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

Reserved on: 11.02.2020

Pronounced on: 28.04.2020

+ CRL.A. 667/2018 & CRL.M.A. 11836/2018, 2660-61/2020

PRAVEEN KUMAR @ PRASHANT Appellant
Through Appellant in person with Mr. Kapil
Modi, AR

versus

STATE OF GNCT OF DELHI & ORS. Respondents
Through Mr.Hirein Sharma, APP for State
ACP Rajender Pathania, Civil Lines,
ACP Anil Samota, EOW, SI S. K.
Singh, SI Sandeep, PS Fatehpur Beri

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present appeal has been filed u/s 14 A of SC & ST (Prevention of Atrocities) Act 1989 as amended by Act 2015 r/w Article 227 of Constitution of India r/w section 482 Cr.P.C. for setting aside the impugned order dated 05.06.2018 passed by Ld. ASJ-02, Spl. Judge (South) Saket Court, New Delhi and passing of an appropriate order.

2. The appellant belongs to schedule caste category and is an international horse riding champion (equitation) and his goal is to represent

India in Tokyo Olympic 2020 in Dressage. The appellant has won over 30 medals in the international development league competitions.

3. He is a victim of atrocities intentionally committed by alleged accused persons Anush Aggarwala, Ameera Pasrich, Shikha Mundkur, Priti Aggarwala (mother of Anush), celebrity Shivani Pasrich and Amir Pasrich an influential Supreme Court Lawyer (parents of Ameera Pasrich). All of the aforementioned persons belong to elite and influential families. They have intentionally and knowingly insulted and intimidated the appellant within public view, on several occasions, with intent to humiliate and shatter the appellant's self respect.

4. Further case of appellant is that he has been caste abused over the last two years and intentionally insulted and humiliated in public view. His self respect has been seriously shattered because of such acts of being badly and intentionally humiliated by accused persons by abusing him on many occasions during training at Kapil Modi's (AR of the appellant herein) farm at Zonapur, Delhi. Following are the instances where the appellant was caste abused by the alleged accused persons:

- (i) Anush Aggarwala would abuse the appellant in presence of locals by calling him "*Chuda, Chamar, chakka and faggot*".

- (ii) Priti used to visit the farm of the appellant's trainer Kapil Modi, to watch her son Anush compete. She had insulted the appellant on few occasions by telling him that "*Prashant you are a chamar and we rich Marwari's don't like the fact that untouchables like you come close to us, you are unfit to even act as a sweeper in our house. Whenever my son asks you for water/food you must wear plastic gloves and serve him*".
- (iii) On 17.12.2017, when Amir came to the farm house he told the appellant "*Prashant this sport of Dressage is not meant for **chura** and **chamars** like you, this sport is only meant for rich people like us. Tum apni aukat mein raha karo and when my daughter comes to ride don't come in front of her.*"
- (iv) Shikha Mundkur and Ameera Pasrich insulted and humiliated on 28.01.2018, when appellant was riding a horse called "Xanthos" which is owned in 50:50 partnerships between Shikha and Mr. Kapil Modi. When Shikha and Ameera saw the appellant riding Xanthos, they both ran towards the appellant and pushed him off the horse, they spat on the appellant and said "***you bloody mother fucking faggot** agar tuneey agey se Riding karne ki himmat kari*

to bahut bura hoga". All these above mentioned facts were mentioned by the appellant in his complaint dated 29.04.2018 to SHO Fatehpur Beri

5. Further case of the appellant is that Ameera Pasrich created a whatsapp group called "*Alliance*" with Shikha Mundkur and Anush Aggarwala in tacit support with their parents. Daksh Mittal, a 17-year-old boy (former student of Mr. Kapil Modi) was lured and manipulated by the abovementioned persons into joining the above whatsapp group on 04.03.2018. However, on 14.04.2018, Daksh Mittal was asked to leave the whatsapp group by these conspirators because his father Naval Commander (Retd.) Kuldeep Mittal had informed Mr. Modi of their criminal plot to do an acid attack and torture the appellant and to frame and kill his trainer Kapil Modi.

6. Thereafter, Commander Mittal emailed detailed unedited chat records from 4th March to 14th April 2018 of the said whatsapp group to Kapil Modi on 16.04.2018 at 7.49 pm.

7. On 17.04.2018, appellant received complete printout of the said chat records from his trainer Kapil Modi.

8. On 21.04.2018, Daksh Mittal issued public apology and revealed the

insights of the whatsapp group and alleged accused persons' hatred towards horse riders from SC/ST. Daksh along with his mother made a public apology to Kapil Modi via a video recording which they posted on the facebook page of Kapil Modi giving details of this criminal plot against the appellant.

9. On 22.04.2018, Kapil Modi registered a police complaint in PS Fatehpur Beri, Delhi vide DD No. 28B at 3.55 pm. In this complaint, he clearly states "*Plan of Acid Attack on my Schedule Caste student Prashant (aka Praveen Kumar)*". However, the Police did not take any action on this complaint.

10. On 28.04.2018 in execution of the criminal plot discovered in the chat records of the whatsapp group; Shivani Pasrich, Ameera Pasrich & Shikha, came to Kapil Modi's farm along with officers from Animal Husbandry and 6-7 policeman from the PS Fatehpur Beri. Shivani Pasrich criminally intimidated appellant and threatened to kill him by saying that "*inspite of the 22nd April police complaint against her, she has enough influence to bring policeman to the farm*". The same evening, fearing for his life, appellant tweeted to the Hon'ble Prime Minister and Home Minister of India.

11. On 29.04.2018, at 12.30 pm appellant went to register his police complaint in Police Station Fatehpur Beri and the police officials disgracefully refused to receive and register appellant's complaint and disgracefully turned away the appellant. On the said evening, appellant again tweets to the Hon'ble Prime Minister and others mentioning that the Police has refused to register his complaint. On 02.05.2018 the appellant emailed his complaint to the Hon'ble Prime Minister and others including the Commissioner and DCP of Delhi Police. On 03.05.2018, appellant sends by registered post copies of complaint to Commissioner Delhi Police and others. On 06.05.2018, the appellant marked another tweet to the Hon'ble PM & others stating that "*I have realized that inspite of my cries for help no one has helped me and that I have realized that Schedule Caste people are only used for political gains*". On 11.05.2018 at 9:33 am, appellant received an e-mail from Commissioner of Police directing Special Commissioner of Police (Southern Range) to take necessary action on the appellant's complaint. On 14.05.2018, due to inaction by police and other authorities, appellant filed an application under Section 156(3) Cr.P.C before the Metropolitan Magistrate in Saket Court. On 16.05.2018, appellant sent an email reminder to CP/Special CP, but no action was taken. On 22.05.2018,

the application u/s 156(3) Cr.P.C was heard by Ld. M.M. -01 (South) Saket Courts, however to utmost shock of the appellant Ld. MM posted the case for 11.7.2018 for calling of ATR despite repeated request for a shorter date and prompt and urgent calling of ATR. Accordingly, appellant filed an application for preponement of the date on the very next day, but the said application was dismissed and oral prayer for *dasti* order was declined /refused.

12. Mr. Kapil Modi, attorney and representative of the appellant submits that because the public servants, SHO P.S. Fatehpur Beri, Spl CP Southern Range and Commissioner of Police as well as Shri Anurag Dass Ld. M.M-01 (South) Saket Court, willfully neglected their duties required to be performed under Sections 4(1) & 4(2) of the SC & ST (Prevention of Atrocities) Act, 1989 as amended up to date, the appellant filed a complaint case bearing No.536/2018 accordingly, before Ld. ASJ-02(South) Spl Judge Saket Court New Delhi on 25.05.2018 which came up for hearing on 26.05.2018. On said date, matter was heard by Ld. ASJ and initially gave a date for 09.07.2018 and only after intensive pleading from the counsel the date was fixed for 04.06.2018 for calling of ATR.

13. Meanwhile, appellant also received a copy of letter dated 22.05.2018

addressed to Commissioner of Police requesting him to get the matter investigated and thereafter, for sending a factual report directly to Ms. Indri Anurag, Joint Secretary, Government of India, Ministry of Social Justice and Empowerment, Shastri Bhawan, New Delhi-110015 under intimation to department for the welfare of SC/ST/OBC I.P. Estate, New Delhi-02.

14. On 29.05.2018 at 11:12 am, appellant emails to CP regarding an intimidating and humiliating phone call from a person claiming to be police officer from mobile No. 9560820778 at 6:37 pm.

15. On 02.06.2018 at 11:24 am, appellant emails the Hon'ble Chief Justice of India highlighting the apathy of the lower judiciary towards schedule caste.

16. On 04.06.2018, the police sent a request for seeking more time to file ATR. On intensive pleading of the counsel, the Ld. ASJ directed the SHO and SI S K Singh to appear in person on 05.06.2018. On said date, Ld. ASJ Spl Judge Saket, passed the order dismissing the application under section 4 SC & ST Act vide impugned order.

17. Mr. Kapil Modi submits that there is an imminent danger to the life and person of the appellant at the instance of the alleged accused persons who are very rich and influential. The appellant has lost his peace of mind

because being in reasonable apprehension of danger to his person and completely disturbed and perturbed fearing acid attack from the accused persons. Moreover, the accused persons have already started influencing the witness and there is reasonable and bonafide belief that the evidences in electronic form may be destroyed or tampered with.

18. It is further submitted that feeling aggrieved by the erroneous final impugned order dated 05.06.2018 the respondents, as well as the Ld. Spl. Judge in utter disregard, willfully neglected their duties prescribed under section under Sections 5 and 4 r/w 15A(8) (C) of SC & ST Act r/w Rules 5 & 7 of the Rules 1995 and most importantly in utter disregard and knowingly disobeying the directions of Hon'ble the Supreme Court judgment in *Lalita Kumari vs. Govt of Uttar Pradesh & Anr: (2014) 2 SCC 1* and hence this criminal appeal.

19. He further submits that presiding officers of both the courts below failed to discharge the judicial duties judiciously and not being sensitive to the intention of the statute with due diligence and passed erroneous orders. The Ld. ASJ committed grave and serious error in law by not adhering to the directions of Hon'ble Supreme Court in *Lalita Kumari (Supra)* as well as the provisions of the act while passing the impugned final order dated 05-

06-2018 at the threshold without any enquiry.

20. Though, grievance of the appellant is relating to both the impugned orders passed by the Courts mentioned above, however, case of the appellant in present appeal is that on 29.04.2018, the appellant approached Police Station, Fatehpur Beri with complaint of atrocities and humiliation committed by the accused persons mentioned above, however, the said complaint was not entertained by the officials of the said police station.

21. Due to which appellant tweeted to the Hon'ble Prime Minister complaining that he being scheduled caste, the officials of Police Station of Fatehpuri have not entertained his complaint. Thus, the SHO of Fatehpur Beri is liable to be prosecuted under Section 4(2)(b) of SC & ST (Prevention of Atrocities) Act 1989.

22. On the other hand, learned APP appearing on behalf of State has raised preliminary objection on appearing of Mr.Kapil Modi and representing the appellant. However, this issue shall be decided in later part of the judgment.

23. Learned APP further submits that complaint dated 29.04.2018 was not given to Fatehpur Beri Police Station but it actually had reached through the office of Commissioner of Police, Delhi subsequently on 31.05.2018. As per

the police record, no complaint was made or filed by the appellant in Police Station Fatehpur Beri. However, after receipt of this complaint on 31.05.2018, the enquiry was initiated by Rajinder Pathania, ACP, being competent for the same, immediately in view of the directions contained in the order dated 20.03.2018 of Hon'ble Apex Court in the case of ***Dr. Subhash Kashinath Mahajan vs. State of Maharashtra: (2018) 6 SCC 454.***

24. However, on the basis of material on record and statements of the parties concerned, the allegations leveled by complainant/appellant could not be substantiated. Thus, concluded that complaint seems to have been filed as an afterthought to counter the criminal cases filed by Ameera Pasrich and Shikha Mundkar against the trainer (Kapil Modi) of the complainant/appellant. From the enquiry carried out, prima facie, no case was made out under the provisions of SC/ST Act in the complaint of appellant.

25. Learned APP further submits that complaint vide CT No. 536 of 2018 was filed by the present appellant u/s 4 of SC/ST Act against Spl CP Southern Range, SHO PS Fatehpur Beri and Sh. Anurag Das, Ld MM South, Saket Court, New Delhi. After hearing at length, the said matter was dismissed by Ld. Special Judge/ASJ-2 (South), Saket Courts, New Delhi

vide a detailed order dated 05.06.2018.

26. The present appellant had also filed another complaint vide CT No.627 of 2018 under Section 4 of SC/ST Act against Spl CP Southern Range, Rajender Pathania - ACP and SHO PS Fatehpur Beri which was also dismissed by Ld. Special Judge/ASJ-2 (South), Saket Courts, New Delhi vide a detailed order dated 27.08.2018 which is not in question in the present appeal.

27. It is also submitted that the present appellant had filed an application vide CT No.594 of 2018 u/s 156(3) r/w section 200 Cr.P.C for passing order for registration of FIR which was dismissed by the Ld. Special Judge/ASJ-2 (South), Saket Courts, New Delhi mentioned above vide order dated 02.08.2018. When this matter u/s 156(3) Cr.P.C was pending before the Court of Ld. MM vide CT Case No. 7148/2018, action taken report was filed by the Rajinder Pathania, ACP as per the directions of Court. Vide report dated 09.07.2018, it was informed to the learned MM Court that on the basis of the material on record and the statements of the parties concerned, allegations leveled by the complainant/appellant could not be substantiated and from the enquiry carried out, prima facie, no case was made out under the provisions of SC/ST Act.

28. Learned APP further argued that appellant is closely connected with Kapil Modi who is also appearing as his Authorized Representative in this case. Kapil Modi has been a trainer of the appellant and is an accused in FIR No. 134/2018 u/s 354-A/509 IPC and FIR No.135/2018 u/s 354A/509 IPC both registered on 21.04.2018 at Police Station Fatehpur Beri on the complaints of Ms. Ameera Pasrich and Ms. Shikha Mundkar respectively. Moreover, various other petitions are/were filed by appellant but could not get any favourable order.

29. He further submits that there was no willful neglect of the police officials named in the present case as at the time of the alleged incident, the directions of Hon'ble Supreme Court were to first initiate an enquiry before registering a case under Prevention of Atrocities on ST/SC Act and said directions were operative and hence, the ACP named above, being competent officer to conduct enquiry, was duty bound to comply with the Orders of the Hon'ble Apex Court. Thus, the present appeal deserves to be dismissed.

30. I have heard learned counsel for the parties at length and perused the material available on record.

31. Case of the appellant is that he approached police station Fatehpur

Beri on 29.04.2018 to make complaint against the accused persons mentioned above, however, the said complaint was not entertained by the Police Station.

32. As per Section 4 (2) (b) of SC & ST (Prevention of Atrocities) Act, 1989 *“it is the duty of the public servant to register a complaint or first information report under this Act and other relevant provisions and to register it under appropriate sections of this Act.”*

33. Accordingly, as per Section 4 (3) of SC & ST Act *“The cognizance in respect of any dereliction of duty referred to in Sub Section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.”*

34. Whereas, case of respondent is that on 31.05.2018, complaint of the appellant was received in the office of Commissioner of Police, Delhi, however, no complaint was filed in the Police Station on 29.04.2018. After receipt of complaint on 31.05.2018, enquiry was initiated by ACP named above, in view of the directions contained in the Order of Hon'ble Apex Court in the case of ***Dr. Subhash Kashinath Mahajan (Supra)***.

35. Accordingly, on the basis of the material on record and the statements of the parties concerned, allegations leveled by the complainant/appellant

could not be substantiated. The complaint seems to have been filed as an afterthought to counter the criminal cases filed by Ms. Ameera Pasrich and Ms. Shikha Mundkar against the trainer (Kapil Modi) of the complainant/appellant. From the enquiry carried out, prima facie, no case was made out under the provisions of SC/ST Act.

36. In rejoinder, case of the appellant is that status report dated 23.12.2019 has been maliciously filed without supporting an affidavit which is contrary to settled legal norm that reply must be supported by an affidavit. Thus, the respondents continued to play fraud on this Court and a desperate attempt to escape the clutches of perjury and further criminal prosecution under the SC/ST Act.

37. It is pertinent to mention here that in Para 9 of the status report, ACP mentioned that all accused police officers (Respondents in Crl. A. 961/2018 and in present appeal) have accepted and admitted their guilt by fully supporting the orders passed by the Ld. ASJ in CT No. 536/2018 wherein the Ld. ASJ has himself recorded his findings in impugned order dated 05.06.2018 that the complaint dated 29.04.2018 of appellant was refused by the P.S Fatehpur Beri on 29.04.2018.

38. The appellant places reliance on the case of landmark review judgment of ***Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra***: [Rev.Pet.(Crl.) No.275/2018 delivered on 01.10.2019] & ***National Campaign on Dalit Human Rights & Ors. vs. Union of India & Ors.***: [W.P.(C) No. 140 of 2006] & ***State of Madhya Pradesh vs. Vikram Das***: (2019) 4 SCC 125 wherein the Apex Court held that “*the High Court could not award sentence less than the minimum sentence contemplated by the Statute in the SC/ST Act.*”

39. Mr. Kapil Modi submitted that ACP Mr. Pathania and the respondents continued to fearlessly make mockery of justice by having the audacity to play fraud upon this Court by filing such bogus and fake status reports in a desperate attempt to save themselves. Moreover, ACP Pathania and his fellow accused police officers who are liable to face imprisonment upto 6 months as per the SC/ST Act in present appeal & Crl. A. 961/2018 filed by the appellant for refusing to register his complaint, for filing number of fake status reports, disappearance and malicious concealment of over 600 pages of documentary evidence, conducting an enquiry in blatant contempt of finite directions of ***Dr. Subhash Kashinath Mahajan (supra)*** in order to shield R-3 to 8 by misleading the Courts into believing that the Appellant is an

immoral person who has filed counter blast complaints at the behest of Joshi (Kapil Modi) against whom the accused have filed fake FIR's wherein notice have been issued in quashing petition filed by the trainer (Kapil Modi) separately.

40. Regarding the issue raised by the respondents, appellant being represented by Mr. Kapil Modi, in ***Dr. Subhash Kashinath Mahajan (supra)***, on 01.10.2019 Ld. Attorney General's submissions were recorded by Hon'ble the Supreme Court of India where he stated that the low conviction rate under the Act is a failure of the criminal justice system and not an abuse of law. The witnesses are pressurized in several manners and don't support Dalits, biased mindset continues, complainant hardly musters the courage. Further observed that SC/ST have been socially outcasts for centuries. Eye witnesses don't support them, provisions have been made for the protection of witnesses under the Act. The provisions of the Act are in essence, concomitants covering various facets of Article 21 of the Constitution of India.

41. Accordingly, Hon'ble Apex Court in the Review Judgment of ***Kashinath Mahajan (supra)*** has held that there is no presumption of misuse of the SC/ST Act and neither can it be presumed that members of elite class

don't misuse the law. SC/ST hardly muster the courage to lodge even an FIR much less a false and, in case, FIR is found to be false, it may be due to the faulty investigation. SC/ST cannot be treated as liars or crooks who would lodge false reports to secure monetary benefits or take revenge.

42. Vide Appreciation Letter dated 25.03.2019 issued by National Campaign on Dalit Human Rights, Mr. Kapil Modi's contribution have been recognized along with International Dressage Development League for their significant contribution in making the Olympic sport of Dressage accessible to Dalits via the IDDL competition platform. It is further stated in said letter that in India, Dalit men and boys are beaten and murdered for riding a horse. The contribution of Mr Kapil Modi and the IDDL in achieving the constitutional goal of equality for Dalit horse riders is greatly appreciated by the NCDHR. Thus, Kapil Modi is appearing as representative of the appellant. Further, Chapter IV-A Section 15A (12) which says that *"it shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, Social workers or advocates."* Thus, he (Kapil Modi) being social worker and appreciated by aforementioned NGO, is representing appellant. Apart, from that he has

already appeared before the Division Bench of this Court in LPA No. 344/2019.

43. Moreover, under Section 32 of the Advocates Act prescribed as under:

“Notwithstanding anything contained in this chapter, any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case”.

44. In ***Harishankar Rastogi vs. Girdhari Sharma: AIR 1978 SC 1019***, it is held that *“a private person who is not an advocate, has no right to barge into court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact the court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission.”*

Undisputedly, Kapil Modi (AR) is trainer of appellant who appeared in person in court and has reposed trust upon said Modi. He is a social worker and has been recognized and appreciated by ‘National Campaign on

Dalit Human Rights'. Moreover, this Court appreciates his assistance rendered while maintaining decorum of the Court. Thus, in view of above, in my considered opinion, he is competent to represent appellant who belongs to scheduled caste.

45. Case of the appellant is that he has been caste abused over the last two years and intentionally insulted and humiliated in public view.

46. Further case of the appellant is that on 17.12.2017, when Amir came to the Farm House of Mr. Modi, he told to appellant/Prashant that this sport of Dressage is not meant for "*Chura and Chamars*" like him. On 28.01.2018, Shikha Mundkar and Ameera Pasrich insulted and humiliated, when appellant was riding a horse. They pushed him off the horse and abused like '*mother fucking*' and '*faggot*'.

47. In addition to above, further alleged that Ameera Pasrich created a whatsapp group called '*Alliance*' with Shikha Mundkur and Anush Aggarwala in tacit support with their parents. Daksh Mittal, a 17 years old boy and former student of Kapil Modi, was lured on 04.03.2014 by above-named persons into joining '*Alliance*' group. However, on 14.04.2018, Daksh Mittal was asked to leave the said group because his father Naval Commander (Retd.) Kuldeep Mittal had informed Mr.Modi of their criminal

plot to do an acid attack and torture the appellant and to frame and kill his trainer, Kapil Modi. Thereafter, on 16.04.2018, Commander Mittal e-mailed detailed unedited chat records, from 4th March to 14th April 2018 of 'Alliance' group, to Mr.Modi. On 17.04.2018, appellant received complete printout of said whatsapp chat from his trainer Modi. On 21.04.2018, Daksh Mittal issued public apology and revealed the insights of the whatsapp group and accused persons' hatred towards horse rider who belongs to Scheduled Caste category. Accordingly, on 22.04.2018, Kapil Modi registered a complaint at Police Station Fatehpur Beri, Delhi vide DD No.28-B at 03.55 p.m. In this complaint, he disclosed the plan of 'Acid Attack' on his student (appellant herein) namely Prashant who belongs to Scheduled Caste community. However, police did not take any action on the said complaint.

48. Further alleged that on 28.04.2018 in execution of the criminal plot discovered in the chat records of 'Alliance' group; Shivani Pasrich, Ameera Pasrich and Shikha, came to Kapil Modi's farm along with officers from Animal Husbandry and 6-7 policemen from Police Station Fatehpur Beri. Shivani Pasrich criminally intimidated appellant and threatened to kill him. However, appellant on the same evening, fearing of his life, tweeted to the Hon'ble Prime Minister of India. Thereafter, on 29.04.2018 at 12:30 p.m.

appellant went to Police Station Fatehpur Beri to register his complaint but the police officials disgracefully refused to receive and register the complaint. However, on the same evening, appellant again tweeted to the Hon'ble Prime Minister and other authorities mentioning therein that police have refused to register his complaint. Having no alternative, on 02.05.2018, appellant e-mailed his complaint to the Hon'ble Prime Minister and others including Commissioner and D.C.P. of Delhi Police. Again on 03.05.2018, he sent copies of the complaint to Commissioner, Delhi Police and others. On 06.05.2018, appellant marked another tweet to the Hon'ble Prime Minister and others stating that he realised that inspite of his cries for help, no one has helped him and he realised that Scheduled Caste people are only used for political gain.

49. After loosing hope from all corners, however, on 11.05.2018 at 9.33 a.m. appellant received an e-mail from Special Commissioner of Police, Delhi (Southern Range) to take necessary action on the appellant's complaint. Despite, police did not register the case against accused persons. Therefore, at last, on 14.05.2018, due to inaction of Police and other authorities, appellant filed an application under section 156(3) Cr.P.C. before the learned MM, however, same was dismissed.

50. Since the public servants (respondents herein) willfully neglected their duties required to be performed under Sections 4(1) & 4(2) of the SC & ST Act, the appellant filed a complaint case bearing No.536/2018 before Ld. ASJ-02(South) Spl Judge, Saket Courts, New Delhi on 25.05.2018. Meanwhile, appellant also received a copy of letter dated 22.05.2018 addressed to Commissioner of Police requesting him to get the matter investigated and thereafter, for sending a factual report directly to Ms. Indri Anurag, Joint Secretary, Government of India, Ministry of Social Justice and Empowerment, New Delhi-110015 under intimation to department for the welfare of SC/ST/OBC I.P. Estate, New Delhi.

51. It is pertinent to mention here that on 29.05.2018 at 11:12 am, appellant emails to Commissioner of Police, Delhi regarding an intimidating and humiliating phone call from a person claiming to be police officer from mobile No. 9560820778 at 6:37 pm. And on 02.06.2018 at 11:24 am, appellant emails the Hon'ble the then Chief Justice of India highlighting the apathy of the lower judiciary towards schedule caste. However, vide impugned order dated 05.06.2018, learned Special Judge dismissed the application filed under section 4 of SC/ST Act. The appellant also filed another complaint vide CT No.627/2018 under section 4 of SC/ST Act,

however, same was dismissed by above mentioned Judge, vide order dated 27.08.2018.

52. In view of facts discussed above, there was an imminent danger of the life and persons of the appellant. He lost his peace of mind because being in reasonable apprehension of danger to his person and completely disturbed and perturbed fearing acid attack from the alleged accused persons. Moreover, there was reasonable and bonafide belief that evidences in electronic form may be destroyed or tempered with.

53. Be that as it may, grievance of the appellant is that he approached Police Station Fatehpur Beri on 29.04.2018 with complaint of atrocities and humiliation committed by the accused persons, however, said complaint was not entertained by the police officials of said Police Station.

54. Defence of the then SHO, Fatehpur Beri, is that said police station did not receive complaint dated 29.04.2018, however, it actually reached to police station on 31.05.2018 through the Office of Commissioner of Police, Delhi and thereafter made inquiry thereon.

55. The above-stated defence cannot be accepted for interalia reasons:

- (a) On 22.04.2018, Kapil Modi, registered a complaint in Police Station Fatehpur Beri, Delhi vide DD No.28-B at 3.55 p.m. In the said

complaint, he disclosed the plan of '*Acid Attack*' on his student namely Prashant (appellant herein) who belongs to Scheduled Caste community.

- (b) On 28.04.2018, fearing of his life, appellant tweeted to the Hon'ble Prime Minister, when Shivani Pasrich, Ameera Pasrich and Shikha came to Kapil Modi's farm along with officers from Animal Husbandry and police officials and Shivani Pasrich criminally intimidated the appellant and threatened to kill him.
- (c) On 29.04.2018 itself, the day of alleged complaint, again tweeted the Prime Minister of India and other authorities mentioning therein that Police has refused to register his complaint.
- (d) On 02.05.2018, appellant e-mailed his complaint to Hon'ble Prime Minister and other authorities including Commissioner and DCP of Delhi Police.
- (e) Again on 03.05.2018, appellant sent the copies of complaint to Commissioner of Police, Delhi and others.
- (f) On 06.05.2018, appellant again tweeted to Hon'ble Prime Minister and others stating that no one had helped him because he belongs to Scheduled Caste community.

(g) On 11.05.2018 at 9.33 a.m. appellant received an e-mail from Special Commissioner of Police, Delhi (Southern Range) for taking action on the alleged complaint.

(h) On 14.05.2018, appellant filed an application under section 156(3) Cr.P.C. for directions to register FIR against accused persons.

56. Thus, in view of above, it is established that appellant ran from pillar to post to get justice, but present case is hight of deafness of Delhi Police, in particular the then SHO of Police Station Fatehpur Beri.

57. This Court is conscious of the fact that the complaint in question was dated 29.04.2018, however, as per directions of the Hon'ble Supreme Court in case of ***Dr.Subhash Kashinath Mahajan (supra)*** dated 20.03.2018, the Police was not supposed to register FIR straightway, if allegations are falling under section SC/ST Act, but after enquiry if prima facie case is made out. The said directions were in operation till Parliament had brought amendment and said directions were reviewed on 01.10.2019 by the Hon'ble Supreme Court. As per directions dated 20.03.2018 of the Hon'ble Supreme Court in ***Dr. Subhash Kashinath Mahajan (supra)***, preliminary enquiry must be conducted within 7 days, whereas in the present case, enquiry report was submitted by the ACP on 18.06.2018 i.e. after 59 days.

58. In view of above facts, it is not in dispute that during the sun-set period, on the allegations falls under SC/ST Act, preliminary enquiry was to be conducted but for other allegations and there was no embargo to register FIR. On perusal of complaint dated 29.04.2018, there are allegations falling under the other offences of IPC. But, the then SHO of Police Station Fatehpur Beri failed to register FIR for other offences, however, not falling under SC/ST Act.

59. Regarding allegations falling under SC/ST Act, the SHO of Police Station Fatehpur Beri was duty bound to entertain complaint and perform his duty required to be performed under section 4(1) and 4(2) of the SC/ST Act, however, he failed to do so. Moreover, the courts below have ignored the above facts.

60. In view of above discussion and settled legal position of law and statute, this Court is of the view that the then SHO of Police Station Fatehpur Beri is liable to be prosecuted under section 4(2)(b) of SC & ST (Prevention of Atrocities) Act, 1989 as amended up-to-date.

61. Accordingly, the impugned order dated 05.06.2018 is hereby set aside and Trial Court is directed to initiate proceedings against the then SHO of

Police Station Fatehpur Beri as per law, however, no coercive steps shall be taken against above said alleged accused.

62. In view of above, present appeal is allowed and disposed of.

63. This order be transmitted to learned counsel/representative for the parties.

64. A copy of this order be transmitted to the learned Trial Court for information and compliance.

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65. In view of the order passed in the present petition, these applications have been rendered infructuous and are accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 28, 2020
ms/ab