

Karam Veer Singh and Others Vs. State

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Court : Delhi

Decided On : May-04-2012

Judge : M.L. Mehta

Appeal No. : CRL. REV.P. 225 OF 2012

Appellant : Karam Veer Singh and Others

Respondent : State

Judgement :

M.L. MEHTA, J.

1. The present revision is being preferred to challenge the impugned order of charge dated 9th January, 2012 and 25th January, 2012 passed by the learned Addl. Sessions Judge ordering framing of charges under Sections 147/148/149/308/323/325/452/427 IPC against all the petitioners and separately charging petitioner No. 1 and 2 under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989(in short the SC/ST Act).

2. The brief facts that led to the present petition are that an FIR No. 178/2009 was registered on 7th July, 2009 alleging that on 6th July, 2009 at about 10 p.m at house No. 691, Bhola Nagar all the petitioners in furtherance of common object formed an unlawful assembly and entered Complainant Anil Kumar's house and gave beatings to him and his other relations namely Kishan Pal, Monu, Roop Chand, Aakash, Vinod Kumar and Arun with dandas, wooden sticks and rods also

broke the household goods and damaged the windscreen of the cars of the Complainant. In the supplementary statements under Section 161 Cr.P.C. given by the brothers and father of the Complainant and the Complainant himself from 7th July, 2009 to 24th July, 2009 it was further alleged that derogatory remarks pertaining to their castes were made by petitioner No. 1 and 2. On the basis of these supplementary statements petitioner No. 1 and 2 were charged additionally under Section 3(i)(x) of the SC/ST Act by the learned Addl. Sessions Judge.

3. The impugned order has been assailed on the grounds that in fact the petitioners were assaulted by the Complainant and his family and consequently an FIR No. 179/2009 was registered in this regard and the learned Addl. Sessions Judge while framing the charges against the petitioners has not considered this material fact and committed grave error. It has further been contended by the learned counsel for the petitioners that the learned Addl. Sessions Judge wrongly charged all the petitioners under Section 308 IPC and petitioner No.1 and 2 under Section 3(1)(x) of the SC/ST Act. In this regard, it is submitted that no case under Section 308 IPC was made out and further that Section 3(1)(x) SC/ST Act has been added in the FIR as an afterthought with an intention of harassing and arm twisting the petitioners. It has been submitted that the bare perusal of the FIR shows that there was nothing whatsoever alleged therein to satisfy the ingredients of Section 3(1)(x) of the SC/ST Act.

4. Per contra, learned APP for the State submitted that the order on charge has been rightly framed after careful perusal of the statements given by eight family members of the Complainant who have alleged that caste related abuses were hurled at them by petitioner No.1 and 2 in the gali after giving beatings with deadly weapons such as dandas and rods to the Complainant and his family by entering into his house and as such a prima facie case has been made out against the petitioners which should not be thwarted at the nascent stage.

5. I have heard the rival submission and perused the record.

6. It is settled legal position that at the stage of framing of charges, Court is not required to meticulously shift through the evidence, but what is required is to find out that whether on the basis of allegations made in the complaint, a prima facie

case is made out or not, and if the answer to that is in the affirmative then there is no illegality on the part of the Magistrate in framing the charges. Now, applying the facts of the present case to this judicial touch stone, the question before this Court is that whether the learned Addl. Sessions Judge was right in passing the impugned order on charge or not.

7. On the perusal of the FIR, it is evident that there are specific allegations against the petitioners that pursuance to the scuffle between them and the Complainant over a heap of debris, the petitioners armed with dandas, rods and wooden sticks chased the Complainant to his house and assaulted him and his family members and damaged the goods in his house and cars parked outside his house. It is not in dispute that the fight took place and that a cross FIR was recorded against the complainant party and members of both parties sustained injuries. At this stage, the veracity of the allegations made in the complaint cannot be tested especially when the evidence is yet to be placed on record. Having regard to the material available on record including MLCs, a grave suspicion arises against the petitioners that they committed the alleged offence and the testimonies of the Complainant and other witnesses in this regard cannot be brushed aside. The truthfulness of the allegations made in the complaint regarding the act of assaulting the Complainant and his family members can only be judged by the trial court after examination of evidence on record. Consequently, I find no illegality in the order of charge in as much as the petitioners were charged under Sections 147/148/149/308/328/325/452/427 IPC.

8. However, in order to decide, the issue of framing of charges against the petitioner No. 1 and 2 under section 3(i)(x) SC/ST Act, it is pertinent to find out that whether the essential ingredients of the abovementioned sections have been fulfilled or not. Since the provisions of this section are of penal consequences, the Court has to strictly interpret it before invoking its applicability. This Court in **Daya Bhatnagar and Ors. vs. State, 109 (2004) DLT 905** held that the expression 'public view' in Section 3(1)(x) of the Act implied within the view of a group of a people of the place, locality, village not linked with the Complainant through any kinship, business, commercial or any other vested interest and would also not include persons who have previous enmity or motive to falsely implicate the

accused persons.

9. In the present case, the witnesses are the family members of the Complainant and apart from their supplementary statements which were recorded days after registration of FIR, there is nothing on record to show the presence of any other independent witness at the time of alleged incident or that the incident took place in front of neutral persons, so as to bring the case within the meaning of 'public view' as envisaged in Section 3(1)(x) SC/ST Act.

10. Further, on the perusal of the supplementary statement of the witnesses, there are many discrepancies which have come to the fore. In the statement given by the father of the Complainant Kishan Pal on 7th July, 2009 there is no whisper of any caste related abuse passed by the petitioner No.1 and 2. However, in the statement given by him on 9th July, 2009 he alleged that abusive castiest remarks were passed by the petitioner No.1 and 2 in the gali. Moreover, in the statement given by Kishan Pal on 23rd July, 2009 there is discrepancy regarding words which were allegedly used by petitioner No.1 and 2 while making castiest remarks on the Complainant and his family members. It is very much evident from the perusal of these statements that there are many major discrepancies in the statements given by the witnesses regarding the identity of the persons who allegedly passed caste related remarks on the Complainant and his family and also regarding the words allegedly used by the accused persons. At some point, it is stated that the offensive remarks were passed inside the house, whereas at other places it is stated that such remarks were passed in the gali or the gate of the Complainant's house. There is also huge variance in the words which were allegedly used by the accused persons. The accusations which are made have been attributed to different persons in the statements given by the witnesses and also the statement given by a witness on a particular date is completely different from what has been stated by him on the previous date. Neither the complainant nor other witnesses in their first statements mentioned anything regarding castiest remarks. The witnesses kept on improving their versions in their supplementary statements made at different times. It is apparent that effort has been made by the witnesses to improve upon the case and the supplementary statements have been given as an afterthought and it would be unsafe to rely upon them. In the light of

so many contradictions in the supplementary statements given by the witnesses, it is not prudent or in the interest of justice to place reliance on them. The statements given by the witnesses do not inspire the faith of the Court and are not worthy of any credence.

11. After the perusal of the statements of the witnesses and the FIR it can be safely concluded that the allegations which have been levelled against petitioner No. 1 and 2 to bring them under the purview of Section 3(i)(x) of SC/ST Act are false and not trustworthy. Consequently, the impugned order is set aside to the extent of ordering framing of charges under Section 3(i)(x) of SC/ST Act against the petitioner No. 1 and 2 whereas charges under Sections 147/148/149/308/323/325/452/427 IPC against all the petitioners are maintained.

12. The petition is disposed of accordingly.

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