking electric connection on the land, which belongs to the Government. It appears that the complainant has initially filed the complaint before the District Judge Rajkot dated 16.06.2011, which came to be numbered as Exh.1 and, thereafter, Dy. S.P. was asked to continue the inquiry for the very same subject matter. The Dy. S.P. vide his report dated 30.09.2011 had opined that the allegations made by respondent No.2 - complainant were baseless and no offence insulting the caste of the respondent No.2 and any offence under the Atrocities Act has been established.

9. Thereafter, pursuant to the complaint dated 16.06.2011, learned Additional Chief Judicial Magistrate, First Class, Morbi had called for the report from the Dy. S.P. Morbi. By the comprehensive report dated 31.05.2012, the Dy. S.P. Morbi informed learned Judicial Magistrate, First Class that the allegations made by the respondent No.2 - complainant are not established in the statement of witnesses, which were recorded by him as well as in the documentary evidence.

10. A perusal of the report dated 31.05.2012 reveals that no incident of insulting his caste has been narrated by the respondent No.2 in his complaint. The report also reveals that the land on which the respondent No.2 - complainant was seeking the light connection also does not belong to him and he is an unauthorized occupant.

11. Pursuant to the aforesaid report, learned Judicial Magistrate First Class, Rajkot, on the basis of the deposition of the respondent No.2 - complainant, had issued a summons opined that the offence under Section 3(1)(X) of the Atrocities Act is prima facie established against the applicants.

12. A perusal of the complaint dated 13.02.2012 reveals that the respondent No.2 has not stated or mentioned that the applicants have uttered specific words insulting his caste. At this stage, it would be apposite to refer to the judgment of Coordinate Bench dated 19.12.2011 passed in Criminal Misc. Application No.8421

of 2008 (in the case of Kamlesh Krashnakant Modi and Another vs. State of Gujarat and Others). The Coordinate Bench has observed thus in paragraph No. [6.1], which reads as under:

"[6.1] Now, so far as the reliance placed upon the decision rendered in the case of Ashabai Machindra Adhagale (Supra) by the learned advocate appearing on behalf of respondent No.2 - original complainant, it is true that the Hon'ble Supreme Court had specifically observed and held that by not mentioning the caste of accused in FIR for offence under Section 3(i)(xi) of the Act, the F.I.R. cannot be quashed and set aside and as held by the Hon'ble Supreme Court, said issue can be raised during investigation or at the time of framing of the charge or at the time of trial and the accused can prove that he belongs to either scheduled caste or scheduled tribe. In the facts and circumstances of the case, the said decision would not be of any assistance to the complainant as firstly, it was a case for the offence under Section 3(i)(xi) of the Act and the accused pleaded that he belonged to scheduled caste or scheduled tribe and therefore, he cannot be prosecuted for the offence under the Act. However, so far as the alleged offence under Section 3(1) x) of the Act is concerned, complainant is required to allege that the accused, not being a member of the scheduled caste or scheduled tribe, had intentionally insulted or intimidated him with intent to humiliate in any place within public view. As stated herein above, there are no such allegations or averments in the complaint satisfying the ingredients of the offence under Section 3(1)(x) of the Act. Under the circumstances, the case squarely falls within the case of Asmathunnisa (Supra) as well as Gorige Pentaiah (Supra). Under the circumstances, when the basic ingredients of the offence under Section 3(1)(x) of the Act are missing in the complaint, permitting such a complaint to continue and to compel the applicants to face the prosecution and/or the complaint would be totally unjustified leading to abuse of process of law. In paras 12 and 13 in the case of Asmathunnisa (Supra), the Hon'ble Supreme Court has observed and held as under:

"12. Learned counsel for the appellant has also drawn our attention to a judgment of this Court Gorige Pentaiah v. State of Andhra Pradesh & Others (2008) 12 SCC 531. The relevant paragraph of this judgment is as under:

"6. .. 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.

13. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under section 482 of the Code of Criminal Procedure. Inherent power under section 482 of the Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists 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 justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

13. The Coordinate Bench of this Court, after examining the provisions of 3(1)(X) of the Atrocities Act of this Court, has held that the complainant has to specify that he has been insulted on the ground that he belongs to the scheduled tribe or scheduled caste. The complaint is bereft of such averments and hence, as per the decision of the Coordinate Bench of this Court, no offence under Section 3(1)(X) of the Atrocities Act said to have been established against the applicants.

14. In light of the aforesaid observations and analysis, the impugned order dated 29.09.2015 passed below Exh.1 by learned Additional Chief Judicial Magistrate, Morbi in Criminal Case No.3057 of 2015 and issuing process of summons to the applicants are quashed and set aside. Rule made absolute.