

(2011) 01 JH CK 0025

Jharkhand High Court

Case No: Criminal M.P. No. 1494 of 2010

Md. Nisarul Haq

APPELLANT

Vs

The State of Jharkhand and
Prakash Ram

RESPONDENT

Date of Decision: Jan. 10, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 482
- Penal Code, 1860 (IPC) - Section 307, 323, 34, 341, 353
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)

Citation: (2011) CriLJ 2755 : (2011) 3 RCR(Criminal) 51 : (2011) 3 RCR(Criminal) 51 : (2011) 1 JLJR 317

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Judgement

D.K. Sinha, J.

Petitioner has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the FIR of Latehar (Harizan) P.S. Case No. 1/07 as also the entire criminal proceeding of the Petitioner for the alleged offence under Sections 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending before the Chief Judicial Magistrate, Latehar.

2. During course of hearing of the instant petition, the names of the opposite party Nos. 2 and 3 were deleted at the instance of the Petitioner and the opposite party Prakash Ram was renumbered as opposite party No. 2.

3. Prosecution story in short is that the informant-opposite party No. 2 Prakash Ram presented a written report before the Latehar Police on 20.4.2007 narrating therein that he was staying on the alleged date of occurrence at the Circuit House of

Latehar. While sitting in the Circuit House, he sent a messenger to the Petitioner Md. Nisarul Haq, Executive Engineer, Special Division, Latehar to come in the Circuit House to apprise him about the tenders related to Chhaper culvert and Zalim culvert situated at Balumath and Latehar respectively. When the Petitioner Md. Nisarul Haq refused to come at the Circuit House the informant then himself visited the office of the Petitioner and when wanted to ascertain information regarding the tenders related to construction of the aforesaid culverts, it was alleged that the Petitioner became furious and uttered that he had seen many "Harizan-Dusad ML As" and refused to give any information. The informant expressed that he felt humiliated by such utterances made by the Petitioner-accused as he was treated by the accused as Harizan, though he deserved to be treated as the representative of the people.

4. Mr. R.S. Mazumdar, the learned Sr. Counsel at the outset submitted that criminal prosecution of the Petitioner, a public servant of the rank of Executive Engineer, was not maintainable, in the facts and circumstances of the case, for the alleged offence under Sections 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the prosecution case, entire occurrence took place in the office of the Petitioner-Executive Engineer where the informant visited and abused the Petitioner, to which a counter case, giving rise to Latehar P.S. Case No. 43/07, was instituted against the informant of the instant case Shri Prakash Ram and others for the alleged offence under Sections 448/341/323/353/477/307/34 of the Indian Penal Code on 20.4.2007 itself. It was alleged in the counter case that while the Petitioner-accused herein was working in his chamber of the office on 20.4.2007 at about 2:45 p.m. one Samsul Hoda came to him and asked him to accompany as the MLA Prakash Ram was calling him in the Circuit House, to which the Petitioner assured that he would visit the Circuit House after completing his work within ten minutes. Samsul Hoda returned back but after about ten minutes MLA Prakash Ram came there with some hooligans, who entered into his chamber and started abusing and assaulted him with shoes he was wearing. Prakash Ram used filthy language and terrorized. The assailant MLA then called upon the hooligans accompanied him to assault the Petitioner and break his limbs. It was further alleged against the MLA that he started strangulating him but the Petitioner escaped anyhow and saved his life, however, the assailants returned back taking away the valuable documents from the office of the Petitioner.

5. Chapter II of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 deals with the offences of atrocities.

Section 3(1)(x) speaks,

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Section 3(1)(xi) speaks,

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

6. From plain reading of the above provisions of law, it is clear that Section 3(1)(xi) of the Act is not attracted at all against the Petitioner, in the facts and circumstances of the case. As regards relevancy of Section 3(1)(x) of the Act, Mr. Mazumdar, the learned Sr. Counsel, submitted that it was not alleged against the Petitioner that he intentionally insulted or intimidated the informant with intent to humiliate him being a member of a Scheduled Caste or Scheduled Tribe rather, if at all the prosecution case is admitted to be true for the argument sake, though denied, it was alleged that the Petitioner accused had simply uttered that he had seen many "Harizan-Dusad ML As" which did not mean that he insulted or intimidated the informant with intent to humiliate him being a member of a Scheduled Caste or a Scheduled Tribe so as to attract the mischief of Section 3(1)(x) of the Act. It was not the allegation that the Petitioner had hurled abuses to the informant within public view in his caste name except the false allegation that he uttered that he had seen several ML As belonging to Harizan and Dusad. Humiliation of a member of Scheduled Caste or Scheduled Tribe "within public view" is the essence for constituting offence u/s 3(1)(x) of the Act.

7. Advancing his argument, Mr. Mazumdar further submitted that written report did not disclose that such utterance was made by the Petitioner within public view at a public place, rather the informant with the hooligans had visited the chamber of the Petitioner- Executive Engineer and used criminal force against the Petitioner by assaulting him with the shoes while he was discharging his duty as a public servant and in that manner, informant prevented the Petitioner from discharging his duty and while retreating, the informant took away the valuable documents and therefore, it would be evident from the conjoint reading of both the FIR, referred to hereinbefore, that it was the informant of the instant case, who was the aggressor who visited the chamber of the Petitioner and assaulted him.

8. Mr. Md. Hatim, the learned A.P.P. appearing for the State, opposed the contention and submitted that there was direct allegation against the Petitioner of using the caste name of the informant, a respectable person and the then member of the Legislative Assembly, but at the same time, conceded that a counter case was instituted by the Petitioner against the informant of the instant case under various sections including u/s 353 of the Indian Penal Code.

9. The points for consideration in the instant case are as to whether the humiliation alleged to be made by utterances referred to hereinbefore was within public view as

contemplated u/s 3(1)(x) of the Act and as to whether the alleged utterances of the Petitioner entail insult or humiliation to a member of a Scheduled Caste. Admittedly, informant of the instant case is a member of a Scheduled Caste, I find from the written report of the informant that Petitioner-accused uttered that he had seen several ML As of the caste of Harizan and Dusad. To my view, such utterance neither insults nor intimidates a person of the caste of Harizan or Dusad and there was no material on the record much less in the written report presented by the informant that occurrence took place within public view as contemplated u/s 3(1)(x) of the Act. On the other hand, the case instituted by the Petitioner-accused on the same day at the Latehar Police Station giving rise to Latehar P.S. Case No. 43/07 for the alleged offence under Sections 448/341/323/353/477/307/34 of the Indian Penal Code reflected prima facie that it was the Petitioner, who was insulted at the hands of the informant of the instant case and others. In the facts and circumstances, I find that neither the offence u/s 3(1)(x) nor the offence u/s 3(1)(xi) is made out against the Petitioner and that apart, in the facts and circumstances, no sanction u/s 197 of the Code of Criminal Procedure could be obtained by the prosecution before submission of charge sheet. Considering the facts and circumstances of the case, I find that the criminal prosecution of the Petitioner Md. Nisarul Haq under the given situation would amount to abuse of process of Court which cannot be sustained. Accordingly, his criminal prosecution in Latehar (Harizan) P.S. Case No. 1/07, corresponding to G.K. No. 167/07 is quashed.