

Manoranjan Prasad Sinha Vs The State of Jharkhand and Ashok Kr. Das**Cr.M.P. No. 998 of 2008**

Court: Jharkhand High Court**Date of Decision:** April 8, 2011**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 161, 164, 482#Penal Code, 1860 (IPC) â€” Section 385#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3, 3(1)

Hon'ble Judges: Dilip kumar sinha, J**Bench:** Single Bench**Final Decision:** Allowed

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 order dated 13.5.2008, passed by the Chief Judicial Magistrate, Jamtara, by which cognizance of the offence was taken u/s 3(1)(x) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Jamtara P.S. Case No. 187/06 against the Petitioner.

2. Prosecution story in short was that the informant-opposite party No. 2 presented a written report before the Jamtara police on 30.8.2006

stating therein that he was employed by the Petitioner Manoranjan Prasad Sinha, Executive Engineer, R.E.O., Jamtara as a domestic help for the

last one year. Informant alleged that the Petitioner proposed on 20.7.2006 to arrange Rs. 1,00,000/- (One lakh) within two days if he actually

wanted to do construction work of Panchayat Mandap proposed by the side of his house, for purchasing essential articles related to construction

and for that he assured to deliver the work order to him. Pursuant to such proposal by the Petitioner, the informant arranged money from his fifteen

friends and then went to the house of the Petitioner on 23.7.2006 with all his fifteen friends to deliver the amount. It was further alleged that the

Petitioner finding him in the company of fifteen friends, asked the informant to come alone in his house and he took the entire amount from him. The

Petitioner directed that foundation was to be laid on 28.7.2006 and thereafter, informant would start the construction work since 8.8.2006.

Pursuant to his direction, the informant started the construction work from 8.8.2006 and after three days, the Petitioner called the informant again

in his house. He visited the house of the Petitioner on 13.8.2006 at about 10:00 a.m. where he was asked again to arrange Rs. 50,000/-(Fifty

Thousand) more for him as he had to give P.C. The informant then expressed his inability to pay such amount whereupon the Petitioner abused in

his caste name Chamar and also said that his nature of work was to repair shoes and slippers , he need not expect for contract work and he was

thrashed out. He was cautioned that if at all he wanted to continue, he was asked to arrange Rs. 50,000/-(Fifty Thousand) by next day morning.

The informant expressed that such utterance adversely affected his personal honor and caste. On his written report, Jamtara P.S. Case No.

187/06 was registered u/s 385 of the Indian Penal Code as also u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989. However, charge-sheet was submitted after investigation only u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989, which is the impugned order.

3. Informant-opposite party No. 2 appeared and filed counter-affidavit wherein informant stated that he was abused and insulted by the Petitioner

within public view in presence of the witnesses on 13.8.2006 and this fact was fully corroborated by other witnesses in their statements recorded

u/s 164 of the Code of Criminal Procedure. Xerox copies of the statement of the informant Ashok Kr. Das and other witnesses viz. Ranjit

Mondal, Avinash Das, Satya Prakash Das and Umesh Kumar Mondal recorded u/s 164 of the Code of Criminal Procedure have been annexed

with the counter-affidavit.

4. Carbon copy of the case diary was called for during pendency of this criminal miscellaneous petition, on the request of the learned senior

counsel for the Petitioner.

5. The learned senior counsel Mr. Pandey appearing for the Petitioner at the outset submitted that charge-sheet was submitted only u/s 3(1)(x) of

the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and not u/s 385 of the Indian Penal Code and in that manner,

extortion of money, which is the genesis of the case, has been disbelieved after investigation of the case in the charge-sheet. Yet, no offence much

less the offence alleged in which cognizance has been taken u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act is attracted against the Petitioner, the senior counsel added.

6. Chapter II of the Act bearing Section 3 deals with offences of atrocities.

Section 3(1)(x) of the Act 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.

7. Mr. Pandey, the learned senior counsel, submitted that the investigation was supervised by the Superintendent of Police, Jamtara, who in his

report dated 15.2.2007 had drawn a conclusion that the criminal case was lodged by the informant with oblique motive as none of the persons in

the neighborhood nor the person, who was working in the house of the Petitioner could claim and corroborate that the informant was working in

the house of the Petitioner as domestic help for about a year. The plea of alibi of the Petitioner that he was on casual leave from 18.7.2006 to

21.7.2006 as he had gone to Delhi for the purpose of admission of his son was also substantiated by the documentary evidence. It further

transpired that the Junior Engineer happened to be the agent of construction of Panchayat Mandap, used to be supervised by the Zola Parishad

itself under the Chairmanship of the Deputy Development Commissioner of the district. The construction work was to be done in accordance with

the rules framed and not on the discretion of the Petitioner Executive Engineer. The occurrence as alleged took place on 13.8.2006 but the written

report was submitted to the police on 30.8.2006 without plausible explanation of such inordinate delay. As a matter of fact, there were two groups

and each of them wanted to grab the construction work of Panchayat Mandap and to start the work forcibly, to which the Junior Engineer

reported the matter to the police and on the recommendation of the police, a proceeding u/s 107 of the Code of Criminal Procedure was initiated

against both the groups (parties) wherein the name of the informant Ashok Kr. Das was figured at column-10 as the second party of the

proceeding (Annexure-3). The informant wanted to grab the work order by putting the Petitioner under threat and instituted the case when he

failed in his nefarious design. The allegation of demand or acceptance of money by the Petitioner could not be substantiated in the investigation,

which was the genesis of the occurrence and when it could not be found to be true then the subsequent event that the informant was thrashed,

dragged out and abused by his caste name cannot be relied upon and on this ground alone, the criminal proceeding of the Petitioner was liable to

be set aside.

8. On the fact, the learned senior counsel submitted that in the written report, the informant had not named any of the witnesses, who had

accompanied him on 23.7.2006 which was the date of first occurrence when he had delivered the alleged amount to the Petitioner. Even in relation

to the subsequent alleged date of occurrence i.e. on 13.8.2006, he nowhere narrated that he had visited the house of the Petitioner with other

witnesses and there he was abused and thrashed out from his house within view of the witnesses to bring the offence within mischief of Section

3(1)(x) of the Act.

9. First part of the occurrence was disbelieved by the Investigating Officer with regard to delivery of any amount. Even with respect to second part

of the alleged offence, it was nowhere stated that the occurrence took place within public view in the written report presented by the informant.

Statement of several witnesses were recorded u/s 164 of the Code of Criminal Procedure during course of investigation and none of the witnesses

supported that the occurrence took place in view of any of them. Witnesses, whose statements were recorded in paragraph Nos. 22,24,25,27 and

28, were consistent that they were apprised by the informant about the occurrence and none of them claimed having seen the Petitioner insulting

the informant. Yet, in course of investigation, the statements of some of the witnesses were recorded u/s 164 of the Code of Criminal Procedure

for the reasons best known to the Investigating Officer of the case where they have developed the facts substantially. The informant in his statement

recorded u/s 164 of the Code of Criminal Procedure narrated that he had gone inside the house of the Petitioner alone where he was insulted and

was thrashed out. The witness Ranjit Mondal stated in his statement recorded u/s 164 Code of Criminal Procedure that he was apprised by Ashok

about the entire occurrence. Similar statement was made by Avinash Das also in his statement recorded u/s 164 of the Code of Criminal

Procedure that Ashok went alone in the house of the informant where he was abused, but the witness Satya Prakash Das in his statement u/s 164

of the Code of Criminal Procedure claimed having seen the occurrence that the Petitioner had dragged out Ashok by abusing that his nature of

work was to repair shoes and slippers. Statement of this witness Satya Prakash Das was recorded in paragraph-27 of the case diary and from the

plain reading of which it appears that he was apprised by Ashok about the incident and that he was not the eye-witness, therefore, his statement

recorded u/s 164 of the Code of Criminal Procedure shall be treated as development from his earlier statement u/s 161 of the Code of Criminal

Procedure and therefore, cannot be relied upon. In that view of the matter, no single witness claimed having seen the occurrence wherein it was

alleged that the Petitioner had abused and humiliated the informant by his caste name which adversely affected his dignity and honor within public

view, Mr. Pandey pointed out.

10. The learned Counsel appearing on behalf of the opposite party No. 2 submitted that senior counsel for the Petitioner has raised the question of

fact only which shall be considered only during course of trial and not by invoking the inherent jurisdiction of this Court. All contradiction may be

evaluated on the scale of natural justice by giving an opportunity to the informant to prove his case.

11. Heard Mr. Md. Hatim, the learned A.P.P. on behalf of the State, who also read out the relevant paragraphs of the case diary when called

upon to do so.

12. Having regard to the facts and circumstances of the case, arguments advanced on behalf of the parties, perusal of the statements of the

witnesses recorded u/s 161 of the Code of Criminal Procedure as also u/s 164 of the Code of Criminal Procedure, I find that none of the

witnesses except the informant, who alleged the occurrence, did claim having seen the occurrence and they were consistent that the informant had

apprised the incident to them. Yet, one of the witnesses made substantial development in his statement recorded u/s 164 of the Code of Criminal

Procedure as discussed hereinbefore. I find and observe that the ingredients to constitute an offence u/s 3(1)(x) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not attracted against the Petitioner as the alleged occurrence did not take place within

public view"" , as such the criminal proceeding of the Petitioner u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 would tantamount to miscarriage of justice. I further find that the informant was a party to the proceeding initiated u/s 107 of

the Code of Criminal Procedure brought on the report of the Junior Engineer when two rival groups forcibly tried to grab the contract work of the

constructing Panchayat Mandap. For the reasons stated above, the criminal proceeding of the Petitioner in Jamtara P.S. Case No. 187/06,

corresponding to G.R. No. 471/06 including the order by which cognizance of the offence was taken u/s 3(1)(x) of the Act is quashed and this

petition is allowed.

13. Let the carbon copy of the case diary be returned back immediately.