

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 151 of 2021

Sonal Jain, W/o Ashwin Jain Aged About 35 Years R/o C-129, Himalaya Height, Bank Road, Boirdadar, Raigarh Police Station Chakradharnagar, Tah. And District Raigarh, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh through the police thana - Sariya, District - Raigarh, Chhattisgarh.

---- Respondent

For Applicant	: Shri Sanjay Agrawal, Advocate.
For Respondent/ State	: Shri Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

01-04-2021

Heard.

1. This criminal revision petition has been brought challenging the charge framed against the applicant by order dated 21.1.2021.
2. The applicant is facing trial in Special Criminal Case No. 72 of 2020 before the Court of Special Judge under Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, Raigarh. Learned trial Court has framed charges against the applicant under Sections 294, 506B and 323 of the Indian Penal Code and Sections 3(1)(s), 3(1)(r) and 3(2)(va) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act').
3. It is submitted by counsel for the applicant that the applicant before this Court is specifically challenging the framing of charges under Sections 3(1)(s), 3(1)(r) and 3(2)(va) of the Atrocities Act. It is further submitted

that the FIR has been lodged on 1.1.2020 on the basis of the complaint given by complainant – Sunita Nirala on 3.11.2019, which clearly shows that all the incidents in which the complainant was abused by her caste name and the atrocities committed were the incidents inside the house of the applicant. Therefore, nothing has happened in the public view which is a specific requirement to complete the commission of offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Further, there is no material present at all to frame charge against the applicant under Section 3(2)(va) of the Atrocities Act.

4. Reliance has been placed on the judgment of Supreme Court in the case of **Satish Mehra vs. Delhi Administration and Another**, reported in **(1996) 9 SCC 766**, in which it was held by the Supreme Court that the Court has to decide whether it is necessary to proceed to conduct the trial and that there is no prospect of the case ending in conviction. Placing reliance on the judgment of this Court in the case of **Rajnish Mishra vs. State of Chhattisgarh** in **CRA No. 845 of 2020** dated 14.1.2021, it is submitted that there is total absence of material for framing charges under the Atrocities Act, hence, without any such *prima facie* material, the charges framed under the Atrocities Act against the applicant are not sustainable. Hence, it is prayed that the revision petition be allowed and the impugned order about framing of charges against the applicant may be set aside.
5. Learned counsel appearing for the respondent/ State opposes the submissions so made and submits, that though the applicant's counsel referred to only the contents of the FIR, however, the statement of the witnesses discloses, that there are two eyewitnesses of the incident that has occurred, which shows that all the incidents have occurred in public view.

6. Placing reliance on the judgment of the Supreme Court in the case of **Bhawna Bai vs. Ghanshyam and Others** reported in **AIR 2020 SC 554**, it is submitted that charges can be framed even if there is strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. Hence, the present revision petition is not sustainable, which may be dismissed.
7. Heard counsel for both the parties and perused the documents present on record.
8. Considered on the submissions. The copy of the charge-sheet which is filed as Annexure-P/2 contains FIR. The FIR mentions that on the date of incident the complainant was abused by this applicant by telling her that she is a member of low caste and had the applicant known about it she would never have employed her. It is alleged that this applicant used to abuse the complainant in her caste name and also beat her often. On another date when the father of the complainant came to meet her, this applicant again abused her by telling that she is a member of low caste and slapped her. This incident took place in front of her father. The statement of complainant – Sunita Nirala is similar under Section 161 of the Cr.P.C. Khol Bahara Nirala is the father of the complainant who has stated about witnessing the incident. The applicant abused, threatened and thrashed the complainant and also said that the complainant is a member of low caste and insulted her. Another witness – Goutam Prasad Miri has witnessed one such incident in which the complainant was abused by her caste name.

9. In the case of **Daya Bhatnagar and Others vs. State**, reported in **109 (2004) DLT 915**, in which the expression 'public view' used in the Atrocities Act has been explained. It was held that expression within 'public view' occurring in [Section 3\(i\)\(x\)](#) of the Atrocities Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village. Thus, a wider meaning has been given to the word public view by this judgment of Delhi High Court. Further, the presence of witnesses on the spot can also be noted from their statement under Section 161 of the Cr.P.C. when the complainant was abused in her caste name hence, on this basis, there appears to be presence of *prima facie* material for framing of charges under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

10. As regards, the framing of charge against the applicant under Section 3(2)(va) of the Atrocities Act, I am of this view that there is no *prima facie* material present for framing of charge against him under Section 3(2)(va) of the Atrocities Act, which is as follows:

'3(2)(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;'

11. The words are specific in this provision, that the offence must be that which is mentioned in the schedule of the Amendment, 2016. The schedule of the Amendment, 2016 mentions of offences under Sections 120(A), 120(B), 141 and 142 of the IPC. The other offences of IPC for which the applicant has been charged are not included in this schedule. Hence, the charge framed against the applicant under Section 3(2)(va)

of the Atrocities Act is without any basis and without any material.

12. After considering the submissions and the material present in this case against the applicant, this revision petition is partly allowed. The framing of charges against the applicant under Sections 294, 506B and 323 of the IPC and Sections 3(1)(s) and 3(1)(r) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 are upheld which needs no interference, however, framing of charge against the applicant under Section 3(2)(va) of the Atrocities Act is set aside.

13. Accordingly, this revision petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi