

* **"REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ **Writ Petition (Crl.) No. 1593/2006 and**
Crl.M.A. No. 6859/2006

Date of decision: 9.01.2009

ASHWANI KUMAR PETITIONER

! Through : Mr. Hitender Kapur, Advocate

Versus

\$ STATE & ANR. RESPONDENTS

^ Through : Ms. Mukta Gupta, Standing
Counsel.
Mr. Vipin Kumar Gupta, Adv.
for R-2 with respondent No. 2
in person.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. This writ petition has been filed by petitioner; Ashwani Kumar seeking quashing of FIR No.

266/2006 under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 (hereinafter referred to as SC/ST Act) registered at Police Station Tilak Marg.

2. Petitioner was working as Manager with North Zone Railway Employees, CTC Society Ltd., Baroda House, whereas complainant Amit Chauhan was working as assistant with the said society. Petitioner had come to know that there was some misappropriation of funds and fraud in the organization as the LIC premium of Rs. 50/- paid by the members of the society was never paid to the Life Insurance Corporation of India (LIC) on account of insurance. Petitioner filed complaints with LIC and other agencies and because of these complaints, Chairman Anil Kumar Rajpal, North Zone Railways Employees, Baroda House was unhappy as he apprehended being caught for fraud during investigation of the said complaints. Petitioner was suspended from service on 21.12.2005 by the Chairman and petitioner filed a suit against suspension order on 23.1.2006. In the

said case the Chairman was issued notice for appearance on 1.2.2006. The said suit is pending adjudication.

3. In brief, the case of the prosecution is that on 2.2.2006 complainant Amit Chauhan made a complaint alleging that on 27.1.2006 at about 11.15 AM he had gone to the upper floor of the offices, when intercom no. 27 installed in the office cabin of the petitioner started ringing and since the door was open, complainant entered the office cabin of the petitioner to receive the phone. Upon questioning by the petitioner, complainant replied that he had entered the cabin to receive the phone as nobody was there, on which petitioner started abusing him saying "Pata Nahin Is Karyaliya Mein Kahan - Kahan Se Chure Bharti Kar Liye Saale Bina Puchche Mere Cebin Mein Ghus Aate Hain" (from where-where Chure have been employed saale entered into my cabin without my permission) and pushed the complainant out of the cabin. This alleged act of lewdness was done and the offending words were spoken by the petitioner

when Sh. Subhash Chander, Sh. Umesh Sharma, Sh. Kishore Kumar, Sh. Ajay Kumar, Smt. Sonia and Sh. Kishan Kumar were sitting in the office. After preliminary enquiry FIR No. 266/2006 under Section 3(1)(x) of SC/ST Act was registered against the petitioner on 4.7.2006.

4. Petitioner has sought quashing of the FIR on the following grounds:

(1) The FIR does not contain the ingredients contained in Section 3(1)(x) of the SC/ST Act i.e. the FIR does not disclose that the petitioner was aware that complainant belonged to Scheduled Caste/Scheduled Tribe. Even the FIR does not disclose that complainant belonged to Scheduled Caste/Scheduled Tribe.

(2) Complainant alleged that the offence took place inside the cabin and as such the incident did not take place within the ambit of public view as required under the provisions of Section 3(1)(x) of the SC/ST Act.

- (3) The present FIR is an abuse of process of law as the same has been filed by the complainant to take revenge against the petitioner on behest of the Chairman of the organization, where the petitioner and complainant worked.
- (4) There is a delay in filing of the complaint dated 2.2.2006 as the alleged date of occurrence of the incident being 27.1.2006.
- (5) Allegations mentioned in the FIR are implausible and false as the petitioner was suspended from service on 21.12.2005 and had handed over charge of the office cabin to the officer as directed in suspension letter. During the course of suspension petitioner could not have entered the office.
- (6) Under Section 3(1)(x) it is mandatory that the alleged insult or intimidation should be done with an intent to humiliate, by the person against whom the complaint has been lodged. However, no such averment is contained in

the FIR.

5. Mr. Hitender Kapur, learned counsel for the petitioner, has argued that ingredients of Section 3(1)(x) of the SC/ST Act are not made out in the present case as petitioner did not know that complainant belonged to Scheduled Caste/ Scheduled Tribe on the date of the alleged incident and the complainant obtained and produced the scheduled caste certificate only after the registration of the FIR; and that petitioner had no intention to offend the complainant nor he was present in the cabin at the time of alleged incident. It is further argued that there was no occasion for the petitioner to use the offending words as narrated in the FIR with a view to insult or intimidate or with an intention to humiliate the complainant. It is also emphasized by the counsel for the petitioner that as per the FIR itself the incident had allegedly taken place in the cabin of the petitioner and in front of the persons named in the FIR as witnesses who were sitting in the office at the relevant time, therefore, it could not be said

that the offending words were used at the place within public view. It is further submitted that petitioner has been falsely implicated in this case because he had made complaints against the Chairman of North Zone Railway Employees and others for misappropriating the funds and committing fraud in the organization by not depositing the LIC premium paid by the members of the society to the LIC on account of insurance. It is also argued that petitioner was involved by the complainant in a number of other cases with a view to pressurize the petitioner to withdraw his complaint filed against the Chairman for offence of cheating, fraud and misappropriation etc. in which the investigating agency have already filed closure reports. Learned counsel for the petitioner has referred to:

1. ***Mukesh Kumar Saini v. State (Delhi administration) - 2001 Cr.L.J. 4587.***
2. ***Daya Bhatnagar & Ors. v. State - 2004 (2) JCC 1136.***
3. ***Smt. Deepa Bajwa v. State - 2004 (3) JCC 1754.***

6. Before examining the question whether on the

allegations made in the FIR prima facie any offence under Section 3(1)(x) is made out against the petitioner, it is necessary to examine provisions of Section 3(1)(x) of SC/ST Act. It reads:

“3. Punishments for offences of atrocities.—
(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, --
(i) to (ix)
(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

Thus the basic ingredients for making an offence under Section 3(1)(x) of SC/ST Act are:

- a. There must be an intentional insult or intimidation;
 - b. Insult must be with intent to humiliate SC/ST member by a non SC/ST member.
 - c. This insult must have been done in any place within public view.
7. The expression ‘intentional insult or intimidation with intention to humiliate’ contained in the aforesaid Section makes it crystal clear that

mensrea is an essential ingredient of the offence and it must be established that accused had the knowledge that the victim was an SC/ST member and the offence was committed for that very reason. If a person is merely called by caste, it would not attract the provisions of SC/ST Act. There should be specific accusation of calling the person by caste with an intention to humiliate against the accused. Provisions contained in this Section are penal in nature and therefore, have to be given a strict interpretation. In case any of the ingredients are found to be missing or lacking, it would not constitute an offence under SC/ST Act.

8. In ***Mukesh Kumar Saini and others v. State (Delhi Administration) - (supra)***, wherein accused had uttered humiliating words to the complainant and his brother and FIR under Section 3(1)(x) of SC/ST Act was registered. The Court observed that as per the FIR, humiliating words were uttered by the accused while brother of the complainant was being dragged inside before the arrival of the neighbours, these words could not

have been said to have been uttered in the public view and ingredients of the offence under Section 3(1)(x) of the SC/ST Act were not made out. This Court interpreted Section 3(1)(x) of SC/ST Act as below:

“7. The basic ingredients of the offence under Clause (x) of sub-section (1) of Section 3 of the SC/ST Act are: (a) that there must be an “intentional insult” or “intimidation” with “intend” to humiliate SC/ST member by a non-SC/ST member; (b) and that insult must have been done in any place within the “Public view”. The use of expression “intentional insult or intimidation” with “intention” to humiliate, makes it abundantly clear that the mens rea is an essential ingredient of the offence and it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason. Merely calling a person by caste would not attract the provisions of this Act. There must be specific accusation alleged against each of the accused. Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating words may not be enough. This being a penal

provision has to be given a strict interpretation. If any of the ingredients is found lacking, it would not constitute the offence.....”

9. Proposition of law thus is clear. Simply because Section 3(1)(x) of SC/ST Act finds mention in the FIR by itself cannot be a ground to conclude that prima facie an offence under the alone said Section of SC/ST Act has been made out. Judicial scrutiny of the documents in such like cases is permissible to evaluate whether the material relied upon by the prosecution revealed the existence of basic ingredients of the offence or not. For that limited purpose, the Court can sift and weigh the material placed before it, before examining the question whether on the allegations made in the FIR, prima facie any offence under Section 3(1)(x) of SC/ST act is made out.
10. In the present case, alleged occurrence took place when the complainant went inside the cabin of the petitioner to attend phone call to which petitioner objected and when complainant tried to explain why he had entered the cabin, humiliating and

offending words were used by the petitioner. Under these circumstances, prima facie it cannot be said that petitioner had any intention to humiliate, insult or intimidate the complainant.

11. Learned counsel for the petitioner has pointed out that even the Scheduled Caste certificate was obtained by the petitioner after registration of the FIR and at the time of alleged occurrence petitioner was not in the know that complainant was a SC/ST member. As per the status report filed by respondent No. 1, the caste certificate was placed on record on 17.7.2006 and statement of the witnesses were recorded thereafter and the chargesheet was filed on 30.8.2006. The incident had taken place on 27.1.2006 and FIR was registered on 4.7.2006 i.e. after about 5-6 months of the incident.

12. In the FIR there is no mention of the fact that complainant was an SC/ST member and this fact was known to the petitioner at the time of commission of the offence. At the time of

registration of the FIR, complaint 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 of the witnesses and thereafter proceed to register an FIR. If such a latitude is allowed, it would create undue advantage as well as opportunity for unscrupulous complainants to nail others by hook or by crook, inspite of the fact that their initial complaint did not make out the offence as complained of. This would also encourage misuse of process of law. First narration of facts in the FIR is always an important factor for adjudicating as to whether an accused has committed an offence.

13. Status report filed by respondent No. 1, as pointed out above, shows that complaint was kept pending as ingredients of offence under Section 3(1)(x) of the Act were not complete and after obtaining the legal opinion and after holding enquiry and

recording of supplementary statements of the complainant and other witnesses in which they stated that petitioner had knowledge about the complainant being SC/ST member, the FIR in question was registered.

14. In ***Smt. Deepa Bajwa v. State & Ors. - (Supra)***

under such like circumstances, it was observed:

“6. After considering the submissions made by 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 F.I.R., 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 F.I.R. 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.”

15. Under these circumstances, enquiry conducted by the Investigating Officer and the statements subsequently recorded by him to the effect that petitioner knew that complainant was an SC/ST member was, probably with a view to falsely implicate the petitioner in this case, might be on behest of Chairman; Anil Kumar Rajpal, North Zone Railways Employees, CTC Society. False implication of the petitioner in other cases by the complainant wherein closure reports have been filed also indicates that this complaint was filed by the complainant with a view to falsely implicate the petitioner by subsequently alleging that petitioner knew that he was an SC/ST member.
16. Now it is to be seen if the words uttered by the petitioner were within ‘public view’. ‘Public view’ does not necessarily mean that there should be large number of persons present at the time of the incident. Even few members of the public can hear and view the offending words being used and in

that case also the offence would be made out, provided other ingredients of the section are satisfied.

17. Expression “public” is a poli-morphus word which has different meanings, which is used as noun or as an adjective. As noun, “public” means a body of people at large; the community at large, without reference to the geographical limits of any corporation like a city, town or country, the people; the whole body politics, or all the citizens of the state. In other words, the word public does not mean all the people or most of the people nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Therefore, public means inhabitants of a particular place, may be all or few or the people of the neighbourhood. As an adjective, ‘public’ would have meaning upon the subjects to which it is applied. SC/ST Act has been enacted with a view to protect a weaker section of the society from various kinds of atrocities that might be perpetrated against SC/STs which find

enumeration in Section 3 of the SC/ST Act as constituting an offence. Court has to keep in mind that offence under the SC/ST Act are quite grave and provide stringent punishment and therefore, stronger proof is required. Court has to adopt an interpretation which suppresses or evades the mischief which might have been played and advances the object of the Act. Therefore, 'public view' appearing in Section 3(1)(x) of SC/ST Act has to be interpreted to mean the presence of the public persons, however small may be, and those persons are 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 have to be excluded from the definition of 'public view'.

18. In ***Daya Bhatnagar & Ors. v. State (supra)*** while in agreement with the interpretation put on the expression "public view" by B.A. Khan, J., in the said case on reference for interpretation of the expression "public view" appearing in Section 3(1)(x) of SC/ST Act by the Division Bench, while

hearing the petition seeking quashing of the FIR registered under Section 3(1)(x) of the Act against the petitioners in the said case Sh. S.K. Aggarwal, J. reproduced the relevant portion of the views of B.A. Khan, J., in his order which reads:

“I accordingly hold that expression within ‘public view’ occurring in Section 3(1)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of ‘public view’ within the meaning of the expression used.”

19. In the reference public view was also further interpreted to mean:

““Public view” envisages that public persons present there should be independent, impartial and not having any commercial or business

relationship, or other linkage with the complainant. It would also not include persons who have any previous enmity or motive to falsely implicate the accused persons. However, merely because a witness, who is otherwise neutral or impartial and who happens to be present at the house of the victim, by itself, cannot be disqualified."

20. In the present case, witnesses named in the FIR are employees of North Zone Railways Employees, CTC Society and were allegedly sitting in the office. They being employees of the Society were subordinates to the Chairperson Anil Kumar Rajpal and therefore, can be termed as interested witnesses. Besides, the cabin was made of glass, though as stated it was open from the top. The fact remains that the alleged offending/humiliating words used by the petitioner while addressing the complainant could not have been heard or viewed by any of these witnesses, cabin being a closed space. Also, the petitioner had already handed over the keys of the Almirah etc. to Sh. U.S. Bhalla, the branch Manager, in compliance with the suspension order. The petitioner was under

suspension at the relevant time and as per the attendance register, his presence was not marked in the attendance registered for the said day. Under these circumstances, when petitioner denies his presence at the spot and denies the incident having taken place, possibility of his false implication in this case by the complainant cannot be ruled out. The fact that complainant had previously got registered two FIRs against the petitioner and the parties were inimical to each other before the registration of the FIR can also be a reason for false implication of the petitioner in this case.

21. Essential ingredients of Section 3(1)(x) of SC/ST Act are not made out from the narration of the incident in the FIR and the complaint lacks material particulars. The prosecution cannot be allowed to fill in lacuna or deficiency by obtaining additional complaint or supplementary statement and thereafter proceed to register an FIR against the petitioner. Since complaint lacks essential ingredients to make out an offence under Section

3(1)(x) of SC/ST Act, it is a fit case for the Court to exercise its power under Article 226 of the Constitution of India read with Section 482 Cr.P.C. and quash the FIR and the proceedings initiated in consequence thereof.

22. Hence, Petition is allowed. FIR No. 266/2006 under Section 3(1)(x) of SC/ST Act Police Station Tilak Marg is hereby quashed.

Attested copy of the order be sent to the Trial Court as well as to the State.

(ARUNA SURESH)
JUDGE

January 09, 2009
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