

(2007) 08 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 14160-M of 2000

V.K. Agarwal

APPELLANT

Vs

Jasjit Singh

RESPONDENT

Date of Decision: Aug. 29, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 202, 482
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 3(1)(x)

Citation: (2007) 4 RCR(Criminal) 242

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: K.T.S. tulsi, with Mr. R.T.S. Tulsi, Dr. D.N.S. Srivastava and Mr. Sunil K. Sahore, for the Appellant; S.K. Garg Narwana, Advocate, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

By this common order, I will dispose of two petitions i.e. CrI. Misc. No. 14160-M of 2000 instituted by V.K. Agarwal (hereinafter referred to as accused No. 2) and CrI. Misc. No. 21154-M of 2000 instituted by R.S. Grover (hereinafter referred to as accused No. 1) as both these petitions have been filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing of same criminal complaint No. 83 of 1998 (Annexure P-1) instituted by Respondent Jasjit Singh u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') pending before Judicial Magistrate Ist Class, Ambala Cantt and the consequent proceedings arising therefrom.

The Respondent instituted the impugned complaint against both the Petitioners inter alia on the following allegations.

2. The Respondent, after qualifying the Civil Services Examination in 1976, was appointed as Class-I Officer in Indian Railway Traffic Service vide order dated 16.11.1977. The Respondent belongs to ad-dharmi caste i.e. Scheduled Caste whereas both the Petitioners are non-Scheduled Caste. The Respondent was posted as Senior Divisional Commercial Superintendent, Ambala Cantt in June 1992, when he detected five cases of fraud in the Commercial Section of Ambala Division of Northern Railways. Some officials of the Commercial Section and some private persons were involved in those cases of fraud. Accused No. 2 did not like the aforesaid act of the Respondent. From the facts and circumstances, it can be presumed that accused No. 2 had a soft corner for many of the railway officials who were indicted in the aforesaid five fraud cases. Accused No. 2 was then posted as Advisor Vigilance whereas one Ashok Bhatnagar was Member (Traffic), Railway Board, New Delhi. The whereabouts of said Ashok Bhatnagar, since retired, are not known to the Respondent (therefore, Ashok Bhatnagar has not been arrayed as accused). The persons involved in the fraud cases engineered false and frivolous complaints against the Respondent with full patronage of accused No. 2 and Ashok Bhagnagar. The complaints, on inquiry, were found to be false. Accused No. 2 created pressure on the Respondent not to go further in the fraud cases. Accused No. 2 and Ashok Bhatnagar ridiculed the Respondent with very humiliating, scornful and insulting comments that being from Scheduled Caste, he acquired the said post on the basis of reservation and was going to prove himself 'Satyawadi Harishchandra'. Accused No. 2 further humiliated the Respondent by remarking that a 'Chamaar' was to be approached and requested by a higher caste officer. Accused No. 1 came to Ambala Division as Divisional Railway Manager in January, 1996. He was not party to the acts committed against the Respondent prior to it. However, accused No. 2 instigated accused No. 1 also against the Respondent on caste lines. The accused persons hatched conspiracy to cause damage to the Respondent. Accordingly, various acts and omissions, as detailed in paragraph 11 of the impugned complaint, were committed by or at the instance of the accused persons. It was got ordered that the Respondent should not be posted on sensitive posts. His name was also included in secret list. He was also ordered to be transferred to Jodhpur but the said transfer was cancelled by the Railway Minister. Respondent's representation dated 3.7.1995, against inclusion of Respondent's name in the secret list, has also not been decided on account of influence of accused No. 2. Some important functions of the Respondent were also got withdrawn by the accused persons, vide order dated 19.7.1996, which was challenged by the Respondent before the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). Accused No. 2, while posted as General Manager, Northern Railway, New Delhi issued charge-sheets dated 24.5.1996 and 19.7.1996 on false and frivolous allegations. The Respondent challenged the same before the Tribunal. Accused No. 2, by exercising his influence, also got the Respondent transferred from higher post of Senior Divisional Commercial Manager to the lower post of Divisional Safety Officer, Ambala Division in April 1997. Respondent had to file another petition

before the Tribunal impugning the said order. On 16.1.1997, accused No. 1 called the Respondent to his chamber and uttered derogatory remarks against the Respondent with reference to his caste. Accused No. 1 repeated the same acts on 10.10.1997 and 16.10.1997. Respondent had also written letters to accused No. 1 regarding harassment and humiliation of one M.M. Singh belonging to Scheduled Tribe, at the hands of one Mr. S.P. Gupta. Accused No. 1, however, gave undue shelter to Mr. S.P. Gupta and even got the Annual Confidential Report (ACR) of S.P. Gupta re-written by Additional Divisional Commercial Manager, thereby depriving the Respondent from writing the same although S.P. Gupta was subordinate to the Respondent. The Respondent was also by-passed by accused No. 1 in the allotment of vending/catering contracts of some railway stations. Accused No. 1 also committed many other acts to make the Respondent ineffective. His many tour programmes were cancelled by accused No. 1. Even seat was not kept reserved for the Respondent for going to attend a meeting in New Delhi. No servicable official vehicle was provided to the Respondent for site inspection etc. Respondent's name was not included in most of the important functions of Ambala Division. In April 1997, Respondent, during inspection, detected supply of sub-standard ballasts by the Contractor but thereafter he was barred from such inspections. The Respondent was also left all alone while on inspection tour to Shimla. On 12.11.1997, the Respondent was present in verandah outside his office where two contractors happened to meet him. Accused No. 1 also passed through the verandah but was not observed by the Respondent as he was talking with the contractors. Thereupon, accused No. 1, in the presence of the contractors, passed derogatory remarks loudly against the Respondent by referring to his caste, attracting attention of other employees also. The Respondent was also ordered to be transferred from Ambala to Moradabad. The Respondent filed petition before the Tribunal assailing the said transfer order. In spite of status quo order of the Tribunal, his successor was posted without relieving him. His telephone connection was also got disconnected. Respondent's salary for November 1997 was also not paid.

3. As would be seen from the allegations made by the Respondent in the impugned complaint, some acts have been attributed to the Petitioners indirectly. In other words, it is alleged that they got certain actions taken against the Respondent. However, there is no evidence to substantiate the Respondent's allegations that the said actions against the Respondent were taken at the behest of the Petitioners or under their influence.

4. Some official actions of accused No. 1 have also been narrated in the impugned complaint. However, the said official actions taken by accused No. 1 in discharge of his official duties cannot be said to constitute any offence under the Act. Moreover, no sanction for prosecuting accused No. 1, for the said actions taken by accused No. 1 in the discharge of his official duties, has been obtained, as required by Section 197 of the Code. Thus, for the alleged official actions by or at the instance of the accused persons, they cannot be prosecuted without mandatory sanction required

u/s 197 of the Code. However, the Petitioners may be prosecuted without sanction for the alleged derogatory remarks attributed to them.

5. As regards the derogatory remarks attributed to accused No. 2, it has only been vaguely alleged in the impugned complaint that accused No. 2 and Ashok Bhatnagar ridiculed the Respondent with humiliating, scornful and insulting comments as mentioned herein before. Accused No. 2 is also attributed to have uttered derogatory remarks with reference to the caste of the Respondent. However, these are very vague allegations inasmuch as even date and place of the said incident has not been mentioned in the complaint. In the absence of date and place of the incident, accused No. 2 cannot even properly defend himself with regard to the said allegations. Learned Counsel for the Respondent contended that it is not requirement of the Act to plead the place and date of the occurrence. The argument, to my mind, is unacceptable because it is necessary to mention the date and place of incident so that the accused may be in a position to defend himself properly. In the absence of date and place of the incident being mentioned in the complaint, such an incident cannot be said to have taken place at all.

6. In the aforesaid context, it is significant to notice that to constitute an offence u/s 3(1)(x) of the Act, it is mandatory requirement that the incident occurs in a place 'within public view'. This is very essential ingredient of the offence. It was therefore essential for the Respondent to have alleged that the incident occurred at a place which was within the public view. In view thereof, it was essential for the Respondent to state the place where the occurrence took place. However, the Respondent has not done so. What to talk of a particular place, the Respondent has not even alleged if the incident occurred at Ambala where the Respondent was then posted or at New Delhi where accused No. 2 and Ashok Bhatnagar were posted. Consequently, it cannot be said that the alleged incident attributed to accused No. 2 and Ashok Bhatnagar took place at all or occurred at a place within public view. On this aspect, learned Counsel of [Chandra Poojari Vs. State of Karnataka](#),) and also on another judgment rendered in the case of E. Krishnan Nayanar v. Dr. M.A. Kuttappan reported as 1997(3) RCR(Cri) 622: 1997 Cri.L.J. 2036 (Kerala). In the former case, the incident had taken place in the chamber of the complainant. It was held that words uttered in a private chamber are not in public view whereas to attract Section 3 of the Act, it is necessary that it should be at a place where public could view the incident. In the latter case also, it was held that Section 3(1)(x) contemplates insult of the complainant in public view. In that case, the words were uttered in public meeting but the complainant was not present in that meeting. It was therefore held that his alleged insult was not made in public view as he was not present and therefore offence u/s 3(1)(x) of the Act was not made out. In view of both these decisions, as well as in view of plain language of Section 3(1)(x) of the Act, it is imperative that the incident should have been at a place within public view. In the instant case, however, there is not even an averment that the alleged incident attributed to accused No. 2 and Ashok Bhatnagar was at a place within public view.

Consequently, offence u/s 3(1)(x) of the Act is not made out for the same.

7. Learned Counsel for the Respondent contended that accused No. 2 uttered the derogatory words in the presence of Ashok Bhatnagar and therefore, it was within public view. The contention, to my mind, is completely unacceptable. Ashok Bhatnagar and accused No. 2 are alleged to have jointly committed the offence and therefore, without the presence of anybody else, it cannot be said that accused No. 2 committed the offence within the public view as Ashok Bhatnagar was present. In fact, Ashok Bhatnagar also allegedly committed the offence as per allegations in the impugned complaint but Ashok Bhatnagar has not been arrayed as co-accused of the Petitioners because whereabouts of Ashok Bhatnagar were not known to the Respondent. Remarks uttered in the presence of co-accused only cannot be said to have been uttered within public view. In fact, even the Respondent has not averred in paragraph 9 of the complaint, wherein this incident is narrated, that the incident happened within public view, nor it is alleged that anybody else was present at that time. Thus, essential ingredients of the offence u/s 3(1)(x) of the Act are missing in this regard and therefore, impugned complaint deserves to be quashed as against accused No. 2.

8. It is also worth mentioning here that the motive on the part of the accused No. 2, against the Respondent, is stated to be on account of the fact that the Respondent had detected five cases of fraud. However, the Respondent has not even disclosed the names of the persons, said to be involved in the said cases of fraud, nor the Respondent has made any averment regarding any link whatsoever of those persons with accused No. 2. There is also no motive whatsoever alleged on the part of accused No. 1 against the Respondent. It is rather simply averred that accused No. 2 instigated accused No. 1 against the Respondent on caste lines after Respondent No. 1 came to be posted at Ambala in January 1996 and prior to it, accused No. 1 was not involved in any activity against the Respondent. The Respondent had allegedly detected cases of fraud in the year 1992 and therefore, after about four years, accused No. 2 who himself had no motive against the Respondent, had no reason to instigate accused No. 1 against the Respondent and also there was no reason why accused No. 1 would get instigated against the Respondent. It is thus evident that there was no motive with the Petitioners to have committed the alleged offence against the Respondent. The Petitioners and the Respondent were senior officers in the Railways. Without any motive, it cannot be said that the Petitioners committed the alleged acts against the Respondent without any rhyme or reason and without any provocation by the Respondent. On the contrary, it appears from the averments in the impugned complaint that the Respondent was nursing a feeling of being aggrieved by some official actions of accused No. 1 and somehow, the Respondent also felt that accused No. 2 was also against him although no direct action is practically attributed to accused No. 2. The Respondent thus feeling aggrieved, by misconceived notion, appears to have filed the impugned complaint which is clearly unsustainable.

9. In so far as accused No. 1 is concerned, the incidents dated 16.1.1997, 10.10.1997 and 16.10.1997 are stated to have taken place in the office of accused No. 1. There is even no averment in the complaint that anybody else except the Respondent and accused No. 1 was present there at the time of said incidents or witnessed the same. Consequently, the said incidents did not constitute any offence u/s 3(1)(x) of the Act inasmuch as the same did not take place within public view, which is mandatory requirement of the said offence, as already discussed herein before. However, incident dated 12.11.1997 is stated to have taken place within public view. The same is, however, not credible at all inasmuch as there was no occasion for accused No. 1 to have behaved in the fashion alleged by the Respondent. There was no immediate cause or provocation by the Respondent for accused No. 1 to have uttered the alleged derogatory remarks all of a sudden while passing through the verandah. No incident is alleged to have taken place after 16.10.1997 till before 12.11.1997 and therefore, suddenly on 12.11.1997, accused No. 1 could not have uttered derogatory words against the Respondent without any rhyme or reason and without any provocation.

10. In paragraph 7 of the impugned complaint, it has been alleged that the Respondent's act of detecting five cases of fraud was not liked by accused No. 2. However, it has not even been alleged as to why the said act of the Respondent was not liked by accused No. 2. It is alleged that from the facts and circumstances of the case, it can well be 'presumed' that accused No. 2 had a soft corner for many of the railway officials who were involved in the said cases of fraud. However, this allegation is clearly presumptive and cannot form basis of prosecution of accused No. 2. No facts and circumstances have been alleged to presume that accused No. 2 had any soft corner for many of the railway officials allegedly involved in the cases of fraud. At the cost of repetition, it may be highlighted that even names of the said persons involved in the fraud cases, for whom accused No. 2 allegedly had a soft corner, have not been disclosed. Thus, the impugned complaint appears to be result of misconceived notion and grudge harboured unilaterally by the Respondent against accused No. 2. It is not even alleged that accused No. 2 was ever posted at the same place where the Respondent remained posted. There was, thus, no occasion for accused No. 2 to have acted against the Respondent or to have any malice or ill will against him. In fact, looking into all the facts and circumstances of the case, it appears to be a case of prosecution and not of prosecution of the accused persons at the hands of the Respondent who was aggrieved by some official actions of Respondent No. 1.

11. Learned Counsel for the Respondent emphasized that disputed questions of facts cannot be decided in petitions u/s 482 of the Code. There cannot be any quarrel with the legal position in abstract form. However, in the instant case, the incident relating to accused No. 2 as averred in paragraph 9 of the impugned complaint and the incidents dated 16.1.1997, 10.10.1997 and 16.10.1997 do not constitute any offence under the Act, even if the averments made in the impugned

complaint are taken on their face value, as already discussed herein above. As regards incident dated 12.11.1997 also, the averments made by the Respondent in the impugned complaint do not inspire confidence at all. The said incident appears to be highly improbable. Prosecution of accused No. 1 for the same would be an abuse of the process of the court. In this context, it is significant to notice that the said incident is alleged to have taken place while the Respondent was talking with two contractors from Delhi, namely, Nazim-Ui-Din Khan and Aslam who had allegedly come to the office of DRM, Ambala in connection with their tender of catering. However, no documents whatsoever has been placed on record to show the presence of said contractors of Delhi at Ambala at the time of alleged incident. The presence of persons of Delhi at Ambala at the time of alleged incident has to be taken with a pinch of salt. Some documents should have been produced to indicate their presence at Ambala in connection with tender of catering but no such document has been produced at all. On the contrary, according to averments in the impugned complaint, the said incident occurred in the forenoon but copy of affidavit dated 21.3.1998 of Nazim-Ui-Din Khan mentions the time of occurrence to be 12.30/1.00 p.m. and not in the forenoon. To wriggle out of this situation, Nazim-Ui-Din Khan, while appearing in the witness box in the preliminary evidence, was made to state that the occurrence took place at about 11.00/11.30 a.m. The testimony of such a witness is not worthy of credence. No other witness has been examined by the complainant- Respondent in the preliminary evidence except himself and the said Nazim-Ui-Din Khan. In these circumstances, the very presence of Nazim-Ui-Din Khan at the time of occurrence cannot be believed. On the other hand, according to the averments in the impugned complaint, many employees were also attracted to the scene when accused No. 1 allegedly uttered the derogatory remarks loudly. However, the Respondent-complainant intentionally did not disclose the name of any such employee nor examined any such employee as witness in the preliminary evidence. The employees were the natural witnesses of the alleged incident, but no such employee has been cited or examined as witness by the complainant. Only two witnesses belonging to Delhi have been named in the alleged incident which took place at Ambala. Even out of them, the other witness Aslam has not been examined and only Nazim-Ui-Din Khan has been examined. The case is triable as Sessions case by Special Court under the Act. According to proviso to Sub-section (2) of Section 202 of the Code, in a case exclusively triable by a Court of Sessions, the complainant has to produce and examine all his witnesses in preliminary evidence before issue of process to the accused. In the instant case, however, the complainant felt satisfied by examining himself and Nazim-Ui-Din Khan only.

12. Keeping in view all these circumstances, the incident dated 12.11.1997, as alleged by the Respondent, cannot be said to have taken place. At the cost of repetition, it may be highlighted that there was no reason or provocation for accused No. 1 to have indulged in such a behaviour suddenly.

13. On the other hand, Respondent had the motive to lodge this complaint because the Respondent believed, rightly or wrongly, that the accused persons were acting against him with intent to cause harm and humiliation to him. No sufficient basis is made out from the impugned complaint for the aforesaid belief of the complainant-Respondent. On the other hand, the accused persons had no motive or reason to harm or humiliate the complainant-Respondent. The Respondent felt aggrieved by official acts of the accused persons inasmuch as accused No. 2 had issued two charge-sheets against the Respondent as averred in the impugned complaint itself and accused No. 1 had also taken some actions in discharge of his official duties but the said actions were not to the liking of the Respondent.

14. Learned Counsel for the Petitioners contended that the Respondent made application for amendment of complaint although there is no provision for the same. This argument does not help the Petitioners in any manner because the amendments related to minor typographical errors. No new material facts were added. Moreover, the said amendments were allowed by learned trial Magistrate and the said order has not been challenged by the Petitioners.

15. Learned Counsel for the Petitioners also contended that the trial Magistrate had called the report of Superintendent of Police on complaint made by the Respondent to the police but the learned Magistrate did not take into consideration the report sent by the Superintendent of Police. However, this argument will also not help the Petitioners inasmuch as on this ground, only summoning order and not the impugned complaint can be quashed. However, the said report can be taken into consideration by this Court. According to the said report, on inquiry by District Inspector of Police, the allegations made by the Respondent regarding derogatory remarks, made by accused No. 1, with reference to the caste of the Petitioner, were found to be not proved. It was also mentioned in the report that earlier also, the Respondent had levelled similar allegations against several high officers that he was being insulted on the ground of his caste. In view of this report also, the instant petitions deserve to be allowed.

16. Learned Counsel for the Respondent contended that the summoning order has not been challenged and consequently, the petitions for quashing of impugned complaint are not tenable. The argument is devoid of merit. There are specific averments in the body of the petitions assailing also the summoning order of the Magistrate on various grounds. In paragraph 5 of the instant petitions, it has been specifically averred that the instant petitions are being filed for quashing of the complaint and the order taking cognizance and issuing process against the Petitioners on various grounds detailed in different sub- paragraphs of 5 of the petitions. Even in the prayer, it has been prayed that the impugned complaint and the proceedings thereof be quashed. Consequently, it cannot be said that the Petitioners have not sought the quashing of the summoning order passed by the learned Magistrate. On the other hand, they have specifically sought quashing of

the summoning order of the Magistrate on different grounds as is evident from paragraph 5 as well as prayer paragraph of the petitions.

17. Learned Counsel for the Respondent relying on [Madhumilan Syntex Ltd. and Others Vs. Union of India \(UOI\) and Another](#), contended that in a petition u/s 482 of the Code, the Court would not inquire into or decide correctness or otherwise of the allegations levelled or averments made by the complainant and it is matter of evidence and an appropriate order can be passed at the trial. In the instant case, however, as already discussed in detail, the incidents pleaded by the Respondent in the impugned complaint (except incident dated 12.11.1997) do not constitute any offence under the Act, even if the allegations of the complainant-Respondent are taken on their face value. As regards incident dated 12.11.1997 also, accused No. 1 cannot be prosecuted for the reasons detailed herein above.

18. Learned Counsel for the Respondent also cited [Indian Oil Corporation Vs. NEPC India Ltd. and Others](#), wherein it was held that a complaint can be quashed where allegations made in the complaint, even if they are taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. These observations go against the Respondent himself regarding all the incidents pleaded by him except the incident dated 12.11.1997 because the other incidents do not constitute any offence even if the allegations made in the complaint are accepted in their entirety. It was also held by the Apex Court in the aforesaid case that a complaint may also be quashed where it is a clear abuse of the process of Court, as when the criminal proceedings are found to have been initiated with mala fide/malice for wreaking vengeance or to cause harm or where the allegations are absurd and inherently improbable. This legal proposition also goes against the Respondent and in view of this legal proposition, the impugned complaint deserves to be quashed even regarding incident dated 12.11.1997 because the impugned complaint appears to have been initiated with mala fides/malice for wreaking vengeance and the allegations are absurd and inherently improbable, being inspired by misconceived notion or belief of the complainant that the accused were acting against him.

Learned Counsel for the Respondent, however, contended that as per the observations of the Hon"ble Apex Court in this authority, the complainant is not required to reproduce verbatim legal ingredients of the offence alleged and if the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. In the instant case, however, factual foundation for essential ingredients of offence u/s 3(1)(x) of the Act, has not been laid in the impugned complaint as it is not averred that the incidents except incident dated 12.11.1997 took place within public view. On the other hand, the averments in the impugned complaint rather show that the said incidents did not occur at a place within public view. According to the aforesaid decision of the Hon"ble Apex Court, quashing of complaint is

warranted where the complaint is bereft of even the basic facts which are absolutely necessary for making out the offence. In the instant case, the basic fact that the incident happened at a place within public view is absolutely necessary for making out offence u/s 3(1)(x) of the Act. But the impugned complaint is bereft of the said basic fact and therefore, the impugned complaint deserves to be quashed.

Learned Counsel for the Petitioners also contended that there has also been long delay in filing the impugned complaint. As already noticed, date of the incident relating to accused No. 2 as averred in paragraph 9 of the impugned complaint has not been mentioned whereas incidents relating to accused No. 1 are stated to have taken place on 16.1.1997, 10.10.1997, 16.10.1997 and 12.11.1997. However, the impugned complaint was filed on 26.3.1998 after withdrawing a similar complaint dated 16.12.1997 from the Court of Special Judge under the Act, in view of the law laid down by this Court. Even the complaint dated 16.12.1997 filed initially was highly belated. No explanation has been furnished in the impugned complaint for the aforesaid delay.

In view of the detailed reasons recorded herein above, both the petitions are allowed and the impugned complaint Annexure P-1, filed by the Respondent against both the Petitioners, is quashed along with summoning order and all other consequential proceedings arising from the impugned complaint.