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Vimal Kishore Vs. Arvind Kashyap and Another

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Court : Himachal Pradesh

Decided On : Mar-31-2011

Judge : Dev Darshan Sud, J.

Acts : Indian Penal Code (IPC) - Sections 323, 504, 506; The Prevention of Atrocities of Scheduled Castes and Scheduled Tribes Act - Section 3

Appeal No. : Criminal Revision No.31 of 2011

Appellant : Vimal Kishore

Respondent : Arvind Kashyap and Another

Advocate for Def. : Mr.P.K. Sharma; Ms.Shubh Mahajan, Advs.

Advocate for Pet/Ap. : Mr.K.S. Kanwar, Adv.

Judgement :

1. The petitioner is aggrieved by the judgment of the learned Additional Sessions Judge, Solan, rejecting the complaint under Sections 506, 323, 504 IPC and Section 3 of the Prevention of Atrocities of Scheduled Castes and Scheduled Tribes Act.

2. The complaint was instituted by Ram Lal, who is since deceased, on the allegations that the accused was residing in the neighborhood of the house of the complainant. He was having a grudge against the complainant and his family

members and was proclaiming his superior cast calling the complainant and his family “Kolis”, who were unfit to live there and deserved to be shunted out from the neighbourhood.

3. Five witnesses were examined by the complainant in support of the allegations which were made. Complainant Ram Lal appeared as CW-1. CW-2 Vimal Kishore, son of the complainant, has stated that the accused nurtured a grudge against his family members since they belong to a lower caste. CW-3 Pawan Kumar and CW-4 Gulab Singh also testified in the same manner. The respondent was summoned to face trial for offences as aforesaid. A revision was instituted by the petitioner against this order.

4. The learned Court noticed that the complainant Shri Ram Lal was dead, which fact was recorded in the order dated 30.5.2008, passed by the learned trial Court. Thereafter, the case was adjourned repeatedly to 9.6.2008, 28.8.2008, 31.10.2008, 26.11.2008, 2.1.2009 and 25.2.2009. On 25.3.2009, an application was moved to bring on record the legal representatives of the deceased complainant. The learned Court, on the facts, held that since the complainant was dead, the case could not continue any further.

5. Learned Court refers to the averments made in the complaint, which are to the effect that on 30th March, 2007 at about 8.00 A.M. when Vimal Kishore, son of the complainant, was coming from school after dropping his son, his path was obstructed by the respondent, who abused him in filthy manner and fist blows were given to him. The respondent also threatened to do away with his life as also his family members. The complaint is totally lacking in the exact word used to denigrate/insult the deceased complainant by caste. The Court then proceeds that the complainant had retired as Deputy Director Prosecution and was well versed in law. In these circumstances, coupled with the fact that the son of the complainant had not come forward himself to file a complaint, the complaint would be deemed to have been dismissed for non-presence of the complainant.

6. Learned counsel for the petitioner urges that the view as taken by the learned Sessions Judge is highly technical and that a clear reading of the complaint shows that the complaint could proceed in the absence of the deceased complainant as it

was the son and all the family members of the complainant who were aggrieved.

7. I cannot persuade myself to accept this submission, more especially, considering the fact that none of the family members of the deceased have joined as complainant and continuation of the proceedings against the respondent will not serve any purpose for the reasons that there are no averments in the complaint about use of the exact word constituting the insult to the honour/caste of the deceased complainant. There is no merit in this petition which is dismissed.

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