

(2012) 08 AP CK 0031

Andhra Pradesh High Court

Case No: Criminal Petition No. 10914 of 2009

J. Chinna @ Naresh Kumar and 2
Others

APPELLANT

Vs

The State of A.P. and Yellia

RESPONDENT

Date of Decision: Aug. 23, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 354
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 3(1)(x), 5

Citation: (2012) 2 ALD(Cri) 686 : (2012) 3 ALT(Cri) 296

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: A. Prabhakar Rao, for the Appellant; G. Ashok Kumar Reddy, for the 2nd Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Hon"ble Sri. Justice K.G. Shankar

1. The petitioners seek for the quashment of First Information Report in Crime No. 353 of 2009 on the file of Narayanaguda Police Station, Hyderabad, whereunder case was registered u/s 354 IPC as well as under Sections 3 and 5 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act, for short). The petitioners are the accused 1, 3 and 4. The 2nd respondent herein is the de facto complainant. He is said to be watchman of the building where the incident allegedly occurred on 14-9-2009. Inter alia, it is the case of the 2nd respondent that the accused including the petitioners herein outraged the modesty of the wife of the 2nd respondent and also abused the 2nd respondent touching upon his community and making themselves liable for punishment for the offences under Sections 3 and

5 of the Act. It may be noticed that it is the case of the 2nd respondent that the modesty of his wife Poola was outraged by the accused. He claimed that apart from himself, his wife also was beaten. Thereafter, the complaint reads that the wife of the 2nd respondent herein was molested and her modesty was outraged. There is no specific overt act against any of the accused. I am afraid that a sweeping statement that the accused molested Poola and outraged the modesty of Poola is not making out a prima facie case against the petitioners for the offence u/s 354 IPC. I agree with the contention of Sri A. Prabhakar Rao, learned counsel for the petitioners, that the prima facie case against the petitioners for the offence u/s 354 IPC is not made out, so much so the complaint is liable to be quashed insofar as the case is u/s 354 IPC.

2. Regarding the offence under Sections 3 and 5 of the Act, it is relevant to note that the offence u/s 3(1)(x) of the Act can be made out if the insult or intimidation to a member of a Scheduled Caste or Scheduled Tribe is in a public place within public view. Indeed, it is alleged in the complaint that the accused abused the 2nd respondent touching upon his community. However, nothing in the complaint establishes that the incident occurred in a public place. The incident would appear to have taken place in the residential complex of Sri Sikhara Constructions, Street No. 1, Himayatnagar, Hyderabad. Thus, the incident did not occur in a public place.

3. Added to it, there is no evidence that any person witnessed the incident to consider that the offence u/s 3(1)(x) of the Act occurred within public view. Sri G. Ashok Kumar Reddy, learned counsel for the 2nd respondent, submitted that one Naresh and others were arrayed as witnesses in the private complaint. Indeed, the private complaint claimed in the preamble that apart from the complainant and his wife Poola, Naresh and other residents were also witnesses. However, in the body of the complaint, no averment was made that the incident occurred in the presence of Naresh. It was also not mentioned as to who witnessed the incident apart from the accused and the victims in the 2nd respondent and his wife. I am afraid that the accused and the victims cannot be considered to be "public" within the meaning of Section 3(1)(x) of the Act. Apart from these people, no other person allegedly witnessed the incident according to the complaint. I, therefore, consider that prima facie case is not made out against the accused for the offence u/s 3(1)(x) of the Act. The question of considering Section 5 of the Act does not arise as there is no allegation that it is a repeated incident.

4. It is contended by the learned counsel for the petitioners that in fact, the 2nd respondent lodged a complaint on the basis of which, a Summary Trial Case (STC) was registered u/s 323 IPC against the culprits, so much so the present petition is tantamount to double jeopardy. I do not consider it appropriate to go into this question where it is found that prima facie case is not made out against the petitioners. The learned counsel for the petitioners also contended that there was delay of 1 month and 10 days in filing the private complaint. The learned counsel for

the 2nd respondent explained the delay by pointing out that the 2nd respondent waited for the Police to take action and when the Police did not take action, he lodged the private complaint. Thus, the delay in filing the private complaint has satisfactorily been explained by the 2nd respondent. Be that as it is, for the reasons already set out, the 2nd respondent failed to make out a prima facie case either for the offence u/s 354 IPC or for the offences under Sections 3 and 5 of the Act. Consequently, the private complaint is liable to be quashed as against the petitioners. Accordingly, this petition is allowed. The complaint in Crime No. 353 of 2009 on the file of Narayanaguda Police Station, Hyderabad, so far as the accused 1, 3 and 4, who are the petitioners herein, stands quashed.