

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-13575 of 2016

Date of Decision: November 9, 2016

Surender Singh

.....Petitioner

Vs.

Chaman Lal Sharma and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Nitin Jain, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Petitioner has filed a complaint against Chaman Lal Sharma, Manoj, Ashvini and Prem Lata on the allegations that on January 24, 2013, the complainant was assaulted by giving slaps and fist blow and all the accused stated that he was dedh dhanak and that all accused in collusion with each other used caste based words when Avinder Kumar, neighbour Chander Pal and tenant Narain Kumar had come on the spot. All the accused simultaneously allegedly abused the complainant and they stated that they belong to upper caste and he would not be allowed to stay in the house. The trial Court has, on appreciation of evidence, opted to drop the

proceedings under provisions of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for short 'the Act' and summoned the accused under Sections 323, 506 and 120-B IPC, observing that the alleged humiliation is not at any place within the public view as such no offence under Section 3 (1) (x) of the Act is made out. The petitioner is aggrieved by the order of the summoning Court and has questioned the legality and propriety of the said order in not summoning the accused for offence under Section 3 of the Act.

Counsel for the petitioner has submitted that when an accused abuses a person by the name of his caste even inside a building but some members of the public are there who are not merely relatives and friends, then also the offence would be made out, since the occurrence in said circumstances can be said to be in 'public view'.

A direction was issued to counsel for the petitioner to place on record the statements of the witnesses who have been produced.

I have gone through the statements of CW1 Ravinder CW2 Rohtash, CW3 Surender Singh and CW4 Chanderpal who have levelled general allegations against all the respondents not specifically attributing the words individually used by the accused. Respondent No.1 is related to the other accused as accused No. 2 and 3 are the sons and accused No.4 is wife of accused No.1. All the accused simultaneously using the same words that too in presence of the witnesses who are apparently interested witnesses, requires a Court to determine the culpability by carefully considering the

allegations. Since the provisions of the Act entail serious consequences i.e. non-applicability of provisions of Section 438 Cr.P.C., a severe punishment prescribing minimum sentence, standard of proof has to be seen in consonance with the stringent provisions and would require a Court to carefully appreciate the evidence. The allegations seem to be vague and uncertain. The reasoning adopted by the trial Court in declining to summon the accused is that the occurrence has not taken place in 'public view'. There is no controversy regarding the differentiation made in the word 'public view' and 'public place' in the judgment cited by counsel for the petitioner i.e. **Swaran Singh and others Vs. State through Standing Counsel and anr.**, 2008 (4) RCR (Crl.) 74. There is no controversy regarding the proposition that the expression 'public place' has not to be confused with 'public view'. The occurrence can be at a place which is in 'public view'. The relevant observations made in para 28 of the abovesaid judgment reads thus:-

“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.”

The observation in the judgment of **Swaran Singh's** case (supra) does not lay down a general rule of law that the words 'public view' has to be ignored in all the proceedings launched under the complaint under the Act. It is pertinent to observe here that in the complaint which has been filed by the petitioner, he has not specifically mentioned that the occurrence has taken place in 'public view' if seen in context to the observations of the judgment in **Swaran Singh's** case (supra). In para 5 of the complaint, the complainant has admitted that some cases have been filed against the petitioner- complainant by the accused named in the complaint which clearly

indicates that the complaint is in the nature of counter-blast to the proceedings initiated against him under Section 107/151 Cr.P.C., as mentioned in annexure P-1.

Besides this, in another judgment of **Dhiren Prafulbhai Shah Vs. State of Gujarat**, 2016 CrI.L.J. 2217, the basic ingredients for trying an accused under Section 3 (x) of the Act are that the incident must occur in a place within the ‘public view’. The concept of ‘public view’ in context of the ‘private view’ has been discussed in detail in the said judgment.

In view of the observations of the said judgment also, the occurrence would be said to have taken place in ‘public view’.

In view of the above circumstances, the reasoning adopted by the trial Court in not summoning the respondents/ accused appears to be reasonable for the reasons mentioned in the impugned order as well as the reasons mentioned hereinabove. No ground is made out for setting aside the impugned order.

The revision petition is dismissed. It is specifically observed here that anything mentioned in the present order will not, in any manner, prejudice the case of the petitioner on merits regarding offences for which the accused have been summoned.

November 9, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.