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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 3066/2016 and CRL.M.A. 16410/2016

REKHA YADAV Petitioner

Through: Mr. Parmil Kumar, Advocate.

versus

STATE & ANR. Respondents

Through: Mr. Avi Singh, ASC and Ms. Megha Bahl, Advocate along with ACP Raj Kumar, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

28.11.2016

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1. The petitioner has preferred the present writ petition to seek quashing of FIR No.451/2006 under Section 3(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at PS–Old Delhi Railway Station and the proceedings arising therefrom.

2. The submission of learned counsel for the petitioner, firstly, is that the allegations made by the complainant/ respondent No.2 in the complaint made departmentally on 29.01.2016 are at contradiction with those found in the FIR in question. It is pointed out that in the departmental complaint, the complainant alleged that the petitioner accused had insulted the complainant by use of caste specific derogatory words because the complainant had asked the accused to work on her work seat, whereas in the FIR in question, the complainant has stated that upon his asking the accused to proceed to deposit the cash in the bank, the accused had committed the said offence.

3. The second submission of learned counsel for the petitioner is that, in any event, it could not be said that the intentional insult or intimidation with intention to humiliate the complainant – a member of the Scheduled Caste, was “*in any place within public view*”. The submission is that, firstly, in the departmental complaint names witnesses in whose presence the alleged offence was committed was not disclosed, whereas the names of other co-employees have been disclosed in the FIR in question, and secondly, that the said co-employees are not persons who could be described as forming part of a public view. In this regard, reliance has been placed by learned counsel for the petitioner upon ***Daya Bhatnagar & Others Vs. State***, 109 (2004) DLT 915. In this case, on account of divergent view taken by two learned Judges of this Court, the matter was referred to a third learned Judge. The petitioner has sought to place reliance particularly on the following observations made in paragraph 19 of the said decision, to submit that the other co-employees could not be considered to be independent and impartial and who would not be interested in any of the parties:

“19. 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. I am again in agreement with the interpretation put on the expression “public view” by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

“I accordingly hold that expression within ‘public view’ occurring in Section 3(1)(x) of the Act means

within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used.””

4. Mr. Avi Singh has opposed the petition. He submits that, firstly, it is not necessary that the allegations made in the departmental complaint should be identical to those made in the complaint forming part of the FIR in question. Secondly, he submits that the co-employees in an office environment cannot be excluded from the definition of “public view” merely on account of their working in the same office. He submits that to take such a view would be to give a narrow interpretation to the provision, namely Section 3(1)(10) of the aforesaid Act and the same would defeat the object of the Act itself. He has also pointed out the observations made by the learned Single Judge in **Daya Bhatnagar** ((supra)) in paragraph 25, relevant extract whereof reads as follows:

“25. To conclude, I am in complete agreement with the interpretation put by Hon'ble Mr. Justice B.A. Khan to the expression “public view” in Section 3(1)(x) of the Act. But, with great respect to the learned brother Justice Khan, I have not been able to persuade myself to agree to the conclusion reached by him on facts. “Public view” envisages that public persons present there should be independent, impartial and not having any commercial or business relationship, or other linkage with the complainant. It would also not include persons

who have any previous enmity or motive to falsely implicate the accused persons. However, merely because a witness, who is otherwise neutral or impartial and who happens to be present at the house of the victim, by itself, cannot be disqualified. Again, lodging of the counter FIR by the accused against witnesses of the earlier case would not ipso factodeprive them of their status as neutral witnesses, unless the attending circumstances suggest otherwise, like simultaneous lodging of cross FIRs where both parties are injured. ”

5. Mr. Singh has also brought to the notice of this Court another decision of this Court in ***Ghasi Ram Vs. NCT of Delhi & Another***, ILR (2008) I DELHI 426, wherein this Court has observed that mere employment in the same office does not disqualify co-employees from deposing about the veracity or otherwise of alleged incidents which constitute offences under the Act.

6. Having heard learned counsel for the parties and perused the allegations made in the departmental complaint as also the FIR in question, this Court finds no merit in either of the submissions of the petitioner.

7. On perusal of the complaint made by the complainant departmentally as well as the allegations made in the FIR, it cannot be said that there is any glaring contradiction in the two. The sum and substance of the allegations against the petitioner in both – the departmental complaint and the FIR in question, is that the complainant had asked the accused to do her job, whereupon the accused had allegedly committed the offence.

8. It was not necessary to set out in the departmental complaint all the ingredients of the criminal offence, as the purpose of making the departmental complaint was to seek redress of the grievance of the

complainant at a departmental level. It cannot be said that there is any contradiction in the departmental complaint and the FIR in question and it appears that the complainant has said the same thing in different ways in the departmental complaint and the FIR in question. It was not necessary for the complainant to have mentioned the names of the other co-employees present in the office in his departmental complaint, in whose presence the derogatory and insulting words were allegedly used against him by the petitioner.

9. I also find no merit in the submission that it could not be said that on a reading of the FIR that the offence was not committed in public view. Whether or not, the witnesses/ co-employees are credible is a different matter and the said aspect shall be gone into at the stage of trial by the Trial Court. The matter is still at the stage of investigation. Merely because the witnesses are co-employees, it cannot be said that they have a close relationship or association or any financial transaction with the complainant and for that reason, at this stage, it cannot be said that they do not constitute public, within the definition of public view. I agree with this submission of Mr. Singh that to give such a narrow interpretation to Section 3(1)(10) of the Act would practically rule out the offences committed under Section 3(1)(10) of the Act within an office environment, when other outsiders are not present.

10. I, therefore, find no merit in this petition and the same is dismissed.

VIPIN SANGHI, J

NOVEMBER 28, 2016

B.S. Rohella