

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.74 OF 2015**

1. Mr. Moreno Rebello,
Son of late Inacio Rebello,
Age 45 years
r/o H.No.152, Maina Curtorim,
Salcete, Goa.
2. Mr. Inacio Barreto,
Son of Sebastiao Barreto,
Age 46 years,
r/o H.No.20, Cotto, Sanguem,
Goa.
3. Mr. Bibhuti Bhushan Das,
Son of Ramchandra Malik,
Age 32 years,
r/o c/o Moreno Rebello, Mugalli,
Sao Jose de Areal, Salcete, Goa.
Native of Bhatpoda, Bhaiya,
Nirakarpur, Puri, Orissa. .. Applicants/ Orig.
Accused

Versus

State
Through the Public Prosecutor,
High Court of Bombay at Panaji
Panaji, Goa. .. Respondent

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the applicants.

Mr. S. R. Rivankar, Public Prosecutor for the respondent.

CORAM :- S. B. SHUKRE, J.

Reserved on : 6th January, 2016.

Pronounced on : 2nd February, 2016

JUDGMENT :

Heard. Admit.

2. The learned Public Prosecutor waives service of notice on behalf of the respondent. Heard finally, by consent of the learned Counsel for applicants and learned P.P.

3. This is a Revision Application questioning the legality and correctness of the order dated 07/09/2015 passed by Special Judge, South Goa, Margao in Special Case (SC/ST) No.4/2014 thereby directing framing of charge for offences punishable under Sections 143, 147, 148, 452, 427, 504, 506(ii), 509 and 394 read with Section 149 of I.P.C. and also under Sections 3(1)(ii),(iv) and (x) and 3(2)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocities Act" for the sake of convenience.).

4. I have heard Shri Sudesh Usgaonkar, learned Counsel for the applicants and Shri S. R. Rivankar, learned Public Prosecutor for the respondent. With their assistance, I have gone through the impugned order, the complaint filed against the applicants and statements of witnesses.

5. According to the learned Counsel for the applicants, the charge for offences directed to be framed against the applicants is not borne out from the facts alleged in the complaint and also appearing in the statements of witnesses recorded by the police. He submits that in no case, charge for the offences relating to house trespass and rioting could have been framed against the applicants as there is not a single whisper against the applicants that they or any of them committed house trespass and that the chargesheet has been filed only against three accused persons i.e. the applicants. He further submits that the offences punishable under Section 3(1)(ii), (iv) and (x) and also Section 3(2) (vi) are not prima facie made out from the allegations levelled against these accused persons. He submits that for the offence referred to in Section 3(1)(ii) to constitute, it is necessary to show that what has been dumped into the property of the complainant is an obnoxious or filthy matter in the nature of excreta, carcass or any other similar substance or material. He submits that although there is use of words "waste matter" in Section 3(1)(ii), the words must be understood by applying the doctrine of "ejusdem generis" or their meaning be confined to the words occurring before or after them or both. He further submits that in the earlier legislation, such offensive acts as throwing or dumping of excreta,

carcass, filth, dirt and similar substance were not effectively covered and as they were being increasingly committed on the properties belonging to the persons of Scheduled Caste or Scheduled Tribe categories, legislature thought it fit to give teeth to the law so that deterrent effect of law is felt by the prospective offenders and the actual offenders are also made to realise that such crimes do not pay. This being the intention of the legislature, the words "waste matter" must be interpreted to mean some filthy or dirty matter or such matter as is offensive or extremely unpleasant to senses. He further submits that the words "waste matter" used in this subsection, therefore, cannot be understood as also including a material which is not dirty or filthy but only a waste or rubble, as for example, laterite powder or metal or "*Mura*", allegedly dumped in the property in question in this case.

6. Learned Counsel further submits that Survey No.27(3) where the alleged offensive acts have been committed itself does not belong to the complainant and for this reason also neither the offence described in Section 3(1)(ii) can be said to have been prima facie committed, nor the offence described in Section 3(1)(iv) would be prima facie made out.

7. Learned Counsel further submits that there is also a doubt if the alleged giving of abuses on caste lines by the accused persons within public view took place at all or not and there is not a single allegation of passing of such casteist comments by applicant nos.2 and 3. Learned Counsel also submits that the offence punishable under Section 394 of I.P.C. as well as one under Section 3(2)(vi) of the Atrocities Act are not made out as the camera appears to be still in the possession of the complainant and was never seized from the custody of any of the accused persons.

8. Shri Rivankar, learned Public Prosecutor fairly concedes that since chargesheet has been filed only against three accused persons and there is also no allegation regarding commission of any act which is in the nature of a house trespass, offences punishable under Sections 143, 147, 148, 452 read with Section 149 of I.P.C. are not made out in this case. He further submits that the allegations made in the complaint, which receive support from the witnesses whose statements have been recorded by the police during the course of investigation clearly make out a case for framing of charge for the other offences referred to in the impugned order against the applicants. He submits that whatever has been argued on behalf of the applicants is something which

can be considered only on merits of the case that is when the trial against the applicants comes to a conclusion. At this stage, he further submits, the Court has only to consider prima facie worth of the material collected during the course of investigation and find out if such material, taken at its face value, is sufficient to make out the essential ingredients of the offences and for proceeding further in the trial against the accused persons. These parameters, learned Public Prosecutor submits, are squarely met as regards other said offences and, therefore, there is no scope for making any interference with the impugned order, except to the extent already conceded.

9. In support of his argument, learned Counsel for the applicants has referred to me the case of **Gorige Pentaiah Vs. State of Andhra Pradesh and others**, (2008)12 SCC 531, wherein the Hon'ble Supreme Court, while holding a criminal complaint filed in that case as prima facie false and frivolous and filed with an oblique motive, observed that it must be alleged in the complaint that the accused is not a member of Scheduled Caste or Scheduled Tribe and that he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view and in the absence of these basic ingredients of the offence, it would be a travesty of justice to continue with the

trial of the accused.

10. Now in order to appreciate the rival arguments and apply the principles of law laid down in the above referred case to the facts of the present case, it would be necessary first to examine the allegations made in the complaint and the nature of the material collected by police during the course of investigation.

11. The complaint dated 08/07/2013 has been filed by Smt Joana Dias with Police Station Maina Curtorim. It is seen from the complaint that the complainant has specifically alleged that she and her family members are belonging to a Scheduled Tribe Community and whereas the applicant no.1 and his family members are not from either Scheduled Tribe or Scheduled Caste community. The complainant has also stated that she is in cultivatory possession and enjoyment of the property being Survey No.27/3 and that the applicant no.1 is planning to dispossess her and her family members from this property. She has alleged that under the instructions of applicant no.1 some persons numbering about 10 entered her said property at about 11.00 a.m. on 08/07/2013 together with a bulldozer and running over the bulldozer on the standing crop of paddy, and other parts of the said land, destroyed the paddy crop and also one Savor tree. She

has also alleged that thereafter, basalt or laterite waste was dumped and was spread over in the entire area of the land. She has further alleged that this incident was video recorded by her son in his camera, but seeing that her son was recording the whole incident, applicant no.1 snatched the camera and took it away. The complainant has particularly alleged that the applicant no.1 abused her by uttering some words on caste lines, the description of which has been specifically given in the complaint. Thereafter, the applicant no.1 and other persons also assaulted her son and while leaving the place, threatened to kill the complainant and her family members and also rape complainant's daughter.

12. Statements of other witnesses including Justine Joe Viegas, son of the complainant support the allegations stated in the complaint dated 08/07/2013.

13. It is well settled law that at the stage of framing of charge, the Court has to see as to whether or not the complaint and the material collected by the police during the course of investigation which includes the statements recorded under Section 161 of Cr.P.C. as well as documents seized by the police, taken at their face value or accepted as they are, indicate the constitution of the offences alleged and make out a case to

proceed further against the accused by framing a charge. It is only when the Court, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution, forms an opinion that there are no sufficient grounds for proceeding against the accused, the Court would be under a duty to discharge the accused for the reasons recorded in writing, as provided in Section 227 of the Code of Criminal Procedure, 1973. The expression "sufficient grounds" used in Section 227, Cr.P.C. suggests that the Court should not examine the material before it from the view point as to whether the trial will end in conviction or acquittal. The perspective of such examination should be whether the material is of such a nature as to enable the Court to reasonably believe that there is something against the accused which would warrant his trial for the offences alleged against him. But, if two views are possible and one of them gives rise to suspicion only as distinct from grave suspicion, the trial Judge would be within his powers to discharge the accused. A useful reference in this regard may be made to the case of **Vijayan Vs. State of Kerala**, AIR 2010 SC 663.

14. Applying the above referred settled principles of law to the facts of the instant case, I find that the offences punishable

under Sections 143, 147, 148, 452 read with Section 149 of I.P.C. are not at all made out against all the applicants as there was neither any unlawful assembly nor any allegation of commission of offence of house trespass by any of the accused persons in this case. Learned Public Prosecutor has also conceded to this proposition which glaringly comes out from the material available on record. Similarly, I find that there is neither any allegation specifically made against the applicant nos.2 and 3 nor is there any material prima facie attributing any role to them in commission of other offences alleged in the complaint, which are the offences punishable under Sections 427, 504, 506(ii), 509 and Section 394 of I.P.C. and Section 3(1)(ii), (iv) and (x) and Section 3(2)(vi) of the Atrocities Act. The result is that there are no sufficient grounds for proceeding against applicant no.1 for offences punishable under Sections 143, 147, 148, 452 read with Section 149 of I.P.C. and against applicant nos.2 and 3 for any of the offences specifically referred to against them in the impugned order. The learned Special Judge, it is seen, has completely ignored these aspects of the case which are fundamental to the exercise of jurisdiction to frame charge under Section 228 of the Cr.P.C. and thus committed an illegality in directing framing of the charge for the said offences against the applicants. To this extent, the impugned order cannot be sustained. However, this is not so

with regard to the other offences alleged against applicant no.1, and I have given my reasons therefor in the foregoing paragraphs.

15. The argument advanced by Shri Sudesh Usgaonkar, learned Counsel for the applicants reproduced in extenso earlier, with regard to interpretation of the words “waste matter” appearing in Section 3(1)(ii) of the Atrocities Act by applying doctrine of “ejusdem generis”, impactful as it is at the first blush, requires, like any other argument raising a legal ground, it's testing on the anvil of applicable principles of law. It is all the more so because it has been disagreed with by Shri Rivankar, learned Public Prosecutor contending that the language of clause (ii) of Section 3(1) is so clear that rule of “ejusdem generis” would have no application to it. So, let us first see how the clause (ii) of said Section is worded. It reads thus :

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

(i)

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

shall be punishable with imprisonment for a term

which shall not be less than six months but which may extend to five years and with fine. ”

16. It is clear that the clause criminalises any act in the nature of dumping either excreta or waste matter or carcass or any other obnoxious substance in the property of the person belonging to Scheduled Caste or Scheduled Tribe (hereinafter referred as SC or ST) category and makes it an offence punishable with imprisonment for a term which shall not be less than 6 months, but which may extend to five years and also with fine. The language of the clause is such that it raises no difficulty in discerning the object and intention of the legislature in penalising the dumping acts. The object is to curb growing tendency among upper caste fortunates to single out those unfortunates who are at the bottom of ladder of caste system for causing humiliation, injury and loss, just to keep their strangle hold in all walks of life and deprive the unfortunates of benefits of development and being in main-stream society, by providing stringent punishment. The intention is to achieve the object by criminalising only those acts which are done with criminal intent. Such object and intention behind the legislation would have to be kept in mind while construing the words “waste matter” about which a way out or forward..., not agreed to by learned P.P., has been suggested by

learned Counsel for the applicants.

17. Learned Counsel for the applicants wants the words “waste matter” to mean, by application of doctrine of “ejusdem generis”, same as filthy or foul or nasty substance just as excreta or carcass or any other obnoxious substance, all of which by their very nature are revolting and unpleasant to senses. He submits that a waste material in the nature of basalt or laterite reject or powder or metal not being obnoxious or repulsive or unpleasant to senses in its very nature could not be intended by the legislature to be included in the list of offensive acts given in the clause (ii) of Section 3(1), Atrocities Act. To appreciate the argument, it would be necessary to first briefly consider the basic rules of Statutory construction. This will help in providing insight into kinetics of “ejusdem generis” doctrine.

18. Understanding the words of a Statute by their plain and ordinary meaning is the first and foremost rule of interpretation of Statutes. By this rule, a Court must begin with the familiar canon of statutory construction that the starting point for interpreting a Statute is the language of the Statute itself. Absent a clearly expressed legislative intention to the contrary, language of the Statute must ordinarily be regarded as conclusive.

In interpreting Statues, a Court must turn always to one cardinal canon before all others which is- a Court must presume that a legislature says in a Statute what it means and means in a Statute what it says there. When the words of a Statute are unambiguous, then, this rule of interpretation is also the last. This is the plain meaning or plain language rule of construction of Statutes.

19. Plain meaning rule's position as the first and foremost rule of construction of Statutes can be seen from a catena of judgments of the Hon'ble Supreme Court. It has been held that the rule simply means that when language is plain and unambiguous, and admits of only one meaning, no question of construction of a Statute arises, for the Act speaks for itself and this has to be done without having any regard to consequences. The rule also implies that the intention of the legislature must be found in the words used by the legislature itself as a first step towards interpretation of the Statute and it is only when it cannot be found that other aids of construction can be resorted to. In the case of ***State of U.P. and others Vs. Vijay Anand Maharaj***; AIR 1963 SC 946, the Hon'ble Supreme Court held that the fundamental and elementary rule of construction is that the words and phrases used by legislature must be given their ordinary meaning and that meaning must be collected from the expressed

intention of the legislature while observing in paragraph 8 thus :

“8.....The fundamental and elementary rule of construction is that the words and phrases used by the legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the legislature.....”

20. In the case of ***M/s. Girdhari Lal and sons Vs. Balbir Nath Mathur and others***; (1986)2 SCC 237, Hon'ble Apex Court held that ascertainment of legislative intent is a basic rule of statutory construction and that construction should be preferred which advances the purpose and object of a legislature. It also observed that although the construction should be in accordance with rule of plain language, such a construction should not be adopted where it leads to anomalies, injustices or absurdities. The relevant observations of Hon'ble Apex Court, as they appear in paragraph 16, are given thus :

“16. Our own court has generally taken the view that

ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K. P. Varghese V. I.T.O.⁵, State Bank of Travncore v. Mohd. M.Khan⁶, Som Prakash Rekhi v. Union of India⁷, Ravula Subba Rao Vs. C.I.T.⁸ Govindlal v. Agricultural Produce Market Committee⁹, and Babaji Kondaji v. Nasik Merchants Coop. Bank¹⁰.”

5. (1981) 4 SCC173

6. (1981) 4 SCC 82

7. (1981) 1 SCC 449

8. (1956) SCR 577

9. (1976) 1 SCR 451

10.(1984) 2 SCC 50.”

21. Emphasizing the importance of plain language rule, Hon'ble Apex Court in the case of **Nelson Motives Vs. Union of India**; 1992(4)SCC 471, in paragraph 8, has observed thus:

“8.....It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences.....”

22. Hon'ble Apex Court has clarified in no uncertain terms in the case of ***Padma Sundara Rao (dead) and others Vs. State of Tamil Nadu and others***; 2002(3) SCC 533 that the Statute, being a command of the legislature, must be understood by its language, and it is the language of the Statute which must be determinative factor of legislative intent. It is also held that it is not permissible for the Court to read anything into a statutory provision which is plain and unambiguous. Relevant observations appearing in paragraph 12 are reproduced thus :

*"12..... It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage*¹¹). The view was re-iterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De**

*Gama*¹².

11. 218 FR 547

12. (1990)1 SCC 277”

23. Coming to the rule of “ejusdem generis”, a latin expression for “of the same kind or nature”, which is one of the rules of interpretation of Statutes, it is said that it offers to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. This rule has its own limitations and cannot be applied when the specific words and the general words do not belong to same class or species or genus or when there is a clear legislative intent that the general term be assigned it's plain or broader meaning rather than restrictive meaning confined to specific words, so as to increase the sweep of the provision. Observing that this rule must be confined within narrow limits and general or comprehensive words must receive their full and natural meaning unless they are clearly restrictive in their intendment, in the case of ***State of Bombay Vs. Ali Gulshan***, AIR 1955 SC 810, the Hon'ble Supreme Court in paragraph 8 held thus :

“8. With great respect, we are constrained to say that the ejusdem generis rule of construction, which found favour in the court below for reaching the result that the words "any other public purpose" 'are restricted -to

a public purpose which is also a purpose of the State, has scarcely any application. Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied. If the words "any other public purpose" in the Statute in question have been used only to mean a State purpose, they would become mere surplusage; Courts should lean against such a construction as far as possible."

24. Explaining the nuances of rule of "ejusdem generis" in the case of ***Tribhuban Parkash Nayyar Vs. The Union of India (UOI)***; AIR 1970 SC 540, Hon'ble Apex Court found that the rule, being one of the rules of interpretation, only serves like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated constitute a class which is not exhausted and are followed by general terms and when there is no legislative intent to give broader meaning to the general words. The observations of the Hon'ble Apex Court in this regard, made in paragraph 13 of the judgment, are of great help in understanding what the rule conveys and where it operates. They are reproduced thus :

“13.....When in a statute there are general words following particular and specific words, the general words are sometimes construed as limited to things of the same kind as those specified. This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the appellant. This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. Ejusdem generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general words.”

25. There is also another rule of construction which is famously called as Heydon's case rule or mischief rule, which has been followed with approval in the case of ***Bengal Immunity Company Limited Vs. State of Bihar***, AIR 1955 SC 661 and later on in several other cases. This rule can be resorted to when the words of a Statute are unclear and do not make out the intention of the legislature or in cases where the words used in a

Statute are capable of carrying two different meanings. In such a case, this rule postulates that construction must be adopted which advances the remedy provided by the legislature and suppresses the mischief intended to be removed by the legislature. In the case of **Zile Sing Vs. State of Haryana and others**; (2004)8 SCC 1 referring to the case of **Bengal Immunity Company Ltd** (supra) in paragraph 20, the Hon'ble Apex Court observed thus :

"20. In The Bengal Immunity Company Ltd. Vs. The State of Bihar & Ors.⁶, Heydon case⁷ was cited with approval. Their Lordships have said :(Scr pp. 632-33)

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case⁷ was decided that-

'....for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered-

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such

construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

6. AIR 1955 SC 661

7. (1584)3 Co Rep 7a : 76 ER 637”

26. In the case of **Kanai Lal Sur Vs. Paramnidhi Sadhukhan**; 1958 SCR 360, the Hon'ble Apex Court struck a note of caution in applying the Heydon's case doctrine when it observed in paragraph 6 thus :

“6..... In support of his argument Mr. Chatterjee has naturally relied on the observations made by Barons of the Exchequer in Heydon case¹. Indeed these observations have been so frequently cited with approval by courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged. However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of

one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct.....

1. (1584)3 Co Rep 8.”

27. Now in the light of aforesaid rules of construction of Statutes and the discussed contingencies of their applicability to different situations, it would have to be seen as to whether it is possible to give a restrictive meaning to the words “waste matter” used in clause (ii) of Section 3(1) of the Atrocities Act or whether these words can be assigned their plain and ordinary meaning. If these two words are capable of being assigned their plain and ordinary meaning and assigning of such meaning to them does not

go against the legislative intent, the doctrine of “ejusdem generis” cannot be resorted to for interpreting them. Similarly, if these two words are found to be belonging to a distinct and exhausted class or species from that of the words which precede and follow them, the rule of “ejusdem generis” would have no application. If these two words are seen to be conveying two different meanings and the legislative intention is not clearly manifest by understanding their meaning, then only principle of “ejusdem generis” can be pressed into service and even then it would be only to the extent that it produces a result which suppresses the mischief and advances the remedy and does not lead to any absurdities or anomalies. This is how the process of interpreting the words “waste matter” used in clause (ii) of Section 3(1) of the Atrocities Act would have to be carried out.

28. The terms “waste matter”, if one goes to the dictionaries of English language, can be found to be carrying specific and distinct meanings. Concise Oxford English Dictionary, 12th Edition (Indian), at page 1631, describes the word “waste” as “used carelessly/ extravagantly, or to no purpose”. Same dictionary at page 882 defines the word “matter” as physical substance or material in general that occupies space and possesses mass, especially as distinct from energy. Black's Law

Dictionary, 9th Edition at page 1727 defines “waste” as permanent harm to real property committed by a tenant “for life or for years” to the prejudice of the heir, reversionary, or the remainder man. The dictionary also equates this term with the term “devastation”. Same dictionary at page 1067 defines the term “matter” as “a subject under consideration”. These definitions of the terms “waste matter” clearly indicate that these two terms have their specific and distinct meanings and together they only show that waste matter is a substance which serves no purpose and which is capable of causing injury. Once it is found that the words “waste matter” carry their own distinct meaning, the first canon of construction, the plain meaning rule would come into play and according to it these terms would have to be given their full effect by the Court. It would mean that the legislature intended them to be understood by their plain meaning only. Therefore, the doctrine of “ejusdem generis” cannot be usefully pressed into service for understanding the meaning of the general words, in the present case the words “waste matter” and rather, the plain language rule would have its application in interpreting them.

29. There is another reason for concluding that “ejusdem generis” rule has no application in constructing the terms “waste matter”. It has to be found in the intention of the legislature as

ascertained from reading of the whole section. Clause (ii) of Section 3(1) proscribes only those acts of dumping of excreta, waste matter, carcasses or any other obnoxious substance which are performed with intention to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe. If such acts are carried out unintentionally, they would not be covered under the mischief of this section. It means that the legislature intended to curb only those acts which are intentional or calculated to cause injury, insult or annoyance. Therefore, the acts of “dumping excreta, waste matter, carcasses or any other obnoxious substance” would have to be construed to be criminal only when their nexus is shown to the criminal intention of the accused. In other words, even dumping of excreta or carcass or some filthy or dirty substance, leave aside non-repulsive waste matter, is not covered under this section, if it is done unintentionally. If this is how this clause is intended by the legislature to operate, there is no reason why the clause would not penalise dumping of simple waste matter which is non-obnoxious or non-repulsive, if same stinks with criminal intention of causing injury, insult or annoyance. The relation between the words “excreta”, “waste matter”, “carcasses” or “any other obnoxious substance” is not *intra-se* or within the same group of words, but outside that group or *inter-se* with the criminal intent

with which these dumping acts are heaped on the property. If dumping of waste matter has been done with the requisite *mens rea*, it would attract the rigour of clause (ii) of Section 3(1), no matter the matter is non-obnoxious, for mind, prevails over the matter. To clarify, almost as a reiteration, what is important is criminal intention to cause injury, insult or annoyance by using any useless substance. This interpretation, to my mind, is consistent with the object and intention of the legislature which are as said earlier, to pull the members of SC or ST from the edge of the brink and bring them into the main-stream society so that they are allowed to develop and grow fully to their potential, by punishing all those acts carried out by physically dumping of any useless material done with intention to cause injury, insult or annoyance to any of such members by the accused.

30. It is true that the words “waste matter” are sandwiched between the specific words “excreta” on one hand and “carcass”, “or any other obnoxious substance” on the other hand. It is also true that all these words belong to same genus of all that useless, unwanted or non-reproductive waste. But, their species or classes in this case cannot be equated with each other. Therefore, they would have to be seen as conveying distinct meanings and as such, it would be improper to restrict the

meaning of the words “waste matter” to the meaning connoted by the words preceding and following them by application of principle of “ejusdem generis”. Doing so, would go against the manifest object and intention underlying the said clause. If one considers the terms “excreta”, “carcasses” or “any other obnoxious substance” together, one would instantaneously know that they belong to one same species that is exhausted in the clause and it is of filthy or foul substances. Same, however, cannot be said to be true about the words “waste matter”. These terms may or may not include substances foul or dirty or repulsive to ocular or olfactory senses like excreta, carcasses etc. and this would make them broader in connotation. Therefore, these two words are required to be given broader meaning, which in fact is their plain and ordinary meaning. There is no reason to hold that there is some linkage in these two classes of words which justifies narrower meaning of the words “waste matter”. If any such restrictive meaning is to be given, it would only result in encouraging the prospective offenders to continue to cause injury, insult or annoyance by dumping only waste material, while tactfully avoiding filthy substances.

31. Mischief rule or Heydon's case rule would also not allow such an interpretation to be made. The interpretation which it permits is the one which advances the remedy and suppresses

the mischief. So, viewed from any angle, the interpretation sought to be assigned to the terms “waste matter” by learned Counsel for the applicants cannot be accepted. These words, being capable of carrying a distinct meaning, would have to be given their full effect plainly and simply. Having understood them so, I find that the words “waste matter” appearing in clause (ii) of Section 3(1) of the Atrocities Act have to be understood differently from the connotation of filth, dirt, repulsion or unpleasantness as conveyed by the words preceding and following them and, therefore, dumping of any waste matter like bounders, metal, laterite or basalt rejects, mining rejects, rubble, debris, mud etc would be covered by the mischief of this clause as long as it is found to be done with the requisite *mens rea*. The *mens rea* would have to be gathered from the facts and circumstances of each case. Even recording a prima facie finding about the element of *mens rea*, whenever an occasion arises to do so, would also be permissible, if it could be ascertained by considering the prima facie worth of the material taken at its face value.

32. In this case, the allegations made in the complaint and also the statements of witnesses, prima facie, show that the waste material in the nature of laterite or basalt reject was dumped by some persons on the instructions of applicant no.1 with a view to

cause injury, annoyance and, therefore, at this stage, I find that the impugned order directing framing of charge for the offence punishable under Section 3(1)(ii) of the Atrocities Act, cannot be said to be illegal or perverse.

33. So far as the offence punishable under Section 3(i)(iv) of the Atrocities Act is concerned, I find that its ingredients which require wrongful occupation or cultivation of any land owned by or allotted to a member of Scheduled caste or Scheduled Tribe are, prima facie, fulfilled in the instant case. The argument of learned Counsel for the applicants that this section is not attracted for the reason that there is no proof of the fact of allotment of land in question to the complainant or any of her family members, would have to be considered, as rightly submitted by the learned Public Prosecutor, on merits of the case and not at this stage. Such argument can be a defence of the applicants which may be raised at an appropriate time. At this juncture, the Court is required to go by the principle of prima facie value of the material collected during the course of investigation by the police and considered so, I find no substance in the said argument of learned Counsel for the applicants.

34. Learned Counsel for the applicants has also submitted

that one of the basic ingredients of the offence of insult on caste lines within public view punishable under Section 3(1)(x) is not fulfilled in this case. I find that the material available on record does not support the argument. No doubt, there is no mention in the complaint about hurling of abuses on caste lines intentionally by any of the accused persons. But, the intention of an accused, being a state of mind, has to be gathered from the facts and circumstances of the case. In the instant case, upon reading of the complaint as a whole and other material available on record, I am, prima facie, of the view that the manner in which abuses were given and the place where they were given by applicant no.1, sufficiently imply at this stage, criminal intention on the part of applicant no.1. These facts distinguish themselves from the facts of the case of **Gorige Pentaiah** (supra). In that case, both the basic ingredients of the offence punishable under Section 3(1)(x) of the Atrocities Act were missing. It was not alleged in the complaint that the accused was not a member of the Scheduled Caste or Scheduled Tribe and that he intentionally insulted or intimidated with an intent to humiliate the complainant within public view. In this case, both these ingredients appear to be prima facie present, if the entire material is taken into consideration. Therefore, in my respectful submissions, said case of **Gorige Pentaiah** (supra) would have no application to the facts

of this case and argument of learned Counsel for the applicants in this regard, is rejected.

35. Section 3(2)(vi) of the Atrocities Act relates to an offence committed by a non-member against the member of Scheduled Caste and Scheduled Tribe, of causing any evidence of commission of offence committed under Section 3 to disappear with an intention to screen the offender from legal punishment. The fact that there is material which prima facie shows that the camera had been snatched away and taken away by the applicant no.1, would be sufficient at this stage to proceed further against the applicant no.1 under this section. The argument of the learned Counsel for the applicants, in this regard, therefore, cannot be accepted.

36. As regards the remaining offences punishable under Sections 427, 504, 506(ii), 509 and 394 of I.P.C. also, a bare perusal of the complaint and the statements of witnesses, is enough to prima facie find that even for these offences there are sufficient grounds to proceed against at least the applicant no.1.

37. In the result, I find that the impugned order deserves to be partially interfered with by partly allowing this Revision

Application. The impugned order dated 07/09/2015, in so far as it directs framing of charge for the offences mentioned therein against the applicant nos.2 and 3 is concerned, is quashed and set aside. The applicant nos.2 and 3 stand discharged from the case.

38. The impugned order dated 07/09/2015 is also quashed and set aside to the extent it directs framing of charge for offences punishable under Sections 143, 147, 148 and 452 read with Section 149 of I.P.C. against the applicant no.1 and applicant no.1, for these offences, stands discharged from the case. For remaining part of the impugned order, as it applies to applicant no.1, it is sustained and confirmed. Parties are directed to appear before the Trial Court on 15/02/2016 at 10.00 a.m.

S. B. SHUKRE, J.

SMA