

CRM-M-47819-2023

IN THE HIGH COURT OF PUNJAB & HARYANAAT CHANDIGARH

CRM-M-47819-2023 (O&M)
Reserved on:06-12-2023.
Pronounced on:04-01-2024.

Bhawana Gupta

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. R.S. Rai, Sr. Advocate and
Mr. Chetan Mittal, Sr. Advocate with
Mr. Pawan Narang, Advocate and
Mr. Mayank Aggarwal, Advocate
for the petitioner(s).

Mr. Gaurav Garg Dhuriwala, Addl.A.G., Punjab.

Mr. P.S. Ahluwalia, Advocate
for respondent No.2.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
41	5.5.2023	Division No.3, District Police Commissionerate, Ludhiana	279, 337, 427 IPC and Section 3(x) and 4 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989, Sections 3(x) and 4 deleted and Section 3(s) of the SC/ST Act added later on.

1. A young female journalist, working for Times Now Navbharat Unit of Times Network as their Sr. Correspondent, has come up before this Court under Section 482 CrPC, seeking quashing of the above captioned FIR, by primarily asserting that (without admitting) even if the allegations are taken as a gospel truth, she had no intention or *mensrea* to abuse the complainant knowing that she belonged to the Scheduled caste community with the words attributed to her, because she was visiting the said location for covering a political event, had never met the complainant in her life, and was unaware of her caste, as such there was no question of violating Section 3(s) of the Scheduled Castes & Scheduled Tribes (Prevention of

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Atrocities), Act, 1989, and other offenses are not attributed to her.

2. The prosecution's case is based on the statement made by one Smt. Gagan, which led to the registration of the FIR captioned above. The copy of FIR translated in English is annexed as Annexure P-1, and none of the parties disputes its translation.

The contents of the FIR read as follows: -

Statement of Gxxxx wife of RxxxKxxx resident of Balmiki Colony Ludhiana aged 50 years. Stated that I am resident of the said address and am a housewife. Today, on 05.05.2023 I alongwith Neelam Rani Resident of 991, Near Balmiki Mandir Chowk Division No. 3 and Sharda Resident of Ghaati Mohalla, Ludhiana were going to the inauguration of the new Mohalla Clinic by Chief Minister Bhagwant Maan at Mohalla Harcharan Nagar and were getting down from the e-Riksha near Shingaar Cinema crossing, and immediately upon getting down, a car driver while driving carelessly hit me from one side and while I was trying to defend myself; my right hand was injured due to the impact of the vehicle and due to the impact of the vehicle my mobile phone brand Samsung Galaxy fell down from my hand and was broken. On reading the number of the vehicle I found it to be UP-16-CD-6327 of Innova make Color White. The driver of the vehicle started arguing with me and when I asked the driver of the vehicle that why did you hit the vehicle into me and because of being hit by your vehicle, I have been injured and the phone of a poor has been broken. On this, alongwith the car driver, another man and a woman also came there and they alongwith the car driver started abusing me and the woman started saying "Tum NeechJaatiwaley chamaar logon ka yahikaam hai, tum log gaadiwalon se paisa aithne keliyehisibhi had tak girsakte ho" and after saying this when I objected to it a lot of people gathered there and after a while your police party reached the spot. I came to know the name of the driver of the car as Parminder Singh Rawat, the name of the other person who argued as Mritunjay Kumar and the woman who uttered caste indicative words as Bhawna. That the driver of the said car while driving recklessly rammed the car into me and caused me injury and caused damage to my mobile and the car passenger Bhawna insulted me by publically using caste indicative words against my caste and I may be provided justice by taking suitable action against them as per law. I have got recorded my statement with you in presence of my known Neelam Rani & Sharda, gone through, it is correct. Sd/- Gxxxx".

3. The State has filed its reply dated 29-09-2023 through the affidavit of the concerned Assistant Commissioner of Police, Emergency Response-cum-Nodal Officer the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989 [SCSTPOA]. The petitioner has filed her rejoinder to the reply. The complainant has also filed her reply dated 16-10-2023. Opposing the quashing, the State contends

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that the investigation is continuing, and if this Court quashes the FIR, it will be throttling the investigation.

4. Mr. R.S. Rai, Sr. Advocate representing the petitioner, argued that the FIR is politically motivated, concocted and throttles the voice of the media. He further submitted that the *mensrea* is a necessary ingredient for all criminal offenses and offenses under section 3(s) of the SCSTPOA, the knowledge that the victim belongs to the Scheduled Caste or Scheduled Tribe category is an essential ingredient, and there has to be an intention to commit an offense. Even if all the allegations made in the FIR and evidence collected during the investigation are accepted as true and correct (without admitting or conceding), those do not reveal that the petitioner committed the act because the victim belonged to the scheduled caste or knew her caste.

5. Mr. Gaurav Garg Dhuriwala, Additional Advocate General for the State of Punjab, argued that the investigation is at its nascent stage; the petitioner intended to insult the complainant by hurling casteist abuses and violated S. 3(s) of SCSTPOA.

6. Mr. P.S Ahluwalia, counsel appearing for the complainant, contended that all the ingredients of the penal offenses invoked in FIR are fully engrained in the complaint, and it is not the stage for quashing FIR.

7. The State and the complainant are opposing the petition because the petitioner has raised a disputed question of fact which cannot be gone into in a petition under Section 482 CrPC for the reason that the truthfulness of the allegations has to be ascertained and decided at the time of trial by leading evidence. It is further argued that this Court cannot conduct the mini trial while deciding the petition under Section 482 CrPC. Further, offenses under SCSTPOA are heinous and cannot be quickly quashed. The respondents have also referred to judicial precedents, settled principles of law that cannot be disputed.

8. The petitioner's first and foremost ground is that the FIR is politically motivated at the instance of Aam Aadmi Party [AAP] and has given details for such implication. However, the petitioner did not make AAP or its representative a respondent in this petition, and this court shall not adjudicate and give a finding at their back.

9. The petitioner's second limb of arguments is based on legal grounds. It is

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stated and submitted that the petitioner had met the complainant/victim for the first time in her life in a place she had visited at her job, and it was a sudden accident that led to the alleged spurs, and how would she know the caste of the complainant? As such, there was no question of her knowing the complainant's caste, and even as per the FIR, the complainant did not state that the petitioner knew her or her caste. Petitioner's next stand is that even if the vehicle had met with an accident, by no stretch of the imagination, it could be presumed that the petitioner, who was not its driver, caused the accident, and as such, no case either under the Motor Vehicles Act or causing loss to the mobile phone which had fallen due to the accident's impact is made out against her.

10. To analyze these submissions, it would be appropriate to refer to the FIR, per which when the complainant/respondent No.2, along with her neighbors, had gone to attend the inauguration of the new mohalla clinic and when they were descending from an e-rickshaw, a car, [Innova] hit her which was being driven carelessly. In the process of saving her life, her right hand got injured, and even her mobile phone fell from her hand and broke. After that, the vehicle's driver started arguing with her. When she questioned him about why he hit her with his vehicle, because of which she was injured and her phone was broken, the vehicle's driver and another man and woman, who were in the vehicle, came down and started abusing her. As per the informant, the woman [petitioner] who was sitting in the car attributed words "*Tum neechjaatiwaleychamaar logon ka yahikaamhai, tum log gaadiwalon se paise ainthnekeliyekisi vi had takgirsakte ho*". On hearing these words, the complainant objected, and many people gathered there, and in between, the police party reached the spot. She later stated that the person who had also argued with her, sitting in the car, was named Mritunjay, and the other lady who had uttered casteist words was named Bhawna.

11. Based on these allegations, the police registered FIR, i.e., for driving the vehicle in a rash and negligent manner endangering human life punishable under Section 279 IPC, due to a rash and negligent act causing hurt to a woman and endangered personal safety offense punishable under Section 337 IPC and wrongfully committed mischief by causing loss for more than Rs.50 punishable under Section 427 IPC. In addition to that, FIR was registered under Sections 3(x) and Section 4 of SCSTPOA, and later on Sections 3(x) and Section 4 were substituted by S.3(s) of SCSTPOA.

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12. The offences under Sections 279, 337 IPC are attributed to the vehicle's driver. As far as the offence under Section 427 IPC regarding "Mischief causing damage to the amount of fifty rupees" is concerned, it relates to the damage of a mobile phone that had fallen because of the impact of an accident. Section 425 IPC defines 'Mischief' and uses the word intention and states that whoever, with intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person, causes the destruction of any property or any such change in any property or the situation thereof and destroys or diminishes its value or utility or affects it injuriously, commits "mischief."

13. It would be a travesty of justice to arrive at a finding of a prima facie case that the petitioner, who was not driving and was a passenger, had caused impact with the vehicle with the intention or knowledge that the driver will cause an accident, the phone that the victim might be carrying would fall, which in turn would cause a loss of more than Rs.50. Thus, by such an imagination, the ingredients of mischief could not have been invoked against the petitioner. Even if all allegations of causing damage to the phone are taken to be truthful, it will not constitute any offense against the petitioner, punishable under Sections 279, 337, 427 IPC; as such, the FIR for an offense under Sections 279, 337, 427 IPC are, as a result of this quashed and set aside.

14. The remaining offense falls under S. 3(s) of SCSTPOA and was invoked against the petitioner on the allegations that the driver of the said car while driving recklessly, rammed the car into the complainant, caused her injury, and damaged her mobile and the car passenger Bhawana also insulted her by publicly using caste indicative words against her caste... *"Tum neechjaati wale chamar logo ka yahikaamhai, tum log gaadiwalon se paise ainthnekeliyekisibhi had takgirsakte ho"*

15. It will be appropriate to extract the following provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989:

S.3. Punishments for offences atrocities. — [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, —

S.3(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

S.8. Presumption as to offences. —In a prosecution for an offence under this Chapter, if it is proved that—

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the ac-

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cused was aware of the caste or tribal identity of the victim, unless the contrary is proved.

16. In Swaran Singh and Ors. v. State through Standing Counsel, (2008)8SC C 435, Supreme Court holds,

[24]. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used.

17. In Hitesh Verma v. The State of Uttarakhand &anr., (2020) 10 SCC 710, a three-member bench of Supreme Court holds,

[18]. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

18. In Khuman Singh v. State of Madhya Pradesh, (2020) 18 SCC 763, Supreme Court holds,

[14]. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.

19. In Yuvraj Singh v. State of Haryana and Ors., MANU/PH/0241/2022, a single bench of Punjab & Haryana High Court observed,

[63]. It is to be again observed by this court that the Act of 1989, as amended up to date, is intended to serve the purpose of betterment of the lives of persons belonging to the Scheduled Castes and Scheduled Tribes and consequently, in the opinion of this court, usage of word -names denoting particular Scheduled Castes or communities as derogatory words, would amount to insulting any such person belonging to that caste and hence, whether any offence under the provision of that Act is made out or not, would need to be properly investigated by the investigating agency concerned.

20. In Mata Sewak Upadhyay v. State of U.P. (Allahabad)(F.B.), 1996(1) ECRC 97, I. S. Mathur, J., wrote,

[168]. It would clearly follow from the authoritative texts and the various decisions, noticed above, that the basic principle of common law is that mens rea is an essential ingredient of a criminal offence The

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statute can, no doubt, exclude that element but it is a sound rule of construction that mens rea must be presumed to be a necessary ingredient of a criminal offence unless the statute expressly or by necessary implication excludes it. The mere fact that the object of the statute is to promote welfare activities or to eradicate grave social evil is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. Mens rea by necessary implication can be excluded from a statute only where it is clear that the implementation of the object of statute would otherwise be defeated. In other words, there is presumption about mens rea being an essential ingredient of an offence and it cannot be considered to be excluded unless this exclusion is expressly stated or necessarily implied. This implied exclusion will have to be investigated with reference to the object and terms of the statute. It may also be observed that mere omission to mention knowledge or intention or mens rea in a particular provision will not be sufficient for drawing the inference that mens rea was intended to be excluded.

21. In *Ajay Pattanaik @ Ajaya Kumar Pattanayak and Another v. State of Odisha and Another*, CRLMC No.2636 of 2021, decided on 01.03.2023, High Court of Orisa, observed,

[9]. ...It was on the spur of the moment that the incident happened, in course of which, the alleged abuse was hurled at the witness, whose caste name was uttered by one of the petitioners. To claim that it was with an intention to insult or humiliate the witness present at the spot and the alleged offences under the Special Act are committed would be like stretching things too far and unjustified. If someone is abused with the name of his caste or the caste is uttered suddenly in course of events and during the incident, in the humble view of the Court, by itself would not be sufficient to hold that any offence under the SC and ST (PoA) Act is made out unless the intention is to insult or humiliate the victim for the reason that he belongs to Scheduled Caste or Scheduled Tribe is prima facie established.

22. A survey of the abovementioned statute and judicial precedents would lead to the following inference and outcome:

23. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used.¹ Offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.² There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-

¹*Swaran Singh v. State through Standing Counsel*, (2008) 8 SCC 435, Para 24.

²*Hitesh Verma v. The State of Uttarakhand*, (2020) 10 SCC 710, Para 18.

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accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.³

24. To establish a prima facie violation of Section 3(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989, the FIR/complaint and the investigation must have disclosed and established all the following constituents:

- (a). The accused must not belong to a Scheduled Caste or a Scheduled Tribe.
- (b). The victim must belong to a Scheduled Caste or a Scheduled Tribe.
- (c). The accused must have abused any member of a Scheduled Caste or a Scheduled Tribe by caste name.
- (d). Such abuse must be in any place within public view.
- (e). The accused had personal knowledge of the victim or their family to enable the Court to presume that the accused was aware of the caste or tribal identity of the victim unless the contrary is proved by the accused.

25. It remains undisputed that the accused/petitioner had no personal knowledge of the victim's or her family's caste. As such, the Court cannot presume that the accused was aware of the victim's caste or tribal identity. Given this, the primary burden was on the complainant to establish this knowledge, which they did not state. Neither the State nor the complainant mentioned that the petitioner was aware of the victim's caste, and their conspicuous silence speaks more than the words.

26. In *Ashabai Machindra Adhagale v. State of Maharashtra*, (2009) 3 SCC 789, a three-member bench of Supreme Court holds,

[10]. ...When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

27. In *Prathvi Raj Chauhan v. Union of India & Ors.*, (2020) 4 SCC 727, Supreme Court holds,

[12]. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

28. In *Salib alias Shalu alias Salim v. State of U.P. and Others*, ; 2023 SCC OnLine SC 947, [2023 INSC 687], Supreme Court holds,

³*Khuman Singh v. State of Madhya Pradesh*, (2020) 18 SCC 763, Para 14.

[28]. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

29. Given above, in the peculiar facts and circumstances, it is a fit case where the continuation of criminal proceedings shall amount to an abuse of the process of law, and the Court invokes its inherent jurisdiction under section 482 CrPC and quashes the above captioned FIR and all subsequent proceedings *qua* the petitioner.

Petition allowed. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

January 04, 2024
Jyoti Sharma/ AK

Whether speaking/reasoned: Yes
Whether reportable: **YES.**