

Chanda Tirkey Vs. Surajdev Sahu and Another

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Court : Chhattisgarh

Decided On : Jun-25-2014

Judge : Sanjay K. Agrawal

Appeal No. : Criminal Revision No. 812 of 2013

Appellant : Chanda Tirkey

Respondent : Surajdev Sahu and Another

Judgement :

1. Impugning the legality and correctness of order dated 22/07/2013, the instant revision has been filed by applicant/complainant, by which, non-applicant No. 1 has been discharged from offence under Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short Atrocities Act) finding no sufficient cause for proceeding with trial.

2. On 03/10/2012 a written complaint made by the applicant herein and the offence under Sections 3(2) (v) of the Atrocities Act, 376 and 506 of the Indian Penal Code (in short IPC) was registered against the non-applicant No. 1. The copy of complaint (Annexure P-3) states that the applicant is working as A.N.M., in Primary Health Center, Umeshwarpur under non-applicant No. 1. The non-applicant No. 1 is working as Rural Medical Assistant.

3. It is the case of the complainant/applicant that on 23/11/2009 non-applicant No. 1 outraged her modesty and thereafter on 04/09/2011 committed rape with her. As

she is a member of Scheduled Tribe, concerned Police Station registered the offence 3(2)(v) of the Atrocities Act and other related offences under provision of 306 and 506 IPC and the charge-sheet was filed before the jurisdictional Criminal Court.

4. By the impugned order, the learned Special Judge framed the charges for offence under Sections 306 and 506 of the IPC but discharged the non-applicant No. 1 for the offence under Section 3(2)(v) of the Atrocities Act finding no sufficient material for framing charge under the aforesaid offence, feeling aggrieved against this order, the revision has been filed.

5. Mr. Bhupendra Singh, learned counsel appearing for the applicant would submit that the learned Special Judge has committed legal error in holding that there is no sufficient ground for proceeding against the non-applicant No. 1 for commission of offence under Section 3(2)(v) of the Atrocities Act, as the applicant is a member of Scheduled Tribe and sufficient material is available to frame charge against him, therefore, the order discharging non-applicant No. 1 be set-aside and the case be remanded for trying the offence under Section 3(2)(v) of the Atrocities Act against the non-applicant No. 1.

6. On the other hand, Ms. Hamida Siddiqui, learned counsel appearing for the non-applicant No.1 and Mr. Anand Verma, P.L. appearing for the State/non-applicant No. 2 supporting the impugned order, would oppose the submission made by counsel for the applicant while supporting the impugned order.

7. The question that falls for consideration is whether there is a material for framing charges for offence under Section 3(2)(v) of the Atrocities Act against the non-applicant No. 1. The Section 3(2)(v) of the Atrocities Act provides as under:-

3. Punishments for offences of atrocities.-

XXXX

(2) - Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

XXXX

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

8. The Atrocities Act was enacted to prevent atrocities against members of Scheduled Castes and Scheduled Tribes and to provide special Courts for trial of such offences. Atrocity is defined in Section 2(1)(a) to mean an offence punishable under Section 3. Section 3 creates independent offences relating to such atrocities and they stand by themselves. To attract Sec. 3(2)(v) of the Atrocities Act the following ingredients must be established:-

1) the offender should not be a member of a Scheduled Caste or a Scheduled Tribe;

2) he must commit an offence under the Indian penal Code punishable with imprisonment for a term of 10 years or more;

3) the commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;

4) the offence must have been committed on the ground that such person is a member Scheduled Caste or a Scheduled Tribe.

9. All the above ingredients must be established by the prosecution before requesting the Court to frame a charge under this Section against the accused. There is no material on record to show that non-applicant No. 1 committed rape on applicant on the ground that she is a member of a Scheduled Tribe. It is not enough if the victim is a member of a Scheduled Caste or a Scheduled Tribe. The offence must have been committed because the victim is a member of a Scheduled Caste or a Scheduled Tribe. The cause for the offence must contain an element of racial prejudice.

10. The Madhya Pradesh High Court in **Karansingh v. State of M.P. (1992 CrL. L.J. 3054)** has observed that as special and stricter provisions have been made in

the Act, it is the duty of the prosecution to examine the case more carefully. Registration of the offence under the Act only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste was a mechanical exercise of authority and it has to be deprecated. It is also observed that the Courts have to see immediately after a case is brought to it whether an offence under the Act is purely made out prima facie on the material available in the case diary.

11. The complaint Annexure P-3 made by the applicant against the non-applicant No. 1 before the Station House Officer reads as under:-

LANGUAGE

12. A careful perusal of the complaint would show that the offence of outraging her modesty is said to be committed on 23/11/2009 and rape is said to be committed on 04/09/2011 and the report is made on 03/10/2012. The complaint nowhere states that the rape was allegedly committed merely because she is a member of Scheduled Tribe. Thus on the face of complaint, the essential ingredient of offence under Section 3(2)(v) of the Atrocities Act, particularly the element of racial prejudice is absolutely missing in the complaint therefore, Special Judge has rightly declined to frame charge under Section 3(2)(v) of the Atrocities Act.

13. In view of the aforesaid discussion, the Special Court is absolutely justified in discharging the non-applicant No. 1 for commission of offence under Section 3(2)(v) of the Atrocities Act.

14. As a fallout and the consequence of the aforesaid discussion, the revision is held to be devoid of merit and is, therefore, required to be dismissed at the admission stage, which I direct accordingly.

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