

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Proceedings through Video Conferencing
CR.R. No. 228/2021

1. Hukumchand Sahu s/o. late Shri Ramesh Datt Sahu, aged 53 years
 2. Gajendra Kumar Sahu S/o. late Shri Gunvantri Sahu, aged 37 years
 3. Jasalram Sahu, son of Shri Gambhir Ram Sahu, aged 53 years
 4. Radhelal Patel, son of Hemlal Patel, aged 57 years,
 5. Sarjuram Patel, son of Brijlal Patel, aged 66 years
 6. Goutam Kumar Patel, son of Pitamber Patel, aged 27 years
 7. Toshan Kumar Sahu, son of Ashok Kumar Sahu, aged 38 years
- All R/o. Village Rudgaon, PS Dongargaon, Distt. Rajnandgaon, (CG)

----Applicants

Versus

1. State of Chhattisgarh, through PS Dongargaon, Distt. Rajnandgaon (CG)
2. Goutarhin Bai @ Goutar Bai Gond, wife of Ghumman Lal Gond, aged 32 years, R/o. Vill. Rudragaon, P.S. Dongargaon, Distt. Rajnandgaon (CG)

----Non-applicant

For Applicant	: Mr. Devarshi Thakur, Adv.
For non-applicant No. 1	: Mr. Afroz Khan, Panel Lawyer.
For non-applicant No. 2	: Mr. Rakesh Thakur, Adv.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

18-8-2021

1. This criminal revision has been preferred by the applicants being aggrieved by the order dated 10-2-2021 passed in Criminal Case No. 30/2021 by the Special Judge (Atrocities Act), Rajnandgaon (CG), by which, charges have been framed against the applicants under Sections 147, 294, 323/149 (on three counts), 506, of the Indian Penal Code, 1860 (in short 'the IPC') and Section 3(1)(द)(घ) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SCST Act').
2. Brief facts of the case are that on 9-10-2020, complainant Smt. Goutarbai Gond was called on meeting, but she did not go. After sometimes, when she was standing at the door of her house with her family members, at that time, applicants/accused came

there abusing them with filthy language, threatened them and committed marpeet with hands and fists with her, her jethani Roopabai and her daughter (Jethani's) Pooja Thakur. They received injuries in the incident and saari of Roopabai was also torn. As per prosecution, the applicants also abused and insulted them by uttering caste name. Report was lodged by complainant Goutarbai Gond on the same day. Police registered FIR against the applicants under Sections 294, 323, 506 and 147 of the IPC. After usual investigation, police of police station Dongargaon, Distt. Rajnandgaon filed charge sheet under Sections 294, 323, 506 and 147 of the IPC and Section 3(1)(द)(घ) of the SCST Act.

3. After hearing counsel for both the parties, vide order dated 10-2-21, learned trial Court framed charges under sections 147, 294, 323/149 (on three counts), 506 of the IPC and Section 3(1)(द)(घ) of the SCST Act. Hence, this revision.

4. Learned counsel for the applicants submits that the applicants have been falsely implicated in this case. Actual incident is that one Malikram Gond had gone with his labourers to construct a community building on his personal land, when they reached at the spot, at that time, complainant Goutarbai and her other relatives obstructed them. Complainant and her relatives abused them, committed marpeet with them, threatened them to life. Applicants of this case intervened and settled the quarrel. During this, the complainant and her relatives also assaulted and committed marpeet with applicants, in which, many of them sustained injuries. Malikram Gond had lodged F.I.R. against complainant Goutarbai and her family members, on the basis of which, Crime No. 217/2020 was registered at PS Dongargaon and charge sheet has been filed against them before the Judicial Magistrate First Class, Rajnandgaon. The applicants have been implicated in this case, because they intervened in that dispute. He further submits that in Dehati Nalishi of the present case lodged by complainant Goutarbai Gond and in the FIR, she did not mention that the applicants abused and insulted them by their caste, but later, on the afterthought, the witnesses have exaggerated the facts in

statements recorded under Section 161 of the Cr.P.C. Therefore, ingredients of offence under Section 3(1)(द)(घ) of SCST Act are not attracted in this case. Therefore, learned trial Court has committed error in framing charge under Section 3(1)(द)(घ) of the SCST Act against the applicants which is illegal and not sustainable. To buttress the argument, learned counsel for the applicants places reliance on the decision of Bombay High Court bench at Aurangabad in **Manohar Kulkarni -v- State of Maharashtra and ors.** (2005 Cr.L.J. 4653).

5. I have heard learned counsel for both the parties and perused the material available on record.

6. The applicants have filed copy of charge sheet of this case, as also the copy of charge sheet of Crime No. 217/2020, which has been filed against Chumman Gond, Smt. Gourtarbai and others. A perusal of both the charge sheets and their enclosures shows that incident of Crime No. 217/2020 took place at 10.30 am on 9-10-2020 and the incident of Crime No. 216/2020 pertaining to present revision, took place at 12.00 noon. Thus, time gap of both the incident is not much.

7. Complainant Smt. Goutarbai Gond has lodged Dehati Nalishi at 18.30 hrs. on 9-10-2020, wherein she has stated that when she was standing at the door of her house with her Jethani Roopabai Thakur and her (Jethani's) daughter Pooja, at that time, applicants came there and assaulted them by hands and fists and also they abused them by uttering filthy language and also threatened to their life. In the incident, all of three got injured. Her statement has been supported by her husband Chummanlal Gond, Jeth Than Singh Thakur, Jethani Roopabai Gond, Jethani's daughter Pooja Thakur. Therefore, necessary ingredients for framing of charges under Sections 147, 294, 323/149, 506 of the IPC are available on record, therefore, learned trial Court has not committed any error in framing charges under the aforesaid sections against the applicants.

8. So far as charge under Section 3(1)(द)(घ) of the SCST Act is concerned, Dehati Nalishi was lodged at the instance of

complainant Goutarbai Gond after about six and half hrs. of the incident and numbered FIR was registered on the basis of the Dehati Nalishi, but while writing Dehati Nalishi, complainant Smt. Goutarbai Gond has not stated that applicants/accused abused and insulted them by uttering their caste name, however, in police statement recorded under Section 161 of the Cr.P.C., after 4 – 5 days of the incident, except Than Singh Thakur, complainant Goutarbai alias Goutarhin Gond, her husband Chummanlal Gond, her jeth Than Singh Gond, Jethani Roopabai, Jethani's daughter Pooja Thakur have stated that the applicants abused them by uttering their caste name. Had the applicants/accused intentionally abused, insulted or intimidated them with intent to humiliate them, by uttering their caste name, then certainly they would have felt humiliated, insulted, and while lodging Dehati Nalishi, complainant Goutarbai Gond would have mentioned it in Dehati Nalishi, but as stated above, she did not mention above important fact while lodging Dehati Nalishi.

9. Than Singh Thakur is brother of husband of complainant. As per his police statement, they have purchased a piece of land from Malikram Gond, (who is complainant of Crime No. 217/2020, on the basis of which, charge sheet against Chummanlal Gond, Smt. Goutarbai Gond and their other relatives has been filed), and Malikram Gond says that he has gifted the said piece of land to the village and dispute arose with Malikram Gond and others because of that land. This fact somehow is also mentioned as cause of dispute of Crime No. 217/2020. Thus, it is clear that incident in both the cases is related to the dispute over a piece of land, in which, the applicants/accused are said to have intervened and some of them sustained injury.

10. In the case of **Hitesh Verma Vrs. State of Uttarakhand** reported in **(2020) 10 SCC 710**, Hon'ble Apex Court, considering various judgments, held that "offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the

victim belongs to such caste. In the present case, the parties are litigating over possession of a piece of land. Allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a member of scheduled caste, offence under Section 3(1)(r) of the SCST Act is not made out.”

11. In the instant case also, facts of both the charge sheets reveal that there is a dispute between complainant Goutarbai Gond and her family members with Malikram Gond over a piece of land. On the date of incident also, quarrel took place between them over a piece of land and applicants intervened in the dispute between them, one party of which i.e. Malikram Gond seems to be a member of scheduled tribe, therefore, it does not seem that the applicants/accused abused, insulted, or intimidated the complainant Goutarbai Gond and her family members by uttering their caste name, because, as has been stated earlier, had the applicants/accused intentionally abused, insulted or intimidated them with intent to humiliate them, by uttering their caste name, certainly complainant Goutarbai Gond would have mentioned these facts while writing Dehati Nalishi.

12. On the basis above facts situation of the case, I find that necessary ingredients for framing of charge under Section 3(1)(द) (घ) of the SCST Act are not attracted in this case and the applicants are entitled to be discharged from aforesaid charge.

13. Consequently, this revision petition is partly allowed. Order of framing of charges against the applicants for offence under Sections 147, 294, 323/149 (on three counts), 506, of the IPC is affirmed. However, order of framing of charge under Section 3(1)(द)(घ) of the SCST Act is set aside. The applicants are discharged from the charge framed against them under Section 3(1)(द)(घ) of the SCST Act.

Sd/-
N.K. Chandravanshi
Judge