

Neutral Citation No. - 2025:AHC:41418

Judgment reserved on 18.12.2024

Judgment delivered on 21.3.2025

Court No. - 37

Case :- APPLICATION U/S 482 No. - 37113 of 2024

Applicant :- Sandhya Dwivedi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raghuvansh Misra, Yogesh Kumar Singh

Counsel for Opposite Party :- Rajan, Sunil Kumar, G.A.

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party No. 2 and learned A.G.A.
2. Learned counsel for the opposite party No. 2 has refused to file counter affidavit to the instant application under Section 482 Cr.P.C. and given his consent to decide the same on merits. Likewise learned A.G.A. has no objection to decide the instant application on merits as well.
3. In view of the peculiar facts and circumstances of the present case and order proposed to be passed hereunder, this Court proceeds to decide the instant application finally with the consent of counsel for the parties present without calling for their respective affidavits.
4. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the entire criminal proceeding, as well as Charge sheet dated 21.06.2023 and Cognizance/Summoning order dated 23.02.2024, in Sessions Case No. 162 of 2024 (Jaiprakash Dwivedi and Others Vs. State), arising out of Case Crime No. 40 of 2023 under Sections 143, 504, 506 of I.P.C. and Sections 3(1)(Dha) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (in brevity 'SC/ST Act'), Police Station-Kotwali City, District-Mirzapur, pending in the court of Special Judge (S.C./S.T. Act), Mirzapur.

5. Respondent no.2 has moved an application under Section 156(3) Cr.P.C. levelling allegation of criminal intimidation, intentional insult and offence under Sections 3(1)(Dha) and 3(2)(va) of SC/ST Act against six named accused, including the present applicant. In pursuance of the order passed in aforesaid application, an FIR dated 22.04.2023, being Case Crime No. 0040/2023, has been lodged with an averment that complainant/first informant is a senior lecturer/*ad hoc* Principal of Adarsh Inter College, Visundarpur, Mirzapur. In pursuance of an order passed by the District Magistrate, he has unfurled the National Flag on Republic Day i.e. 26.1.2023 alongwith employees and students of the school, however, owing to caste-based hatred, the Manager of the School marked him absent on the said date and deducted his salary. Moreover, having been inimical with the first informant, accused nos. 1 and 2, namely, Akhilesh Chand Dwivedi and Smt. Sandhya Dwivedi have called upon him on 31.1.2023 at 11 AM at their residence on the 2nd floor, and they alongwith other accused unanimously threatened the first informant for life and uttered caste-based abusive languages viz. "*Pasi*", "*Chamar*", "*Siyar*" alongwith other derogatory remarks about his mother and sister. On 02.2.2023, all the accused persons went to the school and played mischievous (tampered) with the relevant documents of the school, they are throughout threatened to the first informant for life. It has also been averred in the FIR that on 31.1.2023, while he was being taken to the house of the accused persons, he rang to his wife and a relative who were present at the time of incident, while he was being harassed and abused.

6. Learned counsel for the applicant has questioned the criminal proceeding solely for the alleged occurrence of offence under Sections 3(1)(Dha) and 3(2)(va) of the SC/ST Act and submits that by any stretch of imagination, no offence is made out under Sections 3(1)(Dha) and 3(2)

(va) of the SC/ST Act, inasmuch as place of occurrence of offence as averred in the FIR is within the four walls of house of the accused where no person of public was present and incident in house cannot be said to be a place within the public view. The second submission advanced by the learned counsel for the applicant is that the victim/first informant cannot be said to be abused or harassed, if any, merely because of his caste that he belongs to the Scheduled Caste community.

7. Per contra, learned counsel for the respondent no.2 has vehemently opposed the submissions as advanced by the learned counsel for the appellant and contended that at the time of occurrence of incident, the wife and brother-in-law of the victim/first informant were present in house, therefore, the incident took place within the public view. It is next contended that it was well known to the applicant/accused that the first informant (respondent no.2) belongs to the Scheduled Caste community and owing to caste-based hatred, respondent no.2 has been subjected to crime.

8. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that question raised before this court in exercise of its jurisdiction under Section 482 Cr.P.C., while challenging the criminal proceeding, lies in a narrow compass as to whether the place of occurrence of offence is a place within the public view and whether respondent no.2 has been subjected to an offence under the SC/ST Act only on the ground because he is a member belongs to the Scheduled Caste community. Perusal of the FIR evinces that a well-drafted FIR has been lodged on behalf of the first informant regarding the incident in question which allegedly took place on 31.1.2023, when he has been called upon by the present applicant and her husband Akhilesh Chand Dwivedi (accused no.1) at their residence on the 2nd floor at about 11 AM, where he has been subjected to criminal intimidation, intentional insult, humiliation and harassment. Thus, it is the

case of the applicant that the occurrence of offence took place at the residence of the accused, to wit, within the four walls of the house of accused. Upon receiving the telephonic information from the first informant, his wife and brother-in-law went on the spot who witnessed the incident in question, wherein first informant was being subjected to humiliation, harassment and intentional insult. All the accused have uttered caste-related abusive languages, namely, *Pasi, Chamar and Siyar*. Admittedly, the two witnesses, namely, Smt. Seema Devi and Anil Kumar are the wife and brother-in-law of the first informant who have made their statements being ocular witnesses. Thus, neither the house of the accused can be construed as a "place within the public view" nor the wife and brother-in-law of the first informant can be considered to be members of the public. Even in the presence of the wife and the brother-in-law, the incident in question cannot be considered within the public view. In the matter of **Swarn Singh Vs. State, (2008) 8 SCC 435**, the Hon'ble Supreme Court has drawn the distinction between a "public place" and a "place within the public view". The ratio decided by the Hon'ble Supreme Court in the case of **Swarn Singh (supra)** has elaborately been considered by the Supreme Court in its subsequent judgement of **Hitesh Verma vs. State of Uttarakhand & Another (2020) 10 SCC 710**. The relevant paragraph nos. 14 and 15 of **Hitesh Verma (supra)** is quoted hereinbelow :

"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 Swarn Singh & Ors. v. State through Standing Counsel & Ors.5. 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 5 (2008) 8 SCC 435 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. 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."

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet."

9. I found substance in the second submission advanced by the learned counsel for the applicant as well that the occurrence of the offence, if any, wherein the caste-related abusive language has allegedly been hurled, cannot be said to be occurred solely because the first informant belongs to the Scheduled Caste community. In the given circumstance of the present case, as averred in the FIR, *prima faice*, it is difficult to accept that the first informant has been harassed, intimidated or intentionally insulted solely because of his caste being a member of the Scheduled Caste. The backdrop of the incident evinces, *prima facie*, that there is some management dispute in the institution, which appears to have been dragged into the criminal proceedings.

10. On the face of the First Information Report and the charge-sheet, there is nothing to suggest that there was an intention of the accused to humiliate the respondent no.2 merely because of his caste being a member

of the Scheduled Caste and Scheduled Tribe community. Paragraphs 17 and 18 of the **Hitesh Verma (supra)** case are relevant in this regards, which are quoted hereinbelow :

"17. In another judgment reported as Khuman Singh v. State of Madhya Pradesh⁶, this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

6 2019 SCC OnLine SC 1104 "15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."

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."

11. In the recent judgement of **Ramesh Chandra Vaishya vs. State of U.P. reported in 2023 SCC Online SC 668**, Hon'ble Supreme Court has expounded the implementation of the provisions of the SC/ST Act. Relevant paragraphs 16, 17 and 18 are quoted hereinbelow :

"16. The first F.I.R., registered at the instance of the complainant, is silent about the place of occurrence and who, being a member of the public, was present when the appellant is alleged to have hurled caste related abuses at the complainant. However, on a reading of the second F.I.R. registered at the behest of the appellant, it appears that the incident took place at the house of the appellant.

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.

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 encyclopaedia 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 cognisance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21 st 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.”

12. While exploring the scope of SC/ST Act in the matter of anticipatory bail under Section 438 Cr.P.C. the Hon'ble Supreme Court in

the matter of **Shajan Sakaria Vs. State of Kerala and another**, AIR 2024 SC 4557 has endorsed the verdict in **Hitesh Verma (supra)** and case of **Khuman Singh vs. State of M.P.**, (2020)18 SCC 763, and elucidated the scope and implementation of SC/ST Act. Relevant paragraphs 60, 61, 62,78, 79 are quoted hereinbelow :

"60. Thus, the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

a. Meaning of the expression "intent to humiliate" appearing in Section 3(1)(r) of the Act, 1989

61. The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

62. We would like to refer to the observations of this Court in Ram Krishna Balothia (supra) to further elaborate upon the idea of "humiliation" as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of 'untouchability' and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category. Referring to the Statements of Objects and Purposes of the Act, 1989 it was observed by this Court that the object behind the introduction of the Act, 1989 was to afford statutory protection to the Scheduled Castes and the Scheduled Tribes, who were terrorised and subjected to humiliation and indignations upon assertion of their civil rights and resistance to the practice of untouchability. For this reason, mere fact that the person subjected to insult or

intimidation belongs to a Scheduled Caste or Scheduled Tribe would not attract the offence under Section 3(1)(r) unless it was the intention of the accused to subject the concerned person to caste-based humiliation.

78. *It was also sought to be argued that the appellant knew very well that the complainant belongs to a Scheduled Caste and despite such knowledge if he went on to make derogatory utterances in the video then the offence under Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989 could be said to have been prima facie made out.*

79. *We find no merit in the aforesaid submission. Wherever the legislature intended that mere knowledge of the fact that the victim is a member of Scheduled Caste or Scheduled Tribe would be sufficient to constitute an offence under the Act, 1989, it has said so in so many words. We may reproduce some of the relevant provisions where knowledge that the complainant belongs to the Scheduled Castes or Scheduled Tribes is sufficient in itself to constitute the offence:*

“3. Punishments for offences atrocities.-(1) xxx xxx xxx (w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.” xxx xxx xxx (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,— xxx xxx xxx

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;]” (Emphasis supplied)”

13. Having considered the dictum of Hon'ble Apex Court, as mentioned above, in the given circumstance of the present case, I am of the view, there is nothing to even *prima facie* indicate that, considering the derogatory and humiliating statements alleged to have been made by the applicant (herein accused), she could be said to have *prima facie* committed an offence under Section 3(1)(Dha) and 3(2)(va) respectively of SC/ST Act. Hon'ble Apex Court in the case of **Hitesh Verma (supra)**

has endorsed the verdict of **Ishwar Pratap Singh Vs. State of U.P., (2018)13 SC 612** wherein it has been held that there is no prohibition under the law for quashing the charge sheet in part. Paragraph 23 of **Hitesh Verma (supra)** case is quoted hereinbelow:-

"23. This Court in a judgment reported as Ishwar Pratap Singh & Ors. v. State of Uttar Pradesh & Anr.10 held that there is no prohibition under the law for quashing the charge-sheet in part. In a petition filed under Section 482 of the Code, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice. The Court held as under:

"9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed."

14. In this conspectus, as above, I find substance in the submission advanced by the learned counsel for the appellant and I am of the view that, *prima facie*, no occurrence of offence is made out under Sections 3(1)(Dha) and 3(2)(va) of S.C./S.T. Act against the present applicant, who has illegally been arraigned in the charge sheet under the aforesaid sections. Criminal proceedings initiated against the present applicant under the aforesaid Sections of the SC/ST Act arising out of FIR being Case Crime No.40 of 2023, is nothing but abuse of the process of law/court and to secure the ends of justice, so that accused (appellant herein) may not be forced to indulge in the criminal proceedings for the offence which is not made out against her from the face of the record, the

criminal proceedings is liable to be quashed. It is no more *res integra* that in the exercise of inherent jurisdiction under Section 482 Cr.P.C. the High Court is entrusted solemn duty to nullify any such proceedings which is result of an abuse of process of law.

15. Resultantly, instant application under Section 482 Cr.P.C **succeeds** and is **partly allowed**. Criminal proceeding in Sessions Case No. 162 of 2024 (Jaiprakash Dwivedi and Others Vs. State), arising out of Case Crime No. 40 of 2023 under Sections 143, 504, 506 of I.P.C. and Sections 3(1)(Dha) and 3(2)(va) of SC/ST Act is **quashed partly** so far it relates to the occurrence of offence under Sections 3(1)(Dha) and 3(2)(va) of SC/ST Act against the present applicant, namely, Sandhya Dwivedi.

16. Learned trial court is hereby expected to decide the proceedings for the remaining offence under Sections 143, 504, 506 IPC in accordance with law, as early as possible.

Order Date :- 21.3.2025/vkg