

Uttarakhand High Court

Hitesh Verma vs State Of Uttarakhand on 20 July, 2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 507 of 2020

Hitesh Verma

..... Petitioner

Vs.

State of Uttarakhand

.....Respondent

Mr. Amit Kapri, Advocate for the petitioner.

Mr. S.T. Bharadwaj, Deputy Advocate General for the State. Hon'ble Ravindra Maithani, J.(Oral) Instant petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred for quashing the charge- sheet as well as the summoning order dated 25.06.2020, passed in Special Sessions Trial No. 18 of 2020, State vs. Hitesh Verma by the Court of learned Sessions Judge, Pithoragarh (for short "the case"). By the impugned summoning order, the petitioner has been summoned under Sections 504 and 506 IPC and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act").

2. The case is based on FIR lodged on 11.12.2019 by respondent no.2, under Section 3 (1) (x) of the Act and Sections 452, 504 and 506 IPC. According to it, on 10.12.2019 morning, at 9:00 petitioners and others entered into the premises of the informant, abused her with caste coloured remarks and threatened her to life. After investigation, charge sheet under Sections 504, 506 IPC and Section 3 (1) (x) of the Act has been submitted against the petitioner. Based on it, proceedings of the case were instituted and on 25.06.2020 the petitioner has been summoned. It is the impugned order.

3. Learned counsel for the petitioner would argue that in the instant case, FIR was lodged against various persons, but I.O. did not find involvement of other persons, except the petitioner; it is the informant herself, who had occupied the land belonging to the petitioner; it is the case of misuse of provisions of the Act. Reference has been made to the law as laid down in the case of Gorige Pentaiah Vs. State of Andhra Pradesh and others (2009) 1 SCC (Cri) 446 to argue that in the FIR, the averments have not been made to attract the provisions of the Act.

4. Learned State counsel would argue that the occurrence is admitted because an FIR has also been lodged against the informant and others. Who is aggressor would be determined at the trial; in the instant case, provisions of the Act are attracted.

5. It is admitted on behalf of the petitioner that with regard to the occurrence, the FIR was lodged against the informant and others on 11.12.2019. Copy of the FIR is filed as Annexure No. 5 to the petition. FIR in the instant case reveals that the incident occurred on 10.12.2019 at 10:00 AM, whereas, according to the FIR, lodged against the informant and others, the incident occurred on 11.12.2019, at 9:45 AM. Date and time of incident is different in both the FIRs. Therefore, as such, they may not be said to be cross cases. It is admitted that informant and others are facing trial under Sections 323 and 504 IPC (Copy of the summoning order against the informant and others is

Annexure No.6 to the petition).

6. In the case of Gorige Pentaiah (supra), Hon'ble Supreme Court has laid down the principles as to under which circumstances the provisions of the Act would be attracted. In para 6 of the judgment, Hon'ble Court observed as hereunder:

"6. In the instant case, the allegation of Respondent no.3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basis ingredients of Section 3 (1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

7. Subsequent to the judgment in the case of Gorige Pentaiah (supra), in the case of Ashabai Machindra Adhagale Vs. State of Maharashtra and other, (2009) 2 SCC (Cri) 20, Hon'ble Supreme Court held that an FIR is not an encyclopedia and applicability of the Act may be gone into during investigation. In paras 10 and 12 of the judgment, Hon'ble Court observed as hereunder:-

"10. It needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned counsel for the appellant whether the accused belongs to Scheduled Caste or Scheduled Tribe can be gone into when the matter is being investigated. It is to be noted that under Section 23 (1) of the Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short "the Rules") have been framed.

12. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe." (emphasis supplied)

8. Both cases deal in the same area. The judgment in the case of Gorige Pentaiah (supra) was delivered on 20.08.2008 by the two Hon'ble Judges of the Supreme Court and the judgment in the

case of Ashabai Machindra Adhagale (supra) was delivered on 12.02.2009 by the three Hon'ble Judges of the Supreme Court. They both deal with the same issue with the regard to the applicability of the provisions of the act.

9. Petitioner himself has filed a document (Annexure No.2), which is a kind of certificate, which reveals that petitioner is not a person belonging to the Scheduled Castes or the Scheduled Tribes category. In the FIR lodged by the informant in the case, it is categorically admitted that informant belongs to Scheduled Caste category and she and her labourers were abused. She was abused with caste colored remarks. It makes provisions of the Act applicable. After investigation, charge-sheet has been submitted.

10. It is true that in the instant case FIR was filed against petitioner and five other persons, but charge-sheet has been submitted only against the petitioner and in the charge-sheet the I.O. has recorded that, in fact, the informant had made encroachment. These facts also do not make any difference in so far as the instant petition is concerned. Does it not reflect that the I.O. did his job to find out the truth?

11. In view of the foregoing discussion, this Court is of the view that prima facie, the offence has been made out against the petitioner and in these proceedings under Section 482 of the Code there is no reason to make any interference. Accordingly the petition deserves to be dismissed.

12. The petition is dismissed.

(Ravindra Maithani, J.) 20.07.2020 Shubham