

A.F.R.

Court No. - 74

Case :- APPLICATION U/S 482 No. - 40418 of 2012

Applicant :- K.P. Thakur And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sunil Tripathi,S.K.Tripathi

Counsel for Opposite Party :- Govt. Advocate,Ashok Kumar

Hon'ble Ram Krishna Gautam,J.

1. The applicants, by means of this application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the entire proceeding of Complaint Case No. 1577 of 2012, under Sections 323, 504, 506 I.P.C. and Section 3(1) (X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending in the Court of Judicial Magistrate, Duddhi, Sonebhadra.

2. Heard learned counsel for applicants, learned counsel for opposite party no. 2, learned A.G.A. for State and perused the record.

3. Learned counsel for applicants argued that a departmental inquiry was pending against Vinod Kumar Tanay, wherein applicant no. 1 K.P. Thakur was Enquiry Officer and applicant no. 2 Binod Kumar was Presenting Officer. This enquiry was being hindered by Vinod Kumar Tanay by any means. He was summoned for recording of evidence in above inquiry, where he came with M.P. Tiwari, another co-worker. It was objected with a direction to M.P. Tiwari not to intervene in the proceeding of enquiry and he was asked to remain outside of the chamber of applicant no. 1, wherein enquiry was being conducted. He made obstruction. The complainant Vinod Kumar Tanay was of habit of creating hindrance in the smooth functioning by making false accusation at different stages because of being member of Scheduled Caste community. In that enquiry too

he tried so, for which instant complaint was lodged by applicants to Department's superiors as well as local authorities. This complaint, with false accusation, was got lodged before court of Judicial Magistrate, Duddhi, Sonebhadra, wherein allegation was levelled with a view to make hindrance in above departmental enquiry, wherein he was examined under Section 200 Cr.P.C. and his two witnesses (co-workers), were examined under Section 202 Cr.P.C. and on the basis of same, learned Magistrate passed impugned summoning order for offences punishable under Sections 323, 504, 506 I.P.C. read with Section 3(1)(X) of SC/ST Act, whereas no assault or abuse in a public view was said to be made by applicants nor it was ever made. The statements, recorded under Section 200 Cr.P.C. as of complainant was with no mention that this occurrence of alleged assault and abuse was made with intention to abuse or insult on the basis of complainant being member of Scheduled Caste community by present applicants, who were not member of Scheduled Caste community. The place of occurrence has been said to be chamber of applicant no. 1 that too after bolting it from inside i.e. it was not an abuse in the public view. The essential ingredients of offence punishable under Section 3(1)(X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as the Act) are intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. In **Gorige Pentaiah Versus State of Andhra Pradesh & Others; (2008) 12 Supreme Court Cases 531**, apex court has propounded at para 6 that a public view is the view, which is of public access. Once it is inside any house, it will not be a public view and in the case of lack of above basic ingredient, the offences of Section 3(1)(X) of the Act is not completed. The same has been propounded by apex court while interpreting public view in same case at para 28. In present

case, the place of occurrence has been said to be chamber of applicant no. 1, which was said to be bolted from inside. Meaning thereby, that was not a public view at all. The enquiry concluded with dismissal of complainant as well as his witnesses. Applicants being officers of Northern Coalfields Limited being Controller and Head of Department of Mining, where complainant was an employee and they are to take work from him with administrative control and if such type of practice is being permitted then it will be highly impossible for administrative superiors in getting work from administrative inferiors in performance of official duties. The allegations levelled by complainant was false, baseless and under manipulation, for hindering senior officers and influencing enquiry being conducted against him. It was abuse of process of law. Hence, this application with above prayer for setting aside impugned summoning order.

4. Learned counsel for opposite party no. 2 vehemently opposed above argument with this contention that there was huge corruption in the office of applicants, for which repeated complaint was being made by complainant, and no inquiry was got conducted, whereas documents regarding same were in the office of given section of the office concerned from where it may be taken and inquiry may be conducted, but no such inquiry was ever conducted and complainant was being victimized, wherefor above departmental enquiry was being constituted and proceeded, wherein complainant along with his colleague M.P. Tiwari, went for appearing in above enquiry. When this occurrence took place, door was bolted from inside and M.P. Tiwari was asked to remain outside from chamber, wherein he was assaulted and insulted by taking name of his caste and threat of dire consequences was extended, which was instantly complained to Department's officers as well as local authorities and police, but of no avail. Then a complaint was filed before Judicial Magistrate,

where cognizance was taken and enquiry under Sections 200 and 202 Cr.P.C. was got conducted, thereafter, prima facie evidence was found and impugned summoning order was passed against applicants, against which this application under Section 482 Cr.P.C. has been filed and it is with ulterior motive to get complainant victimized. Hence, this court in exercise of inherent jurisdiction is not to dwell in factual aspect. There was a medical paper, where injuries were found. Hence, this application be dismissed.

5. Learned A.G.A. has vehemently argued that in first line of complaint at para 2, it has been specifically mentioned that complainant was member of Scheduled Caste community and he was insulted and abused by accused persons because of being a member of Scheduled Caste community and place of occurrence was an office, which can never be held to be residential premises of accused persons. It was a public place. It can never be said to be not in public view. Accordingly, this application be dismissed.

6. Saving of inherent power of High Court, as given under Section 482 Cr.P.C, provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Meaning thereby this inherent power is with High Court (I) to make such order as may be necessary to give effect to any other order under this Code (II) to prevent abuse of the process of any Court (III) or otherwise to secure the ends of justice. But Apex Court in **State of Andhra Pradesh v. Gaurishetty Mahesh, JT 2010 (6) SC 588: (2010) 6 SCALE 767: 2010 Cr. LJ 3844** has propounded that "*While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the*

evidence in question is reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court". In another subsequent **Hamida v. Rashid, (2008) 1 SCC 474**, hon'ble Apex Court propounded that "*Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 at an interlocutory stage which after filed with some oblique motive in order to circumvent the prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of Justice".* In again another subsequent **Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781**, the Apex Court has propounded "*Inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*" While interpreting this jurisdiction of High Court Apex Court in **Popular Muthiah v. State, Represented by Inspector of Police, (2006) 7 SCC 296** has propounded "*High Court can exercise jurisdiction suo motu in the interest of justice. It can do so while exercising other jurisdictions such as appellate or revisional jurisdiction. No formal application for invoking inherent jurisdiction is necessary. Inherent jurisdiction can be exercised in respect of substantive as well as procedural matters. It can as well be exercised in respect of incidental or supplemental power irrespective of nature of proceedings".*

7. Regarding prevention of abuse of process of Court, Apex Court in **Dhanlakshmi v. R.Prasana Kumar, (1990) Cr LJ 320 (DB): AIR 1990 SC 494** has propounded "*To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not*

*disclose any offence or was frivolous vexatious or oppressive" as well as in **State of Bihar v. Murad Ali Khan, (1989) Cr LJ 1005: AIR 1989 SC 1**, Apex Court propounded "In exercising jurisdiction under Section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not".*

8. Meaning thereby, exercise of inherent jurisdiction under Section 482 Cr.P.C. is within the limits, propounded as above. But this provision under Section 482 Cr.P.C. is for ensuring end of justice by avoiding abuse of process of law and it is not a power creating section under Code of Criminal Procedure, rather it is an acknowledging power of High Court of Judicature for ensuring that no abuse of process of law by any criminal machinery is to be there and this Court is to see as to whether there is any abuse of process of law apparently on the face of record or in procedure.

9. In present case, the complaint is by an administrative inferior against administrative superior, admittedly, who is conducting a departmental enquiry against him and he had gone there to participate in above proceeding. The Enquiry Officer is to decide as to whether Assisting Officer is to be given to employee, who is delinquent employee in above inquiry or inquiry is to be conducted in camera in Chamber. Any Tom and Harry can never be permitted to come inside, wherein the enquiry is being conducted and to participate in above enquiry, rather if any Assisting Officer is to be taken by delinquent employee, he will have to move an application before Administrative Head or Enquiry Officer for appointing and permitting any Assisting Officer to that delinquent employee and, thereafter, that Assisting Officer may take part in above Administrative Enquiry. In present case, M.P. Tiwari in his statement, recorded under Section 202 Cr.P.C., has said that he went

at the place of occurrence to say the justice. Neither he was appointed as Assisting Officer nor he was permitted to take part in enquiry, but he went to that place for saying justice. He was so social worker and so a person of securing cause of justice that without following the procedure, he present himself for saying justice, though he was asked to remain out and he remained out side. The door was locked form inside. It was a Chamber of the Enquiry Officer, where Presenting Officer and Enquiry Officer were present and it can never be said to be a public view. Even if, any occurrence took place at that place, it may never be said to be a public view and it has been verified by apex court, mentioned as above. Hence, the very ingredient of offence punishable under Section 3(1)(X) of the Act was missing. The second aspect is that complainant in his statement recorded under Section 200 Cr.P.C. has not said that he was insulted because of being a member of Scheduled Caste community by a persons, who were not member of Scheduled Caste community. This ingredient too was missing in the statement of complainant, recorded under Section 200 of Cr.P.C. Other two witnesses, who were examined were co-workers of the same Department and they were admittedly not inside the room, when this occurrence took place and how this occurrence took place, what was precipitation time and what resulted in this occurrence, were not witnessed by those witnesses. Hence, for the same occurrence, these superiors have lodged complaint with local authorities as well as Department Heads and for the same, this complaint was filed there. What was the precipitating point, could not be determined by those witnesses. Moreso, apex court in **Vaijnath Kondiba Khandke vs State Of Maharashtra and Anr. AIR 2018 SC 2659**, has propounded that while dealing with a matter, in which complaint or accusation has been lodged by administrative junior or employee against his Head of Office or administrative superior regarding their

exploitation or harassment, the Court must take in mind that if such type of occurrence are being actually visualized, then it will be highly impossible for administrative superiors to take work from administrative juniors. There must be administrative authority of administrative superiors, then and then only, they will be in position to take work from junior employees and mere bald allegation of harassment and such type of exploitation are to be strictly analyzed with all care and caution. Hence, in present case, admittedly, applicants were Enquiry Officer and Presenting Officer. They were conducting a regular departmental enquiry against complainant. Meaning thereby, charge was framed and the employee complainant was charged employee. Meaning thereby, prima facie, he was delinquent employee, for which charge was framed. Preliminary inquiry stage was passed. Thereafter, departmental enquiry was being conducted and when this enquiry was conducted this fuss was created. Who created this and what was the precipitating point was to be visualized and examined by Magistrate before summoning applicants, but casually impugned order of summoning for offence punishable under Section 3(1)(X) of the Act was passed. On above facts and circumstances, as apparently offence under Section 3(1)(X) of the Act was not made out, on the basis of evidence collected in inquiry by Magistrate concerned, hence this application merits to be allowed in part.

10. The application is partly **allowed**. The summoning for offence punishable under Section 3(1)(X) of the Act is hereby quashed. For rest of the offences, the prayed relief is refused.

Order Date :- 18.2.2020

NS