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HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No 3415/1999****Reserved on 8-1-2019****Delivered on 7-2-2019**

(Arising out of judgment of conviction and order of sentence dated 15-12-1999 passed by Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jagdalpur in Spl. Case No. 51/1997)

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Mohd. Shahid, son of Shri Mohd. Rafique aged about 45 years, Gramin Yantriki Seva Kanker, Distt. Kanker (MP) (now CG)

Appellant**VERSUS**

State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, PS Kanker, Distt. Kanker, MP (CG)

Respondent

 For Appellant : Shri Rahil Kochar, Adv.
 For Respondent : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 15-12-1999 passed by Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (in brevity 'SCST Act'), Jagdalpur in Spl. Case No. 51/1997 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction under Section	Sentence	Fine sentence
3(1)(x) of the SCST Act	RI for 6 months	Rs. 2,000/-, in default of payment of fine to undergo RI for 3 months

2. This is admitted by appellant that he is Muslim by caste.

3. In brief the prosecution case is that on 8-8-1997 at about 8 pm complainant Smt. Pushpa Banjare who is Satnami by caste and a member of scheduled caste, was returning back along with her husband P.W. 1 Swamiram Banjare after walking. Appellant was standing in front

of his quarter at RES Colony, Kanker. He spitted towards her and stated that they are Chamar. She gave the application on very day to SHO Kanker. On 9-8-1997 an FIR was lodged in Police Station Kanker. After completion of the investigation a charge sheet was filed against him under Section 509 of the Indian Penal Code (in brevity 'IPC') and Section 3 (i) (x) of the SCST Act. The trial Court framed charge against him under Section 3(1)(x) of the SCST Act. He abjured the charge and faced trial. To bring home the charge prosecution examined as many as 5 witnesses. He did not examine any witness in his defence. After conclusion of the trial, he was convicted and sentenced as aforesaid.

4. Being aggrieved from aforesaid conviction and sentence, the appellant has preferred this criminal appeal.

5. Counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Prosecution has examined interested witnesses. There is no evidence that alleged insult had been committed with intention to humiliate the complainant Smt. Pushpa Banjare. Therefore, the impugned judgment of conviction and order of sentence being bad in law may be set aside and he may be acquitted of the aforesaid charge.

6. On the other hand, State counsel supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

7. P.W. 4 Smt. Pushpa Banjare says in examination in chief that she is Satnami by category.

8. P.W. 1 Swamiram Banjare says in para 1 of his statement given on oath that he is Satnami and member of scheduled casts.

9. P.W. 2 Ajay Banerjee says in para 1 of his statement given on oath that P.W. 1 Swamiram Banjare is a Chamar.

10. P.W. 3 Abhay Sharma says in para 1 of his statement given on oath that P.W. 1 Swamiram Banjare is a member of scheduled cast.

11. As per alleged caste certificate Ex. P-4, P.W. 4 Smt. Pushpa Banjare is by category Satnami and member of Scheduled caste.

12. There is no such evidence on record on strength of which it can be said that aforesaid statements of aforesaid witnesses and Ex. P-4 are not believable. Thus this Court believes on them.

13. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt that P.W. 4 Smt. Pushpa Banjare is by caste Chamar, by category Satnami and a member of Scheduled caste.

14. P.W. 4 Smt. Pushpa Banjare says in examination in chief that she was returning back along with her husband after walking. When they reached in front of the house of appellant, he told that they are Chamar and spitted.

15. P.W. 1 Swamiram Banjare says in para 1 of his statement that he and P.W. 4 Smt. Pushpa Banjare were returning back after walking appellant had told that they are Chamar and spitted seeing them.

16. P.W. 2 Ajay Banerjee says in para 2 that appellant by indicating towards P.W. 1 Swamiram Banjare and P.W. 4 Smt. Pushpa Banjare stated that Chamar are going. He had also spitted.

17. P.W. 3 Abhay Sharma says in para 2 that appellant by indicating towards P.W. 1 Swamiram Banjare and P.W. 4 Smt. Pushpa Banjare stated that Chamar are going. He had also spitted.

18. P.W. 3 Abhay Sharma says in para 5 of his statement that P.W. 1

Swamiram Banjare had taught him. He is respectable for him.

19. In the matter of **Hari Obula Reddy -v- State of Andhra Pradesh** [(1981) 3 SCC 675] Hon'ble Supreme Court has laid down following judicial precedent :-

“Even partisan-ship by itself is not a valid ground for discrediting or rejecting sworn testimony. Interested evidence can form basis of conviction even it is not corroborated on material extent in material particulars by independent evidence. What is required is that the evidence of interested witness should be subjected to careful scrutiny and accepted with caution. If on such scrutiny the interested testimony is found to be intrinsically reliable or inherently probable, the conviction can base on the same.”

20. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in Hari Obula Reddy (supra) this Court finds out that in the case in hand close scrutiny is required regarding aforesaid statements of P.W. 1 Swamiram Banjare, P.W. 3 Abhay Sharma.

21. There is no such evidence on record on the strength of which it can be said that P.W. 4 Smt. Pushpa Banjare, P.W. 1 Swamiram Banjare, had enmity with appellant for any reason, therefore without occurring anything they had stated aforesaid statements.

22. There is no such evidence on record on the strength of which it can be said that P.W. 2 Ajay Banerjee had stated aforesaid statement because he was interested with P.W. 4 Smt. Pushpa Banjare, P.W. 1 Swamiram Banjare for any reason or he was prejudiced with appellant for any reason, knowingly that nothing was happened.

23. There is no such evidence on record on strength of which it can be said that P.W.3 Abhay Sharma had stated aforesaid statement merely on the ground that P.W. 1 Swamiram Banjare was his teacher or he was prejudiced with the appellant for any reason, though he was not alleged

eye-witness of the incident.

24. In Ex. P-1 it has been mentioned that appellant had told after seeing P.W. 4 Smt. Pushpa Banjare that they are Chamar, he had spitted towards her.

25. There is no such evidence on record on strength of which it can be said that Ex. P-1 is not simple, not natural and not normal.

26. Looking to the above-mentioned facts and circumstances, this Court finds that Ex. P-1 is normal, natural, simple and is not concocted, not fabricated.

27. Looking to the above mentioned facts and circumstances, this Court finds that aforesaid statements of P.W. 4 Smt. Pushpa Banjare, para 2 of P.W. 1 Swamiram Banjare, P.W. 2 Ajay Banerjee, P.W. 3 Abhay Sharma are believable, Thus this Court believes on them.

28. Counsel for the appellant placed reliance on a decision of this Court in **Ram Bagas and others -v- State of MP** reported in 2015(3) CGLJ 112, relevant portion of para 11 of the judgment is reproduced below :-

“11. if the element of intention to insult a member of reservation category is lacking, then the first foremost important limb of Section 3(1)(x) of the Act, 1989 is not attracted. Hence, with this, the appellants may not be held to be guilty for the offence under Section 3(1)(x) of the Act, 1989.”

29. Counsel for the appellant further placed reliance on a decision of this Court in **Hulas Singh -v- State of Madhya Pradesh** passed in CRA No. 3109/1998 dated 18-5-2018 relevant portion of para 15 of which is reproduced below :-

“15. from the evidence on record, it is also clear that the Appellant was abusing in public and the dispute had taken place on being stopped by the Complainant. Therefore, the Appellant

said anything to the complainant intentionally to harass him is not established. In these circumstances, the offence alleged against the Appellant under Section 3(1)(x) of the Act of 1989 is not proved beyond reasonable doubt. Therefore, the Appellant is acquitted of the charge framed under Section 3(1)(x) of the Act of 1989.”

30. Hon'ble Supreme Court in the matter of **Swaran Singh and others -v- State through Standing Counsel and another** reported in [(2008) 8 SCC 435] has observed in para 21 to 24 and 30 as under :-

“21. Today the word “chamar” is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person “chamar” today is nowadays an abusive language and is highly offensive. In fact, the word “chamar” when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word “chamar” which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word “chamar” when addressing a member of the Scheduled Caste, even if that person in fact belongs to the “chamar” caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity'so many religions, castes, ethnic and lingual groups, etc.—all communities and groups must be treated with

respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste “chamar” with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word “chamar” will of course depend on the context in which it was used.

30. In this connection it may be mentioned that in America to use the word “nigger” today for an African-American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. In our opinion, even if the word “chamar” was not regarded offensive at one time in our country, today it is certainly a highly offensive word when used in a derogatory sense to insult and humiliate a person. Hence, it should never be used with that intent. The use of the word “chamar” will certainly attract Section 3(1)(x) of the Act, if from the context it appears that it was used in a derogatory sense to insult or humiliate a member of SC/ST.”

31. Hon'ble Supreme Court in the matter of **Arumugam Servai -v- State of Tamil Nadu** reported in [(2011) 6 SCC 405] has observed in para 5, 6 and 7 as under :-

“5.....The word “Pallan” no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word “Chamar” denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a “Pallan”, if used with the intent to insult a member of the Scheduled Caste is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the SC/ST Act”). To call a person as a “pallapalay” in Tamil Nadu is even more insulting, and hence is even more an offence.

6. Similarly, in Tamil Nadu there is a caste called “Parayan” but the word “Parayan” is also used in a derogatory sense. The word “paraparayan” is even more derogatory.

7. In our opinion use of the words “Pallan”, “pallapayal”, “Parayan” or “paraparayan” with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words “Nigger” or “Negro” are unacceptable for African-Americans today (even if they were acceptable 50 years ago).”

32. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in **Swaran Singh** (supra) and **Arumugam Servai** (supra), this Court finds that aforesaid word asked by appellant is generally used for insult, abuse, derision. The aforesaid word is derogatory, highly objectionable and unacceptable now a days. The aforesaid word is highly offensive.

33. Looking to the facts and circumstances of the case, this Court finds that appellant had asked aforesaid word to the complainant Smt. Pushpa Banjare and spitted towards her on seeing her, with intention to insult or humiliate her. Thus, the appellant does not get any help from the aforesaid observations made by this Court in **Ram Bagas** (supra) and **Hulas Singh** (supra).

34. From the facts and circumstances of the case, material available on record, this Court finds that appellant had uttered aforesaid word and spitted towards her on seeing her merely on the ground that she is a member of the scheduled caste.

35. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt against the appellant the offence punishable under Section 3(1)(x) of the SCST Act. Thus, this Court affirms the conviction of the appellant punishable under Section 3(1)(x) of the SCST Act.

36. At the time of commission of the offence punishable under Section 3(1)(x) of the SCST Act, minimum sentence was prescribed as 6

months.

37. Looking to the facts and circumstances of the case, this Court finds that the aforesaid jail sentence and fine awarded by the trial Court are just and proper. Thus, this Court affirms the jail sentence and fine sentence awarded by the trial Court.

38. The appeal being devoid of merit deserves to be and is hereby dismissed.

39. Appellant is reported to be on bail. He is directed to surrender immediately before the trial Court for serving the remaining part of sentence. If the appellant does not surrender, the Trial Court is also directed to take him into custody and send him jail to serve the remaining part of sentence.

40. If the fine amount is deposited by the appellant, Rs. 1500/- (Rupees fifteen hundred) out of Rs. 2,000/- be given to the complainant Smt. Pushpa Banjare as compensation after expiration of the prescribed period for further legal remedy available to the parties. The fine amount deposited earlier, if any, shall be adjusted in the fine sentence.

Sd/-
(Sharad Kumar Gupta)
Judge