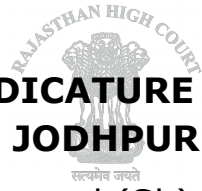




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Appeal (Sb) No. 2169/2023

1. Achal Singh S/o Dungar Singh, Aged About 65 Years, R/o- Silavta Pada Jaisalmer, Dist. Jaisalmer.
2. Madan Singh @ Prem Singh S/o Achal Singh, Aged About 38 Years, R/o- Silavta Pada Jaisalmer, Dist. Jaisalmer.
3. Damodar Singh S/o Achal Singh, Aged About 43 Years, R/o- Silavta Pada Jaisalmer, Dist. Jaisalmer.
4. Surendra Singh S/o Achal Singh, Aged About 40 Years, R/o- Silavta Pada Jaisalmer, Dist. Jaisalmer.

-----Appellants

Versus

1. State Of Rajasthan, Through PP
2. Harish Chandra S/o Shri Kheema Ram Gehlot, R/o- Perva, P.S. Falna, Teh. Bali, Dist. Pali.

-----Respondents

For Appellant(s) : Mr. Leela Dhar Khatri
For Respondent(s) : Mr. Surendra Bishnoi, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment reserved on : 17.10.2024

Judgment pronounced on : 12.11.2024

1. Heard the parties.
2. All the petitioners are accused in FIR No.40/2011 registered with Police Station Kotawali in the District of Jaisalmer for Offences under Sections 353, 332/34 of IPC and Section 3(1)(X) of Schedule Caste and Scheduled Tribe (Prevention of Atrocities Act).
3. By the impugned order dated 13.09.2023, the charges were ordered to be framed for offences under Sections 353, 332/34 of IPC as well as Section 3(1)(X) of Schedule Caste and Scheduled



Tribe (Prevention of Atrocities Act), 1989 (for short "the Act of 1989").

4. The prosecution case is that on 31.01.2011, respondent No.2 along with other officials had gone to identify the area of encroachment on the public land made by Achal Singh, petitioner No.1. When the informant was measuring the site, all the petitioners objected and allegedly committed abuses like Bhangi, Neech, Bhikhari, Mangani to the informant and others and they committed assault as well.

5. After investigation, the Police found the allegation as untrue and submitted negative report but on Protest Petition, cognizance was taken and subsequently, charges were ordered to be framed.

6. Learned counsel for the petitioners submits that ingredients of the offence under Section 3(1)(X) is apparently not made out on bare perusal of the allegation in the FIR or in the Protest Petition which contains verbatim allegations made in the FIR.

7. Learned counsel has drawn attention of the Court to the relevant provisions of Section 3 of the Act of 1989 which reads as follows:-

"3 Punishments for offences of atrocities-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-***

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

***"



8. Learned counsel contends that there is no iota of evidence that the petitioners had knowledge about the caste of the informant and others. There is no material that the incident took place in the public view. Only the prosecution party are witnesses of the incident. Learned counsel next contends that it is a case of flagrant abuse of the provisions of law because the incident did not take place for the reason that petitioners were intending to humiliate the informant and others for their being members of the Scheduled Caste or Scheduled Tribes rather the incident took place for unfair measurements to decide any encroachment allegedly made by the petitioners.

9. Learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in the case of **Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh & Anr.** reported in **2023 LiveLaw(SC) 469**. In **Dashrath Sahu Vs. State of Chhattisgarh decided on 29.01.2024** in **Criminal Appeal No.487/2024 (Arising out of SLP (Crl.) No.6367/2023)** and of this Court in **Kola Ram & Another Vs. The State of Rajasthan reported in 1994 Cr.L.R. (Raj.) 401**.

10. Learned counsel for the respondents including the private respondent submits that meticulous appreciation of evidence at the stage of framing of charge is not permissible. The considerations at both the stages i.e. taking of cognizance and framing of charge are the same, i.e. prima facie cognizable offences are disclosed on bare perusal of the material collected during investigation. The parameters at the conclusion of trial cannot be applied at this stage.



11. in Kola Ram (Supra), a Bench of this Court held that framing of charge after giving opportunity of hearing is an independent judicial act, hence mere taking of cognizance does not make it obligatory to frame charge. In other words, correctness of order of charge can be looked into inspite of order of cognizance on the same facts of the case.

12. Ramesh Chandra Vaishya (supra) was a case wherein the incident took place over the issue of drainage of water. The altercation was alleged including abuse by caste name. In the case on hand as referred above, the words used were not caste name nor there is allegation that the petitioners were known to the caste of the public servants, who had gone to remove the encroachments. Moreover, it is crystal clear on bare perusal of allegation that the petitioners were not intending to humiliate the accused persons for the reason that they were members of Schedule Caste and Schedule Tribes rather act of the petitioners was in protest against the action of measurements being wrongly done by the public servants.

13. In Ramesh Chandra Vaishya (supra), the Hon'ble Supreme Court noticed that three witnesses of the incident were the complainant, his wife and their son. Neither the FIR nor the charge-sheet referred to any fifth individual, member of a public at the place of occurrence. In the case on hand, only the informant and its officials are witnesses of the incident, no independent witness has turned up to support that he was the witness of the incident. The Police after investigation, did not find the allegation true, hence evidently, the offence under Section



3(1)(X) of the Act of 1989 is not made out and the petitioners deserve discharge for the aforesaid offence.

14. However, there is prima facie allegation that the petitioners obstructed in the official discharge of public duty by the respondent and therefore for that act of the petitioners, criminal prosecution would go on.

15. Accordingly, the impugned order to the extent of framing of charge under Section 3(1)(X) of the Act of 1989 stands hereby set aside and this criminal revision is partly allowed. The petitioners are discharged of the offence under Section 3(1)(X) of the Act of 1989.

(BIRENDRA KUMAR),J

Sunita/20