

Court No. - 27

Case :- APPLICATION U/S 482 No. - 5228 of 2024

Applicant :- Kaushar Khan And 3 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Gibran Akhtar Khan

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Mr. Gibran Akhtar Khan, learned Counsel for the applicants, Ms. Ankita Tripathi, learned A.G.A. for the State-opposite party No.1 and perused the material placed on record.

2. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicants seeking quashing of the entire proceeding of Complaint Case No.281/2022; Smt. Pooja vs. Kaushar and Others, under Sections 323 and 504 I.P.C. and Section 3(1) (S) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Police Station-Bilgram, District-Hardoi as well as summoning order dated 09.04.2024 passed in the aforesaid case.

3. Learned Counsel for the applicants submits that the applicants are innocent persons and have been falsely implicated in the present case due to village rivalry. He further submits that the brief facts of case are that on 05.11.2021 when applicant no. 2(Azam) reached home on his Motorcycle at about 1.00 p.m, he found that the Complainant's Husband Bholanath and Complainant's Brother Sunil were sitting at his doorstep and drinking alcohol, on which the applicant no.2 (Azam) requested them not to drink alcohol at his doorstep, however the Complainant's husband namely Bholanath, being in the state of inebriation, started hurling abusive words to the applicant no.2 Azam and applicant no.2, Azam requested the Complainant's husband, not to utter abusive words for his family, but he didn't stop, so applicant no.2 (Azam) called the police at 1.26 pm by making a phone call at Dial 100 Emergency Service, and on seeing the Police Response Vehicle coming at around 2:00pm, the complainant's husband ran away from his home. Applicants thought, that the matter has come to an end. He further submits that the applicants are the next door neighbors of the Complainant, and in the small narrow lane there are only two houses, one of complainant, and the other one is of the applicants.

4. Learned Counsel for the applicants further submits that on 11.01.2022, in an after thought manner, a frivolous complaint was filed by the Complainant (opposite party no.2), falsely implicating the applicants for extorting money and as per the allegations made in the complaint, all the applicants who are four in number, using abusive words started beating the complainant (opposite party no.2), and also the complainant's husband with hands and feet, and the complainant and her husband were saved by the intervention of complainant's brother and some village people. He further submits that in this entire incident surprisingly no injury was inflicted upon the body of the complainant and the complainant's husband, and admittedly no medical examination was done. He further submits that it is unbelievable that four persons physically assaulted the complainant, who is a lady, and no injury was sustained by her. Moreover, the complainant's husband was also physically assaulted by all the applicants as per the allegations made in the complaint, and no injury was inflicted upon him as well.

5. Learned Counsel for the applicants further submits that the statement of the complainant was recorded under section 200 Cr.P.C., but the same do not corroborate the version enumerated in the Complaint. There is no mention in the statement recorded under Section 200 Cr.P.C., that the applicants entered her house and gave blows with hands and kicks. Neither the statement recorded under Section 200 Cr.P.C. finds mention of one Rajpal and village people, as has been alleged in the complaint, who came to the rescue of complainant and her husband. Thus there is major contradiction in the statement recorded under Section 200 Cr.P.C. and the complaint dated 11.01.2022. He further submits that the statements recorded by the witnesses under section 202 Cr.P.C. also do not inspire any confidence that the alleged incident, did take place.

6. Learned Counsel for the applicants further submits that statement of the complainant's brother recorded under Section 202 Cr.P.C., wherein, there is also no mention of Hand Cart(Thiliya), and neither Rajpal nor Village people have been named, who came to the rescue of Complainant and her Husband as has been alleged in the Complaint.

7. Learned Counsel for the applicants further submits that at this juncture that the aforesaid Complaint has been filed in an after thought manner after a period of two months, and there is no independent witness in the Complaint, to corroborate the alleged incident, which falsify the contents of the complaint and also raise a cloud of doubt over the allegations made therein.

8. Learned Counsel for the applicants further submits that the applicants have never had any dispute with the complainant and his family members before this incident. He further submits that the allegations leveled in the complaint are false and fabricated. No such incident ever took place as alleged by the opposite party No.2. He further submits that ingredients of Section 3(1) (S) SC/ST Act are not attracted in the present case as the house of the opposite party No.2 was a private place and there was no public view, the scuffle took place in a private house, thus, there was no public view nor it was a public place. He further submits that on bare perusal of the complaint it is clear that there is no mention of any public view, thus, the very basis of the provisions of SC/ST Act are missing in the present case.

9. Learned counsel for the applicant further submits that the order dated 09.04.2024 passed by learned trial court in Complaint Case No.281/2022; Smt. Pooja vs. Kaushar and Others, under Sections 323 and 504 I.P.C. and Section 3(1) (S) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Police Station-Bilgram, District-Hardoi, by which cognizance was taken and the applicants were summoned, is also non speaking as the Magistrate has not considered any material available before him while summoning the applicants to face the trial. As such, the impugned order dated 09.04.2024 on the face of record appears to be unjustified and is passed without application of judicial mind, therefore, the same is liable to be set aside and further proceedings in pursuance to the above case may also be quashed by this Court and the present application be allowed.

10. In support of his arguments, learned Counsel for the applicants has placed reliance on following judgments of Hon'ble Supreme Court of India:-

"(i) Hitesh Verma vs. State of Uttarakhand reported in (2020) 10 SCC 710.

(ii) Ramesh Chandra Vaishya vs. State of U.P. and Another reported in SCC OnLine SC 668.

(iii) Fakhruddin Ahmad vs. State of Uttranchal and Another repored in (2008) 17 SCC 157.

(iv) Ankit vs. State of U.P. and Another reported in JIC 2010 (1) Page 432.

(v) State of Haryana vs. Bhajanlal reported in 1992 SCC (Crl.) 426."

11. Ms. Ankita Tripathi, learned A.G.A. for the State-opposite party No.1 apposed the contentions made by learned Counsel for the applicants and submits that prima facie offence is made out against the applicants and the trial court has rightly passed impugned summoning order after considering the material placed on record, thus, the applicants are not entitled for any relief by this Court and the present appeal may be dismissed.

12. After considering the arguments advanced by learned counsel for the parties and perusal of record in light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and the contents of the complaint, statements of witnesses as well as summoning order dated 09.04.2024, this court is of the view that the SC/ST Act, 1989 is meant to prevent the commission of offences of atrocities against the members of the Schedule Castes and the Schedule Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

13. It is further observed that the SC/ST Act, 1989 was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act, 1989 is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the SC/ST Act, 1989. The SC/ST Act, 1989 thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community. Section 3(1)(S) of the SC/ST Act, 1989 or 3(1)(S) of the SC/ST Act, 1989 would read as under:-

"Section 3(1)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989- abuses any member of a Scheduled Caste or a Schedule Tribe by caste name in any place within the public view"

Thus, the basic ingredient of the offence under Section 3(1)(S) can be clarified as abuse of any member of Schedule Caste or a Schedule Tribe by caste name in **any place within the public view.**

14. It is further observed that an offence under the SC/ST Act, 1989 would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations

and harassment in any place within the public view.

15. In the present case, this Court finds that the applicants have not abused the opposite party No.2 by caste name in any place within the public view, even though, the opposite party No.2 has not stated anything about abuses hurled to her by the applicants in a place within a public view, thus, the allegations as leveled in the complaint does not constitute offence under Section 3(1) (S) of the SC/ST Act, 1989.

16. It is further observed by this Court that before an accused is subjected to trial for commission of offence under Section 3(1) (S) of the SC/ST Act, 1989 the utterances made by him in any "place within a public view" is mandatory and from the bare perusal of the F.I.R., the utterances, if any, as mentioned in Section 3(1) (S) are not fulfilled. The Investigating agencies while investigating the matter are duty bound to consider the factual aspects of the matter and also to consider the statement of witnesses, complainant as well as the applicants so as to ascertain whether the chargesheet makes out a case under the SC/ST Act, 1989 having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence by learned Magistrate. In the present case from the factual aspects and contents of the F.I.R. discussed above, no offence is made out under Section 3(1) (S) of the SC/ST Act, 1989. Though, the learned Magistrate has not applied its judicial mind while taking cognizance in the matter and while summoning the applicants by impugned order to face trial, which is very serious matter.

17. In view of the aforesaid discussion, this Court deems it proper to discuss some case laws.

18. Hon'ble Supreme Court in the case of ***Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710*** has been pleased to observe in para 13, 14 and 18 as under :-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in

accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as *Swaran Singh v. State* [*Swaran Singh v. State*, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527]. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) . The Court held as under :

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

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. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

19. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya Vs. State of U.P. and Another; (2023) SCC OnLine SC 668** has been pleased to observe in paragraph 17, 18 and 21 as under:-

"17. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not "in any place within public view", the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting

him to stand a trial.

21. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "in his hand and other body parts". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC."

20. Further, the Hon'ble Supreme Court in the case of **Fakhruddin Ahmad Vs State of Uttaranchal and another reported in (2008) 17 SCC 157**, discussed the expression "taking cognizance of an offence" by a Magistrate within contemplation of section 190 of the Cr.P.C and also discussed what must have been taken notice by the Magistrate while taking cognizance. Paras 11, 12, 13,14 and 15 being relevant are abstracted below:-

"11. The next incidental question is as to what is meant by expression 'taking cognizance of an offence' by a Magistrate within the contemplation of Section 190 of the Code?

12. The expression 'cognizance' is not defined in the Code but is a word of indefinite import. As observed by this Court in *Ajit Kumar Palit Vs. State of West Bengal*², the word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means--become aware ² [1963] Supp. 1 S.C.R. 953 9 of and when used with reference to a Court or Judge, to take notice of judicially. Approving the observations of the Calcutta High Court in *Emperor Vs. Sourindra Mohan Chuckerbutty*³, the Court said that 'taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.'

13. Recently, this Court in *S.K. Sinha, Chief Enforcement Officer*

*Vs. Videocon International Ltd. & Ors.*⁴, speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase 'taking cognizance' under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in *Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee*⁵, which were approved by this Court in *R. R. Chari Vs. State of U.P.*⁶. The observations are:

3 (1910) I.L.R. 37 Calcutta 412 4 (2008) 2 SCC 492 5 A.I.R. (37) 1950 Calcutta 437 6 A.I.R. (38) 1951 SC 207 1 0 "7. ... What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

14. From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by 'taking cognizance'. Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

15. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence."

21. This Court in the matter of **Ankit Vs State of U.P. and another** reported in **JIC 2010 (1) page 432** has held that-

"Although as held by this Court in the case of *Megh Nath Guptas & Anr V State of U.P. And Anr*, 2008 (62) ACC 826, in which reference has been made to the cases of *Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal*, 2003 (4th) ACC 686 (SC), *UP Pollution Control Board Vs Mohan Meakins*, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and *Kanti Bhadra Vs State of West Bengal*, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking

cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."

Thus, in the present case learned Magistrate without considering the material available before him and even without considering the averments made in the F.I.R. in which as per the own case of the opposite party No.2 the alleged incident took place in a private Orchard and at that time no public was present nor there was any public view. Learned Magistrate while taking cognizance did not consider the statements of the applicants which was recorded by the Investigating Officer before filing the chargesheet. Thus, the ingredients of Section 3(1) (S) of the SC/ST Act, 1989 is not attracted in the present case and as such, no offence under the aforesaid section is made out against the applicants.

22. Thus, after perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and as per the contents of the complaint and considering the various case laws referred above, the incident does not appear to happen in a public place or in a public view, thus, Section 3(1) (S) of the SC/ST Act, 1989 is not attracted against the applicants as the incident did not occur in any "place within a public view", as such, considering the law laid down by the Hon'ble Apex Court in the case of **Hitesh Verma (Supra)**, **Ramesh Chandra Vaishya (Supra)**, **Fakhruddin Ahmad (Supra)** as well as law laid down by co-ordinate Bench of this Court in the case of **Ankit (Supra)** this Court is of the view that the learned trial court has failed to appreciate the material available on record. The summoning order dated 09.04.2024 passed by the trial court alongwith the entire criminal proceedings of the aforesaid case are liable to be quashed.

23. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Cri.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192**, (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** and (v)

***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra,
AIR 2021 SC 1918.***

24. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued.

25. In ***S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168***, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

26. Accordingly in view of the above discussions and observations made, this application is ***allowed***, the entire proceeding of Complaint Case No.281/2022; Smt. Pooja vs. Kaushar and Others, under Sections 323 and 504 I.P.C. and Section 3(1) (S) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Police Station-Bilgram, District-Hardoi as well as summoning order dated 09.04.2024 are hereby ***quashed*** so far it relates to the present applicants.

Order Date :- 31.5.2024

Piyush/-