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

+ CRL.M.C. 2731/2015

NARESH KUMAR & ORS

.. Petitioners

Through: Mr. Pradeep Kataria, proxy counsel
For Mr. Sumit Sarna, Advocate

Versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, APP for the State
Mr. Amit Chauhan, Advocate for R-2
SI Sunder Singh, PS: BHD Nagar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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29.08.2018

The petitioners are facing prosecution in the Sessions case arising out of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) submitted on conclusion of the investigation into the FIR No. 58/2014 of Police Station Baba Hari Das Nagar. After they had put in appearance, the trial court considered the question of charge. By order dated 19.01.2015, charge was found made out putting the petitioner on trial for the offences under Sections 147/323/506/149, IPC, 1860 and Section 3(1)(x) and Section 3(xi) of *the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989* (for short, "the SC/ST Act") read with Section 149 IPC.

The present petition was filed invoking the inherent power of this Court under Section 482 of Cr.P.C. to pray for quashing of the said criminal case on the grounds primarily that the allegations constituting offences under the SC/ST Act have been concocted and

there was nothing to indicate that the utterances attributed to the petitioner were committed within the 'public view' as is requisite.

Similar arguments were raised before the trial judge at the time of consideration of charge but rejected on the basis of the material showing that an independent witness Dushyant Ahlawat has been cited, his statement under Section 161 Cr.P.C. having confirmed that the utterances attributed to the petitioner were made at a public place and at the time of assault committed against the complainant.

The submissions made by the petitioner give rise to questions of fact which cannot be addressed properly in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 need to be borne in mind.

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by

the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

(emphasis supplied)

Given the fact that the prosecution relies on statement of witness Dushyant Ahlawat, the same and that of the complainant and members of the family, *prima facie* showing that the incident had occurred at a public place and, therefore, in public view, no case for quashing of the proceedings is made out. The petition is dismissed.

R.K.GAUBA, J.

AUGUST 29, 2018/P

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