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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 103/2012

AKHILESH PRATAP SINGH

..... Petitioner

Through: Mr. Arvind Jain with Mr. Gunjan
Kathpalia, Mr. Kuldeep Singh and Ms. Sanskriti
Jain, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for State
Mr. J.H. Jafri with Mr. Virprakash, Advocates for
Complainant.

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Date of Decision: 06th November, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present revision petition has been filed challenging the order on Charge dated 02nd November, 2011 as well as the order framing Charge dated 07th December, 2011 passed by the ASJ/NW-II, Rohini Courts, Delhi in FIR No. 177/2009 registered with Police Station Model Town.
2. Mr. Arvind Jain, learned counsel for the petitioner submits that despite it being settled law that special law overrides the general law, yet the trial court has framed Charges against the petitioner under Section 3 (1) (x) & (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act') and also under Sections 354 and 509 of the Indian Penal Code (for short 'IPC'). He submits that once the complainant had invoked the provisions of the Act, then the complainant was estopped from relying upon provisions under the IPC.

3. Mr. Manoj Ohri, learned APP for State and Mr. J.H. Jafri, learned counsel for complainant submit that the charges under the Act and the IPC are in the alternative.

4. Having heard Mr. Jain, Mr. Ohri and Mr. Jafri, this Court is of the view that the special law would prevail over the general law only in cases of conflict.

5. In the present case, this Court is of the opinion that the Charges framed by the trial court under Sections 354 and 509 IPC are alternative Charges to the Charges framed under Section 3 (1) (x) & (xi) of the Act.

6. This Court is of the view that in the event the facts stated in the charge sheet are found to be true and correct, then the petitioner can be sentenced only under the Act and not under both the Act as well as the IPC as that would amount to double jeopardy.

7. However, in the event it is found that for instance the complainant did not belong to the Scheduled Caste or Scheduled Tribe or the derogatory words were not uttered in a public place, then the Act would not be attracted but certainly general provisions of IPC would be attracted.

8. At this stage, Mr. Jain states that the trial court has framed the aforesaid Charge despite it observing in the impugned order that *“The possibility of the present complaint being a counter blast to the above, by invoking the provisions of SC/ST (POA) Act, cannot be ruled out, but this is an aspect which can be ascertained only after trial.”*

9. This Court is of the view that the issue whether the complainant's complaint is a counter-blast to the petitioner's prior complaint is a disputed question of fact which can be examined by the trial court only at the stage of trial.

10. Accordingly, this defence is left open to be decided by the trial court after recording of evidence. Consequently, the present petition is disposed of with the aforesaid clarifications, but with no order as to costs.

MANMOHAN, J

NOVEMBER 06, 2012
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