

M.M.A Baig and Others Vs. The State of andhra Pradesh Rep. by Its

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Court : Andhra Pradesh

Decided On : Jun-03-2015

Judge : The Hon'ble Sri Justice U. Durga Prasad Rao

Appellant : M.M.A Baig and Others

Respondent : The State of andhra Pradesh Rep. by Its

Judgement :

THE HONBLE Sr.JUSTICE U.

DURGA PRASAD RAO Criminal Petition No.2817 of 2013 03-06-2015 M.M.A Baig and others....Petitioners The State of Andhra Pradesh Rep.

by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and another.Respondents Counsel for Petitioners : Sr.Sarosh Bastawala Counsel for Respondent No.1 : Public Prosecutor ?.Cases referred: HONBLE Sr.JUSTICE U.DURGA PRASAD RAO CRIMINAL PETITION No.2817 of 2013

ORDER

: In this petition filed under Section 482 Cr.P.C, the petitioners/A1 to A.5 seek to quash the proceedings in S.C.No.27 of 2012 on the file of VI Additional Metropolitan Sessions Judge at Secunderabad.

2) On the Complaint dated 26.10.2011 given by the de facto complainantA.

Krishna Veni, the Police of Nampally Police Station registered a case in Cr.No.210 of 2011 and after investigation laid charge sheet against the petitioners/Accused Nos.1 to 5 for the offence under Section 3 (1) (x) of SCs & STs(Prevention of Atrocities) Act, 1989 (for short the Act).3) The brief allegations in the charge sheet are that the complaints family and the accused are residing opposite to each other in Red Hills, Hyderabad.

The Complainant is a bank employee.

She along with her husband Chandra Kumar and children i.e., three daughters and son are residing in H.No.11-5-518 and they belong to Mala (SC) Community.

The complainant and her husband are the owners of their house and extended their house by 10 x 10 feet by raising a room.

The extended site belongs to A.P.State Housing Board and it is not a part of the passage.

Accused Nos.1 to 3 are the sons and A.5 is the daughter of A.4.

The accused raised foot steps in front of their house causing hindrance to the passage of vehicles.

In addition to it, Accused Nos.1 to 3 used to park their vehicles near foot steps further shrinking the passage.

A.1 to A.5 felt jealousy on the complainant for acquiring 10 x 10 feet site from the Housing Board.

Every now and then A.1 to A.3 used to abuse the complainant and her family members in the name of their caste.

The text of the abuses is mentioned in the charge sheet.

Further, the accused used to throw their garbage in the house of the complainant.

The fiRs. accused filed petitions making false allegations before various departments like Municipality, Revenue and Police and thereby the officials of

various departments used to visit the house of complainant for enquiry.

The complainant is a heart patient and her husband is a diabetic patient.

On 25.10.2011 some Municipality officials came to her house and enquired about the petitions given by the fiRs. accused reporting as if the complainant made illegal constructions.

On 26.10.2011 at about 1100 houRs. Revenue Inspector came to the house of complainant and enquired about the constructions.

In the mean while, A.1 to A.3 took some photographs and threatened them that they would demolish the house of the complainant.

Due to which, the husband of the complainant, who is a diabetic patient, collapsed with tension.

Hence, the charge sheet.

4 a) Denying the allegations as false and motivated, the learned counsel for petitioners firstly argued that the accused are the owners of the residential premises in Red Hills and they and their family members have been conducting relentless campaign since past few years for the removal of number of unauthorized encroachments made on the public road on the rear side of their premises by the complainant and some otheRs. The complainant is concerned, she encroached 15 square meters of the Government road and made constructions and in this regard, the Collector in his Letter L.R.No.C/6P/2010, dated 20.02.2010, ordered and directed the Zonal Commissioner(GHMC) and the Tahsildar, Nampally, to clear the encroachments on the public road and thereafter Tahsildar, Nampally addressed the Zonal Commissioner of G.H.M.C. on 3.03.2010 to make necessary arrangement for removal of the illegal encroachments.

The Tahsildar of Nampally also wrote another Letter No.C/SPL/2010, dated 04.05.2010 to the Deputy Commissioner of G.H.M.C for removal of encroachments.

On 24.09.2010, the Tahsildar, Nampally, submitted a detailed report to the Collector in relation to illegal and unlawful encroachments of the public road made by Chandra Kumar i.e., the husband of the complainant and some otherRs. The Tahsildar, Nampally, submitted another Report to Revenue Divisional Officer on 05-10-2010 again in the matter of illegal and unlawful encroachment of public road by Chandra Kumar and otherRs. Finally, on 07-01-2011 the Tahsildar, Nampally, in his Letter NO.C/Spl/2010 requested the Deputy Commissioner of G.H.M.C to immediately dismantle the premises of Chandra Kumar.

While so, on 26.10.2011, the Mandal Revenue Inspector inspected the buildings in the morning hours. Enraged by the above indulgence of the authorities at the instance of the accused, a mob of persons attacked the house of petitioners/accused with dangerous weapons and pelted stones and broke glass panes of the residence and threatened the inmates with murder, rape and abused them in filthiest language and also threatened to outrage the modesty of womenfolk of the house.

The petitioners lodged a complaint on 26-10-2011, but the police have not registered it.

Hence, the petitioners filed W.P.No.29258 of 2011 before the High Court and on its direction, the petitioners filed a private complaint before XX Chief Metropolitan Magistrate, Hyderabad, which was forwarded to S.H.O., Nampally and the Police registered the same as a case in Cr.No.97 of 2012 and was investigated into.

Meanwhile, the complainant gave report to the police with all false allegations to implicate the petitioners in a false case and hence, continuation of proceedings in the above back drop, will amount to abuse of process of law.

(b) Secondly arguing on the merits of the charge sheet allegations, learned counsel submitted that even if those allegations are uncontraverted, they do not disclose any offence because there is no clarity in the allegations as to which of the accused uttered which of the specific words of abuse and similarly, no date or day or time of offence is mentioned in the charge sheet.

If the contents of charge sheet are perused, the only bald allegation is that all the accused were abusing in chorus for the last two years which is quite unbelievable.

(c) Thirdly, the learned counsel argued that the Caste Certificates of the complainant and her husband cannot be believed because the O.S.D of Andhra Pradesh Station Commission for SCs & STs in his Letter R.C.No.53/1599/RRS/SC/2011, dated 07.05.2011, has opined that the complainant and her husband have produced false and fake Caste Certificates.

(d) Fourthly, the learned counsel argued that the petitioners/accused belong to Muslim community and under law, in their community, there is no classification of the persons as members of Scheduled Castes/Scheduled Tribes and non members of Scheduled Castes/Scheduled Tribes and therefore for the purpose of Section 3 of the Act, the petitioners/Accused cannot be termed as not being a member of Scheduled Castes/Scheduled Tribes.

He, thus, prayed to quash the proceedings.

5a) Per contra, the learned Assistant Public Prosecutor firstly argued that merely because of pendency of disputes between the parties relating to encroachment issue, it cannot be said that the complaint allegation are false.

On the other hand, the police after thorough investigation and after examining number of witnesses have come to the conclusion that the petitioners/accused committed the offence and laid charge sheet and if at all the accused claim that they were falsely implicated, they can as well establish their innocence during trial.

(b) Secondly, he argued that the abuse and other atrocious acts of petitioners/accused was not an affair of single day, but spread over a period of more than two years and it is a continuing offence and therefore, the complainant did not give specific date or time of the offence and further, in view of the fact the accused being the residents of opposite row, every now and then one or the other accused used to abuse the complainant and her family members by their caste name and hence the charge sheet allegations should be understood in that

context.

(c) Thirdly, denying the allegation that the complainant and her husband obtained bogus Caste Certificates, the learned APP submitted that the petitioners can as well raise that issue during trial and prosecution will answer the same.

(d) Fourthly, he argued that merely because there is no classification of the persons as members of SCs/STs and non members of SCs/STs in the community of accused, that is not a criterion to decide their offence and on the other hand, since the complainant and her family members belong to Scheduled Caste and the accused are not belonging to that Caste, the offence under Sections 3 (1) (x) of the Act will attract against the accused.

He, thus, prayed to dismiss the Petition.

6) In the light of the above rival arguments, the point for determination is : whether there are merits in this petition to allow?.

7) POINT: As can be seen from the record admittedly there has been some bad blood between the families of complainant and the accused, who are the residents of opposite rows in Red Hills, Hyderabad, on the issue of alleged encroachment of 15 square meters of site by the complainants family abutting their house.

The submission on behalf of the petitioners/accused is that they have been relentlessly fighting against the encroachments made on the passage by the complaints family and others in the vicinity and in this regard, Revenue and Municipal authorities have also been taking steps to demolish the unauthorized constructions made by Chandra Kumar, the husband of the complaint, and others and keeping grudge, the complaints family gave a false report to police, who laid charge sheet.

In the considered view of this Court, whether the complaint is motivated to wreck vengeance against the petitioners/accused or a genuine one can be decided only after a full fledged trial.

As the matter stands, a perusal of 161 Cr.P.C.Statement of Complainant/LW.1--A.

Krishna Veni, LW.2-A.

Chandra Kumar, husband of the complainant, LW.3_A.

Yeswanth Kumar, the son of the complainant shows a strong prima facie case against the Petitioners/Accused.

Not only their statements but also the statements of independent witnesses who are residents of their locality i.e., LW.4_N.

Nilson, LW.5-S.

Jaganadh, LW.6-N.

Rajkumar, LW.7_D.

Venugopal, LW.8-A.

Dharmavathi, LW.9-G.

Rajamani amply support the version of the complainant and her family members with regard to the offence committed by the petitioners/accused.

Adding to it, the statement of LW.10-Shaik Ayub, Revenue Inspector, would show that on 26.10.2011 when he visited the premises to make enquiries with both parties, all the accused used abusive language against the family of complainant.

Of course, the veracity of the statements of above witnesses has to be determined only after trial, but at this juncture, there is a prima facie material against the petitioners/Accused.

As rightly pointed out by the learned A.P.P since the alleged atrocious acts of petitioners/accused are continuing ones over a long period, non mentioning of specific date and time of the offence cannot be regarded as a severe lapse on the part of the complainant.

Then with regard to the allegation about the genuineness of the Caste Certificates of the complainant and her husband, the same can be decided only after full

fledged trial.

8) Then the last argument of the petitioners/accused is that in their community there is no classification of the persons as members of Scheduled Caste/Scheduled Tribes and non members of Scheduled Castes/Scheduled Tribes and therefore they cannot be treated as not being members of Scheduled Castes/Scheduled Tribes for the purpose of Section 3 of the Act and they cannot be charged under Section 3 (1) (x) of the said Act.

It must be said that this argument has no conviction.

Section 3 (1) (x) of the Act reads thus: 3.

Punishments for offences of Atrocities: (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- (i) xxxx (ii) xxxx (iii) xxxx (iv) xxxx (v) xxxx (vi) xxxx (vii) xxxx (viii) xxxx (ix) xxxx (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

9) So, as can be seen, in order to complete an offence under Section 3 (1) (x) of the Act or other provisions of Section (3) of the Act, the victim shall be a member of Scheduled Caste or Scheduled Tribe, whereas the offender shall not be a member of Scheduled Caste or Scheduled Tribe.

Section 2 (c) of the Act defines Schedule Castes and Scheduled Tribes as: Scheduled Castes and Scheduled Tribes shall have the meanings assigned to them respectively under Clause (24) and Clause (25) of Article 366 of the Constitution.

10) It is in this context, the relevant Articles of the Constitution are Articles 341, 342 and 366.

They read thus: Article 341: (1) The President may, with respect to any State or Union territory, and where it is a state .

after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which

shall for the purposes of this Constitution be deemed to be scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause 91) any caste, race or tribe, or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342: (1) The President may, with respect to any State or Union territory, and where it is a state .

after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 366: In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them that is to say (24) Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution: (25) Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.

11) So, a conjunctive study of above provisions would show that the President of India by a public Notification specify the Castes and Tribes which are included in the category of Scheduled Castes and Scheduled Tribes.

It is in exercise of that power conferred under Articles 341 and 342, the Presidential Order, 1950, was issued notifying certain Castes and Tribes as Scheduled Castes and Scheduled Tribes.

It is important to note that in para 3 of the Constitution (Scheduled Castes) Order, 1950, it is specifically mentioned to the effect that notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu(the Sikh or the Buddhist) religion shall be deemed to be a member of a Scheduled Caste So, it is obvious that the persons other than the Hindu, Sikh or the Buddhist religion are not deemed as members of Scheduled Castes.

Therefore, the petitioners/accused, who belong to Muslim religion, squarely come within the meaning of not being a member of Scheduled Castes/Scheduled Tribes as laid down under Section 3 of the Act.

As rightly pointed out by the learned A.P.P, no such classification in their community is not a criterion for the purpose of Section (3) of the Act.

Therefore, the argument of petitioners/accused cannot be countenanced.

I find no merits in the Criminal Petition.

12.

Accordingly, the Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

_____ U.

DURGA PRASAD RAO, J Date: 03.06.2015

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