



2024:DHC:6713



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 02<sup>nd</sup> August, 2024*

*Pronounced on: 28<sup>nd</sup> August, 2024*

+ **CRL.A. 604/2024 & CRL.M.A. 20464/2024**

**VIKAS GAUTAM & ANR.**

.....Appellants

Through: Mr. D S Kohli, Ms. Mannat Kohli & Mr.  
Yash Kadyan, Advocates.

versus

**THE STATE NCT OF DELHI**

.....Respondent

Through: Mr. Hitesh Vali APP with Mr.  
Deepankar Kataria, Advocate along  
with SI Randheer Kumar PS Ranjit  
Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

**ANISH DAYAL, J.**

1. This appeal has been filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (refer to as the “SC/ST Act”) for setting aside order dated 01<sup>st</sup> April, 2024 passed by the ASJ, West, Tis Hazari Courts, Delhi directing framing of charges against the appellants for offences punishable under Sections 354/509 of the Indian Penal Code, 1860 (“IPC”) and Section 3(1)(x) of the SC/ST Act, as well as order



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dated 20<sup>th</sup> April, 2024, order of framing of charges. As per the appellants, an issue arose out of a dispute over stray dogs in the residential colony where both the appellants and the complainant reside. There was a history of confrontation relating to the same since 2012, where on one hand the appellants were making efforts to remove stray dogs, and the complainant as well as the co-tenant were not supporting their stand.

2. On 09<sup>th</sup> October, 2012, as per the appellants, their maid was attacked by a stray dog and they made a complaint on number 100. Then the police visited the spot. The complainant objected. The Resident Welfare Associate (RWA) approached the Municipal Counselor and a representation was filed. That same evening, the complainant gave a written complaint to the local police levelling frivolous scandalous allegations against the appellant No.1. An FIR was registered bearing No.04/2013 in January 2013, PS Ranjit Nagar under Section 3 of the SC/ST Act and Sections 195A/354/509/34 IPC.

3. Appellant No.1 approached this Court with a petition under Section 482 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) for quashing the FIR and directions were passed by this Court on 23<sup>rd</sup> January, 2013 that no coercive action be taken against the appellant. A charge sheet was filed alleging the commission of offences under the said Sections of the SC/ST Act and the IPC followed by a supplementary charge sheet. On 22<sup>nd</sup> November, 2023, appellant No.1 withdrew their petition before this Court with liberty to agitate their grounds at the stage of consideration of charge, in which they were not successful and the impugned order directing framing of charges was passed and the charges were framed subsequently.



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### **Submissions on behalf of the Appellant**

4. Counsel for the appellant contended that the impugned orders were passed without judicious application of mind to facts, and despite no sufficient material on record, which could trigger the framing of charges. The FIR and the charge sheet would make it evident that the allegations were vindictive in nature, owing to a dispute over stray dogs. The complainant has nowhere stated that appellants had intentionally insulted or intimidated the complainant with the intent to humiliate her in public view. There was no reference with regard to any attribution being made by appellant No.2 in the incident of 24<sup>th</sup> March, 2013 and appellant No.2 had been roped in with a *mala fide* objective. Provisions of the SC/ST Act were not to be used as a tactical tool in ordinary disputes.

5. Pursuant to the call made on 09<sup>th</sup> October, 2012 on the PCR, HC Praveen Kumar and HC Aman had deposed that no altercation had taken place and there was no use of any derogatory casteist remarks. Independent witness examined by the investigation agency negated the version of the complaint and for this, appellant relied upon the decision of this Court in ***Daya Bhatnagar & Ors. v. State*** 2004 SCC OnLine Del 33. The initial complaint failed to disclose essential ingredients of the offence and in case of such *lacuna* or deficiency, it cannot be filled up by a supplementary statement and reliance for this was placed on the judgment of this Court in ***Deepa Bajwa v. State***, 2004 SCC Online Del 961. Further, reliance was placed on the decision of ***Gorige Pentaiah v. State of Andhra Pradesh*** (2008) 12 SCC 531.



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6. Reliance by the prosecution on statements of John Antony, Ravikant Shukla and other witnesses, could not be relied upon, since they were not independent witnesses nor supported the case of the prosecution. As regards the statement of John Antony, it was contended that *ex-facie* the statement would show that he was referring to the complainant as "didi".

7. It was also submitted by appellants' counsel that there was no mention in the complaint that accused knew that complainant was of an SC/ST category, and that accused was himself not SC/ST, therefore, the ingredients of the offence are not made out. Further, the altercation, as alleged, was "*not in public view*".

8. Decisions that have been relied upon by the appellants' counsel are: *Asha Aggarwal v State*, 2014: DHC:1701; *Hitesh Verma v. State of Uttarakhand* (2020) 10 SCC 710; *Surendra Kumar Mishra v State of Orissa and Another* in CRLMC No.2628 of 2013 (High Court of Orissa at Cuttack); *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* (1990) 4 SCC 76; *Ashok Kumar Nayyar v The State* 2007: DHC:425

### Submissions on behalf of the State

9. Refuting their contentions, APP for State submitted that it was a public place considering that the altercation had happened in the colony and there were many witnesses. Humiliation and insult had clearly occurred due to the casteist slur made, as corroborated by the other independent witnesses. FIR itself had recorded the complainant's statement that the accused had talked ill about her "*character and caste to people*".



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10. Further, it had been stated by the complainant that the accused had abused her caste and there was constant prolonged harassment and humiliation. According to APP, therefore, sufficient ingredients have been made out and the challenge to the charge cannot be sustained. He relied upon the decision of the Supreme Court in *Swaran Singh & Ors. v. State Through Standing Counsel and Another* (2008) 8 SCC 435 where it is held that calling a member of the Scheduled Castes category "*Chamar*" with intent to insult or humiliate in a place within public view is certainly an offence under Section 3(1)(x) of the Act concerned, and the intent to insult will depend on the context in which it was used. Moreover, it was held that the correctness or otherwise of the allegations in the FIR was not to be seen at this stage and would be considered at trial.

### **Analysis**

11. For the assessment of respective contentions of the parties and upon a perusal of the record, the following is elicited from the record:

- (i) The FIR pertains to the incidents of 24<sup>th</sup> March, 2012 wherein appellant no.1 allegedly threatened the complainant's colleague to shoot him and the stray dogs that the complainant was taking care of. The following day, when appellant no.1 was called to the police station for investigation, both he and his wife, appellant no. 2, began nursing a grudge against her. Since then, they had started talking "*ill about her character and caste to people*". The appellant apparently called her a "*prostitute*" and appellant No.2,



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in particular, repeatedly commented on her character. The complainant admitted that she was taking care of stray dogs and trying to ensure that they were sterilized.

- (ii) On 09<sup>th</sup> October, 2012, a stray dog barked at a domestic help working in the accused house. The accused called the police and HC Praveen Kumar was present. Appellant No.1 pulled her hand and ordered the police to arrest her for feeding stray dogs. Thereafter, the appellants gathered a mob of 70-odd people and threatened to throw her out of the house in front of the mob, assaulted her character and stated "*rat ko do baje tak pata nahi ye bahar kya karte hain, chokidar aur driver ko sarab pilati hain*" and then abused her caste and said "*ab in chamaro ko yahan nahi rahane nahi dena hain ye colony ganda karte hain*". She brought this to the attention of HC Praveen Kumar, who responded by stating, '*This is your personal matter.*' Consequently, she lodged a formal complaint against the appellant, alleging conspiracy to commit atrocities, caste-based abuse, harassment, and defamation of character.
- (iii) Charge sheet states that the audio CD, transcript, caste certificate and other documents were taken from the complainant, as well as the PCR form and call register. Witnesses were examined. Witness Vivek Singh verified his voice and the voice of appellant No. 1 and appellant No.2. The appellants also verified the voice in the audio CD. The other independent witnesses Vivek Singh,



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Ravikant Shukla and John Antony clearly stated that both appellants clearly abused the complainant on her caste and character in public view. The complainant stated that she belonged to SC/ST category and accused persons had prior knowledge about it.

- (iv) Supplementary charge sheet stated that accused were called to give their consent for a voice sample but they refused. On 16<sup>th</sup> April, 2013, the complainant handed over a transcript or audio CD in 9 pages which was taken in possession. Witness Vivek Singh gave his consent to the voice sample. An audio cassette was deposited at FSL Rohini to match the voice of witness Vivek Singh. FSL report revealed that there was no indication of any form of alteration in the audio CD and the voice of witness Vivek Singh is the same as in the audio CD as well as in the cassette.
- (v) Statements under Section 161 Cr.P.C. were recorded of HC Praveen Kumar who confirmed that there was a crowd collected relating to a dispute over stray dogs and the complainant had got agitated and stated that she had complained about the accused even earlier, at which time HC Praveen Kumar said that it was a personal matter and they would take it up as and when a complaint arises.
- (vi) Statements recorded under Section 161 Cr.P.C. of HC Aman stated that the maid of the accused had stated that some dogs had



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run after her and held her, but she refused any medical examination and she stated that she did not have any injury. Thereafter, the accused came out and started confronting the complainant at which she became agitated. Thereafter, the police advised them to register a complaint.

(vii) Statement under Section 161 Cr.P.C. of John Antony was recorded, where he stated that on 09<sup>th</sup> October, 2012 he saw many people around 45-50 in number and 4-5 policemen at that spot. Thereafter, the complainant came and showed them to HC Praveen and then the accused held the complainant's hand and stated "*she will not show us certificate but her character certificate*". Followed by a comment "*throw these bloody chamars out, they have made the colony dirty*". Appellant No.2 stated "*aunty, call the landlady and throw them out*" and followed it up by saying "*throw these chamars out*". He confirmed that HC Praveen said it this is your personal matter.

(viii) Statement recorded under Section 161 Cr.P.C. of Ravikant Shukla, stated that one stray dog had jumped on a domestic help playfully and at that point, the appellants started gathering people shouting names. Police arrived in about 5-7 minutes. Appellants started accusing the complainant of feeding the dogs. The complainant was sitting with two elderly people in the park when HC Praveen Kumar arrived and stated that he had known the complainant for the last one and a half years and to be a very polite and studious



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girl. The appellants started accusing her that she was breaking the law by feeding the animals. The complainant went inside a house to get a brochure of animal laws and vaccination certificates of stray dogs. At that stage, appellant No.1 pulled hands of complainant and stated that she should show her character certificate. Later, appellant No.1 stated "*In chamaro ko yeha rahene nai dena hai. Yeh colony ganda karte hain*" and appellant No.2, the wife stated, "*Nikalo is chamar ko ghar se bahar, aunty ko phone karo aur iska saman ghar se bahar phenko*". Other comments were made. He further stated that he had seen appellant No.2 throwing garbage in front of the complainant's house and saying "*Yahan kudewali rehti hai, kude utha degi*". He stated that the complainant had taken up the matter of harassment on an earlier occasion and he had accompanied her to the police station.

- (ix) Statement recorded under Section 161 Cr.P.C. of Vivek Singh stated that on 09<sup>th</sup> October, 2012 there was a commotion in front of his house dispute about a dog. The appellants were arguing with the complainant. Appellant No.1 said that "*these chamars should be thrown out of the colony*" and his wife appellant No.2 was speaking along with him. The argument continued for quite some time till the police officers came and pacified the situation. He identified the voices of the appellants and of himself, recorded by the police.



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- (x) Statement recorded under Section 161 Cr.P.C. of Kanhaiya Lal stated that he has a clothe pressing shop in that area and when he noticed the commotion and went to the place, he could not understand the conversation in English between police which related to dogs whom the complainant used to feed.

12. Section 3(1)(x) of the SC/ST Act, prior to the 2016 amendment was as under:

*“Section 3(1)(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”*

Post the amendment, Section 3(1)(r) (which was similarly worded) and Section 3(1) (s) of the SC/ST Act read as follows:

*“Section 3(1) Whoever, not being a member of a Schedule Caste or Scheduled Tribe-*

*Section 3(1)(r)- intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*

*Section 3(1)(s)- Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view”*

13. It is *prima facie* evident from the record extracts of which have been noted above that there was a specific allegation made in the FIR relating to casteist slurs being hurled by appellants at the complainant. It is a question of fact that complainant belongs to the SC/SC category since the caste certificate was procured. Further, there is no denial by appellants that they were not a



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member of the SC/ST category. The basic premise, therefore, for the offence to be maintained is that the accused should not be a member of the SC/ST category while the complainant should be, are made out. As regards the “*intentional insult*” or “*intimidation with intent to humiliate*” in “*any place with public view*”

14. , is *prima facie* evident from the bare perusal of the FIR and fully supported by at least three witnesses. The contention of appellants that this was not within public view is absolutely unsustainable considering there is enough on record to confirm that the mob had collected there at the place of incident and there were many people of the residential colony, which have been collected. There is no inconsistency in the statements of the witnesses in this regard, as also the statements of the police officials. The ingredients of intentional insult and intimidation with intent to humiliate are also clearly evident from the nature of the statements which have been mentioned in the FIR as well as distinctively corroborated by the witnesses.

15. In this regard, the Supreme Court in ***Swaran Singh*** (*supra*) categorically stated, with respect to provisions in the SC/ST Act, is extracted as under:

*“22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word “chamar” which it has acquired by usage, and not the*



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*etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.*

*23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word "chamar" when addressing a member of the Scheduled Caste, even if that person in fact belongs to the "chamar" caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity— so many religions, castes, ethnic and lingual groups, etc.— all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.*

*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.*

*25. A perusal of the FIR clearly shows that, prima facie, an offence is made out against Appellants 2 and 3. As already stated above, at this stage we have not to see whether the allegations in the FIR are correct or not. We only have to see whether treating the FIR allegations as correct an offence is made out or not. In our opinion, treating the allegations in the FIR to be correct an offence under Section 3(1)(x) of the Act is prima facie made out against Appellants 2 and 3 because it prima facie seems that the intent of the appellants was to insult*



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*or humiliate the first informant, and this was done within the public view.*

*26. Of course, it will be open to Appellants 2 and 3 to put up their defence at the trial, and the trial court may or may not accept the correctness of the allegations in the FIR. However, at this stage we cannot quash the FIR against them and the trial must proceed.”*

(emphasis added)

16. On a broader point, in terms of constitutional equality, the Supreme Court further stated as under:

*“29. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities in our opinion are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this Court. In the age of democracy no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country.”*

(emphasis added)

Notably, the Supreme Court has stated that at this stage it has not to be seen whether the allegations in FIR are correct or not and it has only to be seen, whether allegations if correct, an offence is made out or not.

17. The decision in **Deepa Bajwa** (*supra*) and **Gorige Pentaiah** (*supra*) may not be strictly applicable in the present case, as in that case, the ingredients of



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Section 3 of the SC/ST Act were not established in the original complaint. As regards the reliance on *Daya Bhatnagar* (*supra*) in that the public persons present should be independent and impartial and should not be of any close relationship, it is not applicable, considering three witnesses were not so closely related to the complainant and corroborated that the casteist slurs had been inflicted. The reliance on *Hitesh Verma* (*supra*) is again distinguishable, considering that it emanated out of an allegation of hurling abuses during a property dispute and one person happened to be of the SC/ST Caste.

18. The nature of the statements is not general in nature. The use of the word “*Chamar*” has not been used generally but specifically. Also, other attendant statements have been made by appellant No.1 and appellant No.2 including about leaving rubbish in front of her house and reiterating that “*these kinds of people should be sent out*”.

19. In the opinion of this Court, reading of the FIR and presuming it to be correct, the offences would be made out and, therefore, the impugned order directing framing of charge as well as the actual order of framing of charges is merited and the appeal is therefore dismissed. Needless to state any observation made above is only for the purpose of assessing the plea of appellants. Respective contentions of the parties are a subject matter of trial.

20. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)  
JUDGE

AUGUST 28, 2024/MK