

Bodasingi Satyanarayana and ors. Vs. the State of A.P.

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Court : Andhra Pradesh

Decided On : Nov-27-2003

Reported in : 2004(1)ALD(Cri)253; 2004CriLJ803

Judge : C.Y. Somayajulu, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3, 3(1) and 3(2); [Constitution of India](#) - Articles 15 and 16; [Indian Penal Code \(IPC\), 1860](#) - Sections 147 and 427

Appeal No. : Crl. Petn. No. 5484 of 2003

Appellant : Bodasingi Satyanarayana and ors.

Respondent : The State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : G. Venkateswar Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

C.Y. Somayajulu, J.

1. Alleging that on 10-9-2002 at about 1.00 p.m. petitioners and others had trespassed into her land and removed the sheds in spite of resistance by her and others, and abused her in a filthy language touching her caste of 'Konda Kapu' community, which is a scheduled tribe community, and necked her out of the premises by threatening her with dire consequences, Medikonda Radha filed a private complaint before the Court of the Additional Judicial First Class Magistrate, Vizianagaram, who referred the same to Vizianagaram Rural police for investigation under Section 156(3) Cr. P.C. who registered the same as Cr. No. 14 of 2003. After investigation, the Deputy Superintendent of Police, Regional Incharge Officer, CID, Visakhapatnam, laid a charge sheet against the petitioners and others for offences under Sections 147, 148, 447, 427, 352, 323, 506 (2), 354, 109 R/w. Section 149, IPC and Sections 3(1)(x) and 3(2)(vii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act). This petition is filed to quash the said complaint against the petitioners.

2. The contention of the learned counsel for petitioners is that since the averments in complaint show that the caste of the de-facto complainant is in dispute, and since the specific averment in the charge-sheet is that the caste certificate of the de-facto complainant as scheduled tribe, was cancelled on the ground that her parents belong to Turpu Kapu community, which is a backward community, it is clear that the de-facto complainant does not belong to scheduled tribe community, and so the provisions of the Act do not apply to her. It is his contention that merely because the de-facto complainant married a person belonging to scheduled caste community, when she does not claim that she belongs to scheduled caste community and asserts that she is a member of scheduled tribe community only, the provisions of the Act have no application for the offence alleged. Placing reliance on the following passage in para 34 at page 1022 :

'Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must be necessity also undergo same handicaps, be subject to the same

disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of scheduled caste, etc., by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.'

In *Valasamma Paul v. Cochin University*, : [1996]1SCR128 he contends that in any event since there is nothing on record to show that the de-facto complainant was accepted as a member of scheduled caste community, and since her schedule tribe certificate is admittedly cancelled, the complaint against the petitioners is liable to be quashed.

3. The allegation in the charge-sheet shows that the caste of the de-facto complainant is in dispute since the Collector, Vizianagaram cancelled the caste certificate given to her on the ground that her parents belong to Turupu Kapu caste, which is a backward class community, and that her husband belongs to scheduled caste community.

4. Question of quashing the entire complaint against the petitioners does not arise because the allegations in the charge sheet disclose commission of offences under IPC. The question is whether the charge-sheet can be laid under the provisions of the Act or not in respect of the alleged assault against the de-facto complainant.

In view of the preamble of the Act reading :

'An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.'

It is clear that the Act is intended to prevent commission of offences or atrocities against the members belonging to scheduled caste and scheduled tribe communities. It has to be kept in view that no benefit under Article 15 or Article 16 of the Constitution is conferred on those communities by the Act. Article 15(4) enables the State making special provision for the advancement of any socially and educationally backward classes of citizens, or for the scheduled castes and scheduled tribes. Article 16 relates to equal opportunity of matters in public employment. Since the provisions of the Act are not made for or intended for advancement of scheduled caste or scheduled tribe communities and since they do not relate to opportunity in public employment also neither Article 15 nor Article 16 of the Constitution apply to the offences committed under the Act.

5. I had an occasion to consider the question relating to the status of a woman belonging to another caste marrying a man belonging to a scheduled caste or scheduled tribe community vis-a-vis Articles 14 and 16 of the Constitution in *Dukku Labudu Bariki v. Sobha Hymavathi Devi*, (2003) 4 Andh LD 138, after referring to the decisions rendered by various Courts including Supreme Court, and held that a woman on marriage acquires the caste of her husband, whatever be her caste prior to the marriage, and if such woman wants to secure the benefits conferred by Articles 15(4) and 16(4) of the Constitution on the members belonging to her husband's, caste, she will have to establish that she had undergone the same handicaps and was subjected to the disadvantages, indignities or sufferings of the caste to which she claims herself to be a member.

6. All these apart, there is nothing in the Act to show that only when the victim specifically claims that he or she is a member of the scheduled caste/tribe community the provisions of the Act should be applied. The scheme of the Act is that if the victim belongs to the scheduled caste/ tribe and if the assailant or the alleged offender does not belong to those communities, the provisions of the Act come into play. In the present system in which we are, no person can shed his caste or community which he or she acquired by birth or marriage, unless he or she converts into another religion. The caste of an individual, thus, is a question of fact to be determined on the basis of evidence to be adduced, when it is disputed.

7. So, even assuming that the decision relied on by the learned counsel for petitioners applies to the facts of this case, question whether the complainant suffered the disadvantages, etc. of the caste of her husband by virtue of her marriage with him or not, has to be established during the course of trial. So, assuming that the complainant does not belong to scheduled caste in spite her, admittedly, marrying a person belonging to scheduled caste community, the charge sheet cannot be quashed, because as per the provisions of the Act if a person belonging to scheduled caste or scheduled tribe is abused or insulted, by a person who does not belong to those communities, he would be liable for punishment as mentioned therein. At this stage, it, therefore cannot be said that there are no grounds to proceed against the petitioners for the offences under the provisions of the Act.

8. In view of the above, I find no merits in this petition. So, the petition is dismissed.