

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.20228 OF 2021 (GM-RES)

BETWEEN

1 . PADMANABHA N.S. @ PADDI

2 . RAGHU

3 . SHIVARAJ

... PETITIONERS

(BY SRI PRASANNA KUMAR P, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY ANEKAL POLICE STATION
ANEKAL CIRCLE
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BUILDING OPP VIDHANA SOUDHA
DR B.R. AMBEKDAR VEEDHI
BENGALURU-560 001

2 . D SRINIVAS

... RESPONDENTS

(BY SRI ROHITH B.J., HCGP FOR R1
SRI H. PAVANACHANDRA SHETTY, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS AND QUASH THE ENTIRE PROCEEDINGS IN SPL.C.NO.460/2019 PENDING ON THE FILE OF LEARNED II ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU AS AGAINST THE PETITIONERS/ ACCUSED NOS. 1, 3, 4 FOR OFFENCES PUNISHABLE UNDER SECTIONS 143, 341, 447, 504 ,506, 384 READ WITH SECTION 149 IPC AND SECTION 3(1)(r)(s) OF THE SCHEDULE CASTE AND SCHEDULED TRIBE (PREVENTION OF ATROCITIES) ACT (PRODUCED VIDE ANNEXURE-D) AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.01.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition is filed by the petitioner-accused Nos.1,3 and 4 under article 226 of Constitution of India read with Section 482 of Cr.P.C for quashing the criminal proceedings in Spl.C.No.460/2019 pending on the file of II Additional District and Sessions Judge, Bengaluru Rural District, and to quash the order passed by the learned Special Judge on the discharge application, for the offences punishable under Section 143, 341, 447, 504, 506, 384 read with 149 of IPC Section 3(1) (r) (s) of the Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred as the SC & ST Act).

2. Heard the arguments of learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1 and learned Senior counsel for the respondent No.2.

3. The case of the prosecution is that on the complaint filed by the respondent No.2 the police registered FIR and it is alleged in the complaint dated

30.7.2019 that he is running a resort in Sy.No.176/50 and 176/51 under the Memorandum of Understanding dated 09.07.2018 and the project agreement dated 12.7.2018 and it is stated that he has invested huge money also he has engaged the staffs for maintenance. The owners of the resort made an agreement with the accused No.5 and trying to intervene with his possession, therefore he had filed suit in O.S.No.341/2019 and obtained the injunction order against them. In spite of the same, on 29.7.2019 the accused Nos.1 to 5 came to the resort, when the CW2 to CW4 were present and the accused picked up quarrel with CW2 and threatened with dire consequences. Also, they asked to remove the tractor otherwise they will kill them, otherwise they will assault the complainant as well as the CW2 to CW4. Hence, he has lodged the complaint, police registered FIR for the offence punishable under Section 143, 341, 447, 504, 506 read with 149 of IPC and during the investigation, the police invoked Section 3 of SC & ST Act, obtained the permission of Special Court and after the investigation they filed the charge sheet. The petitioner

had moved application under Section 227 of Cr.P.C before the Special Court for discharge, which came to be rejected, hence petitioners/accused Nos.1, 3 and 4 are before this Court.

4. The Learned counsel for the petitioners has contended that the complainant is not an eye witness and he has filed complaint on the information given by CW2 and CW3. The complaint came to be registered by police on 1.8.2019, but the statement of CW2 and CW3 has been recorded only after one and half month. There is no whisper in the complaint regarding taking the caste name and abusing the complainant by the petitioner. He further contended that the accused Nos.3 and 4 i.e., petitioner Nos.2 and 3 belongs to the community of scheduled caste and scheduled tribe, therefore Section 3 of the SC&ST Act will not attract against them. Further contended that there was civil suit against accused No.5 and complainant, where the petitioners are not the party to the civil proceedings. Therefore, framing of charges against all the accused

persons under Special Act i.e, Section of 3 of SC & ST is not correct. The trial court has not properly given any finding in the discharge application, therefore prayed for allowing the petition and quash the criminal proceedings against the petitioner.

5. Per contra, the learned counsel appearing for respondent No.2 has strenuously objected and produced some of the documents and contended that the accused No.5 along with the accused Nos.1 to 4 came to the spot and picked up quarrel and abused the complainant in filthy language. The CW2 recorded the quarrel and abusive words used by the accused persons against the complainant and later the accused No.2 was made to delete the Whatsapp messages and video messages. The accused Nos.3 and 4 said to be belonging to same community, therefore the offence of Section 3 (1)(r)(s) will not attract against them. But he has threatened to the dire consequences and abused with filthy language which will attract Section 504 and 506 of IPC. The accused Nos.2

and 5 have not filed any such petitions. The accused Nos.1, 2 and 5, belongs to a different community people. The allegation against the petitioner/ accused Nos.1, 2 and 5, clearly attracts above said provisions. They all came together to the spot and picked up quarrel and abused the complainant by taking the name of his caste in presence of others. Therefore, the accused cannot be discharged from the case. If at all the offence under Section 3 of the SC & ST Act will not attract against accused Nos.3 and 4, the trial court can frame the appropriate charges against appropriate accused, therefore entire proceedings cannot be quashed. In support of his argument, learned counsel for the respondent No.2 relied upon the judgment of Hon'ble Supreme Court reported in **AIR 2021 Supreme Court 3931 AIR Online 2021 SC 512** in case of **Kaptain Sing Vs. State of Uttar Pradesh** and hence prayed for dismissing the petition.

6. The learned HCGP objected the petition and supported argument of counsel for respondent No.2.

7. Having heard the arguments and perused the records, especially the complaint made by the CW1 where he has stated, he is running the resorts by an agreement with the owners of the land under the Memorandum of Understanding and he has left some people for maintenance of the resort. The accused No.5/Nagabhushana said to be an agreement holder with the owner of the land Sai Prakash and accused No.5 is trying to interfere with the possession of the property. Therefore, he has obtained injunction by filing suit in OS No.341/2019. Further it is referred that on 29.07.2019 at 11.30 p.m., the accused Nos.1 to 5 came to the spot, picked up quarrel with CW2 to CW3 and trying to interfere with the possession of the property by claiming rights over the property. The accused persons also said to have threatened the complainant and CW2 and CW3 with criminal intimidation that they will finish them, if they have not left the place. The name of the accused persons are mentioned in the complaint. However, it is further alleged

that the police recorded the statement of CW2 and CW3, where both of them have categorically stated the accused persons abused complainant in filthy language and also are taking the name of his caste and insulted him stating that, he is only a stone cutter and his work is only cutting stone, and that he should not come and do the business, if he will not remove the business, then they will teach the lesson by committing murder. The accused Nos.1 to 5 altogether came with a common intention to commit the offence. The statement of CW2 and CW3 reveals that the CW3 was trying to record the video through his mobile phone, regarding the quarrel made by the accused persons. But later, the accused No.2 snatched the mobile phone and deleted the video clippings, thereby trying to destroy the evidence. When the complainant is in possession of the property, running the business after obtaining the injunction order from the competent Civil Court, the accused persons do not have any business to enter into the possession and enjoyment of the property of the complainant. All accused came to the spot and picked up

quarreled with the CW2 and CW3 and abused the complainant in their presence by taking the caste name as **Wadda**. Ofcourse, Section 3 of the SC & ST Act, will not attract against accused Nos.3 and 4 who are also the persons belonging to the same community. However, the remaining offences under Sections 447, 341, 504 and 506 read with 149 of IPC may attract against accused Nos.3 and 4. The accused No.1 is main accused, he is not the member of the SC & ST. Therefore Section 3 of the SC & ST Act, would attract against the accused Nos.1, 2 and 5 (the accused No.2 and 5 not before this court) . Other IPC offences will attract against accused Nos.3 and 4, such being the case, the special Court is required to try all the offences both IPC and Special Act, as one joint trial. Because the accused Nos.3 and 4 belong to same community, there cannot be separate trial for them. The trial court required to frame appropriate charges against the appropriate accused persons. As per subsection (1) and (3) of 220 of Cr.P.C, the trial court can frame the charges, in respect of offences in respect of IPC as well as

Special Act against the said accused persons but the trial must be a joint trial.

8. Therefore, the contention of the learned counsel for the petitioner cannot be acceptable that there is no offences made out against accused Nos.3 and 4. On the other than all the accused persons with common object entered into the place of business of the complainant, by trespassing to the same, abused the complainant and his employees in filthy language and threatened with dire consequences and insulted the complainant in the presence of the others in the resort. It is unfortunate to note that despite of completion of 75 years of independence of India the downtrodden people not able to do any business equal to that of any other business people who were said to be in upper caste. The other caste people still doing atrocity over the person who is trying to lead a happy life and to keep up the life and liberty on par with the other people. The offence committed by the

accused not only affect the right of business as guaranteed under Article 19 of Constitution of India and also life and liberty guaranteed under Article 21 of Constitution of India and using the same caste people against the complainant is nothing but following the divide and rule policy, which cannot be allowed.

9. For the above said reasons, the alleged offences against accused persons clearly attracts both the provisions of IPC and Section 3(1) of SC & ST (POA) against accused Nos.1, 2 and 5 and IPC offences attracts against accused Nos.3 and 4. Therefore, the question of quashing the criminal proceedings does not arise.

10. Merely the trial court not stated in the order under Section 227 Cr.P.C, that itself is not a ground to quash the criminal proceedings. The learned counsel respondent No.2 also relied upon the judgment of Hon'ble Supreme Court in ***Kaptain Sing Vs. State of Uttar Pradesh*** stated supra where the Hon'ble Supreme Court

stated the criminal proceedings cannot be quashed after filing of charge sheet and when there are ingredients made out in the charge sheet. Considering the same, I am of the view the petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition filed by petitioner Nos.1,3 and 4, is hereby by ***dismissed***.

**Sd/-
JUDGE**

AKV