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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2628 of 2013

Surendra Kumar Mishra

....

Petitioner

Mr. Rajesh Kumar Mohapatra, Advocate

-Versus-

State of Orissa and Another

....

Opposite Parties

Mr. Sidharth Shankar Mohapatra, ASC, OP No.1

None for OP No.2

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:19.12.2022

1. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioner assailing the impugned order dated 5th August, 2013 passed in S.C. No.52 of 2013 by the learned Sessions Judge, Sonepur whereby charge under Sections 294, 323 and 506 IPC besides Section 3(1)(x) SC&ST (PoA) Act was framed against him on the grounds inter alia that no case is made out for any of the offences including under the special Act and it is liable to be quashed in the interest of justice so also the charge framed thereunder.

2. An FIR was lodged by the informant, consequent upon which, Tarva P.S. Case No.96 dated 6th December, 2012 was registered under the alleged offences, which finally led to the submission of chargesheet later to which the learned Sessions court passed the impugned order (Annexure-2) which, according to the petitioner, is unjustified as none of the offences was made out even by considering the materials on record.

3. Heard Mr.R.K.Mohapatra, learned counsel for the petitioner and Mr. S.S. Mohapatra, learned counsel for the State. None represents opposite party No.2.

4. Mr. Mohapatra, learned counsel for the petitioner submits that the court below framed charge mechanically which is erroneous, illegal and against the weight of evidence on record. It is further submitted by Mr.Mohapatra that the ingredients of Section 3(1)(x) of the SC&ST (PoA) Act are not satisfied and hence, the charge for the said offence cannot be sustained in law. It is contended that even by assuming for the sake of argument that during the alleged incident, the informant was abused by taking name of his caste that by itself does not make out an offence Section 3(1)(x) of the SC& ST (PoA) Act since the intention should be to insult or intimidate a person he being a member of Scheduled Caste(SC) or Scheduled Tribe(ST). While advancing such an argument, the decision of the Apex Court in **Hitesh Verma Vrs. The State of Uttarakhand and Another** reported in (2021) 81 OCR (SC) 241 has been placed reliance on by Mr. Mohapatra.

5. On the contrary, learned counsel for the State-opposite party No.1 would submit that the learned special court did not commit any error in taking cognizance of the offences and framing charge by the impugned order under Annexure-2 since the FIR and materials furnished along with chargesheet do make out a case against the petitioner.

6. The alleged incident stands described in FIR (Annexure-1). As per the allegations, the incident happened on 6th December, 2012 while labour work was in progress at the spot and at that moment, the petitioner said to have abused the informant since on account of noise during such work, the cattle got alarmed which annoyed him and in course of events, abused and assaulted

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the latter by means of a stick. The learned counsel for the petitioner submits that the alleged overt act was committed suddenly without any intention to insult or humiliate the informant by making aspersion to his caste, however, the learned special court framed charge under Section 3(1)(x) of the SC & ST (PoA) Act which is not tenable in law. It is further submitted that the other offences have also not been proved from the materials on record which is opposed to by the learned counsel for the State.

7. On a reading of the FIR (Anneuxre-1), the Court finds that the informant was assaulted by the petitioner. It is claimed by the informant that the petitioner also abused him by taking name of his caste. It is further stated that as a result of the assault, the informant lost his sense. According to the petitioner the alleged incident has been exaggerated by the informant as the incident did not take such an ugly turn which is being claimed. According to the Court, the truthfulness or otherwise of the claim of the informant requires examination which can only be determined during trial. Considering the FIR and chargesheet, it would not be wrong to hold that there is a prima facie case made out as the informant was abused, assaulted and threatened during the alleged incident. Now the question is, whether, the offence under Section 3(1)(x) of the SC&ST (PoA) Act is committed by the petitioner?

8. The Apex Court in **Hitesh Verma** (supra) held and observed that the basic ingredients of the offence under Section 3(1)(x) of the SC&ST (PoA) Act which now stands substituted by Section 3(1)(r) of the said Act with effect from 26th January, 2016 shall have to be fulfilled with the requisite mens rea on the part of the accused to intentionally insult or intimidate a person of SC or ST

to humiliate him within public view. In the said decision, it is observed that the offence under Section 3(1)(x) of the SC&ST (PoA) Act would bear the ingredients of insult and intimidation with an intent to humiliate a member of SC and ST; all insults or intimidation would not be an offence under the Act unless such insult or intimidation is on account of the victim belonging to SC or ST since the object of the Act is to improve the socio-economic condition of such persons as they are denied number of civil rights and thus an offence under Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment; that another key ingredient of the provision is insult, intimidation not necessarily only at public place but in any place with public view and while observing so, one of its earlier judgment in the case of **Swaran Singh and Others Vrs. State and Others (2008) 41 OCR (SC) 414** was referred to which has drawn the distinction between the expression 'public place' and 'in any place within public view'.

9. In the present case, as it appears the incident happened at a public place at a time when some road work was in progress. Whether at the relevant point of time any other member of the public was present or not is not revealed from Annexure-1. Even accepting for a while that the alleged incident was at a time when other members of the public were present, the question would still be whether the petitioner did commit the overt act with any intention to insult and intimidate the informant on account of him belonging to SC or ST? Intention is a sine qua non for the alleged offence to have been committed. In other words, unless the required intention is found to exist with a purpose to insult and intimidate the victim the latter being a member of SC or ST, no offence under Section 3(1)(x) of the SC&ST (PoA) Act can be said to have been made out. The Apex Court in **Hitesh Verma**

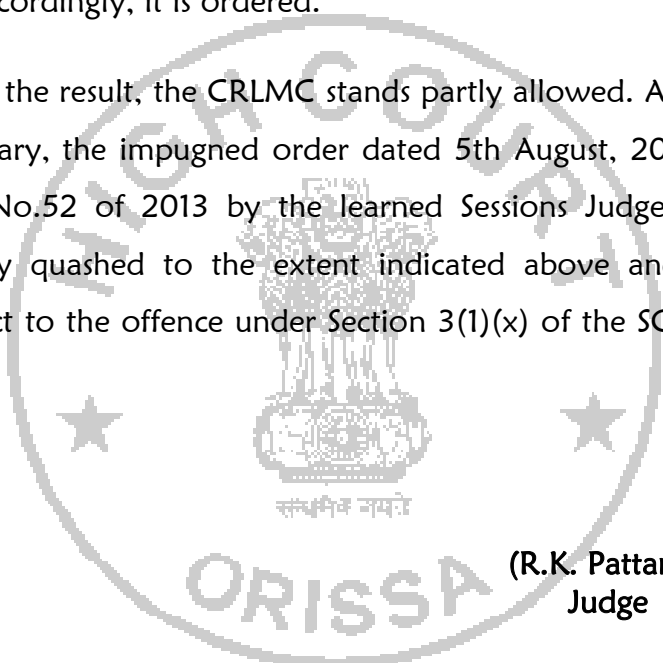
(supra) examined the Legislative intention behind the enactment of SC&ST (PoA) Act and noted down the Statement of Objects and Reasons which indicated that the existing laws like protection of Civil Rights Act, 1955 and other provisions of the IPC were found to be inadequate to safeguard the interest and rights of members of SC and ST as crimes have been committed taking advantage of their caste and backwardness. So having regard to the intent and purpose of the law in place meant to protect the statutory and constitutional rights of the marginalized sections of the society, any such offence committed by a person other than a SC or ST must have to have the requisite intention to insult and intimidate his counterpart for him to be from a backward class because of his caste. So it has to be held that all insults or intimidation do not make out an offence under the Act unless it is directed against the person on account of his caste.

10. The petitioner suddenly out of anger abused the informant under the circumstances narrated in Annexure-1. No doubt petitioner took the name of the informant's caste while abusing the latter. By taking the caste name or utterances of abuse by taking the name of one's caste would not be an offence under the Section 3(1)(x) of the SC&ST (PoA) Act unless the intention is to insult, intimidate the person being a SC or ST. If the law laid down by the Supreme Court in **Hitesh Verma** (supra) is read, appreciated and understood in its proper perspective and applied to case at hand, there appears no such intention on the part of the petitioner for being in dominant position as a man of forward class to insult and intimidate the informant being a member of SC and ST. If the victim is humiliated within public view for being SC or ST and with that intention, any overt act or mischief is committed, an offence under Section 3(1)(x) of the SC & ST (PoA) Act would be made out otherwise not. Though the informant was

abused at a public place or may be within public view by taking his caste name but as it is made to appear from the conduct of the petitioner, it was apparently without any intention to insult, intimidate and to humiliate him. It was pure and simple an abused by the petitioner under the peculiar facts and circumstances and a sudden outburst and on the spur of the moment without carrying the requisite intention to humiliate the informant so to say. Therefore, the contention Mr. Mohapatra to the aforesaid extent is acceptable and justified and not beyond.

11. Accordingly, it is ordered.

12. In the result, the CRLMC stands partly allowed. As a necessary corollary, the impugned order dated 5th August, 2013 passed in S.C. No.52 of 2013 by the learned Sessions Judge, Sonapur is hereby quashed to the extent indicated above and only with respect to the offence under Section 3(1)(x) of the SC & ST (PoA) Act.



(R.K. Pattanaik)
Judge

U.K. Sahoo