

IN THE COURT OF SH. NAVJEET BUDHIRAJA
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI

CNR NO. DLST01-000841-2023

SC NO. 45 OF 2023

FIR NO. 704/2022

PS NEB SARAI

IN THE MATTER OF

State

Versus

Sushma Aggarwal
W/o Shri Krishan Kumar,
R/o House No. 185, Sector 12A,
Gurugram, Haryana

..... Accused

ORDER ON CHARGE

1. This Order shall govern whether there are sufficient grounds for proceeding against the accused with framing of charge as invoked by the Investigating Agency under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act').

2. I have heard detailed arguments on point of charge and have perused the records carefully.

3. The genesis of the case of the prosecution is that on 15.01.2022, a handwritten complaint was received at PS Neb Sarai vide DD No. 29A to the effect that complainant Soniya, who was working in Punjab National Bank, IGNOU Branch for almost 11 years, had been allegedly wronged by Manager Sushma Aggarwal, who on 12.01.2022 has misbehaved with her, told her not to come to work, not to show her face, not to enter the branch, abused her and also hurled casteist remarks 'neech jaati ke logo ko kitna bhu samjha lo samjh nahi aata chure chaar bhangi hai na isliye' against her.

4. The complaint was marked to SI Aman Kumar who conducted inquiry and on 22.11.2022, the present First Information Report (for short 'FIR') was registered. During the course of further investigation, one witness Archana was also examined whose statement under Section 161 of the Criminal Procedure Code, 1973 (for short 'Cr.P.C.') was recorded who also confirmed the aforesaid occurrence with complainant Soniya at the hands of accused Sushma Aggarwal. She categorically stated that the accused screamed at the complainant, misbehaved with her and uttered 'tum chote logo ko ek baar mein baat samajh mein nahi aati tum neech chote log chote he rahoge soch bhi choti he rahegi ab chali jao kal se shakha mein shakal mat dikhana, ghus mat jana'. Her cabin is stated to be near the spot of this incident. This witness also stated that behaviour of the accused with other staff was also not good.

5. During the course of further investigation, CCTV footage of the day of incident was also obtained along with copy of attendance register from 01.01.2022 to 31.01.2022 and on the date of incident both the complainant and the accused were seen inside the bank but the incident could not be captured in the CCTV footage as same had occurred inside the cabin of the manager.

6. During the course of further investigation, two employees, namely, Akash Khokhar and Vivechan Gunpal were also examined who claimed to have witnessed the incident, however, they could not clearly hear the words uttered by the accused.

7. Complainant is stated to be belonging to Valmiki caste and the accused is found to be belonging to general caste.

8. On the back of the aforesaid complaint, statement of witnesses and sequence of events, prima facie, offence under Section 3(1)(r)(s) of the SC & ST Act is made out.

9. Ld. Counsel for the accused, during the arguments, clamoured for discharge of the accused on the ground of no evidence. He also pointed out that the statement of the independent witness is not sufficient enough to indicate uttering of any casteist slurs against the complainant. He particularly pointed out that it is clear from the statement of witness Archana under Section 161 Cr.P.C. that she did not hear the utterances of casteist remarks,

however, in the same breath she also stated that nothing can be said conclusive about the accused who may have made casteist remarks against the complainant as she was not pleased with her work. Ld. Counsel for the accused also relied upon judgment of **Supreme Court of India in Hitesh Verma Vs The State of Uttarakhand & Anr. Crl. Appeal No. 707 of 2020.**

10. It is a settled legal position that at the stage of framing of charge, happening of the offence is to be prima facie envisioned and if circumstances suggest gross suspicion against the accused, discharge cannot follow.

11. In the present case, there is a requirement to take the case to the stage of trial as the statement of the complainant and other witnesses cannot be disregarded in regard to happening of the untoward incident between the complainant and the accused which has been confirmed by all the witnesses. The factum of making casteist remarks is prima facie culled out from the statement of the complainant and, therefore, no ground is made out to discharge accused Sushma Aggarwal.

12. In **Sajjan Kumar Vs. CBI (2010) 9 SCC 368**, Hon'ble Supreme Court of India has held as follows:

“17) Exercise of jurisdiction
under Sections 227 & 228 of
Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge,

though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

13. In view of the above discussion, **prima facie**, there is sufficient material on record to frame charge against the accused Sushma Aggarwal for the offence punishable under Section 3(1)(r)(s) of the SC & ST Act, 1989.

PRONOUNCED IN OPEN COURT ON THIS 10th DAY OF OCTOBER 2023

**(Navjeet Budhiraja)
ASJ-02 (South)/ Saket Courts
New Delhi**