



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

S.B. Criminal Misc(Pet.) No. 2317/2013

Chhinder Singh

-----Petitioner

Versus

State

-----Respondent



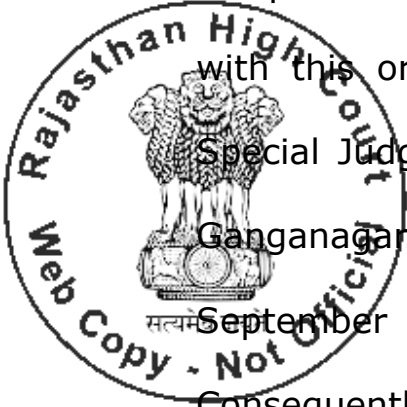
For Petitioner(s) : Mr. R.S. Choudhary
For Respondent(s) : Ms. Sonu Manawat, PP

**HON'BLE MR. JUSTICE ARUN MONGA
Order (Oral)**

Petitioner herein is assailing an order dated 23.09.2013 passed by learned Special Judge SC/ST cases, Sriganganagar in Criminal Revision No.05/2013, thereby dismissing the revision petition and affirming the order dated 22.06.2013 passed by learned Chief Judicial Magistrate, Sri Karanpur District, Sriganganagar in Criminal Case No.333/2013, whereby the learned Magistrate took the cognizance for the offence under Section 3(1)(X) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. To summarize, the facts outlined in the petition are that on January 10, 2013, the complainant, Prithvi Ram, filed a complaint with the Additional Chief Judicial Magistrate, Sri Karanpur, District Sriganganagar. The trial court directed that the complaint be forwarded to the Sri Karanpur Police Station for investigation under Section 156(3) Cr.P.C. The police registered the FIR and initiated their inquiry. Following their investigation, the police submitted a negative Final Report. In response, the complainant

filed a protest petition. The complainant's statement was recorded, and witnesses Shiv Ram, Banwari Lal, and Ratan Lal testified under Sections 200 and 202 Cr.P.C. After considering the arguments, the trial court took cognizance of the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act against the petitioner, as per the order dated June 22, 2013. Dissatisfied with this order, the petitioner filed a revision petition with the Special Judge for SC/ST (Prevention of Atrocities) Act Cases, Sri Ganganagar. The Special Judge dismissed the revision petition on September 23, 2013, upholding the trial court's decision. Consequently, this petition was filed.



3. In the aforesaid backdrop, I have heard the rival arguments and perused the case file.

4. Learned counsel for the petitioner argues that based on the prosecution's evidence, there is no *prima facie* case under Section 3(1)(x) of the SC/ST Act. The counsel contends that the trial Court erred in taking cognizance of the offence under this section, as the Investigating Officer found, after a thorough investigation, that eyewitness Ratan Lal did not mention the presence of the three accused. Additionally, the complainant, Prithvi Ram, denied the presence of his brother Chuni Lal. These material facts were not considered by the trial court when it took cognizance of the offence.

5. Impugned order dated 23.09.2013 passed by learned Special Judge SC/ST cases is based on the premise that the statements of the complainant recorded under Section 200/202 of Cr.P.C. make out a case of criminal culpability and thus the accused / petitioner

was summoned. The learned Magistrate noted that Prithvi Ram alleged the accused had insulted him using derogatory terms and questioned his credibility regarding his affidavits. This complaint was supported by statements from Prithvi Ram and witnesses Shiv Ram, Banwari Lal, and Ratan Lal, all of whom confirmed the abusive behavior.

6. Both learned Courts failed to notice that Section 3(1)(x) of the SC/ST Act requires that the insult or intimidation be made in the presence of others at a public place. In the case in hand, the complainant visited the petitioner at a location that was not a public place, and there is no evidence that the petitioner's remarks were made in public. Thus, without such preliminary evidence, the offence under Section 3(1)(x) of the SC/ST Act is not substantiated.

7. Moreover, the FIR itself reveals that the complainant personally visited the petitioner and inquired of Rugha Ram and Chhinder Singh about the preparation of a false affidavit. During this visit, the petitioner allegedly made caste-based remarks in a sarcastic manner. Pertinently, complainant's statement recorded by the Investigating Officer did not reveal that the petitioner made such remarks in public. It is only subsequently, the complainant, along with others, presented evidence from three additional witnesses—Shiva Ram, Banwari Lal, and Ratan Lal—who testified before the trial court that the petitioner had abused the complainant by caste in public. However, the complainant's statement before the Investigating Officer indicated that these witnesses were neither present at the scene nor accompanied the



complainant. Therefore, taking cognizance of this case against the petitioner, as ordered on June 22, 2013, is an abuse of the legal process.

8. Having thus reviewed the impugned order, it transpires that the cognizance order by the learned trial Court has been passed in the most mechanical manner without there being any application of mind. It is simply recorded that in view of the statements recorded of the complainant, the cognizance is being taken.

9. There is no whisper or discussion of any kind qua the detailed negative Final Report which was filed by the prosecution.

In this regard, reliance may be had on judgment rendered in *Bhagwan Sahai Khandelwal & ors. vs. State of Rajasthan*¹ The relevant part of of judgment in *Bhagwan Sahai ibid* is as below:-

“6. Life and personal liberty of every person is of utmost importance. Hence, life and personal liberty cannot be interfered with without a reasonable cause and without a procedure established by law. Taking of cognizance is, thus, a serious matter. For it involves disturbing the life and personal liberty of a person. Facing of a criminal trial is an ordeal, which adversely affects the reputation, the finance, the energy and the time of the alleged offender. Thus, taking of cognizance cannot be done in a mechanical manner. It should be done after a judicious application of mind to the facts and circumstances of each case. Although, a meticulous examination of evidence is not required at the stage of taking cognizance. but the Magistrate must consider the case in a holistic manner. Piecemeal consideration of the evidence does not commensurate with the judicial vision. Hence, in case a FIR or a complaint is followed by a negative Final Report, which is subsequently followed by a protest petition, while allowing the protest petition, a Judicial Magistrate is legally bound to discuss the negative Final Report. Such a discussion is warranted for three reasons: firstly, the Principles of Natural Justice demand and dictate that any order adversely affecting a right should be a speaking order. Although an elaborate discussion may not be required, but the order must contain sufficient reasons showing the application of a judicious mind, for disagreeing with the negative Final Report. Secondly, since the cognizance order is a revisionable order, the Higher Judicial Authorities have a right to know the reasons, which weighed in the mind of the Judicial Magistrate for disagreeing with the negative Final Report. In the absence of such reasons, the Higher Judicial

¹ State of Rajasthan- reported in 2006 (2) R.Cr.D. 10 (Raj.)

Authorities (the Sessions Court or the High Court) are left in the dark. Thirdly, it is a settled doctrine of law that justice should not only be done, but also must appear to be done. Therefore, the accused has a right to know the reasons why the learned Judicial Magistrate has disagreed with the negative Final Report submitted by the Police after a thorough investigation. In case, such reasons are not stated, alleged offender may find it difficulty to question the validity of the reasoning, hence a cryptic order is not a judicious order whereas cognizance order should always be a judicious order.

7. *In case of Sampat Singh vs. State of Haryana (1993 SCC (Cri.) 376), the Honble Supreme Court had clearly stated that the Magistrate must give reason for disagreeing with the negative Final Report. In case, no such reasons are given, then the order is unsustainable in the eyes of law. Taking a cue from the said judgment, this Court, in case of Gopal Sharma vs. State of Rajasthan (2005 (10) RDB 4197 (Raj.)), has held a similar view.*

8. *Despite the fact that the Hon'ble Supreme Court had laid the principle of law in the case of Sampat Singh (supra), surprisingly the Judicial Magistrates are still passing cryptic orders without following the principle enunciated by the Honble Supreme Court. Because of the omission committed by the Judicial Magistrate, this Court is flooded by Revision Petitions challenging the cryptic and unreasoned cognizance order. Such unsustainable orders are needlessly burgeoning the already over burdened High Court. Therefore, passing of such illegal orders is cause for serious concern to all of us. Firstly, learned Judicial Magistrates are supposed to know the principle laid down by the Honble Supreme Court. Secondly, such orders infringe the fundamental right of the alleged offender to defend himself. Thirdly, such orders add to the sky rocketing litigations inundating this Court."*



10. I am in respectful agreement with the views as expressed as aforesaid. Facts in present case are analogous and the above observations in *Bhagwan Sahai ibid* seem applicable here. I see no reason why the benefit of the same be not granted to the petitioner herein.

11. Accordingly, the petition is allowed and impugned orders dated 23.09.2013 and 22.06.2013 are quashed with consequences to follow.

12. Pending application, if any, stands disposed of.

(ARUN MONGA),J

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Whether fit for reporting: Yes