

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	<u>05.10.2023</u>		C482 No. 113 of 2021 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Rahul Consul, Advocate, for the applicants. Mr. S.C. Dumka, AGA, for the State. 1. This C482 Application was instituted as back as on 27.01.2021. This Court, by an order dated 29.01.2021, while passing the interim order, had issued notice to respondent No. 2. There is an office report dated 10.09.2021 that respondent No. 2 has been served with the notice, but none has put in appearance. 2. When the matter was taken up earlier on couple of occasions and the interim order was extended, because the respondent was not participating in the proceedings. Since respondent No. 2 has already been served with the notice and he has not put in appearance, there is no other option for the Court, except to proceed with the instant C482 Application on its own merits 3. Brief facts of the case are, that the present applicants, in the instant C482 Application have put a challenge to the proceedings of Special Sessions Trial No. 46 of 2020, State Vs. Ambika Prasad Kanswal and others, which is pending consideration before the Court of Sessions Judge, Tehri Garhwal, for trying the present applicants for the offences under Section 506 of IPC

		and Section 3(1)(g) of the SC/ST Act. 4. Consequent to the registration of the FIR, being FIR No. 37 of 2020, for the offences under Sections 506 of IPC and Section 3(1)(g) of the SC/ST Act, the matter was investigated upon and a Chargesheet has been submitted by the Investigating Officer, being Chargesheet No. 30 of 2020 dated 29.10.2020, based on which the applicants have been summoned to be tried in the aforesaid Special Sessions Trial. 5. The argument of the learned counsel for the applicants is twin fold. One, that no offence under Section 3(1)(g) of SC/ST Act, would be made out against the present applicants for the reason being that on a simpliciter reading of the FIR, there is no such allegation levelled in the FIR, pertaining to the involvement of the present applicants in commission of offence under Section 3(1)(g) of SC/ST Act, because there is no assertion of fact that any caste related expression was made by the applicant against the complainant at a public place and no such allegation does finds reference in the FIR, and that also during the course when the investigation was being carried by the Investigating Officer. Hence, the learned counsel for the applicants submits that even the offence under Section 506 of IPC, would not be made out against the present applicants for the reason being that if the contents of the FIR are taken into consideration, there is no element, satisfied which is required to be prima facie established for commission of offence under Section 506 of IPC.
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		6. The argument of the learned counsel for the applicants can be splitted into two parts. 7. First, as far as the FIR is concerned, which if it is to be read with along with the Chargesheet, there is no set of allegation nor any evidence which has been laid by the complainant with regard to the allegations or the elements which are required to be satisfied for involvement of commission of offence under Section 3(1)(g) of SC/ST Act, except for the fact that the complainant in the FIR has mentioned that he belongs to the scheduled caste. But merely belonging to the scheduled caste does not itself mean an involvement in commission of an offence under Section 3(1)(g) of SC/ST Act, until and unless there are references to such utterances made by the accused persons in public, which are derogatory remarks relating to the caste of the complainant. 8. Besides this, when the investigation was carried and the evidence was recorded by the Investigating Officer, as many as six witnesses were examined, even the Chargesheet which has been submitted by the Investigating Officer, though it finds reference that the offence under Section 3(1)(g) of SC/ST Act was converted from offence under Section 3(4) of the SC/ST Act, but the Chargesheet too as submitted on 29.10.2020 doesn't portrays that the involvement of the present applicants as alleged for the commission of offence under Section 3(1)(g) of SC/ST Act, was at all shown to have been made out on the basis
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		of the evidence adduced by the parties before the Investigating Officer. 9. The learned Government Advocate has opposed the C482 Application on the ground that the applicants are carrying a criminal history and in relation to that he has placed reliance on the history chart, which has been annexed with the counter affidavit. 10. The matter was taken up Yesterday and the parties were directed to collect the necessary information as to what consequences the cases have reached as shown in the history chart, against the present applicants, against whom the proceedings of Case No. 37 of 2020 has been drawn. 11. There were three accused persons whose history has been shown and the three accused persons, for example Ambika Prasad Kanswal, apart from the present offence he was shown to be involved in commission of Case Crime No. 25 of 2018, for which the learned counsel for the applicants answers that trial has concluded and he has been acquitted. Apart from that the co-accused Ashutosh Bisht doesn't carry any other history except for the Case Crime No. 37 No. 2020, which is presently the subject matter of the present C482 Application. The third co accused Raghuvir Singh Rawat @ Kukki, he had one case in his credit i.e. Case Crime No. 518 of 2006 which in accordance with the observations made in the history chart itself showed by the learned Government Advocate, he has been acquitted owing to
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		the withdrawal of the prosecution under the provisions contained under Section 321 of CrPC, which would be treated as to be an acquittal. 12. Meaning thereby, all the co accused persons are having only one case, which is pending consideration against them, i.e. the instant C482 Application which arises out from the Special Sessions Trial No. 46 of 2020, State Vs. Ambika Prasad Kanswal and others. 13. As already observed by this Court that none of the elements required for commission of offence under Section 3(1)(g) of SC/ST Act is shown to have been established, either from the narrations of the allegations made from the FIR or the Chargesheet, no offence under Section 3(1)(g) of SC/ST Act is made out against the present applicants, as such, the Sessions Trial, which has been registered because of the Chargesheet being submitted under Section 3(1)(g) of SC/ST Act, would stand quashed, so far it relates to the offence under Section 3(1)(g) of SC/ST Act only. 14. But as far as the offence pertaining to commission of offence under Section 506 of IPC is concerned, i.e. apparently shown to have been made out by the simpliciter narration of allegations levelled in the FIR and which stands substantiated by the Investigating Officer and the evidences adduced thereto, which has been considered by the Investigating Officer. Hence, so far as the offence under Section 506 of IPC is concerned, since it carries a sentence of less than 7 years, it will
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			be open for the applicants to seek their bail from the Competent Court before which the matter would be remitted after the quashing of the offence under Section 3(1)(g) of SC/ST Act, the matter has to be registered as a Criminal Case and not Special Sessions Trial. Upon registration of the Criminal Case, the applicants would be seeking their remedies qua the offence under Section 506 of IPC, as per the parameters prescribed under Satender Kumar Antil Vs. Central Bureau of Investigation and Another, as reported in 2022 (10) SCC 51. 15. Subject to the aforesaid observations, the C482 Application is partly allowed, qua the offence under Section 3(1)(g) of SC/ST Act only. (Sharad Kumar Sharma, J.) 05.10.2023 Mahinder/
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