

Ishwar Pratap Singh vs The State Of Uttar Pradesh Home ... on 28 November, 2017

Equivalent citations: AIRONLINE 2017 SC 34

Author: Kurian Joseph

Bench: Amitava Roy, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2039 OF 2017
[@ SPECIAL LEAVE PETITION (CRL) NO. 6835 OF 2015]

ISHWAR PRATAP SINGH & ORS.

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The appellants are aggrieved by the order dated 22.07.2015 passed in Crl. Misc. Petition No.1392 of 2008 by the High Court of Judicature at Allahabad, Lucknow Bench. The High Court declined to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) on a prayer made by the appellants for quashing the Supplementary Report filed under Section 173 of CrPC. dated 26.04.2007 by the Investigating Officer. It is stated in the Report itself that the charges are added at the instance of the National Commission for Scheduled Castes (hereinafter referred to as “the Commission”). The Report, to the extent relevant, reads as follows:-

“It is most respectfully submitted that NCR No.96/04 u/s. 323, 504, 506 IPC was registered at PS Motiganj on 10.2.2007 and subsequently Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act was inserted under the directions of Hon'ble SC/ST Commission and the investigation of the case was taken up by me. On the

basis of the entire investigation, statement of informant and witnesses, inspection of the place of occurrence, prima facie case for the offence u/s 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act is made out against the named accused in the FIR. The sequence of events are in accordance with the NCR No.96/04 in which investigation has already been concluded in the past and charge sheet no. nil/04 dated 21.9.2004 u/s 323, 504, 506 IPC has been submitted in the Court against Bharat Singh, Vishnu Singh and Eshwar Pratap Singh. After concluding further supplementary investigation in the case, the instant charge sheet no. 17/07 against accused Bharat Singh, Vishnu Pratap Singh and Eshwar Singh for the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act and accused Angad Singh under Section 323, 504, 506 IPC and Section 3 (1)(x) of the SC/ST (Prevention of Atrocities) Act is being submitted before the Court. It is most humbly prayed that learned Court may be pleased to include this supplementary charge sheet no. 17/07 with the earlier Charge Sheet No. Nil/04 u/s 323, 504, 506 IPC and issue summons to all the accused persons for their trial u/s 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act.” (Emphasis supplied)

3. Background: The Respondent No. 2/ complainant lodged an NCR bearing no. 96/04 dated 25.07.2004 against the appellants at P.S Motiganj, District Gonda for offences under Sections 323, 504 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”). In the first chargesheet dated 21.09.2004 filed by the Police before the Chief Judicial Magistrate, Gonda the appellants were charged under Sections 323, 504 and 506 of the IPC. It is the case of the appellants that more than two years after the first chargesheet was filed, the Respondent No. 2 made a complaint dated 03.12.2006 before the Commission. It appears that within three days, by letter dated 06.12.2006, the Commission requested for the addition of Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The direction issued by the Commission reads as follows:-

“Sub.: Regarding protection to atrocity victim – Representation of Sri Ram Bahadur s/o Late Pherai, Vill. Kahova, PS Motiganj, Dist. Gonda.

Sir, On the subject cited above, please recall the deliberation during the District Level Meeting held on 27.11.2006 whereat the enclosed photocopy of the inquiry report received from the Circle Officer, Mankapur, Gonda addressed to you was discussed. It has come to light from a perusal of the aforesaid report that charge sheet u/s 323/504/506 IPC has been submitted against the accused persons in NCR No.96/04 PS Motiganj, Dist. Gonda. In this context, it is to state as to why the appropriate Sections of SC/ST Act were not invoked in the said case, whereas Section 3(1)

(x) of the SC/ST (Prevention of Atrocities) Act clearly provides that “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.” Therefore, it would be just and proper to invoke the appropriate sections of SC/ST Act in the present case.

It is, therefore, requested that in view of the aforementioned facts, you may add Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, besides Section 323/504/506 IPC, in the NCR No.96/04 and submit supplementary charge sheet in the Court as well as a proposal to the competent authority thereby recommending grant of financial help to the victims. Please send the desired information along with action taken report/report on the proposed action to the undersigned at the earliest possible.

Yours faithfully, Sd/- illegible (Dr. Dibakar Basak) Dy. Director & Head of the Office” (Emphasis supplied)

4. Aggrieved, the appellants filed a Writ Petition No. 2330 (M/B) of 2007 before the High Court. Vide order dated 13.04.2007, the High Court stayed the arrest of the appellants. The order reads as follows-

“It has been pleaded in the writ petition that provisions of S.C./S.T. Act have been deliberately added in order to harass the petitioners. The NCR was registered under Sections 323/504/506 IPC only. It has also been asserted in the writ petition that there is no allegation that offences under the provisions of S.C./S.T. Act have been made out.

We are of the considered view that prima facie a case for interim relief is made out in favour of the petitioners. Issue notice to Opposite Party No. 4.

Counter Affidavit may be filed within four weeks. Rejoinder Affidavit, if any, may be filed within one week thereafter.

The arrest of the petitioners shall remain stayed in Case Crime No.8/07, u/s. 323/504/506 & 3(1)(X) of S.C./S.T. Act, P.S. Motiganj, District Gonda. The petitioners shall cooperate in the investigation.”

5. After the supplementary chargesheet was filed, the appellant filed a petition under Section 482 of CrPC. While deciding the Section 482 Petition, the High Court took the view that the charges cannot be quashed in a piecemeal manner. The short judgment dated 22.7.2015, reads as follows:-

“This petition under Section 482 Cr.P.C. has been filed for quashing the proceedings of Criminal Case No.531 of 2007, under Sections 323, 504, 506 I.P.C. and 3(1)(x) of SC/ST Act P.S. Motiganj, district Gonda.

Learned counsel for the petitioner states that no case under Section 3(1)

(x) of SC/ST Act is made out and in the supplementary charge sheet under this Section has been filed subsequently.

I find no illegality in the charge sheet. The charges cannot be quashed in piecemeal. This petition is devoid of merit and it is, accordingly, dismissed.”

6. Heard Mr. Vishwajit Singh, learned counsel for the appellants and Mr. Ratnakar Dash, learned senior counsel appearing for Respondent No.1/State. Though notice is served on Respondent No.2, there is no appearance.

7. We do not think that any detailed discussion is warranted on the well-settled proposition that no external agency can dictate the course of investigation in a criminal case. It is within the exclusive jurisdiction of the police [see R. Sarala v. T.S. Velu & Others (2000) 4 SCC 459)]. The Court also cannot supervise the investigation.

However, in exceptional situations, Superior Courts may monitor an investigation. But that is not the same as supervision.¹ No doubt, superior officers of police may exercise their powers under Section 36 CrPC in supervising the investigation. In the instant case, it appears that the direction was issued on the basis of a complaint filed by Respondent No.2 before the Commission. It is not clear as to whether the Commission had conducted any inquiry before issuing direction to the Police. At any rate, it is submitted that the appellants have not been involved in any such inquiry. Equally, it is not clear whether the second respondent had made out a case for the intervention of the Commission under the Rules of Procedure of National Commission for Scheduled Castes. In this context it is relevant to note the contents of the NCR bearing No. 96/04 dated 25.07.2004 which read as follows:-

Manohar Lal Sharma v. Principal Secretary And Others (2014) 2 SCC 532 “To, the Station House Officer, Police Station Motiganj, Dist. Gonda.

Sir,

It is submitted that the

applicant/informant Ram Bahadur s/o late Ram Pherai is a permanent resident of village Kahovi, post office Dalpatpur, Dist. Gonda. Gata No. 97 situated on Motiganj Road is recorded in the name of the applicant. Today, some people equipped with firearms came to forcibly grab the land of the applicant. They assaulted the applicant, abused him with filthy language and threatened him saying that “if you speak further, we will kill you this time and throw your body”.

Names of the assaulters are as under :-

Bharat Singh, Eshwar Pratap Singh and Vishnu Pratap Singh sons of Angad Singh and Angad Singh s/o not known residents of village Kahova, post Dalpatpur, dist. Gonda.

You are, therefore, requested to kindly register my report and take action against the guilty persons. I shall be grateful to you.

Applicant. Ram Bahadur s/o Pherai, Scheduled Caste – Chamar, r/o Vill. Kahovi, post Dalpatpur, Gonda. Date:- 25.7.04 at 6.00 pm.”

8. From a perusal of the above it is clear that the ingredients under Section 3 (1)(x) have not been made out. There was not even a whisper of allegation of harassment based on caste. That is why the first chargesheet was only under Sections 323, 504 and 506 of the IPC. It is over two years later that the Respondent No. 2 appears to have complained to the Commission. Under Rule 7.5.2(vi), the Commission is empowered to conduct an inquiry to “whether proper charge sheet has been filed mentioning the relevant sections of IPC together with the PCR Act, 1955 and SCs & STs (POA) Act, 1989 in Court”. This is not a power to dictate the course of the investigation. The Commission is competent to point out any lapses or laches in the investigation. The Commission could only have brought to notice of the Police the need for a proper or further investigation and it was for the Police to take a call.

9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a chargesheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the CrPC or for prevention of abuse of process, or otherwise to secure the ends of justice. A chargesheet filed at the dictate of somebody other than the police would amount abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the chargesheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The Supplementary Report filed by the Police, at the direction of the Commission, is quashed.

10. However, we make it clear that the order passed by this Court shall not stand in the way of the police and for that matter the Court, taking any steps in due exercise of their powers under the provisions of the CrPC, if so warranted, at any stage.

.....J. [KURLAN JOSEPH]J. [AMITAVA ROY] NEW DELHI;

NOVEMBER 28, 2017.