

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

% Decided on: 17th July, 2018

+ **CRL.A. 1090/2017**

BHOOP SINGH GAUTAM

... Appellant

Represented by: Dr.Naipal Singh, Advocate

versus

THE STATE GOVT OF NCT OF DELHI & ORS ... Respondents

Represented by: Mr.Amit Ahlawat, APP for the
State with ACP Rajbir Singh
and Insp. Arun Dev Nehra,
SHO, PS Paschim Vihar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A.No.19665/2017 (exemption)

Allowed subject to all just exceptions.

CRL.A. 1090/2017

1. By this appeal the appellant challenges the order dated 3rd August, 2017 whereby the learned Special Judge discharged respondent No.2 to 4 of the offences punishable under Section 3(1) (r) & (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short SC ST (POA) Act) and also seeks transfer of investigation.

2. The main reason for discharge of respondents No.2 to 4 was that the appellant who was a complainant neither named the public witnesses nor

produced them nor was it recorded that the derogatory casteist remarks were made within public view and in the presence of witnesses, hence the ingredients of offences punishable under Section 3(1) (r) & (s) of the SC ST (POA) Act were not made out in view of the decision of this Court reported as 2004 (109) DLT 915 Daya Bhatnagar Vs. State.

3. When the present appeal for discharge came up before this Court, learned counsel for the appellant stated that he had informed about the public witnesses to the Investigating Officer, however, he did not investigate the same and record their statements. Thus, this Court directed the concerned Investigating Officer to produce the case diaries. A perusal of the case diary dated 28th November, 2016 reveals that the appellant on the said date joined the investigation and pointed out the place where the quarrel allegedly took place. Unscaled site plan was prepared on the pointing out of the appellant. Thereafter, inquiry was made from the appellant about the neighbours or the independent public witnesses who must have seen the quarrel taking place between the complainant and accused persons on which the appellant stated that he could not recall any such person at that time and that he will recollect his memory and inform the police at a later stage. As per the case diary, thereafter, the investigation staff also tried to find out independent witnesses who had witnessed derogatory remarks being made, however, no witness was found out.

4. Learned counsel for the appellant today states that he had informed the Investigating Officer about the public witnesses but he did not record their names. On a query put by this Court to learned counsel for the appellant as to when the Investigating Officer did not record the name of the

persons who had witnessed the incident either on 28th November, 2016 or 2nd December, 2016 when the appellant joined the investigation and produced self attested copy of his caste certificate and his supplementary statement was also recorded, what action he had taken and whether he had filed a complaint in this regard, the answer of learned counsel for the appellant is that no such complaint has been filed. Even in the present appeal the appellant does not give the names of the persons who had witnessed the incident bringing the offence within the ambit of public view.

5. Considering the fact that the casteist derogatory remarks were not made in front of any other person and as there was no evidence in this regard, the learned Special Court committed no error in discharging respondents No.2 to 4.

6. In view of the facts noted above, no case is made out to transfer the investigation.

7. Appeal is dismissed.

नात्यमेव जयते

(MUKTA GUPTA)
JUDGE

JULY 17, 2018
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