

Crl. Misc. No. M 2263 of 2011 Vs. Crl. Misc. No. M 2263 of 2011

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Court : Punjab and Haryana

Decided On : Aug-01-2013

Appellant : Crl. Misc. No. M 2263 of 2011

Respondent : Crl. Misc. No. M 2263 of 2011

Judgement :

Crl.

Misc.

not M 226.o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH -- Crl.

Misc.

not M 226.of 2011 Date of decision:

01. 08.2013 Hanuman SinghPetitioner Versus Bahadur Singh Saini and othersRespondent(s) Coram: Hon'ble MRS.Justice Rekha Mittal -.- Present: Mr.Rajneesh Chadwal, Advocate for the petitioner Mr.J P Sharma, Advocate for respondent No.1 and 2 -.- 1.

Whether Reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporter or not?.

3. Whether the judgment should be reported in the Digest?.

Rekha Mittal, J.

By way of the present petition filed under Section 482 Cr.P.C, the petitioner prays for setting aside orders dated 03.01.2009 (Annexure P1) and 02.04.2009 (Annexure P2).passed by the Chief Judicial Magistrate, Narnaul and the Additional Sessions Judge, Narnaul, respectively, whereby the complaint filed by the petitioner was dismissed by the Chief Judicial Magistrate and revision petition preferred by the petitioner, was dismissed.

Brief facts of this case are that Hanuman Singh, petitioner filed a criminal complaint on the allegations that he is Chamar by caste, whereas accused No.1 is Saini and accused No.2 and 3 are Gujjar by caste (respondents No.1 to 3 herein).He is owner in possession of land measuring 6 bighas 4 biswas comprised in khaSr.No.3223.

The accused in CrI.

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2. connivance allotted him land of inferior quality in lieu of his aforesaid land.

On 23.07.2007, at about 11.00 am, he visited the office of accused No.1 to make a request to get the land demarcated but all the three accused threatened and rebuked him and asked him to leave the office.

When the complainant resisted, the accused uttered abusive language saying him 'chamar and dhed'.

The said words were spoken by the accused in the presence of Kamal Singh and Ajay Kumar, residents of Narnaul.

After recording preliminary evidence consisting of statements of the complainant and Ajay Kumar (PW2).the Court of Chief Judicial Magistrate, Narnaul, dismissed

the complaint with the findings that no prima facie case is made out to proceed against the accused for commission of offence punishable under Section 3 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (in short, 'the 1989 Act'). The petitioner carried the matter in revision, but was unsuccessful.

Feeling dissatisfied, the present petition has been filed to assail the orders passed by the Courts below.

Counsel for the petitioner submits that at the stage of summoning the accused, the Court cannot go into the question whether there was any truth in the allegations made but only has to satisfy whether on the basis of allegations, a cognizable offence has been alleged and made out.

It is further submitted that keeping in view the allegations of the complainant, duly corroborated by Ajay Kumar (PW2), while examined in the light of documents proved on record, a prima facie case is made out for summoning the accused but the Court of Judicial Magistrate and revisional Court in an illegal and arbitrary manner dismissed the complaint causing a serious miscarriage of justice.

In support of his contentions, he has relied upon Crl.

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3. 'Ram Babu v.

State of Madhya Pradesh and others', 2009(4) RCR (Criminal) 204 and 'Sibu v.

Mohinder Singh', 2002(1) RCR (Criminal) 165.

Counsel for the respondents, on the contrary, submits that the Court of Chief Judicial Magistrate, Narnaul and the Additional Sessions Judge, on due consideration of the matter, have recorded concurrent findings that the petitioner has failed to make out a prima facie case for summoning the accused as he failed to allege and prove that the accused were aware of his caste or that he belongs to a scheduled caste, which negates his plea that the accused used the alleged

objectionable words with an intention to humiliate the petitioner, a member of the scheduled caste.

I have heard counsel for the parties and perused the case file.

Before advertng to the merits of the controversy, it is appropriate to mention that there cannot be any dispute about the settled position of law as laid down in the referred authorities that at the time of issuing of process against the accused, a prima facie case is to be seen and the court is not required to enter into a roving inquiry whether the material on record is sufficient to result in conviction of the accused sought to be summoned.

A perusal of the order passed by the Chief Judicial Magistrate would reveal that the reasons, which weighed in the mind of the Court are recorded in para 6 of the judgement.

A relevant extract from the judgment of the Chief Judicial magistrate is quoted thus:- 6.

However, I do not agree with this contention, in order to establish prima facie case under section 3 of the Act the complainant has to show that the accused was aware about his caste and that is why he CrI.

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4. intentionally insulted, intimated or humiliated him.

In the absence of the knowledge of the accused, it cannot be presumed that an offence punishable under section 3 of the Act is made.

In this regard, I am fortified in my views with Rajender Kumar v.

State of haryana 2002 (3) CCJ 15.and Pishora Singh v.

State of Punjab and another, 2002 (3) CCJ 319.wherein it has been laid down that the complainant is to specifically allege and prove that the accused was aware

about his caste.

Even if the complainant was working with the accused a presumption cannot be drawn that the accused was aware about his caste.

In the case in hand from the perusal of the complaint as well as statements of the Pws there is nothing to show that the accused were aware about his caste.

This fact is missing from the contents of the complaint as well as oral evidence.

The Court of Additinal Sessions Judge, Narnaul recorded its findings in para 7 which reads as follows:- 7.

Ex.P3 is the complaint made by the complainant to the police.

However, it has not been mentioned that accused gave beatings to the complainant.

There is no proof on the file that accused belongs to Harizan Caste.

Moreover, DSP duly inquired the matter and did not find any case against the accused.

Moreover, the land can be demarcated by some other revenue officers of other department particularly when consolidation officers were not going to re-allot the land.

There is no proof on the file that complainant was ever approached the accused for reallocation of the land or for demarcation of the land.

Thus, it is clear that complainant has no occasion to meet the accused.

Secondly, there is no proof that within the knowledge of the accused, the complainant is Chamar by caste.

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5. Moreover, it has not been mentioned in the complaint itself that the accused inflicted any injury on his person.

It is also clear that there is no MLR regarding the injury on his person.

Thus, I am of the considered view that there is no sufficient ground to summon the accused.

Thus, learned trial Court has rightly dismissed the present complaint.

Order of learned trial Court is upheld.

Hence, present revision is also dismissed.

Copy of this order along LCR be sent to the court concerned.

Revision file be consigned to record room after due compliance.

A perusal of averments in the complaint (Annexure P6) would reveal that it has nowhere been alleged that the respondents/accused had the knowledge that the petitioner belongs to a scheduled caste and knowing his caste they used objectionable words with an intention to insult or intimidate the petitioner with further intention to humiliate him being a member of the scheduled caste.

Counsel for the petitioner has not challenged the findings of the Chief Judicial Magistrate that it was not proved on record that the accused were aware of his caste.

The Court of Chief Judicial Magistrate has relied upon *Rajender Kumar v.*

State of Haryana, 2002 (3) CCJ 11. and *Pishora Singh v.*

State of Punjab and another, 2002 (3) CCJ 319. in support of its observations that the complainant is required to show that the accused was aware about his caste and that is why they intentionally insulted, intimidated or humiliated him.

In the absence of knowledge of the accused, it cannot be presumed that an offence under Section 3 of the 1989 Act is made out.

Counsel for the petitioner has not disputed the ratio laid down in the two judgments relied upon by the learned Chief Judicial Magistrate.

He has failed to cite any contrary law that the petitioner is not CrI.

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6. obliged to allege and prove that the accused was aware of his caste.

To construe 'intentional insult or humiliation' by abusing in the name of caste, in my considered opinion, it pre-supposes that the offender had knowledge of caste of the complainant.

Counsel for the petitioner made a feeble attempt to contend that the respondents had the necessary knowledge that the petitioner belongs to a scheduled caste.

For this purpose, he has placed reliance upon a document (Annexure P4).proceedings in regard to constitution of Consultative Committee for smooth running of work of consolidation.

Counsel for the petitioner is fair enough to concede that document (Anexure P4) is not a part of evidence led before the Court of Magistrate.

The petitioner cannot be permitted to rely upon any evidence/document beyond record to find fault with the orders impugned.

As a consequence, I do not find any error much less illegality or perversity in the impugned orders as would call for interference by this Court.

Hence, the petition is dismissed.

No order as to costs.

(Rekha Mittal) Judge 01.08.2013.

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