

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 2596 of 2022

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| 1. Nayan Prakash Singh @ Narayan Prakash Singh | |
| 2. Harendra Singh | |
| 3. Ganesh Prasad Singh @ Ganesh Singh | Petitioners |
| Versus | |
| 1. The State of Jharkhand | |
| 2. Raghunath Ram | Opp. Parties |

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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| For the Petitioners | : | Mr. Prashant Kr. Singh, Advocate |
| For the State | : | Ms. Nehala Sharmin, S.P.P. |
| For the O.P. No. 2 | : | Mr. Gautam Kumar, Advocate |

C.A.V. ON 29.08.2023

PRONOUNCED ON 04 / 09 / 2023

1. The order taking cognizance dated 16.02.2022 passed by Special Judge, SC/ST, Dhanbad in SC/ST Case No. 02 of 2012 (C.P. No. 402 of 2015), registered under Section 323, 451, 506, 120B of IPC and Sections 3(i)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC/ST Act) is under challenge in the instant criminal misc. petition.

CASE OF COMPLAINANT/OP No.2

2. The case of the complainant is that he had purchased 10 katha of land in Plots 46 & 47 of Khata No. 36, Khata 36 in Mouza Baramuri in District Dhanbad by two registered sale deeds executed in 2001 and 2005. After that the land was duly mutated in the name of his wife.
3. The said land was purchased by him from one Ajay Kumar in which Narayan Chakravarty (A5) was also the joint holder of the said land. Naryan Chakravarty executed power of attorney in favour of Kiro Prasad (A5) of land which was not in his share. The said Kiro Prasad who was the power-of-attorney holder sold the land to Nayan Prakash Singh (Petitioner no.1) in the year 2006. It is alleged that both these petitioners have been attempting to oust the complainant from the vicinity and have implicated him in several litigations. Harendra Singh had demolished the portion of the boundary wall of the complainant, and had also fixed explosive substance in the gate of the complainant, in order to terrorize him.
4. In M.P Case No. 803/03 under Section 145 of the Cr.P.C, possession of the wife of the complainant was declared with respect to the land in question.

5. It is alleged that on 08.02.2015 Narayan Prakash Singh, Harendra Singh and Ganesh Singh and other accused persons entered into his premises and started shouting "Sala Adiwasi Hum logon Ka Baat Nahi Manta Hai, Sala Achoot Humlogon Ke Samne Sir Utha Kar Baat Karta Hai". They also manhandled the complainant.
6. After enquiry, prima facie case was found to be made out and summon was issued. Being aggrieved by the order, instant petition has been filed.

CASE OF THE PETITIONERS

7. It is submitted by learned counsel for the petitioners that present case is a malicious prosecution to pressurize the petitioners who had land dispute with the complainant. Earlier, Title Suit No. 274 of 2010 was filed by the petitioners against the wife of the complainant which is now sub-judice. The Complainant had earlier filed Dhanbad P.S. Case No. 1134 of 2009 under Sections 4/ 5 of the Explosive Substance Act against the petitioners in which final form was submitted which was accepted. The order of acceptance of final form was challenged in Cr. Revision No. 175 of 2014 which was rejected by order dated 20.01.2015. Having failed in the criminal case earlier filed, the present case has been filed.
8. Management of Asarfi Hospital had made several correspondences with the authorities, against the Complainant who was obstructing the way to Asarfi Hospital. The complainant had threatened to Institute false cases against the management of the Asarfi Hospital.
9. Earlier the cognizance order in the present complaint case was challenged in Cr.M.P No. 4198 of 2019 by co-accused Prabhakar Singh. The impugned order dated 06.10.2015 was quashed by order dated 20.01.2020 by the Coordinate Bench of this Court and the learned Court below was directed to pass order afresh.
10. Special Judge-SC/ST, Dhanbad took cognizance afresh in the matter vide order dated 16.02.2022, which is presently under challenge.
11. It is submitted that Complainant is a habitual litigant and he had earlier filed C.P. Case No.2149/201 in which the special judge Dhanbad refused to take cognizance, as the complainant failed to file any certificate issued by the state of Jharkhand that they belonged to the Scheduled Tribe in Jharkhand. This order was challenged before this Court, in Criminal Revision No.771 of 2018 which was dismissed by order dated 27.08.2018.
12. In the present case, cognizance has been taken under the special Act (SC/ST)

without evidence to suggest that the complainant was the member of schedule tribe on the basis of two interested witnesses regarding an incidence which took place in the 'premises' and not in public view.

ANALYSIS

13. The main plea of the petitioners is that the stringent provisions of SC/ST have been misused against the petitioners by the complainant, to settle score over ongoing civil dispute for passage.
14. From the pleadings and the arguments advanced it appears that the complainant had earlier filed a case under Explosive Substances Act against Harinder Singh, CEO of the Asharfi Hospital (Petitioner no.2), in which final form was submitted and accepted, the revision against the said order was rejected. In another case filed by the Complainant under SC/ST Act against third party, the cognizance was not taken as he could not present his caste certificate.
15. In the present case the place of occurrence has been said to be the 'house premise' of the complainant in para 14 of the complaint petition. During inquiry the complainant, his wife and another witness has been examined. What were the words used in calling the caste name of the Complainant is in cloud. Contrary to the statement of the Complainant and his wife (EW-1) , EW 2 has stated that the accused persons had called the caste name as '*Harijan*' and not the expression of '*Adivasi*' as stated by the Complainant and his wife.
16. The special law of SC/ST Act has been enacted to protect the interest of the marginalized section of the Society and it is not intended to be used as an instrument of persecution to settle scores. Two cases earlier filed one under the Explosive Substance Act and another under the SC/ST Act, have falsified the stand of the Complainant, which lends credence to the argument of the petitioners that he is a habitual litigant. There is no clarity as to the place of occurrence which is the house premise, if it was in public view or not. There is contradiction in the statement made by the complainant and his wife on one hand and EW-2 on the other, regarding the use of expression of insinuation against the Complainant by the petitioners. Further, the dispute with the complainant did not take place because of his caste, but was because of land dispute. It shall be relevant to refer to certain observations of Hon'ble Supreme Court in cases of such nature. *Ramdas v. State of Maharashtra*, (2007) 2 SCC 170:

11. *At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.*

Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710

13. *The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.”*

Under the aforesaid facts and circumstance and for the reasons stated above, this Court is of the view that the present case is a case of malicious prosecution and it will be an abuse of process of court to permit the continuation of prosecution under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The cognizance of offence under this Act is accordingly quashed as far as these petitioners named above are concerned.

Criminal Miscellaneous Petition is allowed.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated the 4th September, 2023

AFR / AKT