

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.13 of 2014

Sushil Kumar Agrawal, S/o Kanhaiya Lal Agrawal, aged about 48 years, R/o Tikrapara, Jagmal Chowk, Police Station City Kotwali, Civil & Revenue Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Home Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)
2. Director General of Police, Raipur, Distt. Raipur (C.G.)
3. Superintendent of Police, Janjgir, Distt. Janjgir-Champa (C.G.)
4. Deputy Superintendent of Police, Head Quarter Janjgir, Distt. Janjgir-Champa (C.G.)
5. Station House Officer, Azak Janjgir, District Janjgir-Champa (C.G.)
6. Dhanraj Sonwani, S/o Shivcharan Satnami, aged about 36 years, R/o Village Murlidih, Police Station Akaltara, Civil & Revenue Distt. Janjgir-Champa (C.G.)

---- Respondents

For Petitioner:	Mr. Awadh Tripathi and Mr. Soumitra Kesharwani, Advocates.
For Respondents No.1 to 5 / State:	- Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.
For Respondent No.6:	None though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/04/2019

1. The petitioner herein against whom a first information report (FIR) under Crime No.41/2012 for the offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989') read with Sections 294 & 506 of the IPC stood lodged and thereafter after due investigation, he has also been charge-sheeted for the aforesaid offences, seeks quashment of the FIR as well as the charge-sheet

filed against him by way of this petition inter alia contending that the alleged offence under Section 3(1)(x) of the Act of 1989 was not even alleged to have been committed within the public view and the offence under Section 294 of the IPC is not even said to have been committed in public place and offence under Section 506 of the IPC is non-cognizable offence and that cannot be investigated except by the order of the Magistrate by virtue of the provision contained in Section 155(2) of the CrPC, therefore, the FIR as well as the subsequently filed charge-sheet against the petitioner deserve to be quashed.

2. The petitioner on the relevant date i.e. 12-9-2012 was owner of M/s. Jhahhariya Nirmal Private Limited and was in the site of the construction work of the said company and on that day, complainant Dhanraj Sonwani along with nine other persons went to the petitioner seeking contribution for celebrating Vishwakarma festival. It is the case of the complainant / prosecution that instead of extending contribution for celebrating the festival, the present petitioner inquired the caste of the complainant and others, particularly of Dhanraj Sonwani and on being informed by him that he belongs to Scheduled Caste, the petitioner intentionally insulted the complainant with intent to humiliate that he is a member of Scheduled Caste on which complainant Dhanraj Sonwani reported to the police and FIR was registered for commission of offence punishable under Sections 294 & 506 of the IPC and Section 3 (1)(x) of the Act of 1989. On 19-9-2012, statement of the complainant was recorded and thereafter, statements of nine other persons accompanying him were recorded within a day or two. Caste certificate of the complainant was seized on 19-9-2012 in which he was held to be belonging to notified Scheduled Caste and thereafter, on 30-7-2013, the petitioner has been charge-sheeted for

the aforesaid offences and he was also released on bail.

3. Mr. Awadh Tripathi, learned counsel appearing for the petitioner / accused, relying upon the decision of the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**¹, would submit taking the entire allegation made in the FIR and the charge-sheet in their face value and accepted in their entirety, do not constitute any offence or make out a case against the petitioner / accused, as the offence under Section 3(1)(x) of the Act of 1989 even not alleged to have been committed in a place within the public view. Likewise, offence under Section 294 of the IPC has not been said to have been committed in public place and offence under Section 506 Part-II of the IPC is non-cognizable offence which cannot be inquired into without the order of the Magistrate under Section 155(2) of the CrPC. Therefore, the FIR lodged and the charge-sheet filed against the petitioner deserve to be quashed.
4. Mr. Ravi Kumar Bhagat, learned Deputy Govt. Advocate appearing for the State / respondents No.1 to 5, would submit that the prosecution has clearly established the offence committed by the petitioner who is not a member of Scheduled Caste, as the petitioner knowing fully well that the victim / belongs to Scheduled Caste, intentionally insulted and humiliated him and thus, the offence under Section 3(1)(x) of the Act of 1989 has been committed by the petitioner in a place within the public view which is of paramount importance in order to attract Section 3(1)(x) of the Act of 1989. He would further submit that as the act of the petitioner was visible and audible to the other staff working nearby in the place inside the premises of the petitioner, therefore, the basic ingredients of public view for offence under Section 3(1)(x) of

¹ 1992 Supp (1) SCC 335

the Act of 1989 is made out and the prosecution has been able to bring home the offence what was really uttered and what was really uttered was with the idea to hurl insult in the name of caste. Therefore, the petition under Section 482 of the IPC deserves to be dismissed and the petitioner is always at liberty to raise all the points including the pleas raised in this writ petition, during the course of trial.

5. I have heard learned counsel for the parties and considered the respective submissions raised herein and gone through the record with utmost circumspection.

6. In order to appreciate the dispute, it would be appropriate to consider Section 3(1)(x) of the Act of 1989 which reads as under: -

“3. Punishments for offences of atrocities.—(1)
Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

7. A careful perusal of the aforesaid provision would show that there must be intentional insult or intimidation with intent to humiliate the member of a Scheduled Caste or a Scheduled Tribe by a non-Scheduled Caste or a non-Scheduled Tribe member and the insult must have been done in a place within public view. The use of expression “intentionally insults or intimidates with intent to humiliate” makes it abundantly clear that the *mens rea* is an essential ingredient of the offence and it must also be established that the accused had the knowledge that the victim is SC/ST and that the offence was committed for that reason.

8. The expression “public view” used in Section 3(1)(x) of the Act of 1989

was considered by the Supreme Court in the matter of Swaran Singh and others v. State through Standing Counsel and another² and it was held as under: -

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.

33. We have already stated above that in today's context even calling a person “chamar” ordinarily amounts to intentionally insulting that person with intent to humiliate him. It is evident from a perusal of the FIR that Appellant 1 Swaran Singh joined his wife and daughter in insulting Vinod Nagar, and he also used the word “chamar” in a derogatory sense. However, a perusal of the FIR shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the FIR to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against Appellant 1.”

9. Similarly, the Delhi High Court in the matter of Daya Bhatnagar and others v. State³ considered the meaning of the expression “public view” as employed in Section 3(1)(x) of the Act of 1989 and held as under: -

“19. The SC/ST Act was enacted with a laudable object to

² (2008) 8 SCC 435

³ (2004)109 DLT 915

protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(1) of the Act enumerate 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 Caste 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 be 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. 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." "

10. The aforesaid decision of the Delhi High Court in [Daya Bhatnagar](#) (supra) has been further followed in the matter of [Ashwani Kumar v. State and another](#)⁴ by holding as under: -

"17. Expression 'public' is a poli-morphus word which has different meanings, which is used as noun or as an adjective. As noun, 'public' means a body of 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 politics, or all the citizens of the state. In other words, the word public does not mean all the people or most of the people nor very many of the people of a place, but so many of them as contra-distinguishes them from a few. Therefore, public

⁴ W.P.(Cri.)No.1593/2006, decided on 9-1-2009 [Manu/DE/0988/2009]

means inhabitants of a particular place, may be all or few or the people of the neighbourhood. As an adjective, 'public' would have meaning upon the subjects to which it is applied. SC/ST Act has been enacted with a view to protect a weaker section of the society from various kinds of atrocities that might be perpetrated against SC/STs which find enumeration in Section 3 of the SC/ST Act as constituting an offence. Court has to keep in mind that offence under the SC/ST Act are quite grave and provide stringent punishment and therefore, stronger proof is required. Court has to adopt an interpretation which suppresses or evades the mischief which might have been played and advances the object of the Act. Therefore, 'public view' appearing in Section 3(1)(x) of SC/ST Act has to be interpreted to mean the presence of the public persons, however small may be, and those persons are 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 have to be excluded from the definition of 'public view'."

11. In the aforesaid judgment – **Ashwani Kumar** (supra), the Delhi High

Court has clearly held that 'public view' appearing in Section 3(1)(x) of the Act of 1989 has to be considered to mean the presence of the public persons, however small may be, and those persons are 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 have to be excluded from the definition of 'public view'.

12. Reverting to the facts of the present case in light of the meaning extended by Their Lordships of the Supreme Court and the Delhi High Court in the aforesaid judgments, it is quite vivid that in the present case, the prosecution has only examined complainant Dhanraj Sonwani and nine other persons who had accompanied Dhanraj Sonwani, and no other person has been examined though claimed to be present at the time of incident or it is not the case of the prosecution that any person was present at the place where the present accused person hurled abuses on the basis of caste of complainant Dhanraj Sonwani to him, though the place where the

offence is alleged to have been committed in a private place, but since no other independent and impartial person except the complainant and his nine other friends, who were said to be present at the relevant time, was examined even under Section 161 of the CrPC and the incident actually took place inside the cabin or chamber of the petitioner, it cannot be held that the offence under Section 3(1)(x) of the Act of 1989 is committed within public view, even if the allegation in the FIR or the charge-sheet is taken in its entirety and as such petitioner's prosecution for said offence deserves to be quashed.

13. Now, coming to the question of offence under Section 294 of the IPC, Section 294 of the IPC states as under: -

“294. Obscene acts and songs.—Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

14. For proving the offence under Section 294 of the IPC, mere utterance of offensive words are not sufficient, it must be with the intention of causing annoyance to others and the further requirement is that the offence must be committed in public place. Here, in place of 'public view' in contradistinction with Section 3(1)(x) of the Act of 1989, 'public place' has been used. The offence has been admittedly, committed inside the private office owned by the petitioner. Since no offence under Section 3(1)(x) of the Act of 1989 is held to be made out, it would be improper to make out a case for prosecution of the accused/petitioner under Section 294 of the IPC on same set of facts on which the offence under Section 3(1)(x) of the Act of 1989 is not found to

have been committed in public view.

15. Offence under Section 506 Part-II of the IPC is non-cognizable offence and by virtue of the provision contained in Section 155(2) of the CrPC, no police officer is entitled to investigate the non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial. It has been so held by the Karnataka High Court in the matter of Siddanagouda v. State of Karnataka⁵ and by the M.P. High Court in the matter of Arun Kumar Bhargava v. State of M.P.⁶. Even otherwise, the allegation of threatening and abuses on its face value does not satisfy the ingredients of Sections 504 & 506 of the IPC, as intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. Mere allegation that the petitioner came and abused and threatened the complainant does not satisfy the ingredients of Section 504 of the IPC, as noticed in paragraph 13 of the judgment rendered by the Supreme Court in the matter of Fiona Shrikhande v. State of Maharashtra and another⁷ which reads as follows: -

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

5 1998 Cri.L.J. 2162

6 2001(1) M.P.L.J. 691

7 (2013) 14 SCC 44

16. In view of the aforesaid discussion, I am of the considered opinion that this is a fit case for quashing the FIR and the criminal case against the petitioner for offence punishable under Sections 3(1)(x) of the Act of 1989 and 294 & 506 of the IPC. Accordingly, the FIR and the subsequently filed charge-sheet for the aforesaid offences against the petitioner are hereby quashed.

17. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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