

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1491 of 2018

I.A. CRAN 3 of 2019 (Old CRAN 2814 of 2019)

I.A. CRAN 5 of 2020 (Old CRAN 1308 of 2020)

Shreyas kumar

-vs-

The State of West Bengal & anr.

For the Petitioners	: Mr. Sandipan Ganguly, Sr, Adv. Mr. Karan Dudhwewala
For the O.P. No. 2	: Mr. Jayanta Narayan Chatterjee Mr. Nazir Ahmed Ms. Ritushree Banerjee Mr. S. Deb Roy
For the State	: Mr. S.G. Mukherjee, Ld. PP : Mr. Imran Ali : Ms. Debjani Sahu
Heard on	: 02.08.2022
Judgment on	: 10.08.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved with the proceeding of Special Case No. 32/2017 pending before the Court of learned Additional Sessions Judge, 1st Court, Alipore arising out of Garfa PS Case no. 256/17 dated 29.8.2017 under section 3(1)(r) of the Schedule Cast and Schedule Tribes (Prevention of Atrocities) Act

1989, (in short Act of 1989) read with section 34 of the Indian Penal Code, (IPC), present application has been preferred.

2. In the petition of complaint the allegation levelled , inter alia, is as follows:-

- (a)** That the opposite party no. 2/ Complainant is an Ex-Marine Executive officer of the Merchant Navy. He is also an ex-student of Sainik School Purulia and in January 2016 was elected as the Secretary of the (Ex.) Students' Association of the said school.
- (b)** That soon after the election, it is alleged that the opposite party no.2/Complainant started receiving false and derogatory e-mails and post in the official group of the school as well as on other social media including WhatsApp and Facebook, from one Mrityunjoy Patra, batch mate of the Opposite party No. 2 at Sainik School (Accused No.1) and one Shreyas kumar, junior of the opposite party No. 2 at Sainik School Purulia (Accused No. 2/ petitioner).
- (c)** It is alleged that the Accused No. 1 and 2 intended to be a candidate of the post of secretary of the School Association, with an ill intention and being motivated, started sending derogatory content and e-mail in various social media and groups, wherein they have addressed him as "CHOR, FRAUD SECRETARY DIPESH CHANDRA ROY". That such frivolous act of publishing such false and fabricated news was done with a mala fide intention to cause damage by way of defamation to complainant's image and reputation.

(d) It is further alleged that Accused No.1 in collusion with Accused No.2/ petitioner, had intentionally insulted and intimidated with intent to humiliate the Opposite party No. 2/ complainant in public, by saying that he is 'using Govt. of India Reserve category policy to present' himself 'to get preference everywhere'. It is also alleged that Accused No.1 published /posted that ESSPIAN SECRETARY POST IS NOT FOR RESERVE CATEGORY FRAUD PERSON LIKE FRAUD DIPESH CHANDRA ROY' thereby pointing to his caste, which is a clear case of Caste Discrimination.

(e) It is further alleged that Accused No. 1 and Accused No.2/petitioner threatened the Opposite Party No. 2 with dire consequences and threatened him by saying that they will take him out of his home or office during their reunion to be held on December 2017. It is also alleged that the Opposite party No. 2 is getting threatening phone calls from different phone numbers asking for money to be paid to Accused No.1.

3. Mr. Sandipan Ganguly appearing on behalf of the petitioner submits that the petitioner is completely innocent and in no way connected with the commission of alleged offence and he has been falsely implicated. Petitioner never made any imputation against the cast of opposite party no. 2. No specific role has been attributed to the present petitioner in the alleged commission of offence in the FIR. The petitioner has not justified as to how and under what circumstances the present case is required to be proceeded against the present petitioner. Apart from making generic allegations no specific role has been

attributed against the present petitioner in the alleged offence. Mr. Ganguly further submits that, the present petitioner came to know that there was previous dispute between opposite party no. 2 Dipesh Chandra Roy and accused no. 1, namely Mrityunjoy Patra whereby it was alleged that the opposite party no. 2 in connivance with a promoter namely, Krishnendu Dey Sarkar had defrauded accused no. 1 Mrityunjoy Patra for a sum of Rs. 20 lakhs. However, the present petitioner had never personally met with the accused no. 1 and was never party to the said transaction. Mr. Ganguly further submits that the present petitioner came into the picture only after he raised objection before their school's ex-students association about the fraud committed by opposite party no.2 and thereby sent mail exposing the alleged fraud committed by opposite party no. 2 and only questioned the integrity of the opposite party no. 2 as an office bearer of the ex-students school association. Only for this reason the petitioner has been made accused by the opposite party no. 2 and the only alleged offence that petitioner has committed is that he decided to speak in favour of accused no. 1 thereby bringing it to notice to the ex-students association.

4. Mr. Ganguly further submits that on 30.12.2017 only for exposing the fraud and cheating suffered by accused no. 2, he had put up a post on Face Book that too in a closed group called "ESSPEANS" comprising only of ex-students of Saynik School, Purulia. The said post was a hypothetical scenario, how the opposite party no. 2 and the promoter had defrauded said accused no. 1. Subsequently on 23.6.2017, the petitioner put up another post stating "coming soon in a theater near you, 'GOLDEN FOREST CHIT FUND SCAM'

starring Dipesh Chandra Roy. Mr. Ganguly further submits that in both Face Book posts, the petitioner has neither made any imputation about the cast of the opposite party no. 2, nor said anything that insults a member of the scheduled caste.

5. In the instant case, the proceeding practically initiated on the basis of an e.mail sent by accused no. 1 in the “ESSIPIAN” G-mail group accusing the opposite party no. 2 of cheating and wherein it was stated by the accused no. 1 that “ESSIPIAN” SECRETARY POST IS NOT FOR RESERVED CATEGORY FRAUD PERSON LIKE FRAUD DIPESH CHANDRA ROY. In the said e.mail the accused no. 1 had apprehended the efforts of the petitioner along with various other persons in exposing the fraud committed by opposite party no. 2. Mr. Ganguly strenuously argued that the accused no. 1 (who is not the petitioner herein) had sent the said e.mail in his individual capacity from his private email account and the petitioner was not a party in sending the said e.mail in the “ESSIPIAN” G mail group . Furthermore, the petitioner had never personally met or is related to the accused no. 1 and therefore there cannot be said to have common intention between the petitioner and the accused no. 1 for commission of the alleged offence for which section 34 of IPC can attract.

6. Mr. Ganguly further submits that the allegation that the present petitioner aspire for the post of the secretary of the ex-students school association is totally false and baseless in view of the fact that since 2003, the petitioner has a full time job at USA and thus hardly comes to India thereby making it beyond the possibility to take part in the management of ex-students school association. Furthermore, present petitioner only spoke against the

opposite party no. 2 being the secretary of the said association to the extent that the person accused of a serious offence like cheating and forgery should not be allowed to be at the helm of the school association but present petitioner never made any imputation against the cast of the opposite party no. 2. He spoke nothing derogatory against the cast of the opposite party no. 2 for which section 3(1)(r) of the Scheduled Cast and Schedule Tribe(Prevention of Atrocities) Act 1989 can be attracted, against present petitioner.

7. It has been further argued on behalf of the petitioner that from the FIR, it appears that opposite party no. 2 was allegedly abused with the words “reserved category” and was also called upon for using Government of India Reserved Category policy to present himself and get preference everywhere. Same cannot cause insult or results in humiliation of the opposite party no. 2 because the term “reserved category” does not have any cast implication since there was no motive even by the sender of the message (accused no.1, who is not the petitioner) to insult the opposite party no. 2 by his cast name and as such section 3 of the said Act of 1989 does not apply in the present case. Mr. Ganguly, accordingly submitted that simply by saying that a person belongs to “reserved category” is not an offence as there is no intimidation with the intention to humiliate the opposite party no. 2 as a member of the scheduled caste.

8. It is further submitted that under section 3(1)(r) of the Act of 1989, the accused must know that victim belongs to SC/ST and he himself intentionally insult, intimidate and humiliate him/her at a place within “public view”. Accordingly, one of the essential and necessary element that needs to be

proved is that the insult or intimidation himself have occurred within public view. Accordingly, Mr. Ganguly argued that persons having any kind of close relationship or association with the complainant would necessarily be excluded from the definition of “public view” .Here the term “reserved category” was used in closed group on Face Book and G.mail with a limited and selected number of people being members only of ex-students school association of Sainik school at Purulia. Thus, the members of the group being the ex-students of the Sainak school at Purulia were closely related to each other and are not stranger to one another. So said group does not come under the purview of “public view” and as such no offence can be attributed under section 3(1)(r) of the Act of 1989 against petitioner. However, Mr. Ganguly submits that the present petitioner nowhere said or written anything to intimidate or insult the caste of the opposite party no.; 2 as is appearing from the complaint as well as materials available in the case diary and thus no prima facie offence has been disclosed against the petitioner. Therefore, the charge sheet under section 3(1)(r) of the Act 1989 is clearly not sustainable against the present petitioner. It is also evident that during investigation none of the witnesses in their statement has stated anything against the present petitioner, that would suggest that he made any imputation against the caste of opposite party no. 2 or spoke anything derogatory against the Scheduled Caste, and as such, no prima facie offence whatsoever can be said to have been committed by the petitioner, for which he prayed for quashing of the proceeding in respect of the present petitioner.

9. Learned counsel on behalf of the opposite party no. 2 submits that opposite party no. 2 Dipesh Chandra Roy had sent letter dated 11.11.2019 wherein he has contended that during pendency of present proceeding the second accused/petitioner Mr. Shreyas Kumar had approached and because of his apologetic approach, opposite party no. 2 agreed to withdraw the case against accused / petitioner Shreyas Kumar only in good faith and accordingly he filed a joint petition but he submits that the case against the main accused person Mr. Mritunjoy Patra is to continue.

10. Mr. Saswata Gopal Mukherjee appearing on behalf of the state submits that since the present petitioner has entered into a compromise with the complainant/opposite party no. 2, he wants to leave the issue to the discretion of the Court.

11. Considered submission made by the parties. I have gone through the materials in the case diary and I find from the statements recorded during investigation that a discord between the principal accused Mritunjoy Patra and opposite party no. 2, Dipesh Chandra Roy took place since August 2013 on account of invest matter. It was alleged that a loan of Rs. 20 lakhs was provided by said principal accused to the opposite party no. 2 and a tripartite agreement was signed but subsequently he made a separate agreement with Krishnendu Dey Sarkar on 4.3.2009 which according to said principal accused Mritunjoy is deceiving in character and till now the said principal accused has not got back his money. Further, the post in respect of which the said Act of 1989 has been alleged to have attracted, levelled against the said Mritunjoy and present petitioner has been implicated under section 34 of the IPC as

according to the opposite party no. 2 petitioner herein has made collusion with the principal accused Mritunjoy in respect of posting those comments. It has also been argued that the petitioner never met with accused no. 1 and the present petitioner only raised objection before their schools ex-students association when he came to know about fraud committed by opposite party no. 2 and present petitioner sent e.mail only with an object of exposing the alleged fraud committed by opposite party no. 2 and also against the integrity of opposite party no. 2 as an office bearer of the ex-students school union and the said message sent by the petitioner to the closed group of ex-students of Purulia Sainik School.

12. Whatever posting has been sent by accused number 1 allegedly imputing opposite party no. 2, were sent by accused no.1 in his individual capacity from his e.mail account. Accordingly, from the facts and circumstances of the case, I find that there is no common intention between the present petitioner and the accused no. 1 for making the impugned posts in the group for which present case has been initiated. Only allegation leveled against the present petitioner, in complaint and also in the statements recorded under section 161, is that principal accused Mritunjoy in collusion with present petitioner has caused those posting, imputing opposite party no.2, which appears to be absurd and inherently improbable for the reason discussed above. There is every likelihood that as petitioners raised voice against opposite party no. 2 against his selection as secretary of the school association, so out of malice present petitioner has been implicated in the said proceeding. However, from the documents it reveals that the present petitioner has not made any imputation

against the caste of the opposite party no. 2, so that it can attract section 3 of the Act of 1989. Last but not the least, in view of the amicable settlement appearing from the letter sent by the opposite party no. 2 dated 11.11.2019, it appears that petitioner no. 2 has entered into amicable settlement with the present petitioner and has accordingly agreed not to speak against the present petitioner. So even if the present trial is allowed to be continued against the present petitioner, the chance of conviction of the present petitioner is bleak.

13. In view of amicable settlement, a co-ordinate Bench of this court in ***Sri Amiya Saha (Majhi) & others Vs. The State of West Bengal & others*** reported in **(2014) 2 CrLR (Cal) 410** was pleased to quash the First Information Report under the SC and ST (Prevention of Atrocities Act) Act, of 1989 in the interest of justice as accused person were condoned by defacto complainant and as such continuance of proceeding became mere abuse of process of law.

14. In view of the above, CRR 1491 of 2018 is allowed.

15. Let all further proceedings being Special Case No. 32 of 2017 pending before the learned Additional Sessions Judge, 1st Court, Alipore arising out of Garfa PS Case No. 256 of 2017 under section 3(1)(r) of the SC and ST (Prevention of Atrocities Act) 1989 read with section 34 IPC against the present petitioner namely Shreyas Kumar is hereby quashed.

However there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)