

SC 292-2020
STATE Vs. Sarita Batra
FIR No. 559 /2019
(Shalimar Bagh)

09.05.2023

Present: Sh. H.K. Nar, Ld. Substitute Addl. PP for the State.
Complainant with ld. counsel Sh. L K Pasi and Dr. K C Rakesh.

1. Arguments on protest petition heard.
2. This cancellation report was filed by IO in case of offence under Section 3 (1) (S) SC/ST Act.
3. The facts in brief are that complainant who is post PGT Maths in the Govt. Boys Senior Sec. School received a whatsapp message to join a departmental inquiry on 10.10.2019 at Govt. Boys. Sen. Sec. School Shalimar Bagh on which he went there at 11:30 am and at Principal room the Inquiry Officer Ms. Sarita Batra and Sh. Mahender Kumar Chadha were present. Complainant gave a complaint to Chief Secretary of GNTCD which was received by Ms. Sarita Batra. When complaint asked for a copy of receiving she tore that complaint. On this complainant asked that he will call at 100 number. However, when he tried to call at 100 number Mr. Mahender Kumar Chadha snatched the mobile phone from his hand and shut the door of principal office and threatened the complainant to end his service if he complaints. Mahender Kumar Chadha also abused the complainant by using casteist slur that he should not

have been given job and the accused persons threatened the complainant that they will not allow the complainant to leave the office if he complains to police and also threatened to end his carried by making negative reports.

4. The cancellation report is filed on the ground complainant has alleged the offence under Section 3 (1) (s) SC/ST Act but the offence allegedly committed in the office where no one witnessed the incident, the essential conditions of Section 3 (1) (r) (s) SC/ST Act are not made out and no body heard what was said to the complainant and the CCTV footage of the principal room could not be retrieved as it was over written.

5. In the protest petition it is stated by complainant that the IO was since beginning being partisan towards the accused persons as they are influential person. Ld. Counsel has pointed towards the proceedings before Hon'ble High Court of Delhi in quashing petition filed by accused wherein Hon'ble High Court vide order dated 15.11.2019 directed not to take any coercive action against the accused persons and not file final report. However, in violation of Hon'ble High Court the IO filed the cancellation report in the Court and on 09.12.2020 when the matter was called before Hon'ble High Court of Delhi he made a false submission that the cancellation report has been accepted by Trial Court which was a false submission.

6. It is the submission of ld. Counsel that he has already filed contempt petition before Hon'ble High Court Delhi which was

although dismissed but its appeal is pending.

7. The grounds taken in the protest petition in this background on the conduct of the IO are that the IO has deliberately not collected the relevant evidence to show it was an institution act against the complainant from the accused as there was already an FIR filed by complainant when he posted in Sector 8 Rohini and subsequent to that FIR inquiry was initiated against the complainant on false complaint of students and it was marked to the accused herein. But IO did not collect any such evidence in his investigation. It is also stated that despite that FIR was registered on 05.11.2019 IO did not make efforts to seize the CCTV footage which was the best evidence and allowed it to overwrite due to which crucial evidence has been destroyed. It is also the contention of Id. Counsel that observation of IO that principal office is not a public place is completely wrong and the offence being of glass doors it was within public view to see what is happening inside the office. Therefore, IO did not deliberately make the office staff the witnesses of this case. On these grounds complainant has prayed for rejection of cancellation report and take cognizance of dereliction of duties on the part of IO under Section 4 of SC/ST Act and passed directions to conduct fresh investigation fairly and impartially.

8. Since the place of incident is office of principal and from the complaint of complainant it is shown that the door of the office of the principal was closed, despite it was a public place within the public view, it could not be said that anyone could

have heard what was uttered by the accused persons to the complainant. Under Section 3 (1) (r) & (s) SC/ST Act mere utterance of word is not sufficient. It must be made in the public view to mean that the public have heard those words uttered by the offender towards the victim to humiliate the victim in public. No doubt the complainant was humiliated by accused persons, but it could not have been audible to any other person outside to that office because the door of the office was closed. Therefore, so far as cancellation for offence under Section 3 (1) (r) & (s) SC/ST Act is concerned, I find no infirmity in the report of IO. He should not have, however, filed the cancellation report when the quashing petition was pending before Hon'ble High Court of Delhi and it was specifically directed not to file any final report.

9. Be that as it may, the IO will bear his consequences in the contempt petition which is pending before Hon'ble High Court of Delhi. However, there are allegations of wrongful confinement as well as criminal intimidation committed by the accused persons. These offences are covered under Section 3 (2) (va) of SC/ST Prevention of Atrocities Act. It appears that IO was only concerned about the offence under Section 3 (1) (r) & (s) of SC/ST Act and do not go into the Act and allegations in the complaint to see if the other offences in the Act are made out or not.

10. At this stage, I do not see any purpose being served by sending the file for further investigation as the CCTV footage can never be retrieved being over written by subsequent footages and

there is no likelihood of any witness appearing in favour of complainant. In the protest petition also complainant has not specified about any person to whom he could relied to have heard or seen the incident.

11. The fact that complainant belong to scheduled caste community is not in dispute. The accused persons being superior in position to the complainant are presumed under Section 8 of the Act to have that knowledge of the caste of complainant. Therefore, their act of wrongful confinement and criminal intimidation is punishable under Section 3 (2) (va) of the Act. Hence, I take cognizance of the offence. The protest petition is accordingly disposed off.

12. Summons be issued against both the accused persons, to be served through IO personally, returnable for 24.07.2023.

VIKRAM
ASJ-II/SPECIAL JUDGE NDPS/
NORTH-WEST/ROHINI COURTS/
DELHI/09.05.2023