

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of Decision: October 27, 2016

1. CRM M-24338 of 2015

Sandeep KumarPetitioner

Vs.

Bharat BhushanRespondent

2. CRM M-41346 of 2015

Sandeep Kumar and othersPetitioners

Vs.

Bharat BhushanRespondent

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

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Present:- Ms. Isha Goyal, Advocate
for the petitioners in both cases.

Mr. Mohinder Kumar, Advocate
for the respondent.

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M.M.S. BEDI, J.

This order will dispose of two petitions bearing CRM M-24338 and M-41346 of 2015 filed by Sandeep Kumar and others seeking quashing of the criminal complaint No.25185 dated September 22, 2011 (annexure P-9) titled Bharat Bhushan Versus Sandeep Kumar and others for offences under Sections 3 of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities Act), 1989 read with Sections 452, 427, 506, 323, 148, 149 IPC pending in the Court of CJM, Amritsar and the summoning order dated May 11, 2015 (annexure P-15) passed by CJM, Amritsar and all the criminal proceedings including the order passed by CJM issuing non-bailable warrants against petitioners No.3 and 6 in CRM M-41346 of 2015. Since the claim of the petitioners in both the proceedings are coinciding, CRM M-24338 of 2015 has been considered only qua Sandeep Kumar whereas second petition bearing CRM M-41346 of 2015 has been considered qua petitioners No.2 to 5 but the petitions have been taken up simultaneously as the similar question of fact and law is involved in both the petitions. For the convenience, the facts have been taken from CRM M-24338 of 2015.

Before referring to the grounds for quashing, the contents of the private complaint filed by respondent as mentioned in annexure P-9 are required to be dealt with. The contents of complaint under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for short 'the Act' read with Sections 452, 427, 506, 323, 148, 149 IPC against the petitioners read as follows:-

“Complaint under section 3 of the SC & ST Prevention of Atrocities Act read with section 452, 427, 505, 323, 148, 149 IPC Police station Civil Lines.

Sir,

It is respectfully submitted as under

1. That the complainant is permanent resident of the above said address and is law abiding citizen of India.
2. That the complainant belonging to Scheduled Caste Category and photocopy of the Scheduled Caste Certificate issued by the competent authority is enclosed herewith.
3. That the complainant is dealing in the work of Cable communication and running the cable net work from this house under the name and style of A.S Cable, Hukam Singh Road, Amritsar.
4. That the accused persons are belonging to upper class of the society and they are also dealing with the cable communication net work business and they are known to the complainant and they also knew that the complainant is belonging to Scheduled Caste Category.
5. That since the complainant is belonging to Scheduled Caste Category and accused are belonging to upper class of the society and they have been putting pressure upon the complainant not to run the cable communication/ network of M/s God Father Communication but the complainant refused to accede their illegal demand.
6. That on 14.7.2011 at about 2 pm all the accused came in Endeavour Car in the house from where the complainant is

doing his business in one shop situated in the said house and while coming at the spot, the accused Sandeep Kumar stated “Is Kute Chure the Saman Kad Lawo ate is kute chure noon kahi war akhia hai ke God Father Communication da kam Band Kar Deve par ih Baaj Nahin Aunda”. They stated these defamatory words while standing in the street which is public place with a view of defame the complainant Then the accused Sandeep and Sarabjit Singh alias Raju forcibly entered into the shop and started breaking the Machinery/operatus of the complainant and they caught hold the complainant from his neck and brought him in the street and accused Sarabjit Singh and accused Angad said, Is Kute Chure dian Latan Bhan Devo te is kute chure noon aaj pata dus devo ke kiven ih sada kehna nahin manda. Is bhain chod kute Chure ne gand pallia hai Ihna Kutean Churian noon sarkar ne Sir te Jharaiya hai”. That the accused Sandeep also used derogatory words towards the case of the complainant by saying that “Teno Kutea Churea Asin Cable da kan nahin karan Dena and teno ethon kad ke sadan ge”.

7. That on hearing Rola Avinash Kumar son of Puran Chand resident of 4500/10/2, Gali No 2, Islamabad,

Amritsar attracted the spot and Avtar Singh son of Gurbachan Singh resident of Jagdambe Colony, Amritsar who is employee of the complainant also came there. The complainant and the above said witnesses also requested the accused persons not to uttered such type of derogatory words against the caste of the complainant but they did not listen them and continued in giving filthy abuses to the complainant and his caste. All the accused then with their common intention again entered the house of the complainant and broken his house hold articles. The above said witnesses intervened and while leaving the spot all the accused threatened the complainant that they will come again and will eliminate the complainant if he will continue with the said business.

8. That the complainant approached the local police and moved application to SHO, Majitha Road, Amritsar which was marked as Diary No. 215AP (F) dated 14.7.2011 but since the accused are very influential persons, the police lingered on the matter and rather registered a false case against the complainant and others, hence this complaint.
9. That the accused have committed the above said offences and as such they are liable to be prosecuted under the law.

10. So it is prayed that the accused may kindly be summoned, tried under Section 3 of the S.C. & S.T. (Prevention of Atrocities) Act read with Sections 452, 427, 506, 323, 148, 149 IPC and be punished according to law in the interest of justice, equity and fair play.”

A perusal of the above said complaint indicates that in nut-shell the allegation against the petitioners is that on July 14, 2011 at about 2 p.m. all the accused had come to the house of the complainant where he is doing the business in one shop situated in the house and abused the complainant in the name of his caste and forcibly entered the shop and started breaking the machinery and apparatus of the complainant. After recording the statements of complainant Bharat Bhushan as CW1 (annexure P-10), Avtar Singh, CW2 (P-11) who is working with complainant Bharat Bhushan, Avinash Kumar, a resident of the locality as CW3 and Salwinder Singh as CW3 (annexure P-13) who proved that the complainant is a registered cable operator working at the address given in the complaint, CW5 T.S. Negi (annexure P-14), photographer, the CJM, Amritsar passed summoning order dated May 11, 2015 by observing that on perusal of the complaint and testimony of witnesses, prima facie there are sufficient grounds to summon all the accused for offences under Sections 3 (x) of the Act and Sections 452, 427, 506, 323, 148, 149 IPC.

Quashing of the criminal complaint and the above said summoning order annexure P-15 has been prayed for, inter-alia on the

ground that the petitioners are victims of malicious prosecution as a counterblast to the FIR which has been lodged by petitioner Sandeep Kumar against complainant- respondent for commission of offence under the provisions of Copy Right Act, 1957 and is aimed at to brow-beat and harass the petitioners so as to deter petitioner Sandeep Kumar from pursuing the FIR. It has been urged that FIR No. 240 dated July 14, 2011 was registered against the complainant under Sections 37, 51, 52A, 63, 68, 69 of the Copyright Act, 1957 registered at Police Station Civil Lines, Amritsar at the instance of petitioner Sandeep Kumar which pertains to the same occurrence of dated July 14, 2011.

In order to appreciate the contention of learned counsel for the petitioners, it is important to refer to the FIR which has been registered against the complainant at the instance of Sandeep Kumar. The contents of the FIR which was registered pertaining to the incident dated July 14, 2011 are reproduced hereunder for ready reference:-

“To The SHO PS Majitha Road, Amritsar. Subject
Offence 37, 51, 52A, 63, 68, 69 Copy Right Act, 420
120-B IPC. Sir, it is stated that I Sandeep Kumar s/o Raj
Kumar am resident of 10-B, Block-D, Kashmir Avenue,
Batala Road, Amritsar. I have been authorized by V4U
Copy Right Protection, Mumbai that no cable operator or
sub-operator can broadcast any film songs, programme or
film of which the above company has the rights. Today

Gurdev Singh Bhullar Godfather Cable Network himself and his sub-operator Bharat Bhushan resident of Hukam Singh Road, ASR and Rakesh Arora resident of Street Khai Wali. PS D- Division, ASR and Rajesh Kumar Latti resident of Pacci Gali, near State Bank Town Hall, ASR are broadcasting movie Kuch Kuch Hota Hai and are committing cheating with people and our company and are causing huge loss. Kindly take necessary action these accused persons. Sd/-sandeep Kumar, 98780-89999. Attested Satwant Singh, ASI, I/C PP Shivala Bhaiya, Amritsar, 14.7.2011.”

It is averred in the petition that there are two cable TV operators in Amritsar, Godfather Communications and Royal Communications, owned by Proprietors Gurdev Singh Bhullar and Harish Kumar, respectively. It is alleged that they have been indulging in screening, broadcasting the films, songs, programmes without any licence and collecting money from the public at large causing huge loss to the revenue and the distributor Company. The FIR No. 302 dated December 27, 2010 had been registered against Gurdev Singh Bhullar and others. Complainant Bharat Bhushan is one of the agents of Godfather Communications which is run by Gurdev Singh Bhullar. The premises of the Godfather Communications was raided and large number of CDs and DVDs and duplicate cassettes were recovered. Petitioner Sandeep Kumar has referred to six FIRs which have been

registered against Gurdev Singh Bhullar and Harish Kumar, Proprietors of Godfather Communications and Royal Communications. Copies of the said FIRs have been placed on record as annexures P-3 to P-7 registered in the year 2011. In order to highlight criminal antecedents of the owner of Godfather Communications-Gurdev Singh Bhullar, five FIRs registered in the year 1991 and 1997 have been mentioned. It has been averred in the petition that the complainant Bharat Bhushan admits that he is doing cable business in association with Godfather Communications acting as a stooge of Gurdev Singh Bhullar so as to settle the personal scores. The main grievance of the petitioners is that regarding the occurrence dated July 14, 2011, an FIR No. 240 dated July 14, 2011 had been registered against Gurdev Singh Bhullar of Godfather Communications Cable Network and Bharat Bhushan- respondent/ complainant, Rakesh, Arun and Rajesh Kumar @ Laddi at Police Station Civil Lines, Amritsar for commission of offence punishable under the Copy Right Act. Copy of the said FIR has been placed on record as annexure P-4. The other grievance of the petitioners is that the complaint depicted the occurrence of the same date whereupon petitioner Sandeep Kumar was instrumental in getting an FIR registered against respondent No.1 and his co-accused persons. The trial in FIR No. 240 is pending in the Court of CJM, Amritsar as case No. CHA/0023955/2013 in State Vs. Bharat Bhushan and others and charges have been framed against the respondent-complainant and his co-accused vide order dated May 3, 2013. Copy of the charge-sheet has been placed on record as annexure P-8.

The quashing of the complaint and the criminal proceedings has been sought for on another ground that there is a delay of about 2 months in filing of the complaint with an objective to take revenge and to brow-beat and deter petitioner Sandeep Kumar and others from perusing FIR No. 240. In order to highlight the malafide conduct of the complainant and Gurdev Singh Bhullar, petitioner Sandeep Kumar has referred to a number of cases in which the proceedings have been stayed. Copies of the order in CRM M-24906 of 2012 Sandeep Kumar and others Vs. Ravinder Singh and another staying the proceedings vide order dated August 22, 2012 has been placed on record as annexure P-16. Similarly in CRM M-28214 of 2012, Sandeep Kumar and others Vs. Jagdish Kumar and others, proceedings have been stayed in another complaint case No.552/2011 vide order annexures P-17 and P-18 dated August 13, 2012 and August 3, 2012, respectively. In CRM M-39418 of 2013, Sandeep Kumar and others Vs. Pawan Trehan arising out of a complaint Pawan Trehan Vs. Sandeep Kumar and others proceedings have been stayed vide order dated November 21, 2013 (annexure P-19).

Quashing of the criminal complaint and the summoning order has been sought on the followings grounds:-

- i) the private complaint is a counter-blast to various cases registered against Gurdev Singh Bhullar and others involved in the cable operation business;
- ii) the complainant and the summoning orders are abuse of the process of the Court in order to deter petitioner

Sandeep Kumar and others from pursuing FIR No. 240 in which Sandeep Kumar is a complainant and that the complaint has been filed after unexplained delay of two months;

- iii) It was mandatory for the trial Court to resort to the provisions of Section 202 Cr.P.C. which require the holding of an inquiry by the police official before issuing process under Section 204 Cr.P.C. as the Magistrate was required to stay the proceedings under Section 210 Cr.P.C., as it was mentioned in the complaint that pertaining to the incident dated July 14, 2011 an FIR had been registered against the complainant/ respondent;
- iv) That the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which had been enacted for laudable purpose of preventing the commission of offences of atrocities against the members of Scheduled Castes and Scheduled Tribes as also for the relief and rehabilitation of the victims of such offences but same have been used as an instrument of oppression at the hands of vested interests for initiation of frivolous prosecution to achieve ulterior objectives. The provisions of the said Act have been gravely misused for abusing the process of law.

On notice having been issued to complainant, he has filed a reply objecting to the exercise of powers by his Court under Section 482 Cr.P.C., that the impugned order dated May 11, 2015 was subject to revision and the alternative remedy having not been availed of, the exercise of inherent powers under Section 482 Cr.P.C. is not permissible. It is averred that no illegality has been committed by the Magistrate in passing the summoning order dated May 11, 2015. It was vehemently denied that the criminal proceedings were counter-blast to FIR No. 240 dated July 14, 2011 lodged against the complainant but it was averred that the said FIR lodged by petitioner Sandeep against the respondent is a counter-blast to the complaint given by the respondent to the police against the petitioners. It is mentioned in the reply that the crime had been committed by the petitioners on July 14, 2011 at about 2.00 p.m. and on learning about the complaint, the FIR was registered at 7.10 p.m. and the information was given to the police by petitioner Sandeep Kumar at 6.30 p.m. and the information was received at Police Station at about 6.30 p.m.. It was claimed that the FIR registered by the petitioner is a counter-blast to the complaint given by the respondent. Pertaining to the other allegations, the complainant has averred in the reply that petitioner Sandeep Kumar is not public spirited person rather he is a hired person whose job is to get registered false FIRs against rival cable operators at the instance of Fast Way Transmission Pvt. Ltd. and he has got registered about 40/50 FIRs in the State of Punjab against cable operators. In order to give a political ting to the controversy, it has been mentioned that

petitioner Sandeep Kumar is employee/ office bearer of Fastway Transmission Pvt. Ltd. which has created monopoly in Cable TV business after the family of Chief Minister of Punjab came into power and has captured about 95% business of the Cable TV in the State by misusing the police power and their modus operandi is that they forced their rival cable operators to merge with Fastway Transmission Private Limited and when the cable operator refused to do so, they get false FIRs registered against such cable operators on the complaint of petitioner Sandeep Kumar. The complainant has not denied his association with Godfather Communications rather it is claimed in the reply that Godfather Communications has been granted licence/ permission by the Government of India to run cable TV network and that there is nothing against Gurdev Singh Bhullar of M/s Godfather Communications. The complainant has denied that the complaint had been filed in conspiracy and collusion with Gurdev Singh Bhullar but it is admitted in the reply that complainant is working as cable operator in the name and style of AS. Cable Network which is getting signals from Godfather Communications which had been granted licence/ permission from Ministry of India to run cable TV Network business. The lodging of FIR No. 240 by petitioner Sandeep Kumar has been admitted. It has also been admitted that the allegations in the said FIR pertain to an incident dated July 14, 2011 but it has been alleged that the allegations in the said FIR are false.

With the able assistance of counsel for the petitioners as well as counsel for the respondent, I have gone through the contents of the complaint, contents of the FIR registered against the respondent and the averments for quashing of the complaint on the allegation that the complaint is an abuse of the process of law to defeat the rights of petitioner Sandeep Kumar in the complainant and to pressurise him and his associates.

So far as the exercise of powers under Section 482 Cr.P.C. for quashing of the criminal proceedings are concerned, the parameters have been laid by the Apex Court for exercise of said powers in **State of Haryana and others Vs. Bhajan Lal**, AIR 1992 SC 604 wherein in context to the scope of provisions of Section 482 Cr.P.C. it has been held that the High Court would interfere under Section 482 Cr.P.C. for quashing of FIR or a private complaint only in the following circumstances:-

- “1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the

Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Learned counsel for the respondent has relied upon the following judgments in support of his contention that powers of the High Court under Section 482 Cr.P.C. should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim and caprice:-

- i) P.S. Meherhomji Vs. K.T. Vijay Kumar and others, 2014 (4) RCR (CrL.) 731
- ii) Ashabai Machindra Adhagale Vs. State of Maharashtra and others, 2009 (2) RCR (CrL.) 86;
- iii) Subrata Das Vs. State of Jharkhand and another, AIR 2011 SC 77; and
- iv) Sonu Gupta Vs. Deepak Gupta and others, 2015 (2) RCR (CrL.) 32.

There is no controversy regarding the parameters laid down by the Apex Court in **Bhajan Lal's case** (supra) laying down the parameters

under which the inherent power under Section 482 Cr.P.C. is to be exercised. If the material forming part of the complaint and the facts brought on the record clearly indicate that the criminal prosecution launched by a party is attended with malafide and the proceedings have been initiated maliciously with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge and the story put forth in the complaint is apparently absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the Court has to exercise powers under Section 482 Cr.P.C. to prevent the abuse of process of law.

The fact that an FIR No.240 dated July 14, 2011 has been registered by the police on the day of occurrence i.e. July 14, 2011 is indicative of the fact that the complainant- respondent is an accused. The association of the complainant- respondent with Gurdev Singh Bhullar has been admitted expressly in the reply filed by the respondent. The rivalry between the parties regarding running of the business of Cable TV is also apparent. The factum of lodging of FIR No. 240 dated July 14, 2011 on the complainant of petitioner Sandeep Kumar against Gurdev Singh Bhullar, the complainant, Rakesh Arora, and Rajesh under Copy Right Act and pendency of the criminal case State Vs. Bharat Bhushan and others in the Court of CJM, Amritsar is not a disputed question of fact. The complaint filed by the

respondent pertaining to an incident dated July 14, 2011 is dated September 22, 2011 i.e. more than two months after the occurrence.

The contention of learned counsel for the respondent that the FIR lodged by the petitioner is a counterblast to the complainant is not correct from the evidence produced by the complainant in the shape of preliminary evidence. The complaint is dated September 22, 2011 though the MHC Police Station Majitha Road, Amritsar has been cited as a witness to prove the complaint but at preliminary stage no such material was produced to establish that a complaint had been filed on July 14, 2011. If any complaint had been filed, the same could have been established by producing the record of acknowledgement of such complaint. The lodging of complaint in offence under the Act at the earliest is the requirement of Rule 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, for short 'the Rules', which requires that every information relating to the commission of offence under the Act shall be reduced to writing and shall be entered in a book to be maintained by the police station and same would be given free of cost to the informant. If any person is refused by the act of an officer in-charge of a police station to record the information referred to in the rule, he may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the

substances of that information to be entered in the book to be maintained by the police station. Rule 5 of the Rules reads as follows:-

“5. Information to Police Officer in-charge of a Police

Station.- (1) Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a police station shall be reduced to writing by him or under his direction. and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.

(2) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the

concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station.”

Rule 5 of the Rules leaves no manner of doubt that law postulates recording of the information if received pertaining to an offence committed under the Act. The mandatory provisions of the Act and the Rules framed thereunder are required to be adhered to in view of stringent provisions and prevent the commission of atrocities towards the members of the Scheduled Castes and Scheduled Tribes. The stringent provisions of the Act prescribe minimum sentence of six months which is extendable to 5 years with fine. Sections 18 and 19 of the Act make the provisions of Section 438 Cr.P.C. and provisions of Section 360 of the Probation of Offenders Act non-applicable to the offenders found guilty under the Act. When a special Act is constituted with stringent provisions, certain statutory provisions are also required to be followed. When statute requires a particular act to be done in a particular manner, it is required that the mandatory provisions have been followed. In the absence of proof regarding mandatory provisions having been followed, a presumption of creditworthiness will not be attached to the act which is required to be performed in a particular manner. In the present case, no material having been brought on the record regarding a complaint having been filed pertaining to the incident dated July 14, 2011 and the same having not been established by summoning the record from the concerned Police Station and

a private complaint having been filed after a gap of more than two months, coupled with a circumstance that the complainant is an accused in a criminal case pertaining to the same occurrence, it would be apparent that the private complaint filed by complainant is an abuse of the process of the law and is a counter-blast to the criminal proceedings and the private complaint is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. The provisions of Section 210 Cr.P.C. should have been complied with by the Court by calling for a report pertaining to the incident dated July 14, 2011 especially when it was mentioned in the complaint that an FIR had been registered pertaining to the incident of the said date.

I have considered the contention of learned counsel for the respondent that FIR registered by petitioner Sandeep Kumar is a counter-blast to the complaint, but I do not find any force in the same. Had the complainant produced the relevant evidence as per the requirement of Rule 5 of the Rules before the trial Court, the plea of counsel for the respondent could have been believed but in the absence of any such material produced on the record, the delay of two months in filing of the complaint is prima facie an act of malafide establishing that the complaint annexure P-9 is counterblast to the FIR registered by petitioner Sandeep Kumar against the complainant and others.

Counsel for the petitioners has placed reliance on the judgment in **Dhiren Prafulbhai Shah Vs. State of Gujarat**, 2016 CrI.L.J. 2217, in which it was observed as follows:-

“23. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows:-

- (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST;
- (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and
- (c) the incident must occur in any place within the public view.

There cannot be any dispute that the offence can be committed at any place whether it is a private place or a “public view” as long as it is within the “public view”. The requirement of “public view” can be satisfied even in a private place, where the public is present.

24. The difficulty is only as regards the true and correct import of the expression “public view” which is used by the Legislature in contra distinction to the expression “private view”. The ‘View’ here means sight or vision and hearing. Only meaning of the word “public” is left to be found in the context in which it is used.
25. The expression “public” is a polimorphus word, which assumes different colours in different context. Judges and jurists have so far not found it possible to work out a complete logical definition of the words “public” universally applicable to all situations. Corpus Juris (Page 844) defines “public” as under: “PUBLIC AS A NOUN does not have a fixed or definite meaning; it is a convertible term. In one sense, the “public” is everybody; and accordingly “public” has been defined or employed as meaning the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town or country; the people; the whole body politic; or all the citizens of the state. In another sense the word does not

mean all the people, or most of the people, nor many of the people of a place, but so many of them as contra distinguished them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place, the people of the neighbourhood. 'B'. As an adjective, 1. In General. It is said to be very difficult, if not impossible to frame a definition for the word "public" that is similar or clearer than the word itself; a convertible term, used variously, depending for its meaning upon the subjects to which it is applied. It has two proper meanings."

26. The SC/ST Act was enacted as the laws like the Protection of Civil Rights Act, 1955 and provisions of the Indian Penal Code were found inadequate to arrest the commission of atrocities against members of Scheduled Castes and Scheduled Tribes. A specific legislation to check and deter crimes committed by the non-Scheduled Castes and Scheduled Tribe members thus became necessary. The statement of objects and reasons of the Act reads:

“Despite various measures to improve the socioeconomic conditions of the Scheduled Castes and the Scheduled tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment.

They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded force labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even

the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on the mass, killing of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and Scheduled Tribes.

27. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Subclauses (I) to (xv) of Section 3 (1) of the Act enumerated various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, sub-clause (x) is the only clause where even offending “utterances” have been made punishable. The Legislature required intention as an essential ingredient for the offence of “insult”, “intimidation” and “humiliation” of a member of the Scheduled Castes or Scheduled Tribe in any

place within “public view”. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence stronger should the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in Section 3 (1) (x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.”

Applying the above said ratio to the facts of the present case, I am of the opinion that the incident in the present case was not in public view as the witnesses supporting the complainant have stated in their evidence that the complainant had raised alarm, hearing which they had come present on the spot. The said witnesses had reached the place only after the complainant raised alarm. The legislature has required intention as an essential ingredients for the offence of insult, intimidation of members of Scheduled Castes and Scheduled tribes in any place out of public view. It is

settled principles of law that offences under the Act are grave and provide stringent punishment. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted.

As discussed hereinbefore the element of intentional insult and intimidation in a place in public view is not prima facie established from the evidence produced. Taking into consideration the totality of the above said circumstances, the continuation of proceedings against the petitioners appear to be an abuse of the process of law.

In view of the above circumstances, both the petitions are allowed, the complaint and the summoning order being abuse of the process of the Court. The provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act appear to have been misused with an objective to defeat the rights of the petitioners. The complaint annexure P-9 and the summoning order annexure P-15 and all the criminal proceedings emanating therefrom are hereby quashed being an abuse of the process of the Court.

October 27, 2016
sanjay

(M.M.S.BEDI)
JUDGE

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