

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3184 of 2023

Appellant :- Tej Narayan Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kailash Pati Singh Yadav

Counsel for Respondent :- G.A., Mohammad Alam

Hon'ble Nalin Kumar Srivastava, J.

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act') has been preferred by the appellants - **Tej Narayan Yadav** and **Hori Lal Yadav** with the prayer to set-aside the cognizance / summoning order dated 4.2.2021 passed by the Special Judge (SC/ST Act) Varanasi and the entire proceedings of S.T. No. 184 of 2021 (State Vs. Tej Narayan Yadav and Others), arising out of Case Crime No. 0503 of 2019, under Sections 323, 504, 506 IPC and Section 3(1)(s) of the SC/ST Act, Police Station Sarnath, District Varanasi.

2. Heard learned counsel for the appellants, learned counsel for the respondent no.2 as well as the learned A.G.A. for the State and perused the entire record.

3. Prosecution case, as culled out from the record, is that on 2.9.2019 at about 10:00 in the morning, an altercation took place on account of constructing brick road over the irrigation nali between the named accused persons including the present appellants and the informant when the informant was returning to his home from the hospital and the present appellants alongwith their associate hurled abuses with caste related remarks and threatened the informant for dire consequences and he was also beaten by the accused persons. F.I.R. was lodged and after investigation charge sheet was filed and cognizance was taken by the Court of the said offences and the accused persons were summoned to face trial accordingly.

4. It is submitted by the learned counsel for the appellants that appellants are innocent and have been falsely implicated in this case. Charge-sheet in this matter has been submitted under

Sections 323, 504, 506 IPC and Section 3(1)(s) of the SC/ST Act but the said charge-sheet is not sustainable under law. It is also submitted that no offence has been committed by the appellants in this matter which takes the case within the purview of Section 3(1)(s) of the SC/ST Act. It is further submitted that the incident did not happen in a place within the public view. Although the complainant claims that the incident happened on a public road and witnesses Sant Lal and Jeet Lal, who are said to be the eyewitnesses of the occurrence, are the family members of the informant and since no independent person witnessed the incident, the provisions of Section 3(1)(s) of the SC/ST Act do not apply to this case. It is also submitted that the prosecution evidence is also not capable of showing that on a public place the informant / opposite party no.2 was hurled abuses and threatened for life and received simple injuries as well. It is also submitted that it is totally false to say that on account of some altercation any assault was made by the appellants alongwith their associate upon the informant. In fact no injury has been caused to the informant of this case.

5. The next argument advanced by the learned counsel for the appellant is that the I.O. of this case collected absolutely no evidence to the effect that the incident took place in any place within the public view and intentional insult or intimidation was made by the appellant. It is further submitted that there is not even an iota of evidence on record as collected by the I.O. that the appellant committed the alleged offence for the simple reason of the injured being a member of SC/ST community. It is also submitted that the appellant never hurled abuses to insult him by caste related remarks nor threatened for life or beat him and no independent witness came forward to support the prosecution version in this respect. The impugned order suffers from infirmity and illegality warranting interference by this Court.

6. Reliance has been placed on the decisions of the Hon'ble Supreme Court in **Hutu Ansari @ Futu Ansar & Others vs. The State of Jharkhand** passed on 7.4.2025 in Special Leave Petition (Crl.) No.6763 of 2023 and **Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh & Another, 2023 0 Supreme (SC) 550**.

7. Per contra, learned counsel for the respondent no.2 as well as the learned A.G.A. opposed the appeal and it has been submitted that the incident in the instant matter took place on a public road and the appellants not only hurled abuses to the informant / opposite party no.2 but also made an assault upon him and he was threatened for dire consequences. It is also submitted that the

essential ingredients to take the matter within the purview of Section 3(1)(s) of the SC/ST Act are fully applicable in this case. It is further submitted that the Investigating Officer collected ample evidence in this matter although accused Bhai Lal Yadav has been exonerated in the investigation but sufficient evidence was collected against other accused persons / appellants and there is no illegality or perversity in the impugned order. It is also submitted that as per the prosecution case the incident happened on a public road and several persons were present over there. Hence, the offence was committed at a place which was within public view. It is also submitted that the Court concerned after applying its judicial mind has passed the cognizance and summoning order on the basis of sufficient evidence on record. The trial court was under no obligation to enter into the elaborate discussion of the evidence at the stage of taking cognizance of the offence. Hence, the appeal having no force is liable to be dismissed.

8. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

9. It is trite law that at the stage of taking cognizance and summoning the accused, the Magistrate / Court dealing with the matter is required to apply judicial mind only with a view to take cognizance of the offence to find-out as to whether prima-facie case has been made out to summon the accused or not. The Court at this stage is not required to analyze the material on record to find-out as to whether the matter may lead to conviction or not. Sufficiency of materials for the purpose of conviction is not required. It is also settled that even when there are materials raising strong suspicion against the accused, the Court will be justified in taking cognizance and summoning the accused. The Court / Magistrate is not required to analyze the evidence on merits but to scrutinize the evidence only with a view as to whether sufficient grounds exist to initiate criminal proceedings in respect of the offence which is said to have been committed (**Vide : R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283**).

10. Further, what is 'sufficient ground' for proceeding to issue summons and warrant has been clarified in **Nirmaljit Singh Vs. State of West Bengal, (1973) 3 SCC 753** and it is held therein that the words "sufficient ground" used in Section 203 have been

construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction.

11. It is also not out of the scope of subject here that an order passed to summon the accused is an opinion of the Magistrate and to pass a detailed order or to state the grounds of his satisfaction is not required from a Magistrate, however the summoning order must be a speaking order.

12. In **State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539**, the Hon'ble Apex Court reiterated that for issuance of summons strict standard of proof of satisfaction of the Magistrate regarding sufficiency of ground(s) to proceed in the matter is not required and such satisfaction should be based only on prima facie evidence. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. Sufficiency of evidence to hold accused guilty, merits of matter and defence pleas have to be examined at the stage of trial and not at the stage of issuance of process. Whether statement of a witness is hearsay and whether it is supported by "contemporaneous exposition" and whether it would fall under "res gestae" and whether it is admissible or not is to be seen only at the time of trial.

13. To find out the requisite ingredients to establish an offence under Section 3(1)(s) [also to be read as Section 3(1)(dha)] of the SC/ST Act, the provisions thereof, are reproduced below :

"3. Punishments for offences of atrocities.— (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

14. In the instant matter, if a search is made as to whether the respondent no.2 / informant was abused by the appellants, who are not the members of S.C./S.T. community, by his caste name in a place within public view, a perusal of the F.I.R. is required.

15. In the F.I.R., it is mentioned that when the informant was going to his house, he was prevented by the appellants, who hurled abuses by caste related remarks and threatened for dire consequences and he was also abused in filthy language and was also slapped by the appellants.

16. It is to be noted that in the F.I.R., the name of any eyewitness of the incident has not been mentioned. However, during investigation the Investigating Officer proceeded to record the statement of witnesses Sant Lal and Jeet Lal, who are said to be the eyewitnesses of the occurrence and both of them supported the F.I.R. version in material terms. However an objection has been raised by the learned counsel for the appellants that since both the above-named witnesses are the family members of the informant and no other eyewitness was named either in the F.I.R. or in the statement made by the informant under section 161 Cr.P.C., the purpose of Section 3(1)(s) of the S.C./S.T. Act is not solved and it cannot be presumed that the incident happened on a public place in public view.

17. Relying upon the judgment of Hon'ble Supreme Court in the case of Ramesh Chandra Vaishya (supra) it was submitted that witness Sant Lal is the real brother of the informant and other witness happens to be the cousin of the informant. To show the relation of witness Jeet Lal with the informant, a supplementary affidavit has been filed by the learned counsel for the appellants and a revenue record has also been placed on record which prima facie goes to show that witness Jeet Lal is the cousin of the informant. Some revenue records are also placed on record in this connection.

18. In **Ramesh Chandra Vaishya (supra)**, in the almost similar matter, the Hon'ble Supreme Court held like this -

"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 21 st 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."

19. In the another case relied upon by the learned counsel for the appellants i.e. **Hutu Ansari @ Futu Ansar & Others (supra)**, the Hon'ble Supreme Court found that the evidence of prosecution witnesses was recorded, who were all related. P.W.1 and P.W.3 were husband and wife, P.W.6 was the brother of P.W.1, P.W.2 was the son of P.W.6 and P.W.4 is the son of P.W.1 and P.W.3. It was noticed by the Hon'ble Supreme Court that all the said witnesses of fact were related to each other. The Hon'ble Supreme Court further held that the incident occurred not in a public place nor in the presence of any member of the public. In the facts and circumstances of that case, the Hon'ble Supreme Court held that in any event, there is no scope for finding either clause (r) or (s) of Section (1) of the SC/ST Act since P.W.1 has categorically stated that there was no member of public present at the time the incident occurred.

20. If the said factum of law is translated to the facts and circumstances of this case, it is found that the witnesses of fact Shiv Kumar Yadav and Radhey Shyam Yadav also corroborated the prosecution case when they stated that on 2.9.2019, an altercation was taken place in between Hori Lal, Tej Narayan and Gram Pradhan Basant Lal. In his statement, the informant never states that no other eyewitness was present on spot except Sant Lal and Jeet Lal but witnesses Shiv Kumar Yadav and Radhey Shyam Yadav fully corroborated the prosecution case. It is also to be noted that after investigation, the Investigating Officer has submitted the charge-sheet in this matter under Section 323, 504, 506 IPC and Section 3(1)(s) of the SC/ST Act. Even if the witnesses Sant Lal and Jeet Lal are found to be the family members of the informant but the other independent witnesses i.e. Shiv Kumar Yadav and Radhey Shyam Yadav have affirmed the prosecution case in their statement when they were interrogated by the Investigating Officer. The natural consequences, which arises from the said situation is that besides Sant Lal and Jeet Lal, who happen to be the close relatives of the informant, witnesses Shiv Kumar Yadav and Radhey Shyam Yadav also affirmed the prosecution case and prima facie offence under Section 3(1)(s) of the SC/ST Act is made out.

21. In the same manner, injury report of the injured, who was medically examined on 4.9.2021 at 5:30 P.M. indicates that although no visible injury was seen on his person but he was complaining of pain on chest, abdomen, lower back and both the wrist joints as well.

22. Section 323 IPC deals with simple injuries and to establish that

offence even injury report is also not required nor visible injury is required.

23. Hence the injured / informant very well supported the prosecution case when interrogated by the Investigating Officer. The injury report of the injured is also available on record. Witnesses of fact also corroborated the prosecution version. In this matter, as per the materials available on record, at this stage, it cannot be said that offences levelled against the appellants are not attracted. A prima facie case is made out against the appellants to proceed for trial. Further, to decide the pleas raised before this Court leading of evidence would be required, which can appropriately be done before the court concerned at appropriate Stage.

24. The Hon'ble Supreme Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62** held that cognizance is taken when a Magistrate or Court applies his mind or takes judicial notice of an offence with a view to initiating criminal proceedings in respect of the offence which is said to have been committed. This is the special connotation acquired by the term "cognizance", and is given the same meaning wherever it appears in Chapter XXXVI as well.

25. Moreover, the view vented in **Jagdish Ram vs. State of Rajasthan and another, AIR 2004 SC 1734** by the Hon'ble Apex Court sets a reminder that taking cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

26. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya vs. State of U.P. and another, (2023) 17 SCC 615** has been pleased to observe that 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.

27. In view of the aforesaid discussion, I am of the opinion that there is no force in the submissions made by the learned counsel for the appellant. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused /

appellant to face trial for the offences made out prima facie. There is no illegality, infirmity or perversity in the impugned order. The prayer made in the appeal is refused.

28. The criminal appeal being devoid of merits is liable to be dismissed and the same is accordingly **dismissed**.

Order Date :- 10.4.2025

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