

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1886 of 2019

Smt. Laxmi Balmiki

-vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Saheb Banerjee

For the Opposite Party : Ms. Rajnandini Das
Mr. Karan Bapuli

For the State : Mr. Arijit Ganguly
Mr. Saryati Datta

Heard on : 14.6.2022

Judgment on : 20.06.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been preferred for setting aside the order no. 7 dated 22.4.2019 passed by Special Judge, 1st Court, Burdwan whereby the learned court accepted the charge sheet being charge-sheet no. 377 of 2018 dated 13.8.2018 filed under Section 341/323/506/34 of the Indian Penal Code in connection with Bardhaman Police Station case no. 464 of 2018 though originally the said Bardhaman Police Station case no. 464 of 2018 dated 7.7.2018 was also booked under Section 3 of the Schedule Caste

and Schedule Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SCST(POA) Act).

2. Petitioner's complaint in a nutshell in that over the issue of death of mother-in-law of opposite party no. 2 allegedly due to doctor's negligence, who happens to practice in the chamber of petitioner's medicine shop, opposite party No. 2 along with his men on 09.05.2018 attacked petitioner's medicine shop and abused petitioner by saying "Sali choto loker jat" (Sali belongs to lower caste) and also assaulted the employee of medicine shop physically and threatened to kidnap petitioner and her daughter and ordered to close her shop.

3. Learned counsel for the petitioner Mr. Saheb Banerjee contended that petitioner was humiliated and harassed by the opposite party no. 2 for which she went to the police station for lodging complain but police did not take any action, so she moved before the Judicial Magistrate, Purba Burdwan and as per direction of the concerned Magistrate, police started investigation treating her petition of complain as first information report. It is specifically alleged by the petitioner that investigating authority has conducted investigation which ended in charge-sheet but the investigating authority has not implicated the accused persons under any of the provisions of the SCST(POA) Act in the charge sheet, without any reason, though initially the case was registered under SCST(POA) Act. It is further alleged that the petitioner submitted a copy of the caste certificate during investigation but investigating officer in spite of receiving the same has made a false statement that victim could not supply her schedule caste certificate. In view of the same, the petitioner filed an

application under Section 173 (8) of the Code of Criminal Procedure on 24.1.2019 with a prayer for further investigation but learned Special Judge, 1st Court, Burdwan did not allow the petitioner's prayer for further investigation. Furthermore, the petitioner never wanted to implicate the accused no. 2, Soma Mukherjee but investigating officer with the nexus of accused person wilfully added Soma Mukherjee in this case. It is further argued by the petitioner that in the impugned order dated 22.4.2019, no reason has been shown by the court below as to why the petitioner's prayer for further investigation was disallowed. As such, the continuation of the present proceeding under Section 341/323/506/34 of the Indian Penal Code only without adding relevant provision under SCST (POA) Act before the learned court below, is bad in law. This revisional application has been preferred for passing instruction upon the court for making further investigation under Section 173(8) of the Code of Criminal Procedure and to set aside the impugned order no. 7 dated 22.4.2019 passed by Special Judge, Burdwan thereby accepting the charge sheet being charge sheet no. 377 of 2018 filed under Section 341/323/506/34 of the Indian Penal Code, but dropped relevant provisions of SC/ST (POA) Act, 1989.

4. Learned counsel for the opposite party no 2 and 3 strenuously argued that no case under any of the provisions of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 made out in the present context and as such there is no question of setting aside the impugned order. In this connection, he has referred two case laws reported in **(2019) 6 SCC 268** and **(2020) 10 SCC 710**.

5. Learned counsel on behalf of the State argued that the materials collected so far in the case diary does not disclose any offence under any of the provision of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

6. On perusal of case diary it appears that in the complaint, there is an allegation of abusing the petitioner with filthy words by the accused persons but the particular word that instigated the petitioner to rope the accused persons under the provision of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 is “Sali Chhoto loker jat”(Sali belongs to lower caste). Furthermore, the investigating officer has recorded, during investigation, the statement of witnesses, under Section 161 of the Code of Criminal Procedure. The statement made by witnesses during investigation does not attract any of the provision of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

7. In this context it is to be made clear that even if the contents of complaint is to be taken as true from its face value, even then it does not constitute any offence under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. This is simply because “Chhoto loker jat” (lower caste) does not imply any particular caste far from Scheduled Caste or Scheduled Tribe so that it can attract any of the provision of the said act. It is trite of law that the victim is a member of schedule caste or schedule tribe, is not sufficient to attract Section 3 unless there is evidence that the offence against the victim was committed because of the fact that she belongs to schedule caste or schedule tribe. In order to establish the case under Section

3(1) the prosecution must establish that the accused intentionally insulted or intimidated the complainant with intent to humiliate her because she belongs to schedule caste or schedule tribe. The intention part is also relevant and where accused was not aware of the fact that victim belongs to schedule caste he cannot be convicted under the Act where offence was committed against the victim not because she is a member of schedule caste or schedule tribe but for other reasons or without knowledge about the caste of the victim.

8. In the case of ***Narad Patel vs. State of Chhattisgarh*** reported in **(2019) 6 SCC 268**, the Hon'ble Apex Court was pleased to observe as follows:

"8. It has been found that the appellant was not guilty of the offence under Section 506 IPC and the case presented by the prosecution in that behalf was completely rejected. According to the record, following certain acts committed by the appellant a Panchayat was held in which some abuses were hurled by the appellant. Going by the version of the complainant Deshiram himself, the expression used by the appellant during the course of vertical altercation, did not refer to the caste or tribe that the complainant belonged though such assertion finds place in the testimony of the other witnesses.

9. Thus, the fact that the appellant abused the complainant Deshiram is quite clear and as such his conviction and sentence recorded under Section 294 IPC was fully justified. However, going by the version of the complainant Deshiram according to which there was no reference to the caste or tribe of the complainant, there is a doubt as regards charge under Section 3(1)(x) of the Act.

10. In the circumstances, while affirming the conviction and sentence of the appellant under Section 294 IPC, we grant him benefit of doubt and acquit him of the charge under Section 3(1)(x) of the Act."

9. The ingredients of offence under section 3 (1) of the Act must be to intentional insult or intimidation with intent to humiliate a member of a schedule caste or schedule tribe and in this context, the statement of object and reasons of the aforesaid enactment has also been discussed by the Apex Court in another judgment reported in **(2020) 10 SCC 710**.

10. Having regard to the facts and circumstances of the case and materials in case diary, I find nothing to interfere with the order impugned being order no.7 dated 22.4.2019 passed by Special Judge, 1st Court, Burdwan whereby the learned court accepted the charge sheet being charge-sheet no. 377 of 2018 dated 13.8.2018 filed under Section 341/323/506/34 of the Indian Penal Code in connection with Bardhaman Police Station case no. 464 of 2018.

11. Accordingly, CRR 1886 of 2019 stands dismissed.

There will be no order as to costs .

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

(AJAY KUMAR MUKHERJEE)