

18.08.2023

Present: Sh. Vikas Kumar, Ld.Addl. PP for the State.

All accused persons on court bail with ld. Counsel.

Complainant with Ld. Counsel.

1. Arguments have been heard on behalf of state as well as accused side. I have been through the case file.
2. The present FIR was registered on the basis of complaint dated 04.02.2021 lodged by complainant 'G'. She has alleged that on one occasion i.e. 10.09.2020, the accused persons who were residing her neighbourhood had abused her younger brother in filthy language and also made certain derogatory caste remarks and they had restrained him near his house and beaten him very badly and had also uprooted his scalp hair. When she tried to save him, the accused Rampal Sharma and Umesh Kumar Sharma outraged her modesty "*mere sath bhi chherchhar kari aur mere sharir ko hath lagaya*". Though 100 no. call was made but the matter was amicably resolved on the assurance of the neighbours.
3. Thereafter on 21.02.2021, all the accused persons around 9:00pm, collectively again quarreled with the complainant side and used filthy abusive language against the complainant and her family and also passed derogatory caste remarks "*aaj hum in bhanghi, chhamaaro ko jaan se maar denge aur yaha par sirf unchi jaati ke log hi rahege*".
4. Thereafter, all the accused persons while abusing in filthy language, came outside house of the complainant and they were

armed with dandas. Some part of the incident was also video recorded by the complainant. The video was played in the court on some previous dates of hearings wherein it was seen that there was some quarrel between both the sides. Initially, both parties participated actively. When accused side came armed with lathis and dandas, complainant family went outside her house. It is not reflected from any of the videos that any caste related words were used against complainant side by any member of the accused side as the voices could not be heard clearly in an environment of quarrel.

5. The complainant made a call at 100 no. regarding the incident. Since the allegation outrage of modesty was levelled u/s 164 Cr.P.C. of victim 'G' was recorded. During the statement, the witness did not make mention about accused persons having touched her inappropriately or having done any chherchhar with her.
6. Regarding the injuries caused victim Manoj at the time of first incident 10.09.2020, some medical documents have been placed on record. From the perusal of the same, it appears that he had suffered burning sensation and pain on account of hair pulling and suffered hair loss as well but the quantum of hair loss is not noted in the medical papers.
7. Before proceeding further, it would be worth to make mention of important judicial pronouncement on the subject:-
  - (i) It has been held by Hon'ble High Court of Delhi in the matter of case titled **Rajbir Singh Vs Commissioner of Police & Anr. 2018 IX AD(Delhi) 314** that before a person can be charged under section 3(1)(x) of the SC/ST Act, it is essential to show that the incident in question had taken place in public view. Further, there should be some material on record to show

that accused had knowledge about the complainant belonging to SC/ST community. It was also held that complaint in such cases must be lodged promptly as delay gives rise of apprehension of concoction.

(ii) In **Swaran Singh & Ors Vs. State & Anr., 2008 CRI.L.J. 4369**, it has been held that the expression 'public view' in section 3(i)(x) of the Act should not be confused with public place as there is clear difference between two expressions. If the alleged offence has been committed inside a building, it might not be in public view. However, if the offence is committed inside a building but some members of public are present there, it will be an offence within public view. Place can be a private place but still in public view. For example a lawn outside a house, the lawn can be seen by some one from the road outside the boundary wall, therefore, it would be a place within public view. The Hon'ble Court has further observed that calling a person '*chamar*' today is an abusive language and highly offensive and it is generally used to intentionally insult and humiliate someone. Of course, it will depend in the context in which the word was used as to whether there was an intention to insult and humiliate someone by using this word.

(iii) In **Gorice Pentaiah Vs. State of A. P. & Ors, VII(2008) SLT 776**, it was observed by the Hon'ble Supreme Court that where the allegations were that complainant was only called by the accused by his/her caste and had not intentionally insulted or intimidated him/her with intention to humiliate him/her within public view, provisions of section 3(1)(x) were not attracted.

(iv) **In Narad Patel Vs. State of Chhattishgarh (2019) Supreme Court cases 268,** it was held by the Hon'ble Supreme Court that where it was not recorded in the version of the complainant that the accused made any reference to the caste or tribe of complainant, the offence under section 3(1)(x) of the Act is not attracted even if the complainant belonged to such caste.

(v) **In Asmathunnisa Vs. State of AP AIR 2011 SC1905,** it has been held by the Hon'ble Supreme Court that the expression within public view means that public must view the person being insulted. It requires that the person insulted must be present there and no offence under section 3(1)(x) of the Act is attracted if the person is not present there.

(vi) **In Hitesh Verma Vs. State of Uttarakhan, Supreme Court (2020)11SC CK0013,** it has been held by the Hon'ble Supreme Court that all insults or intimidation to a person will not be an offence unless such insult or intimidation is on account of the victim belonging to SC/ST. Filing a civil or criminal complaint against the members of SC/ST caste does not attract the provisions of the Act, rather it means that concerned party is availing its remedies in accordance with the procedures established by laws. Such action by the concerned party is not for the reason that other side belonged to SC/ST.

Further, it was observed that expression 'public view' implies that there must be any member of public present at the time of incident who had seen the incident. This person should be an independent public person not merely friend or relative. The offence should have been committed because complainant belonged to SC/ST. Offence under the Act is not established merely on the fact that informant is the member of SC/ST

unless there is intention to humiliate the members of SC/ST community because the victim belonged to such caste. In this case, there was a property dispute between two sides. It was held that the property dispute between the parties was not on the account of the fact that other party belonged to SC and the very fact that accused was aware of the caste of the victim is of no effect because the knowledge of other party belonging to SC(Scheduled caste) cannot bar a person from protecting his rights by following the procedure established by law. Hence, FIR lodged by the petitioner was quashed by the Hon'ble Supreme Court holding that the property dispute between a person belonging to SC/ST Community i.e vulnerable section of the society and a person of upper caste will not disclose any offence under SC/ST Act if a person is merely availing his remedy under the law.

(vii) **In Alkesh & Ors Vs. State of M.P, Criminal Appeal No. 8182/2019**, the Hon'ble Court has observed that the caste of the complainant is of paramount importance and is a sine qua non in a case under the SC/ST Act and it cannot be assumed that the complainant would forget to mention in the FIR that the assailants also made aspersions against his caste. Accordingly, charge under SC/ST Act was set aside by the High Court.

(viii) **In State Vs. Om Prakash Rana & Others, 2014(1) JCC 657**, it has been held by the High Court of Delhi in this case that the original complaint lodged by the complainant did not mention in whose presence the offending words were used by the respondents/accused. There was also nothing on record to show that the respondent/accused persons were having the knowledge that the complainant was a member of SC/ST

community. There was also nothing on record to show that offending words were used in full public view. The names of alleged witnesses were not mentioned in the complaint dated 18.07.12. The witnesses i.e Meenakshi and Durga had alleged themselves to be the eye witnesses but their names had not been mentioned by the complainant in her complaint, the supplementary statement dated 27.08.12 of the complainant giving the names of alleged witnesses could not fill up the lacuna. There was also unexplained delay of 3 days in lodging the FIR. It was held that the basic ingredients of Section 3(1) (x) of the SC/ST Act were missing. Accordingly, the Hon'ble Court found no illegality in the impugned order which called for interference in the order of Ld. Trial Court. The revision petition was accordingly dismissed.

(ix) In **Deepa Bajwa Vs. State & Ors. 115 (2004) DLT 202** it was held by the court that a complaint on the basis of which the complainant seeks registration of FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceeding to register the FIR. The relevant portion of the judgment is as under:-

(x) “After considering the submissions made by the learned counsel for the parties, this court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary

statement and thereafter proceed to register the FIR. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of.

Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence. In the complaint dated 19<sup>th</sup> April, 2001, the complainant himself alleged that the councillor Chhannu Mal was introducing him to the petitioner. If that was the case, how could he say later that on that day the petitioner knew that he was a scheduled Caste. This statement, therefore, was a crude falsity introduced at the behest of the police to implicate the petitioner under section 3 of the Act. This effort on the part of the police to supply the deficiency and cover up a lacuna in the complaint in view of legal opinion was totally unwarranted and an abuse of the process of law”.

(xi) In **Kallu @ Donger Singh Vs. State of M.P, (2012)06MPCK**, it was held by the Hon'ble High court of Madhya Pradesh that if there was no mention of the caste of the complainant in the FIR and caste certificate is not even obtained during investigation, the accused could not be charged under provisions of SC/ST Act because proof of caste by specific evidence is necessary requirement. In the facts of that case, the parties were not previously familiar with each other. Hence, the Hon'ble court held that the proof the caste not having been collected during the investigation was fatal to the charge under SC/ST Act. It was further held that delay of two days in lodging of FIR was also an important aspect to be

considered. This judgment reiterates the mandatory requirement of investigation by an officer not below the rank of DSP/ACP in SC/ST Act cases.

(xii) In **2002(64)DRJ 29(DB) D.P. Vats Vs. State &Others**, it was held by the Hon'ble High Court of Delhi that derogatory utterances made in generalized terms in public gathering even in the name of the caste would not attract an offence, unless it was directed against an individual member of SC/ST community and the person making it knew that individual person belonged to SC/ST community. It was observed that the expression public view has to be interpreted that the public persons present should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant will necessary get excluded. These people should be as good as strangers and should not being linked with the complainant either through any close relationship or through any business/commercial relationship nor should have any vested interest and they should not be any participating members with the complainant. If the people present at the time of incident comprised of any of these kinds, it would not satisfy the requirement of public view.

(xiii) In **Elangovan vs. State (2016) 02 MAD CK 0100**, it is held that rule 7(1) of SC/ST Act is mandatory provision and any office below the rank of DSC/ACP is not empowered to conduct investigation in an FIR for the offences under SC/ST Act. It was further held that unexplained delay is fatal to the prosecution case because when there is unexplained delay it shakes the credibility of the witnesses.

(xiv) In **State of Madhya Pradesh Vs. Babbu Rathore &**

**Anr, (2020) 2 SCC 577**, it was laid down that Rule 7(1) of the SC/ST Rules is mandatory in nature. It was further held that investigation of offence under 3 of SC/ST Act by an Officer not appointed in terms of Rule 7(1) is illegal and invalid with respect to the offences under SC/ST Act. If other offences of IPC or some other law are also involved in the same case, the investigation with respect to those offences is sustainable in law.

8. Now coming to the present case. Regarding the first incident there is only one public witness namely Anil Kumar as he is admittedly the friend of Sh. Manoj Kumar ( brother of complainant) and hence, is presumed to have leaning towards the victim side. Also it is mentioned in his 161Cr.P.C statement, that he had visited the office of IO ACP Suresh Chand with the complainant lady. Further, he has mentioned that he had taken Manoj to hospital after the incident of 10.09.2020. “*Uske bad hum thane gaye the or Rampal Sharma ke khilaf complaint likhwai thi*”. It is also not clear from the record whether the witness belonged to a community other than SC/ST.
9. Therefore, in my view, there is no sufficient material to frame charge u/s 3(1)(r) & (s) of SC/ST Act against the accused persons with respect to the first incident, considering the judicial pronouncements referred above on this aspect.
10. Regarding the second incident dated 29.01.2021, no public witness has made any statement regarding abusive and derogatory caste remarks used by accused persons against the victim side. In the video as already noted, it is not clear as to what words were uttered by either side.
11. Therefore, in the facts of the present case, there is no sufficient material to frame charge u/s 3(1)(r) & (s) of SC/ST Act and I

discharge all the accused persons of offences u/s 3(1)(r) & (s) of SC/ST Act.

12. Since abusive and filthy language was used against the complainant, prima facie offence u/s 509/34 IPC is attracted against all accused persons. Secondly, offence u/s 323/34 also gets attracted against the accused persons regarding the incident of assault on brother of complainant.

13. Now since offences u/s 323 and 509 IPC are mentioned in the list of Scheduled offence under SC/ST Act, the offence u/s 3(2) (v) (a) of SC/ST Act is also attracted against all accused persons regarding the offences u/s 323/509/34 IPC. Put up for framing of charge on 14.09.2023.

(Savitri)  
ASJ-02(NE)/KKD/Delhi  
18.08.2023