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

Reserved on: 18.02.2020

Pronounced on: 28.04.2020

+ CRL.A. 817/2018

PRAVEEN KUMAR @ PRASHANT Appellant

Through Mr.Kapil Modi, AR of appellant.

versus

STATE & ORS. Respondents

Through Mr. Hirein Sharma, APP for State.
SI Laxman Kumar PS Fatehpur Beri.
Mr.Shiv Chopra, Adv. with Ms.Richa
Rebhan, Adv. for R-6.
Mr.Ansh Singh Luthra, Adv. for R-7
& 8.

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

J U D G M E N T

Crl. M.A.43246/2019, 2656/2020, 2791/2020 & 2794/2020

1. Allowed, subject to all just exceptions.
2. Applications are disposed of.

CRL.A. 817/2018 & Crl.M.A. 43245/2019, 2655/2020, 2790/2020 & 2793-94/2020

3. Present appeal is filed under section 14A of SC & ST (Prevention of

Atrocities) Act 1989 as amended by Act 2015 (hereinafter referred to as '*SC/ST Act*') read with Article 227 of Constitution of India read with section 483 Cr.P.C. for setting aside the impugned order dated 02.08.2018 passed by learned ASJ-02, Special Judge (South), Saket Court, New Delhi and for registration of FIR in accordance with law.

4. Case of appellant is that he belongs to schedule caste category aged 23 years. He is an International Horse Riding Champion (Equitation) and his goal is to represent India in Tokyo Olympic 2020 in Dressage. He has won over 30 Medals in the International Development League Competitions. However, over the last two years, he is being victim of atrocities inflicted upon him by his 3 competitors (including their parents) namely; Ameera Pasrich, Shivani & Amir Pasrich (parent of Ameera), Anush Aggarwala, Priti Aggarwala (mother of Anush) & Shikha Mundkur. The alleged accused persons belong to upper caste and rich families. They have intentionally & knowingly caste abused and intimidated the appellant within public view with intent to humiliate and shatter his self respect on several occasions at his trainer Kapil Modi's farm. However, he kept silent out of fear.

5. The issues raised in present appeal are as under:

- a. Whether The Ld. ASJ has complied with the directions as directed by this Court in disposing the appellant's application?
- b. Whether the Ld. Special Judge has wilfully disobeyed the directions of this Court qua the disposal of the appellant's application?
- c. Whether the Ld. ASJ has erred by not ordering registration of FIR after applying the test of Lalita Kumari and SC/ST Act under Rule 5 on the complaint dated 29.04.2018 of the appellant which prima facie discloses atrocities which are non bailable offences under SC & ST Act.
- d. Whether the Ld. ASJ under section 156(3) Cr.P.C. is empowered to ascertain the truthfulness of the allegations and the bonafide of the complainant?
- e. Whether the Ld. ASJ under section 156(3) Cr.P.C. is empowered to appreciate and adjudicate on the veracity of the incriminating documentary evidence of the "Alliance" chats wherein the accused have themselves admitted to hatching a criminal conspiracy and acid attacking the appellant?

6. Learned counsel appearing on behalf of the respondents have raised strong preliminary objection on appearing of Mr.Kapil Modi who representing the appellant. It was prayed that let this issue be decided first. Accordingly, issue is being decided interalia:

7. Regarding the issues raised by the respondents, the appellant being represented by Mr.Kapil Modi, in case of **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.

8. 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.

9. 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.

10. 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”.

11. 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.

12. Mr.Kapil Modi, Authorised Representative of the appellant submits that Ld. MM on 06.07.2018 issued a contempt notice to ACP Pathania for violating the directions of the Apex Court in ***Lalita Kumari vs. Govt. of U.P.: (2014) 2 SCC 1*** and ***Dr. Subhash Kashinath Mahajan vs. State of Maharashtra: (2018) 6 SCC 454***. The concerned MM on 12.07.2018 returned the victims application and it was consigned to Ld. ASJ on 18.07.2018. In the impugned order 02.08.2018, Ld. ASJ has not even mentioned that a contempt notice was issued to the ACP by the concerned court.

13. He also submits that the Apex court in ***Dr. Subhash Kashinath Mahajan (supra)*** has given finite directions that a preliminary enquiry must be conducted within 7 days as per the directions in ***Lalita Kumari (supra)***

by a DSP rank officer. The relevant paragraph from the judgment is extracted below:

"79. We are of the view that cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held. Such inquiry must be time-bound and should not exceed seven days in view of directions in Lalita Kumari (supra)."

14. He submits that in the present case, a bogus preliminary enquiry was conducted by the ACP over a period of around 59 days which is corroborated by the ACP's submissions in ATR dated 18.06.2018. In spite of knowing the aforementioned facts, the Ld. ASJ has made the following perverse finding in paragraph 23 of the impugned order:

"23 In this scenario, mere non-filing of action taken report within 7 days could not be taken as the blatant violation of the directions in Subhash Kashinath Mahajan's case and furthermore merely on the basis of delay, this report cannot be thrown away in present facts and circumstances."

15. It is submitted that by not finding any illegality in the report is wilful violations of the directions issued in case of ***Dr. Subhash Mahajan (supra)***, thus Ld. ASJ is in wilful contempt of Article 141 of the Constitution of India and in contempt of directions issued by Hon'ble Supreme Court in case of ***Dr. Subhash Mahajan (supra)*** whereby held as under:

"81. iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that, the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt."

16. Accordingly, submits that in view of above directions, the observations of learned ASJ are perverse in law. Further submitted that SI S.K. Singh conducted a forced written interrogation of the appellant on 16.06.2018, whereas, only ACP/DSP rank officer is competent to conduct inquiry as per SC/ST Act. Thus, it is not legal for the learned ASJ to assume and record in order dated 05.06.2018 in CT case No.536/2018 that there is no illegality in ACP Pathania to direct a Sub Inspector from conducting interrogation. In cases of *Dr.Subhash Mahajan (supra)* and *Lalita Kumari (supra)* there is no dictum of the Supreme Court for conducting written interrogations. Accordingly, the victim had sent an email to Police and other authorities against said illegal interrogations. If the forced interrogation of the appellant on 16.06.2018 was legal then why did the ACP maliciously concealed this fact from his ATRs dated 18.06.2018 and 09.07.2018 filed before learned MM.

17. Mr.Kapil Modi/AR of appellant submits that it is perverse as per the principle of natural justice for the Learned ASJ to dismiss the appellant's application by relying heavily on the fake ATR's without first adjudicating on the victim's complaint. Such an act, under the SC/ST Act, is an offence punishable with minimum imprisonment of 1 year.

18. The appellant in his forced written interrogation of 16.06.2018 has categorically stated the reason that he did not call the police immediately after the incidents of atrocities inflicted upon him by the accused, because he was scared. During his interrogation, SI S.K. Singh in order to shield the accused Anush, Priti Agarwalla & Shivani Pasrich (former Miss India) maliciously did not ask any questions qua atrocities inflicted by them upon the victim in order to exonerate the accused by stating that victim has not given any date or time as to when the atrocities were committed by the accused Anush and Priti. To exonerate accused Shivani Pasrich, the police filed a fake inspection report on 28.04.2018.

19. Para 111(vi)(e) of ***Lalita Kumari (supra)*** is relevant here and extracted below:

"111) In view of the aforesaid discussion, we hold:

(vi) As to what type and In which cases preliminary Inquiry Is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(e) Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay."

20. Mr.Modi submits that as per the above directions, the victim has stated that he did not report the atrocities inflicted upon him immediately because of fear. In context of directions in para 111 (vi) (e) of ***Lalita Kumari (supra)*** recently in PS Fathepur Beri a woman filed a rape complaint against Godman Daati Maharaj stating that she was raped by him two years ago and because of fear, she did not report the complaint earlier. The SHO who refused to receive the appellant's complaint on 29.04.2018, but immediately registers FIR on the woman's complaint and the case is being investigated by the crime branch.

21. He further submits that in the present case, the appellant, just because belongs from a poor schedule caste family, the police refuses to accept the reason for delay in filing the complaint by the victim and in order to shield the accused, branded the complaint of the victim as malafide and motivated and shockingly the learned ASJ believed this fake ATR and ignored over

200 pages of documentary evidence and averments which prove the guilt of the accused police officers and the offenders filed in Annexure-3, 4 colly for reasons best known to him.

22. Further submitted that coordinate bench of this Court in W.P.(C) No.7868/2018 (filed by appellant and his trainer) on 30.07.2018 has directed the DSPCA not to conduct any inspections based on the false complaints of the accused at the premises of Kapil Modi. The whatsapp chat records of "*Alliance*" was the crucial evidence placed by the appellant on record to expose the execution of the criminal conspiracy of the accused to steal his horses.

23. Another coordinate bench of this Court in W.P.(Crl.) on 30.07.2018 has issued notices on the FIR quashing petition filed by the victim's trainer (Kapil Modi). The planning of this fake FIR has been exposed in the chat records of "*Alliance*" group wherein the accused have admitted to the conspiracy of framing the petitioner's trainer with the goal of extortion. However, Ld. ASJ, for reasons best known to him, has found no prima facie criminality in the said chat records of "*Alliance*" wherein the accused have admitted to their criminal plans of acid attacking the appellant and the

accused have already executed their plans which are mentioned in these chats.

24. The Apex court in several judgments has held that a Judge should actively find out the truth by separating the grain from the chaff. Ld. ASJ has quoted the Apex court judgment of ***Ramdev Food Products vs. State of Gujarat: 2015 (6) SCC 439*** wherein held that “*the magistrate must apply his judicial mind*”.

25. Now question arises, in the context of entire averments made from paragraph 6 to 14 of this appeal, whether the learned ASJ applied his judicial mind while dismissing the appellant’s application.

26. In ***Khurram Rauf Khan vs. State of U.P. & Anr.*** dated 14.12.2014 the High Court of Allahabad observed as under:

“..Para-3: It is contended that the impugned order is illegal because the learned Magistrate had tried to assess the truthfulness of the allegations for which he was not legally permitted and has recorded the finding on the basis of the allegations made in application under section 156 (3) Cr.P.C. prima facie cognizable offence is not made out, the finding is perverse. It is against the evidence present on the record because on the basis of the allegations made in the application under section 156 (3) Cr.P.C. prima facie cognizable offence is made out. Learned A.G.A. opposed the contention of the petitioner

by submitting that the learned Magistrate has passed a reasoned order.

"Para-4: From perusal of the application under section 156 (3) Cr.P.C., it appears that on the basis of the allegations made therein, prima facie cognizable offence is made out and from the perusal of the impugned order, it appears that the learned Magistrate had tried to assess the truthfulness of the allegations and he had scrutinised the allegations for which he was not legally empowered. As such the impugned order is set aside."

[Emphasis supplied]

27. A Three Judge bench of Hon'ble Supreme Court in the case of National Campaign *on Dalit Human Rights & Ors. vs. Union of India & Ors.*: (2017) 2 SCC 432 in [W.P.(C) No. 140 of 2006] held as under:

"12. We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the concerned authorities in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities."

The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so."

28. On the other hand, counsel on behalf of respondent No.5 submitted that she is young girl, aged about 21 years and at the time of complaint, she was aged about 18-19 years. Appellant has wrongly, illegally and malafidely filed the present complaint and proceedings with a view to defame respondent No.5 and as a counter-blast to FIR No.134/2018 dated 21.04.2018 registered at Police Station Fatehpur Beri, New Delhi against Kapil Modi (AR of the appellant herein).

29. Similarly, two more students of Kapil Modi also filed a complaint against him which culminated into FIR No.135/2018 dated 21.04.2018. Present appeal has been filed, however, at the instance and behest of Kapil Modi. On 17.07.2017, respondent No.5 and her father had entered into an agreement with Kapil Modi and in accordance with said agreement, respondent No.5 paid total amount of Rs.31 lakhs to him. The said amount was paid with the understanding that respondent No.5 would be trained and secured valuable riding rights over a warm blood horse called World Vision. However, on 03.04.2018, said respondent and her father filed a complaint with Police Station Fatehpur Beri, New Delhi, bringing out the illegal acts committed by Kapil Modi. As respondent No.5 was cheated and suffered numerous indignities at the hands of Kapil Modi, on 15.04.2018, respondent

No.5 (and also respondent Nos.3, 6, 7 and 8) submitted detailed complaints dated 14.04.2018, on the basis of which an FIR No.134 dated 21.04.2018 for the offences punishable under Sections 354-A/509 IPC was registered at Police Station Fatehpur Beri, New Delhi against Kapil Modi. Insofar as it concerned the case of respondent No.5, subsequently in the course of investigations, Section 420 IPC has been added. Similarly, on the complaint filed by respondent No.6, an FIR No.135 dated 21.04.2018 was registered against Kapil Modi. However, to wreck vengeance, Kapil Modi filed a complaint against respondent No.5 and other private respondents wherein he relied upon certain redacted printouts of a purported chat of WhatsApp group called '*Alliance*' but full chat was never filed by said Authorised Representative, because said Modi knew that his complaint dated 22.04.2018 was bogus, therefore, he through present appellant filed a fresh complaint purportedly dated 29.04.2018 addressed to the S.H.O., P.S. Fatehpur Beri, New Delhi making allegations against respondent No.5 and other respondents. Thereafter, filed an application by appellant seeking directions under Section 156(3) Cr.P.C, however, same was dismissed by learned Additional Sessions Judge, South District, Saket, New Delhi vide order dated 02.08.2018 holding as under:

“16. The principle issue before this court whether there is sufficient material before this court warranting a direction to concerned SHO U/s 156(3) Cr.P.C. to register FIR. Apex Court in Dr. SubhaSh Kashinath Mahajan (supra) after analysing the judgment of Lalita Kumari in para 79 mandated that a preliminary inquiry must be held in cases under SC/ST Act and also given directions in para 83 (iv) as under:

"To avoid false implication of an innocent, a preliminary enquiry may be conducted by the asp concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

17. The ACP Rajender Pathania, Competent officer to inquire into SC/ST complaints filed Action Taken Report before the Hon'ble High Court and thereafter before the court of Ld. MM on 09.07.2018 whereupon he found the allegations under SC/ST Act are vague and, not substantiated, and concluded that, the present complaint seem to be filed as an afterthought to counter criminal cases filed against Mr. Kapil Modi. It is also pertinent to mention here that the complainant also filed a petition u/s 4 SC/ST Act before this court against special Commissioner, Southern Range, SHO PS Fatehpur Beri and the concerned Ld.MM South for not taking action over the complaint of the complainant, and this court vide order dated 05.06.2016 dismissed the said complaint, and as per the record filed by the complainant, the said order is under challenge before the Hon'ble High Court through criminal Appeal No. 667/2018 and now is listed for 25.07.2018.

18. Apex court in case titled 'Ramdev Food Products Vs. State of Gujarat, 2015 (6) SCC 429, held that the directions u/s 156(3) Cr.P.C. to be issued by the Magistrate only after due application of mind. Therefore, the direction under section 156(3) Cr.P.C is not

*mechanical act and this court has to see the entire material in its true perspective. This view is also mandated by Dr. Subhash Kashinath Mahajan case in which the apex court held that to avoid false implication of an incident, a preliminary inquiry to be conducted by DSP to find out whether the allegations make out a case under the Atrocities Act and allegations are not frivolous or motivated. Therefore, **before making any order under this section, this court has not only to see whether a case is made out under SC/ST Act but also the fact that allegations should not be frivolous or motivated.***

.....

*21. As per those messages, there is a whatsapp message of Shikha dated 10.03.2018 in that group that she fear like throwing acid on Prashant, in these messages they have shown anguish against Kapil and Prashant and also used the word "faggot (homo sexual male)" against Prashant. There is nothing in these whatsapp chatting that they have anything to do with the caste of the complainant Prashant @ Praveen Kumar. **There is nothing as per this whatsapp record which is the only documentary evidence relied by the complainant showing the interactions of the accused, that the complainant is treated badly because of his caste or there are caste remarks against him.** The word used 'faggot' cannot be termed as a caste remark. Furthermore, these conversations are not directly with the complainant. There is no conspiracy appears from these messages to kill Kapil or to throw acid over the present complainant though the group members appears to be sharing their anguish against Kapil Modi or the complainant. **No offence whatsoever appears to have been committed on the basis of this documentary evidence i.e. whatsapp messages.***

22. Now it is pertinent to peruse complaint date 22.04.2018 in the background of whatsapp messages. The

whatsapp messages is the basis of this complaint, however as discussed from whatapp messages, it cannot be inferred that there is any conspiracy to kill Kapil Modi or to throw acid on complainant. In this complaint dated 22.04.2018 Mr. Kapil Modi raised a plea of harassment of scheduled caste student Prashant. However, from the whatsapp messages it cannot be inferred that the anguish, against Prashant was because of his caste. **There is no allegations of caste remarks in complaint dated 22.04.2018, however later on vide complaint dated 29.04.2018, the allegations were made against Anush Aggarwala that he had called the accused with caste remarks and faggot but no date and context mentioned, thereafter again allegations against Preeti Aggarwala that she made caste remarks against the complainant, however in these allegations, there is no date or context mentioned. Furthermore, there is an allegation against Ameer Pasrich that on 17th December he made a caste remark however that appears to be vague in context of the fact that the complainant himself is an accomplished International Horse riding champion. The allegations of 28th January that Shikha and Ameera abused him on 28th January when he was riding on the horse by stating "you bloody mother fucking faggot". This allegation also do not contain any caste remarks. Therefore, from the documents of the complainant fired along with the application /complaint u/s 156(3) Cr.P.C, the categorical and clear allegations showing offences under SC/ST Act, conspicuously missing. The allegations of plot to kill or the conspiracy of acid attack is also vague and do not appear to be made out at all on the face of it. The Action Taken Report in the nature of preliminary report as mandated by the apex court in Dr. Subhash Kashinath Mahajan case, also suggest that the allegations are vague and the entire complaints are found to be counterblast to the FIRs lodged by the alleged accused side against Kapil Modi. Ld. Counsel for the complainant submitted that at this stage the court cannot**

*see the credibility of the complaint. There is no dispute to this proposition, however the apex court has clearly mandated that this court has to see at this stage whether any case is made out or whether the allegations are frivolous or motivated.
(emphasis supplied)”*

30. Learned counsel appearing on behalf of respondent no.6 submits the only apparent alleged violations repeatedly cited are in respect of the case of ***Lalita Kumar (supra)*** which call for an investigation within 7 days. It is alleged that such requirement was not complied with. However, the list of dates itself is unclear about the date of filing of the police complaint by the complainant, the petition itself reflect that some complaint was investigated by the police as per the allegations filed with the petition which resulted in the first order dated 05.06.2018 passed by learned Additional Sessions Judge-02 (South), Saket Courts, New Delhi.

31. The two complainants were duly considered by the Ld. Special Judge and finding was arrived at that in the facts of the case no offence is made out under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

32. Counsel for the respondent no.6 further submitted that the appellant filed W.P. (C) 1864/2015 seeking registration of an FIR and same was

disposed of vide order dated 18.06.2018 by this Court by issuing directions to the Ld. Metropolitan Magistrate to dispose of the matter in accordance with law.

33. It is further submitted that respondent no.6 got registered FIR No.135 against Kapil Modi, who is the Authorized Representative appearing on behalf of appellant in the present case. The contents of the FIR includes reference to various wrongful actions committed by the AR of appellant herein, which require investigation. The said FIR was originally registered by the police under Section 354-A and 509 IPC. True facts of the case required careful consideration of matters that had been placed before the Trial Court and thus were the subject of an application under Section 156 (3) in a court monitored proceedings. It was during the course of the hearing of said application, the learned MM, vide order dated 24.04.2019 added the offence of cheating under Section 420 during the police investigation. The complaint filed by the respondent no.6 shows how the Authorized Representative of the appellant has cheated and enticed the said respondent to use his Academy (Called the Olympic Riding and Equestrian Academy or “OREA” hereinafter referred to as “OREA” or the “ACADEMY” for short) and was misled to believe that she had a lifetime opportunity for chasing her

dreams to reach the Asian/Olympics games. Thus, the litigations initiated by the appellant herein, who is an employee and student of Mr. Kapil Modi, are an evasive action against the present respondent through false cases.

34. Moreover, Section 15(A) and (12) of the SC/ST Act provide that victim can be assisted by a social worker and Kapil Modi, AR of appellant in the said case is not doing an act of social work or assistance to the alleged victim as per the Act. On the contrary, Mr. Modi along with the appellant is clearly misusing the provisions of the Act to fulfil his own self interest and ill motive. Thus, it is nothing but an attempt to pressurize the young females i.e. respondent nos.4 to 6 to withdraw two FIR's filed against Mr. Modi which in depth explain the acts of sexual harassment and outraging modesty, cheating, animal cruelty etc. committed by Mr. Modi.

35. It is further submitted on behalf of respondent no.6 that whatsapp chat records cannot be commented upon until the same can be proved in accordance with law. The appellant has relied upon the alleged chats mentioned in writ petition filed by AR for quashing of FIR Nos. 134/2018 and 135/2018 filed against him under Section 354-A and 509 IPC. The chats have been repeatedly adduced in each case filed by the appellant or Authorized Representative in his individual capacity. The said alleged chats

are in his own version of whatsapp chats, all of which are not authentic, bear liberal commentary and redaction/removed of anything unsuitable or inconvenient to the appellant and his Authorized Representative. The chats referred to are mostly false, redacted, altered and are not a subject matter to the present appeal. True electronic record can only be appreciated if and when same is available as a whole and once proven as such in accordance with law.

36. Counsel for the respondent no.8 submits that Mr. Rajender Pathania, ACP, being the competent officer to enquire into the complaint filed under SC & ST Act, has enquired and only thereafter learned Court below vide order 09.07.2018 found the allegations under SC/ST Act are vague and not substantiated, and also considered that complaint seems to have been filed as an afterthought to counter criminal cases against Mr. Kapil Modi. In case of ***Ramdev Food Products Vs. State of Gujarat: 2015 (6) SCC 439***, whereby the Hon'ble Supreme Court held that *directions under Section 156(3) Cr.P.C. to be issued by the Magistrate only after due application of mind. Therefore, the direction under the aforesaid act is not mechanical act and this Court has to see the entire material in its true perspective. This view is also mandated by 'Dr. Subhash Kashinath Mahajan' case in which the*

Hon'ble Supreme Court held that to avoid false implication of an incident, a preliminary enquiry to be conducted by DSP to find out whether the allegations make out a case under the Atrocities Act and allegations are not frivolous or motivated.

37. It is further submitted that the word used 'Faggot' in the whatsapp chat cannot be termed as a caste remark. Further, these conversions are not directly with the complainant. There is no conspiracy appears from these messages to kill Kapil or throw acid over the appellant/complainant. No offence whatsoever appears to have been committed on the basis of whatsapp messages. Moreover, there are no allegations of caste remarks in complaint dated 22.04.2018, however, later on vide complaint dated 29.04.2018, the allegations were made against Anush Agarwalla (respondent no.7) that he had called the appellant with caste remarks as 'Faggot', but no date and context has been mentioned. Allegations against Priti Agarwalla (respondent no.8) are that she had made caste remarks against the complainant, however, in these allegations also, there is no date or context mentioned. Furthermore, there is an allegation against Ameer Pasrich (respondent no.3) that on 17th December, he made a caste remark. However, that appears to be vague in context of the fact that the complainant himself is

an accomplished International Horse Riding Champion. The allegations of 28th January that Shikha (respondent no.6) and Ameera (respondent no.5) abused him on 28th January when he was residing on the horse by stating “*you bloody mother fucking faggot*”. These allegations does not contain any caste remarks. Therefore, from the documents of the complainant filed along with the application under Section 156(3) Cr.P.C., the categorical and clear allegations showing offences under SC/ST Act, conspicuously missing. Thus, the present appeal deserves to be dismissed.

38. Learned counsel for respondents submitted that from the above sequence of events, it is absolutely clear that the present complaint has been got filed by Authorised Representative of appellant, only as a counterblast to complaint filed by respondent No.5 and other respondents against Authorised Representative, who had outraged the modesty and cheated the young women with a view to falsely implicate them.

39. In the present appeal, the appellant has sought to invoke Section 3[1] (r) & (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against respondents. The said Section reads and provides as under:-

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

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;”

40. It is argued that in the facts and circumstances of the case, said Section is not applicable inasmuch as there are no allegations of any kind whatsoever of the purported/alleged in statements having been made in public view or at a public place, which is an essential ingredient of the Section. Public view has been defined to mean that the statement ought to have been made in the presence of strangers i.e. persons who are not interested in complainant or accused persons. However, in the present case, when appellant appeared before the Police Authorities, he clearly and categorically refused to give details of the witnesses, in whose presence alleged remarks were made. In this regard, appellant when asked by the police to give names of the witnesses, he stated as under:-

"Q7 Tell us in detail about the person who was present at that time?"

A7: The name of the witnesses will be given in the Court.

Q8: According to your complaint, on 28th Jan., Ameera and Shikha used inappropriate words for you. Tell us in detail what happened that day?

A8: I have mentioned everything in the complaint. I don't remember but both girls were present at the farm on 28th Jan.”

41. It is submitted that in the complaint, there is no whisper of any public witness being present or the statements having been made in public view. The appellant in application under Section 156(3) Cr.P.C. had sought to name three witnesses in support of his claim:-

- i. Complainant himself,
- ii. Mr.Kapil Modi,
- iii. Naval Commander Kuldeepak Mittal and
- iv. Any other witness with permission of Court.

42. Learned counsel for respondents further submitted that though not named in the original complaint dated 29.04.2019 and later, as an after-thought in an attempt to fill up lacunae named in application under Section 156(3) Cr.P.C., the said persons are totally interested persons inasmuch as Mr.Kapil Modi is the Authorised Representative of appellant and is also representing appellant in the present case. Admittedly appellant, as per appeal, is a student of Mr.Kapil Modi and thus, is an interested witness and cannot be considered as an independent witness. Similarly, another named witness, namely Naval Commander Kuldeepak Mittal, is also an interested

person inasmuch as his son was undergoing training with Mr.Kapil Modi, at whose instance, present complaint has been filed and who is representing the complainant. The appellant has sought to name himself as a witness and statement of complainant himself cannot be considered as a statement of the witness. The aforesaid witnesses are totally interested persons and their statements cannot be looked into for any purpose whatsoever.

43. To strengthen his arguments, learned counsel for respondents have relied upon the case of ***State vs. Om Prakash Rana & Ors.: 2014(1) JCC 657*** whereby held that if names of witnesses are not provided at the first instance and are belatedly provided, the same cannot be looked into as the same are after-thought.

44. It is further submitted that in case, complaint lacks or is wanting in any of the essential ingredients, the lacunae or deficiency cannot be filled-up by obtaining additional complaint or supplementary statement. In case of ***State vs. Om Prakash Rana & Ors. (supra)***, it is observed as under:

“10. In the present case, the original complaint lodged by the complainant does not mention in whose presence the offending words were used by the respondents/accused persons. There is also nothing on record to show that the respondents/accused persons were having the knowledge that the complainant was a member of SC/ST community.

There is nothing on record to show that the offending words were used in full public view. The names of alleged witnesses are not mentioned in the complaint dated 18.7.2012. The witnesses i.e. Meenakshi and Durga Dutt have alleged themselves to be the eye witnesses. But their names have not been stated by the complainant in her complaint, the supplementary statement dated 27.8.2012 of the complainant giving the names of alleged witnesses can't fill up the lacuna. There is also delay of 3 days in lodging the FIR. The delay is also not explained. The basic ingredients of Section 3(x) of the SC/ST Act are missing in the present case. There is no illegality in the impugned order which calls for interference of this court."

45. In case of *Kusum Lata vs. State & Others: 2016(4) AD (Delhi) 362*, it is has held as under:-

"18. The question as to what is the correct and real meaning of the expression public view occurring in Section 3(1) (x) of the Act came up for consideration before this Court in Daya Bhatnagar and others v. State, 109 (2004) DLT 915, which was a case where reference was made consequent upon the difference of opinion on the interpretation of the expression "public view" in this section while hearing the petition seeking quashing of the First Information Report under Section 3(1) (x) of the Act against them. In that case, petitioner and the complainant were neighbours and were residing in the same complex at Vikas Puri, Delhi. Some disputes arose amongst them which resulted in registration of the two cross cases - one under Section 3(1) (x) of the Act and other under Section 354/34 IPC.

19. Hon'ble Justice V.S. Aggarwal (as His Lordship then was) after exhaustively dealing with facts and the law referred to the meaning of the words "public and "view" as explained in Corpus Jurisdiction Secumdum, Black's

Law Dictionary (6th edition) page 1568, Stroud's Judicial Dictionary of Words and Phrases (6th Edition Volume 3) observed that the expression "public view" does not necessarily mean that large number of persons should be present to constitute public; and that even when one or two members of the public hear and view the offending words being used, offence would be made out, provided other ingredients of section are satisfied. It was held:

"....In other words, it is patent that, therefore, to bring a matter within the scope and ambit of expression "public view" firstly the words must be uttered at a place which is within public view and it is unnecessary that the number of public persons herein should be more than one. Even if one or two members of the public hear and view, as the case may be, the same and the other ingredients of section are satisfied, the case would fall within the ambit of said provision."

20. However, Hon'ble Justice B.A. Khan while interpreting the expression "public view" in Section 3(1)(x) of the Act went a step further. Learned Judge after referring to the principles governing interpretation of statutes as laid down by the Supreme Court in *RMD Chamarbaugwalla v. Union of India* [1957] 1 SCR 930 and *Commissioner of Income-tax, Orissa V. N.C. Budharaja and Company and Anr.* AIR 1993 SC 2529 held that the report of Babu Lal is liable to be quashed as persons present with Babu Lal were his associates, friends, participating members and were not independent persons so as to constitute "public" within the meaning of Section 3(1)(x) of the Act.

21.

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(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."

20. In the light of the above discussion, one part of the first question under reference, namely, "What is the correct and real meaning of expression "public view" occurring in Section 3(i)(x) of SC/ST (POA) Act, 1989," stands answered."

46. This Court in the case titled as ***Ms. Gayatri @ Apuma Singh vs. State & Anr.: 2017(6) AD (Delhi) 14*** has held as under:-

"42. In Daya Bhatnagar (supra), the majority view taken by the Court was that to attract the offence under Section 3(1)(x) of the SC/ST Act the place where the offending action takes place should be within public view that does not mean that the place should be a public place. It could well be a private place, provided the utterance was made within public view. "Public view" is understood to mean a place where public persons are present – howsoever small in number they may be. Public persons are independent and impartial persons who are not interested in any of the parties. The same has been explained to mean persons not having any kind of close relationship or association with the complainant. Such persons are as good as strangers who do not have any liking for the complainant through any close relationship or any business commercial or other vested interest and who are not participating members with him in any way."

47. Learned counsel for respondents further submitted that appellant seeks to invoke Section 3[1] (za) (B) of SC/ST Act. However, the said Section is also not applicable inasmuch as complainant was not on horse on a wedding procession. The said Section reads and provides as under:-

"(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;"

48. Thus, the allegations in complaint do not make out any ground for invoking said Section and therefore, said Section is also not applicable. In the present case, there is no allegation of any kind whatsoever that any of the accused persons has obstructed or prevented complainant from mounting horse during wedding procession or that complainant has been prevented from mounting horse at all. Thus, ingredients of Section [1] (za)(B) of SC/ST Act are also not made out. Further, no offence is made out inasmuch as the Apex Court has categorically laid down that for an offence under provisions of the Act, it is necessary that accused person ought to have stated that he/she belongs to a higher caste. However, no such statement was made in the present case. The Supreme Court in the case titled as ***Darshan***

Singh Saini Vs. Sohan Singh & Another: 2015 (14) SCC 570 in this regard

has held as under:-

*“72. Insofar as the connected appeal filed by the respondent - Sohan Singh is concerned, who claims that charges be framed against Darshan Singh Saini and his father Beli Ram, under the provisions of the Scheduled Castes and Scheduled Tribes (Atrocities and Prevention) Act, we are of the view that **the High Court was fully justified in rejecting the aforesaid prayer, on account of the fact that Sohan Singh did not indicate in his complaint dated 24-01-2008, and also in the statement made by him, before the Judicial Magistrate, First Class, Nalagarh, that the appellant Darshan Singh Saini belongs to an upper caste.** We, therefore, find no justification in interfering with the impugned order, on this score also.”*

49. While concluding arguments, learned counsel for respondents submitted that essential ingredients of none of the Sections of the Act are made out, none of the grounds specifically points out any legal infirmity similar to the ones pointed out above. The nature of the nexus between the appellant and the Authorised Representative is apparent from the majority of documents filed unconnected to the Act or to any alleged violations thereof demonstrating oblique motives, hence, present appeal deserves to be dismissed.

50. I have heard learned counsel/representative for the parties and perused the material available on record.

51. It is alleged in complaint dated 29.04.2018 that complainant/appellant belongs to Scheduled Caste. He is an '*International Horse Riding Champion (Equitation)*' and his goal is to represent India in Tokyo Olympic 2020 in Dressage. He has won over 30 Medals in the "International Development League Competitions". However, over the last two years, he is being victim of atrocities inflicted upon him by his 3(three) competitors (including their parents) namely; Ameera Pasrich, Shivani & Amir Pasrich (parents of Ameera), Anush Aggarwala, Priti Aggarwala (mother of Anush) and Shikha Mundkur. They have intentionally and knowingly caste abused and intimidated the appellant within public view with the intention to humiliate and shatter his self-respect on several occasions at his trainer Kapil Modi's farm. However, he kept silent out of fear.

52. The case put before this Court is that learned Special Judge has erred by not ordering registration of FIR while applying the test of *Lalita Kumari (supra)* and SC/ST Act and Rule-5 on the complaint dated 29.04.2018 which prima facie discloses atrocities which are non-bailable offences under SC/ST Act. Further, learned Judge is not empowered to ascertain the truthfulness

of the allegations and bonafide of the complaint. Moreover, learned Special Judge has no jurisdiction to appreciate and adjudicate on the veracity of the incriminating documentary evidence of the 'Alliance' chats wherein the accused have themselves admitted to hatching a criminal conspiracy and acid attacking the complainant/appellant.

53. On the issue of jurisdiction, in *Ramdev Food Products (supra)*, the Hon'ble Supreme Court held that the Magistrate must apply its judicial mind while issuing directions under section 156(3) Cr.P.C. to register FIR. Moreover, in case of *Khurram Rauf Khan (supra)*, High Court of Allahabad has observed that learned Magistrate had tried to assess the truthfulness of the allegations and had scrutinised the allegations for which he was not legally empowered.

54. However, it is trite that the Magistrate has to go through the entire complaint and if prima facie cognizable case is made out, he is empowered to direct the police to register FIR. However, if there is no case made out, he may dismiss the application filed under section 156(3) Cr.P.C. with liberty to lead evidence under section 200 Cr.P.C.

55. In the case in hand, vide impugned order dated 02.08.2018, learned Special Judge has observed that as per messages, there is a whatsapp message of Shikha dated 10.03.2018 that she fear like throwing acid on Prashant (appellant herein). In these messages, group persons have shown anguish against Kapil Modi and Prashant/appellant and also used the word “*faggot (homo sexual male)*” against Prashant. There is nothing in these whatsapp chatting that they have anything to do with the caste of complainant Prashant @ Praveen Kumar. The word used ‘*faggot*’ cannot be termed as caste remark. Furthermore, these conversations are not directly with the complainant.

56. It is pertinent to mention here that on the one hand, learned Judge has recorded that there is a whatsapp message of Shikha dated 10.03.2018 in ‘*Alliance*’ group that she fear like throwing acid on Prashant; on the other hand learned Judge records that there is no conspiracy appears from these messages to kill Kapil Modi or to throw acid over the present complainant. Thus, observed that no offence whatever appears to have been committed on the basis of this documentary evidence i.e. whatsapp messages. Moreover, there are no allegations of caste remarks in complaint dated 22.04.2018, however, later on vide complaint dated 29.04.2018, the allegations were

made against Anush Aggarwala that he had called the complainant with caste remarks and 'faggot' but no date and context mentioned. Thereafter, again allegations against Preeti Aggarwala that she made caste remarks against the complainant, however, in these allegations, there is no date or context mentioned. Furthermore, there is an allegation against Ameer Pasrich that on 17th December, he made a caste remarks, however, that appears to be vague in context of the fact that the complainant himself is an accomplished '*International Horse Riding Champion*'. The allegations of 28.01.2018 that Shikha and Ameera abused him when he was riding on the horse by stating, "*you bloody mother fucking faggot*". Thus, opined that no case is made out.

57. Despite above allegations, learned Special Judge opined that from the documents filed by complainant along with application under section 156(3) Cr.P.C., the categorical and clear allegations showing offences under section SC/ST Act, conspicuously missing. Further opined that allegations of plot to kill or the conspiracy of acid attack is also vague and do not appear to be made out on the face of it.

58. It is pertinent to mention here that learned Special Judge agreed to the contention of learned counsel for complainant that at this stage, the Court cannot see the credibility of the complaint.

59. It is not in dispute that when appellant appeared before the police authorities, during enquiry, he refused to give details of the witnesses, in whose presence alleged caste remarks were made. However, he stated that names of the witnesses will be given in the Court, else he mentioned in the complaint. Moreover, appellant in application under section 156(3) Cr.P.C. had sought to name two witnesses, in addition himself, as under:

- i. Kapil Modi;
- ii. Naval Commander Kuldeepak Mittal; and
- iii. Any other witness with permission of the court.

60. But the fact remains that above-named two witnesses have not been examined during enquiry. Thus, it could not be established whether caste remarks were made in public view which is pre-condition as per SC/ST Act.

61. Accordingly, to meet the end of justice, this Court hereby directs the SHO of Police Station Fatehpur Beri to register FIR on the complaint made by appellant and after investigation file report as per law.

62. However, no coercive steps shall be taken against the alleged accused persons.

63. Accordingly, impugned order dated 02.08.2018 passed by learned Special Judge is hereby set-aside.

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

65. This order be transmitted to the learned counsel/representative of the parties.

66. Pending applications stand also disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 28, 2020
ab/rk/ms