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Asha Aggarwal Vs. State

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Court : Delhi

Decided On : Mar-27-2014

Judge : Deepa Sharma

Appellant : Asha Aggarwal

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + Crl. M.C.2757/2009 Judgment reserved on :

17. h February, 2014 Judgment pronounced on :

27. h March, 2014 % ASHA AGGARWAL Through: ..... Petitioner Mr.Hrishikesh Baruah and Ms.Ankita Advocate. versus STATE Through: ..... Respondent Mr.O.P.Saxena, APP for the State with ACP J.K.Sharma, PG Cell, Central District and Insp.Brij Mohan, PS Kirti Nagar. Mr.Balraj, Advocate for R-2. CORAM: HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
:

1. The present petition has been filed by the petitioner by invoking the jurisdiction under Section 482 of the Code of Criminal Procedure with request to quash the FIR no.204/2009, PS Kirti Nagar registered for the offence under Section 3 of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC & ST Act). The main contention of the petitioner is that the complaint/FIR does not disclose the main ingredients of Section 3 (1) (x) of SC & ST Act even if it is taken on the face value.

2. The FIR was registered on the complaint of Engineer Omprakash, AE-III/WD-15/DDA. It was sent to Police Station through the Executive Engineer, Western Division No.15, DDA, New Delhi. The complaint is reproduced as under: OFFICE OF THE ASSISTANT ENGINEER-III WESTERN DIVISION NO:

15. DDA/N.DELHI J1(Misc)AEM/WD15/DDA/37 dt. 8/7/2009 To The Executive Engineer Western Division No.15, DDA/New Delhi-110015. Subject: Misbehave by Steno Smt.Asha Aggarwal of WD.15. On Monday dt.6-7-2009 when I was going to meet with EE/WD.15 at about 4.00 P.M. Smt.Asha Agrawal steno/WD.15 stopped me in the varandah in front of A/C Branch & steno room and alleged that you have advised the EE to Sign in 3-7-2009 on her joining report. I said that I have no knowledge about your joining report and I am also not concerned with your joining report. Then she abused me that you and your Executive Engineers are Bhangi and I hate all the Bandies. Sh.Jashir Singh JE who was present at the place told to steno that you should not utter this type of words in this society and even in the Govt office. It is not good. She again abused saying that I am saying again and again that I hate Bangis. Some AEs and other staff, EE of WD.15 had come there and tried to intervene but she was saying by challenge that I dont care of any action. I will see all the persons. Yesterday on 7-7-09 I was on casual leave which was already applied for domestic work. Therefore complaint could not be made yesterday. This lady is habitual in misbehaving with the officers and staff and so many proceedings are pending against her. In the light of above it is requested that the suitable action under the rules of DDA against the steno Smt.Asha Agarwal may be initiated and separate letter be forwarded S.H.O. Police Station Kirti Nagar for appropriate action under SC/ST atrocities act as per India penal code so that a suitable lesson may be teach to this erring lady. Sd./(Er.OMPRAKASH) AE-III/WD.15/DDA Copy to:1. SE/CD.17/DDA for information and necessary disciplinary/legal action against Smt.Asha Agarwal SteNo.2. C.E. (DWK)/DDA for information please. Following officers along with

Executive Engineer WD.15/DDA and other staff were present at the time of this incident: Sh.U.S.Chhaunkar, EE/WD.15 (handwritten) 1. Sh.Shambhu Nath Singh A.E.II/WD.15.

2. Sh.Kamal Kumar Suri AE-I/WD.15/DDA.

3. Sh.Sahdeo Kumar A.E.IV & AE (P)/WD.15/DDA.

4. Sh.Jasbir Singh J.E./WD.15/DDA.

5. Sh.P.L.Garg J.E./WD.15/DDA.

6. Sh.Prasant Kumar J.E./WD.15/DDA7 Sh.Ram Narain Peon.

8. Sh.Rajkumar Peon.

9. Sh.Radheyshyam Peon.

10. Sh.Rambrichh Peon 11. Sh.Diwaker Mishra Mate.

12. Sh.Bhopal Singh Peon.

13. Sh.Ramesh Kumar Peon/WD.13.

14. Sh.Umanand Peon. Sd./(Er.OMPRAKASH) AE-III/WD.15/DDA3 Section 482 Cr.PC confers inherent powers to High Courts. This inherent power under Section 482 Cr.PC can be exercised:

4. (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. It has been held by the Apex court in catena of judgments that the inherent powers under Section 482 Cr.PC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified. 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 invoking its inherent power to prevent such abuse of the process of law.

5. In the case reported in 1992 SCC (Cri) 426 entitled State of Haryana vs. Bhajan Lal, the Apex Court in the backdrop of interpretation of various relevant provisions of Cr.PC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.PC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The court had also made it clear that it was not an exhaustive list. The court has thus observed as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. In the present case, the petitioner had lodged a complaint with the police regarding the incident which had taken place on 6.7.2009 at about 4 p.m. in the DDA office against the complainant wherein she had complained that Mr.Singhmar, AE tried to misbehave with her and also threatened to implicate her in a false case under SC & ST Act. The relevant translated portion of her complaint is quoted as under:

..... I did not address him as Bhangi but he insisted that he would initiate action under SC/ST Act. He also said that I was a Bhangis servant and that I ate his bread. .... Please take notice of the fact that he can drag me or anybody else by levelling false allegations and he misuses his status of a SC/ST.

7. It, therefore, is clear that an incident had taken place on 6.7.2009 at about 4 p.m. in the DDA Office for which the complainant as well as the petitioner has its own independent version. The sole question before this court is whether the FIR prima facie discloses the ingredients which make out the offence in clause (x) of Sub section (1) of Section 3.

8. In the case reported in 2004 (2) JCC1136entitled Daya Bhatnagar & Others vs. State, this court has laid down the basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the SC & ST Act as under:

15. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows: (a) there should be intentional insult or intimidation by a person, who is not a member of SC to ST; (b) the insult or insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, if follows that the accused

must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. ....

9. In the case reported in (2008) 12 SCC531entitled Gorige Pentaiah vs. State of Andhra Pradesh and Others, the Apex court has stated 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 No.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 appellantaccused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No.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.

10. In the present case the complainant has nowhere stated that the accused-petitioner was not a member of Scheduled Caste or Scheduled Tribe and that he (complainant) was intentionally insulted or intimidated by the petitioner-accused with intent to humiliate him in public view. All that the complainant discloses is that the petitioner-accused had abused him that he and his executive engineers were Bhangi and that she hate all Bhangis. It is a fact which has come to the notice of this court during the arguments that the Executive Engineer does not belong to scheduled caste. Besides these allegations there is nothing in this complaint which can disclose the other ingredients of Section 3 (1) (x) of SC & ST Act.

9. This court in its earlier pronouncement reported in 2004 (77) DRJ725Deepa Bajwa vs. State & Others has held that where in the FIR, the complainant does not state that the petitioner knew his caste when the remark in question was made, the basic ingredients of Section 3 (1) (x) of SC & ST Act are not make out. In this case it has also been held by this court that the first version in the complaint is always important and subsequent filling of lacunae is not permissible. In the said

case also the FIR was quashed.

11. As discussed above, it is important that all the basic ingredients which constitute the offence under Section 3 (1) (x) of the SC & ST Act should be disclosed in the FIR. All the ingredients of Section 3 (1) (x) of the SC & ST Act have not been disclosed in the FIR in the present case. Moreover, while the accused-petitioner has immediately reported the incident to the police, the complainant had filed his complaint on 8.7.2009 i.e. after two days of the incident.

12. Keeping in view all facts and circumstances of the case, I am satisfied that the FIR requires to be quashed in order to prevent the abuse of process of law.

13. FIR no.204/2009, PS Kirti Nagar registered for the offence under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed.

14. Copy of the order be sent to the trial court along with the trial court record. DEEPA SHARMA, J.

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