

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 355 of 2016**

- Rajendra Patel, S/o. Agrasen Patel, aged about 43 years, Caste-Kurmi, R/o. Ganeshpur, P.S.-Ramanujnagar, Tehsil-Ramanujnagar, Renenue & Civil District-Surajpur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, throguh Secretary Department of Home Affairs (Police), Mahanadi Bhawan, Naya Raipur, District-Raipur, Chhattisgarh.
2. Superintendent of Police Surajpur, District-Surajpur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate.
For Respondents/State	:	Shri Ashish Shukla, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****08/08/2017**

Heard.

1. Learned counsel for the petitioner submits that respondent No.4 claims to be a member of Scheduled Tribe and that she has lodged one FIR against the petitioner, alleging in it that petitioner trespassed her premises and by use of force assaulted her sexually, thus, outraging her modesty and thereafter, using abusive words, threatened and assaulted her causing injuries. On the basis of said report, the offence under Sections 456, 294, 506, 323 & 354 of the Indian Penal Code (for short 'IPC') and under Section Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been registered against the petitioner.

2. It is submitted by the counsel for the petitioner that a fair investigation has not been conducted and caste certificate, on the basis of which respondent No.4 claims herself to be a member of Scheduled Caste has been issued by Gram Panchayat, Ganeshpur, who is not the competent authority for issuance of Caste Certificate as per the requirement of Section 4 of Chhattisgarh Scheduled Castes, Scheduled Tribes & Other Backward Classes (Regulation of Social Status Certification) Act, 2013. The Form-1A is the application for issuance of Caste Certificate and it clearly demonstrates that the competent authority before whom application shall be made is the Sub-Divisional Officer. Hence, the evidence collected in proof of the caste of the complainant, cannot be relied upon. For this reason, the offence in the charge-sheet under Section 3 (1) (xi) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'), is not maintainable. It is prayed that the offence under the Act, 1989 and the charge-sheet under the Act, 1989 be quashed.

3. Counsel for the petitioner has placed reliance on the judgment in ***Gangula Ashok & another Vs. State of A.P.***, reported in **(2000) 1 Supreme Court 378** and ***AIR (2000) 0 AIR (SC) 740*** in which it has been held that the cognizance of offence under the Act, 1989 can be taken by the Sessions Court only on committal of the case by the Court of Magistrate. This direction of Hon'ble Supreme Court is no longer applicable consequent to the coming into force of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

4. Counsel for respondents/State has opposed the arguments raised in this petition, it is submitted that there is no such requirement that a proper Caste Certificate is required to be produced for prosecuting any person for the offence under the Act, 1989. Hence, petition be dismissed.

5. Both the parties are heard and perused the material on record.

6. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not lay down any procedure for any investigation or requirement of any particular evidence in proof of caste of the complainant concerned. As per the contents of charge-sheet, it appears that respondent No.4 has recognition of being a member of Scheduled Caste. Issuance of caste certificate by Gram Panchayat is debatable at present. State may have opportunity to submit that the caste certificate issued in favour of respondent No.4, is proper in

accordance with law. On the other hand, petitioner shall have all the opportunities to contest and defend on the matter of issuance of the caste certificate, and also the caste claimed by the respondent No.4. Hence, for these reasons, this petition is not found to have any substance to show that there has been any abuse of process of law.

7. Accordingly, the petition is dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha