

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2636 of 2021

Ajay Pattanaik @ Ajaya Kumar Petitioners
Pattanayak and Another

Mr. Deepak Ranjan Sundaray, Advocate

-Versus-

State of Odisha and Another Opposite Parties

Mr. S.K. Mishra, ASC

Mr.Soumya Ranjan Mohanty, Advocate for O.P.

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:01.03.2023

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioners challenging the order of cognizance dated 13th April, 2021 under Annexure-2 series passed in T.R. No.203 of 2021 and the consequential order dated 30th March, 2021, whereby, the learned Sessions Judge, Khurda at Bhubaneswar issued NBWAs against them on the grounds inter alia that no case is made out far less an offence under Section 3 of SC and ST (PoA) Act and hence, therefore, the same is liable to be interfered with and quashed.

2. The opposite party No.2 filed a complaint initially registered as ICC Case No.8 of 2017 against the petitioners and others which was entertained by the learned court below and by its order under Section 156(3) Cr.P.C., Badagad P.S. Case No.126 dated 19th May, 2017 was registered and finally, the chargesheet was submitted under Sections 241, 294, 323 and 506 read with Section 34 IPC and Sections 3(1)(r)(s) & 3(2)(va) of SC and ST (PoA) Act, whereafter, the order of cognizance dated 13th April, 2021 was passed.

3. Heard Mr. Sundaray, learned counsel for the petitioners, Mr. Mishra, learned ASC for the State opposite party No.1 and Mr. Mohanty, learned counsel for opposite party No.2.

4. It is contended that the petitioners are in no way connected with the alleged incident and due to political rivalry, a false case has been foisted against them and hence, the impugned order under Annexure-2 series is bad in law. It is claimed that opposite party No.2 is not the victim but the complaint was filed at the behest of a third party, who is a witness to the alleged incident and hence, the offences under Sections 3(1)(r)(s) & 3(2)(va) of SC and ST (PoA) Act are not made out, inasmuch as, the person, who is supposedly affected and against whom the caste aspersion is said to have been directed never complained of and that apart, the alleged offences under the Special Act are not established since there was no intentional insult or intimidation to the alleged victim to humiliate him for being a member of SC or ST. Mr. Sundaray, learned counsel for the petitioners cited the following decisions, such as, **Bhagawant Singh Randhawa and Another Vrs. State of Punjab** in CRM No.42685 of 2021 (O & M) disposed of on 12th October, 2021 by the Punjab & Haryana High Court besides **Hitesh Verma Vrs. State of Uttarakhand and Another** of the Apex Court reported in **2021 (1) OLR (SC) 85**. Furthermore, challenging the coercive action of the learned court below which issued NBWAs against the petitioners, Mr. Sundaray cited a judgment of this Court in **Bata@Bata Krushna Moharana Vrs. State of Orissa and Manjulata Mallick (2016) 63 OCR 134**. It is, thus, contended that the allegations are false and furthermore, no prima facie case under the SC and ST (PoA) Act is made out besides the fact that the learned Sessions Court could not have taken such a drastic decision to issue NBWAs in the first place.

5. On the contrary, Mr. Mishra, learned counsel for the State submits that considering the FIR and the allegations made therein, the offences are prima facie made out as during and in course of the alleged incident, opposite party No.2, who was abused and the alleged mischief was committed involving caste aspersion vis-à-vis the person, who had come to rescue the former. It is submitted that since the investigation proved the alleged occurrence leading to the submission of chargesheet, the learned court below cannot be said to have committed any error or illegality in taking cognizance of the offences and the consequential order as the petitioners were shown as absconders therein. Mr. Mohanty, learned counsel for opposite party No.2 adopted the same line of argument contending that a case is made out for enquiry and trial.

6. The allegation as per the FIR is that on the date of occurrence i.e. 29th April, 2017 at about 9.30 P.M. when opposite party No.2 was returning home after purchasing betel from a shop, the petitioners and their associates reached in motorcycles and abused him in filthy language and also assaulted and terrorized him and committed other overacts and at that time, when the other named persons including the victim, who belongs to Scheduled Caste arrived at the spot and tried to intervene, one of the petitioners, namely, petitioner No.2 criminally intimidated and abused the said witness by making aspersion to his caste. The words uttered by the petitioners and the manner in which the mischief was committed have been described in the complaint.

7. The defence argument is that the allegations in the complaint turned FIR is a falsehood and that apart, no offences under the Special Act have been committed and although the aspersion on caste was allegedly directed against a witness and not opposite party No.2 and even otherwise, there was no intention to insult

or intimidate him for being a Scheduled Caste; secondly, no complaint was lodged by the witness, who said to have been abused by taking the name of his caste and hence such offences under the Special Act cannot be alleged and the petitioners be charged with. Finally, the petitioners challenged the issuance of NBWAs against them without any basis or justification and not being in conformity with the established procedure of law as reiterated in **Bata@Bata Krushna Moharana** (supra), wherein, the settled legal position as decided in **State of Orissa Vrs. Dhaniram Luhar (2004) 27 OCR (SC) 807** of the Supreme Court was followed.

8. In **Hitesh Verma** (supra), the Apex Court was seized of the matter where the point of debate was whether any such offences under the Special Act was committed in absence of mens rea or intent on the part of the accused to insult or intimidate a member of the Scheduled Caste and held and observed that the SC and ST (PoA) Act was enacted to ameliorate the socio-economic conditions of the vulnerable sections of the society, who are subjected to indignities, humiliations and harassments and they have also been deprived of life and property and therefore, the object of the law is to punish the violators, who commit such offences as defined in Section 3 of the said Act. Lastly, it was held therein that the offence under the Special Act is not established merely for the fact that the victim is a member of Scheduled Caste without any intention to humiliate him.

9. In the instant case, the overt acts allegedly committed by the petitioners are primarily attributed to opposite party No.2 and during the incident, the named witness intervened and in course of events, the latter was said to be abused. The question is, whether, it was with the requisite intention to humiliate the witness, who in any case has not lodged any complaint against

the petitioners and in particular, petitioner No.2. The name of the caste has been uttered by petitioner No.2 during the alleged occurrence but it was at a time when the witness tried to intervene and rescue opposite party No.2. It was on the spur of the moment that the incident happened, in course of which, the alleged abuse was hurled at the witness, whose caste name was uttered by one of the petitioners. To claim that it was with an intention to insult or humiliate the witness present at the spot and the alleged offences under the Special Act are committed would be like stretching things too far and unjustified. If someone is abused with the name of his caste or the caste is uttered suddenly in course of events and during the incident, in the humble view of the Court, by itself would not be sufficient to hold that any offence under the SC and ST (PoA) Act is made out unless the intention is to insult or humiliate the victim for the reason that he belongs to Scheduled Caste or Scheduled Tribe is prima facie established. Considering the settled law laid down in **Hitesh Verma** (supra), there is no escape from the conclusion that in the case at hand, the offences under the Special Act are not established prima facie and morefully when, the witness did not register any complaint or lodged report he being not related to opposite party No.2 which has again been challenged by placing reliance on the decision in **Bhagawant Singh Randhawa** (supra) though the authority does not squarely apply to the facts of the case in hand.

10. As to the other offences, on a reading of the FIR, the Court finds that opposite party No.2, who was intercepted and thereafter, the petitioners and other accused persons did commit the alleged mischief and even snatched away gold and cash from the former and hence, a case is prima facie made out against them for enquiry and trial. The truthfulness or otherwise of the

allegations vis-a-vis the petitioners shall have to be examined in trial unless they are discharged during enquiry. As regards, the coercive action taken against the petitioners by the learned court below, the Court is of the view that the learned Sessions court after having received the chargesheet showing them as absconders and issuing NBWAs against them was required to satisfy itself about the need for taking coercive action as a court should normally be careful and duty bound to assign reasons which has been rightly held in **Bata@ Bata Krushna Moharana** (supra) that such an exercise is indispensable for a sound judicial dispensation following the dictum in **Dhaniram Luhar** (supra).

11. Accordingly, it is ordered.

12. In the result, the CRLMC stands allowed in part. As a necessary corollary, the impugned order of cognizance dated 13th April, 2021 passed in T.R. No.203 of 2021 by the learned Sessions Judge, Khurda at Bhubaneswar is set aside to the extent indicated above. Consequently, the order under Annexure-2 series is hereby quashed vis-à-vis Sections 3(1)(r)(s) & 3(2)(va) of SC and ST (PoA) Act with a consequential direction for the court below to reconsider the mode of process against the petitioners taking into account the chargesheet and connected materials besides the case diary and thereafter to pass necessary order as per and in accordance with law.

(R.K. Pattanaik)
Judge

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