

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 245 of 2022

with

CRAN 1 of 2023

Sukdeo Oraon

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Anirban Banerjee.
: Mr. T. Kumai.

For the State : Mr. Aditi Shankar Chakraborty,
: Mr. Ujjwal Luksom.

For the Opposite Party No.1 : Mr. Abhishek Sarkar,
Mr. Debjit Kundu.

Hearing concluded on : 11.10.2023

Judgment on : 16.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for an order dated 25.08.2022, passed by the Court of the Learned Additional Sessions Judge, 1st Court, Jalpaiguri, in connection with Criminal Misc. Case No. 11 of 2022, thereby rejecting the application preferred by the petitioner under Section 156(3) of the Code of Criminal Procedure.
2. The petitioner's case is that the brief fact of the case as stated in the application are inter alia to the effect that:-

"The opposite party no.2 has self appointed himself as the king of the area. He has been misusing his powers for the last five years in order to put the tribals under huge physical, mental, psychological, emotional pressure as well as causing monetary harm. That the opposite party no.2 wrongfully occupied the cultivated land of the Petitioner, and others Tribals of R. S. Plot Nos. 179, 181, 571, Khatian No. 1, Sheet No. 5, Mouza Bhagatpur. During protests against such illegal acts of the opposite party no. 2 in the presence of the public intentionally insulted the Petitioner and witnesses and abused them by calling them poor tribal and ugly qualities people. The opposite party no. 2 illegally and wrongfully dismissed the petitioner along with others from their Tea Garden's job through malicious and vexatious, proceeding against them."

3. **The petitioner states** that from a bare perusal of the complaint written by the petitioner it is clear that he was subjected to abuse and was insulted and humiliated in full public view on the basis of his caste identity and therefore there could be no doubt that the provisions of the SC & ST Act was clearly made out.

4. In **Hitesh Verma vs The State of Uttarakhand & Anr., Criminal**

Appeal No. 707 of 2020, on 05.11.2020, held:-

“14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as **Swaran Singh & Ors. v. State through Standing Counsel & Ors.,(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 e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, 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 (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality

of the State, and not by private persons or private bodies.”

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in **Swaran Singh**, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.”

5. From the materials on record, it appears that the dispute is clearly a private/property dispute.
6. **The petitioner has also been dismissed from his job by the opposite party/accused, prior to filing of this case.**
7. **The petitioners herein admittedly belongs to the Scheduled Tribe Community and was employed by the opposite party.**
8. The Supreme Court in **Ramawatar vs State of Madhya Pradesh** reported in **AIR 2021 SC 5228**, wherein the Court categorically held:-

“16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, primarily private or civil in nature, or 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 power to quash the proceedings. On similar lines, when considering a prayer of quashing on the basis of compromise/settlement, if the Court is satisfied

that the underlying objection of the 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 this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Code of Criminal Procedure."

9. The Learned counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in **Ramesh Chandra Vaishya vs. The State of Uttar Pradesh & Anr.** in **Criminal Appeal No...../2023 (arising out of SLP(CRL) No. 1249 of 2023)** in which Paragraph 18 reads as follows:-

"18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under Section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of

the court's jurisdiction under Section 438, Cr.P.C. and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet(which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial."

10. **In the present case** also the written complaint does not make any reference to any utterances, if any, made by the petitioner in course of the altercation as to the caste of the complainant. There is absolutely no statement making out a case for offence under Section 3(1)(r)(s) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.
11. From the petition of under Section 156(3) Cr.P.C., it appears that the dispute between the parties is also Civil in nature, relating to land, which admittedly belongs to the Govt. (para 4).
12. In ***Randheer Singh vs The State of U.P. & Ors., Criminal Appeal No. 932 of 2021, on September 02, 2021***, the Supreme Court held:-

"23. Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no

title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.

33. *In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.”*

- 13.** Though the petitioner submits that he has been insulted due to his caste, there is no materials or statements to make out an offence against the opposite party as alleged, either in the FIR nor in the charge sheet.
- 14.** From the order under challenge, it appears that the learned Additional Sessions Judge, 1st Court, Jalpaiguri vide order dated 25.08.2022 in Criminal Misc. Case No. 11/22 has clearly held as follows:-

“.....there is dispute pending over possession of such land between the petitioner and the Manager of Bhagatpur Tea Garden and there are various communications made by the petitioner to different authorities over such dispute. From the documents filed it appears that plot filed no.179, has been described as 'path' and the same falls under the purview of Public

Works Department, Govt. of West Bengal. Nothing has been submitted by the petitioner that till date, patta or anything has been issued in favour of the petitioner over the land mentioned above. The dispute between the petitioner and the Manager of the Bhagatpur is purely civil in nature has been continuing for more than last 5 years or even before.....”

15. Accordingly in view of the observations of the Apex Court in **(Hitesh Verma vs The State of Uttarakhand & Anr.(Supra))** and **(Ramesh Chandra Vaishya vs. The State of Uttar Pradesh & Anr. (Supra))** this Court finds that the order under revision requires no interference.
16. **The revisional application being CRR 245 of 2022 is dismissed.**
17. All connected applications, if any, stand disposed of.
18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)