

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRAN/2/2023
In
CRR 4338 of 2022
Jaideep Chatterjee & Ors.
-Vs-
The State of West Bengal & Anr.

For the Petitioner:	Mr. Sekhar Kumar Basu, Sr. Adv., Mr. Milon Mukherjee, Sr. Adv., Mr. Sourav Chatterjee, Adv., Mr. Antarikhya Basu, Adv., Mr. Sayan Mukherjee, Adv., Mr. Aditya Kanodia, Adv., Mr. Tamoghna Saha, Adv., Mr. Nilkanta Basu, Adv.
For the O.P No.2:-	Mr. Sumit Kumar Basu, Adv., Mr. Shayan Sachin Basu, Adv., Mr. Venkatesh Prasad, Adv.
For the State:-	Mr. Ranabir Roy Chowdhury, Adv. Mr. Mainak Gupta, Adv.

With
CRAN/2/2023
In
CRR 4342 of 2022
Moumita Jana & Ors.
Vs.
State of West Bengal & Ors.

For the Petitioners:	Mr. Sekhar Kumar Basu, Sr. Adv., Mr. Milon Mukherjee, Sr. Adv., Mr. Sourav Chatterjee, Adv., Mr. Antarikhya Basu, Adv.,
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Mr. Sayan Mukherjee, Adv.,
 Mr. Aditya Kanodia, Adv.,
 Mr. Tamoghna Saha, Adv.,
 Mr. Nilkanta Basu, Adv.

For the O.P No.2: Mr. Sumit Kumar Basu, Adv.
 Mr. Shayan Sachin Basu, Adv.,
 Mr. Venkatesh Prasad, Adv.

For the State: Ms. Anusuya Sinha, Adv.,
 Mr. Subhasree Patil, Adv.

Heard on: 17 May, 2023.

Judgment on: 03 July, 2023.

BIBEK CHAUDHURI, J. : –

1. Both the criminal revisions filed by two sets of accused persons praying for quashment of FIR and consequent charge-sheet filed against them were heard analogously and this Court delivers the following composite judgment as hereunder.

2. On 18th October, 2022, the opposite party No.2 Miss Sagarika Malakar lodged a written complaint stating, inter alia, that she has been working for gain in Srei Infrastructure Finance Ltd. situated at Sector V, Salt Lake. It was alleged in the written complaint that since April, 2022, she noticed that one Asmaat Zaheer, Audit head of the said organization was staring at her in a disgraceful manner. Many times the said Asmaat Zaheer commented on her sitting posture and being a woman she felt all such comments humiliating and embarrassing.

3. On 28th July, 2022, the opposite party No.2 went to one Goutam Chatterjee, manager to help her to file her IT return. At the relevant point of time, the said Goutam Chatterjee was not in his cabin and one Souren

Mukherjee who was present in the table asked her bring her laptop to help her filing IT return. As soon as she started working on her laptop being helped by Souren Mukherjee, a group of about 15 persons surrounded her under the leadership of Jaidip Chatterjee (HR Head), Asmaat Zaheer (Audit Head) and Binoy Kumar Mishra (Legal Head)(The abovenamed accused are the petitioners in CRR No.4338 of 2022). Binoy Mishra started shouting and abusing at the defacto complainant saying that she was transferring confidential data to Souren Mukherjee. The abovenamed person abused her with filthy language saying “Schedule Caste and Choto Jaat er Barabari”. The defacto complainant tried to convince them but the accused persons did not give any opportunity to her to place her version. They also abused her by uttering sexually coloured statement publicly. Thereafter on being directed by Binoy Mishra and Asmaat Zaheer, one Rajesh Dhawan and Khemraj Pandey of Audit team and one Moumita Jana of HR department started video-graphy of the entire incident. The laptop of the opposite party No.2 was also seized and after 15 minutes it was returned to her. Throughout the entire incident, Jaidip Chatterjee was present at the spot as a silent spectator.

4. On the date of incident itself, the opposite party No.2 lodged a complaint before the internal POSH Committee. She also sent a mail on 30th July, 2022 to Jaidip Chatterjee (H.R Head) stating entire incident seeking justice. However, neither the POSH Committee nor Jaidip Chatterjee took any step on the complaint lodged by the opposite party No.2. Being afraid and severe mental shock perpetrated upon her by

Binoy Mishra, Asmaat Zaheer and Jaidip Chatterjee the defacto complainant stopped going to her office.

5. Subsequently she being accompanied by her mother went to jurisdictional police station to lodge a complaint, she narrated the incident to L.S.I Aparna Das. Then the said police called Jaideep Chatterjee at Electronic Complex P.S. After some time, Jaideep Chatterjee, Asmaat Zaheer, Binoy Mishra, Moumita Jana, Ashis Ghosh, Subarnabinda Roy and others came down to the P.S and in presence of the police officer insisted upon the defacto complainant to withdraw her complaint. They also threatened her to cause harm of her person and reputation. Mr. Jaideep Chatterjee openly put pressure upon her and her mother to settle the dispute amicably and they were forced to submit a written declaration of withdrawal of her complaint.

6. Then on 18th October, 2022, the defacto complainant lodged the complaint on the basis of which FIR case No.162 of 2022 and under Sections 354/354A/506/509/34 of the Indian Penal Code and Sections 3(1)(r)/3(1)s/3(1)(w)(ii) of the SC and ST (POA) Act, 1989 were registered against the accused persons/petitioners.

7. Initially, the petitioners prayed for quashment of the investigational process but after filing of charge-sheet, the petitioners filed supplementary affidavits challenging legality, validity and propriety of the charge-sheet against them and pray for quashing of charge-sheet.

8. It is submitted on behalf of the petitioners in CRR No.4338 of 2022 that according to the First Information Report, FIR Case No.162 of 2022

was registered on 18th October, 2022 while the date of occurrence was referred to as since April, 2022. It is contended by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioners that the FIR is vitiated by inordinate delay. Therefore, there is every chance of concoction, manufacturing and making false statement against the accused persons/petitioners by the opposite party No.2.

9. In order to elaborate his argument, Mr. Mukherjee submits that the petitioner was recommended for her job on 1st September, 2021 by one Souren Mukhopaddhay, the then Deputy CEO, SIFL. Therefore, the petitioner is presumed to have a sense of gratitude for the said Souren Mukhopaddhay. It is also submitted by Mr. Mukherjee, that the company was put under moratorium by the National Company Law Tribunal, Calcutta and vide order dated 4th October, 2021, the Reserve Bank of India appointed one Rajnish Sharma, the Ex-Chief General Manager of Bank of Baroda and Administrator of the said company, superseding the existing Board of Directors. The NCLT, Calcutta vide order dated 8th October, 2021 commenced Company Insolvency Resolution Process, (CIRP) in respect of the said company under the Insolvency and Bankruptcy Code. Mr. Souren Mukhopaddhay was facing certain inquiries for his alleged role in the financial malpractice, taking illegal kick backs for awarding SIFL's contract to ineligible candidates and was directed by the administrator not to be present in office on and from 9th June, 2022. He was sent to gardening leave, meaning thereby that he will be getting salary, but he will neither attend the office nor interfere with the day to

day affair of the business. Since the said Souren Mukhapaddhay was directed not to attend the office of the company on and from 9th June, 2022 he had no business to come to the office on 28th July, 2022. When the petitioner No.2 and others was informed that the opposite party No.2 was working with Souren Mukhapaddhay in her laptop they had every reason to suspect that the opposite party No.2 was passing some confidential data with regard to the business of the company. Therefore, she was asked what was done by her with the said Souren Mukhapaddhay and her laptop was inspected and immediately within 15 minutes it was returned. After a long lapse of time of about six months the defacto complainant/opposite party No.2 lodged the FIR on some false allegations alleging commission of offence under Section 354/354A/506/509/34 of the IPC and Section 3(1)(r)/ 3(1)(s)/ 3(1)(w)(ii) of the SC and ST (POA) Act, 1989.

10. It is further contended by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner that the alleged incident took place on 28th July, 2022, the opposite party No.2 sent one E-mail to the administrator on 19th September, 2022. In the E-mail dated 19th September, 2022 the opposite party No.2 did not refer to any incident allegedly committed by the petitioners abusing her saying that she belongs to a member of lower caste.

11. Thus, it is contended by Mr. Mukherjee that registration of FIR at the instance of the opposite party No.2 is vitiated by delayed allegation relating to abuse in the name of the accused is undoubtedly an

embellishment and a product of afterthought. In this regard Mr. Mukherjee refers to paragraph 41 of the decision of the Hon'ble Supreme Court in **Vineet Kumar Vs. State of U.P ; 1017 (13) SCC 369** paragraph 41 of the aforesaid report runs thus:-

“41. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in *State of Haryana vs. Bhajan Lal*. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in *State of Haryana vs. Bhajan Lal*, which is to the following effect:

“102. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the *State of Haryana vs. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.”

12. The on the same point the learned Advocate for the petitioners also refers to paragraph 23 of the **Ahmad Ali Quraishi vs. State of U.P ; 2020 13 SCC 435**

23. In the facts of present case, we are fully satisfied that present is a case where criminal proceedings have been initiated by complainant with an ulterior motive due to private and personal grudge. The High Court although noticed the judgment of this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426] in the impugned judgment but did not examine the facts of the case as to whether present is a case which falls in any of the category as enumerated in *Bhajan Lal* case [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426]. The present case clearly falls in category (7) of *Bhajan Lal* case [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426] and the High Court failed to exercise jurisdiction under Section 482 Cr.P.C. in quashing the criminal proceeding initiated by the complaint.

13. It is further submitted by Mr. Mukherjee that the SC and ST (POA) Act, 1989 is a piece of special legislation prescribing strict and harsh punishment for the offence punishable under any of the clauses of Section 3(1) of the said Act. It is needless to say that stricter is the punishment, stronger is the proof when an offence is committed in respect of a person incidentally being a member of SC or ST, the same does not ipso facto fall within the umbrage of the said Act, unless it is clearly shown that such offence was intentionally committed only because of the deep sense of untouchability and the fact that the person is belonging to the schedule caste/schedule tribe. The opposite party No.2 did not contemporaneously make any allegation of being abused as a schedule caste in as much as though the alleged incident happened on 28th July, 2022 and as she submitted her resignation of full and final settlement of her duties, did not utter a single word in the E-mail dated 19th September, 2022 and at a belated stage of 18th October, 2022 the

opposite party No.2 made such allegation. When the defacto complainant did not make any allegation of having been abused in the name of her accused immediately after the occurrence or within some reasonable period of time, the court has every reason to hold that the allegation was absurd and made with a mala fide intention.

14. Mr. Mukherjee further submits that offence under Section 3(1)(r) of the said Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of schedule caste or schedule tribe. It is held in **Hitesh Verma vs. State of Uttarakhand & Anr ; (2020) 10 SCC 710** that all insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on an account of victim belonging to Scheduled Castes or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied civil rights. Thus, an offence under the Act would be made to be, when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment.

15. It is further submitted by Mr. Mukherjee that another key ingredient of the provision is insult or intimidation of a member of scheduled caste or scheduled tribe should be in “any place within public view”. What is to be recorded as “place in public view” had come up for consideration in **Swaran Singh vs. State ; (2008) 8 SCC 435**. The court had drawn distinction between the expression public place and “in any place within public view”. It was held that if an offence is committed

outside the building, as for example, in a lawn outside a house, and the lawn can be seen for someone from the road or lane outside the countrywall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there then also it will be an offence committed at a place within public view. Thus, even if an offence specified in Section 3 of the SC and ST (POA) Act, 1989 is committed at a private place but within the public view, the accused is liable to face trial.

16. It is contended by Mr. Mukherjee that the alleged incident took place within the four walls of the office building of Srei Infrastructure Finance Ltd. It is not alleged by the defacto complainant/opposite party No.2 that the alleged incident took place within public view. In the absence of such prima facie evidence, the accused persons/petitioners are not liable to face trial for committing offence under Section 3 of the SC and ST (POA) Act.

17. Mr. Sekhar Kumar Basu, learned Senior Counsel has adopted the submission made by Mr. Milon Mukherjee. In addition to this, it is submitted by Mr. Basu that the police registered specific case against the petitioners on 18th October, 2022 for an incident which according to the defacto complainant started sometimes in April, 2022 and culminated on 28th July, 2022. The police did not make any preliminary inquiry as contemplated by the Hon'ble Supreme Court in **Lalita Kumari vs. Government of U.P** reported in **(2014) 2 SCC 1**. He specifically refers to paragraph 120.6(e) of the said judgment where the Hon'ble Supreme

Court was pleased to direct that cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay, preliminary inquiry ought to have been conducted. Registration of the FIR without having preliminary inquiry is bad in law and accordingly the FIR case ought to be quashed.

18. Referring to the case of **Narad Patel vs. State of Chhattisgarh** reported in **(2019) 6 SCC 268**, it is submitted by Mr. Basu, learned Senior Counsel for the petitioners that abuse without reference to caste or tribe will not bring the matter within the umbrage of Section 3(1)(x), though the same may be punishable under Section 294 of the IPC.

19. Referring to a decision of this Court by a Coordinate Bench in **Nanda Dulal Biswas vs. The State of West Bengal & Anr.** reported in **2017 SCC OnLine Cal 9767**, it is submitted by the learned Senior Counsel on behalf of the petitioners that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. Section 9 of the said Act speaks that there must be a notification in the official gazette, on any officer of the State Government, the powers exercisable by police officer under the Code of such district or part thereof or, as the case may be, for such case or class or group of case, and in particular the powers of arrest, investigation and prosecution of presence before any Special Court. In the instant case investigation was not done by any officer having been notified by the official gazette conferring the power to investigate under the said Act.

20. Mr. Ranabir Roy Chowdhury, learned P.P-in-Charge, on the other hand submits that when the High Court in exercise of powers under Section 482 of the Code of Criminal Procedure quashes the criminal proceeding by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the place of occurrence as well as recording statement of independent witnesses and even the accused persons has filed the charge-sheet before the Special Court and the learned Judge in the Special Court also took cognizance of offence, if the petition under Section 482 of the Code was at the stage of FIR, in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of investigation, the matters stand on different footing and the court is required to consider the material evidence collected during the investigation. Even at this stage also, the High Court is not required to go into the merits of the case as if the High Court is exercising the appellant jurisdiction and/or conducting the trial.

21. It is further submitted by the learned P.P-in-Charge that if from the records of the case it appears to the High Court that there are tribal issues/allegations which need to be given consideration into a considered at the time of trial, a criminal procedure cannot be quashed under Section 482 of the Code of Criminal Procedure. Coming to the instant case it is

submitted by the learned P.P-in-Charge that the defacto complainant alleged in her written complaint that since April, 2022 one Asmaat Jaheer an employee of the company where the defacto complainant used to work used to stare at her in an indecent manner. Subsequently, he made certain remarks on the posture of her sitting etc which caused serious embarrassment to her. Subsequently, on 28th July, 2022 she went to her reporting manager Gautam Chatterjee for assistance regarding filing her IT return. At that material point of time the said Gautam Chatterjee was not present in his cubical and one Souren Mukopadhyay was present there. The said Souren Mukopadhyay told her to bring her laptop offering her to help to file her IT return. When they started working in the laptop she noticed that she was surrounded by approximately 15 people including the petitioners. Petitioner Binay Kumar Mishra being the legal head of the company started shouting at her and threatening her saying that she was transferring confidential data of the company to Souren Mukopadhyay. Her laptop was snatched away. She was threatened by the petitioners and all of them humiliated her uttering sexually coloured remarks. Hearing the hue and cry, all the employees working on the said floor assembled at the spot and in front of them. The defacto complainant was mentally tortured, humiliated and harassed.

22. Petitioner Moumita Jana started making video of the incident without the permission of the defacto complainant. On the date of occurrence itself she narrated the entire incident to the POSH Committee of her office alleging, inter alia, that she was sexually harassed,

humiliated and mentally tortured by the petitioners. On 2nd August, 2022 she was directed to appear before the POSH Committee. She narrated the entire incident before the members of the committee but the committee did not take any action against the offenders. She was so humiliated that she tried to commit suicide on the night of 7th August, 2022. Her mother saved her. Then her mother took her to Electronic Complex Police Station situated at Sector V of Salt Lake City, Kolkata. The defacto complainant narrated the incident to one lady police officer named Ms. Aparna Das. After hearing the incident the said Aparna Das contacted Mr. Jaidip Chatterjee over phone and asked him to come down to the police station. Jaidip Chatterjee came to the police station along with 10 to 15 people including Asmaat Zaheer, Binay Kumar Mishra, Moumita Jana, Asish Ghosh, Mr. Subarnabindu Roy and others. The said police officer, namely Aparna Das talked to Mr. Jaidip Chatterjee and others exclusively in her cabin while the opposite party and her mother were sitting outside. Thereafter the petitioners threatened the defacto complainant and her mother to withdraw the complaint. She was forced to write the withdrawal letter being dictated by Jaidip Chatterjee in front of the police officer without going through the contents. Subsequently, on 18th October, 2022 she lodged another complaint on the basis of which FIR Case No.162/2022 was registered.

23. After describing the entire incident it is submitted by Mr. Roy Chowdhury, the learned P.P-in-Charge that this not a case of belated filing of FIR. The opposite party No.2 took immediate step informing the

entire incident to the POSH Committee of her officer then on 7th August, she lodged a complaint but the petitioners forced her to withdraw the said letter making a declaration in the police station. Finally on 18th October, 2022 she lodged this complaint. According the learned Advocate for the prosecution the chain of the events has clearly established the cause of delay in filing the written complaint against the petitioners. At this stage the allegation cannot be said to be mala fide within the scope of prima facie paragraph 120.7 of Bhajanlal's Case. In support of his contention Mr. Roy Chowdhury refers to decision of the Hon'ble Supreme Court in **Kaptan Singh vs. State of Uttar Pradesh & Ors.** reported in **2021 (9) SCC 35.**

24. On the question as to whether the petitioners are liable to face trial under Section 3(1)(r), 3(1)(s) and 3(1)(w)(ii) of the SC and ST (POA) Act 1989, it is submitted by Mr. Roy Chowdhury that ordinarily, when dealing with offences arising out of special statutes such as the SC/ST (POA) Act, the Court will be extremely circumspect in its approach. The said Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold

objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities at the hands of upper castes.

25. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST (POA) Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the said Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a special statute would not refrain the High Court, from exercising its power under Section 482 of the Cr.P.C. In support of his contention the learned P.P-in-Charge refers to an unreported decision of the Hon'ble Supreme Court in **Criminal Appeal No.1452 of 2023 : Sri Gulam Mustafa vs. State of Karnataka & Anr.** decided on 1^{0th} May, 2023.

26. Coming to the instant case it is submitted by the learned Advocate for the State that the accused Jaidip Chatterjee abused the defacto complainant on 28th July, 2022 uttering "Schedule Caste and Choto Jaater Barabari". According to the learned Advocate for the State the accused persons insulted and harassed the opposite party No.2 knowing fully well that that she is a member of Scheduled Caste community and

causing insult in the name of the accused amounts to an offence under the said Act and at this stage neither the FIR, nor the charge-sheet can be quashed. Having heard the learned Counsels for the parties and on careful perusal of entire materials on record as well as the judgments of the Hon'ble Supreme Court this Court finds that a case for interference on the issue as to whether penal provisions under the Scheduled Caste and Scheduled Tribes (POA) Act are applicable, is made out by the petitioners. It is found from the written complaint submitted by the opposite party No.2 on 18th October, 2022 that on 28th July, 2022 she was abused by all the accused persons saying her "Scheduled Caste, Choto Jaater Barabari". It is important to note that on 28th July, 2022 itself the defacto complainant made a complaint of sexual harassment by the petitioners in her office before the POSH Committee of the office. In the said complaint the defacto complainant did not state that she was abused by the accused persons or intentionally insulted or intimidated with intend to humiliate her because she is a member of SC. Subsequently, on 19th September, 2022 the opposite party No.2 made a complaint to the administrator of company by mail in the said mail she did not mention that she was intentionally insulted or intimidated with intend to humiliate being a member of Scheduled Caste in a place within the public view. Only on 18th October, 2022 i.e. after a lapse of about three months the defacto complainant made allegation against the petitioners alleging intentionally insult and intimidated to her in the name of her accused.

27. Thus, it appears to this Court that the allegation made out by the defacto complainant against the petitioners relating to accused abuse is an embellishment which was made by way of afterthought in an out and out mala fide manner to falsely implicate the accused persons under SC and ST (POA) Act.

28. In view of the such circumstances, this Court is of the view that allegation made by the defacto complainant for committing offence under Sections 3(1)(r), 3(1)(s) and 3(1)(w)(ii) against the petitioners cannot lie and charge under the aforesaid sections is liable to be quashed.

29. This, does not, however mean that no incident took place on 28th July, 2022 that the petitioner No.3 Asmaat Zaheer used to stare at the defacto complainant disgracefully and made remarks regarding her sitting posture etc. are undoubtedly an act of making sexually coloured remarks. The defacto complainant also stated that on 28th July, 2022 she was harassed by the petitioners when they abused her making sexually coloured statements. This allegation found place in her complaint made before the POSH Committee on the date of occurrence itself. She made the same complaint subsequently to the administrator of the company on 19th September, 2022. She also made the allegation of sexual harassment in her letter dated 13th October, 2022 to one Ms. Suparna Mukherjee, Adv, Ms. Leena Panja, Ms. Susmita Banerjee, Sr. Manager, SREI and Mr. Shayan Sachin Basu, Adv. Same allegation is depicted in the complaint dated 18th October, 2022.

30. The accused persons/petitioners are also liable to face trial under the charge of Section 354A/506/509/34 of the IPC.

31. Before I part with I like to record that under the facts and circumstances of this case, delay in lodging the complaint in the instant case cannot be treated as vital for the prosecution at this stage of proceeding. Let me subscribe the reason. It has already been recorded that the defacto complainant made a complaint on 28th July, 2022, i.e. on the date of occurrence describing the incident. Thereafter she came to the P.S to lodge complaint after 7th August, 2022, i.e. within the ten days of occurrence with her mother and narrated the incident to one Aparna Das a police officer. At that time she was forced to withdraw her complaint at the intervention of the accused persons. She then made a complaint to the administrator of the company on 19th September, 2022. She made the same complaint on 13th October, 2022 before the POSH Committee again seeking justice. Finally on 18th October, 2022 his FIR was accepted and specific case was registered against the petitioners.

32. In view of such circumstances, this Court finds that delay in lodging FIR is sufficiently explained from the conduct of the defacto complainant and materials on record.

33. Thus, I hold that criminal proceeding against the petitioners under Section 3(1)(r), 3(1)(s) and 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed. However, criminal proceeding under Section 354A/506/509/34 of the IPC shall continue against the petitioners.

34. Both the revisions are accordingly disposed of on contest however, without cost.

(Bibek Chaudhuri, J.)