

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2689-2023
Reserved On: 31.10.2023
Pronounced On: 06.11.2023

Rajinder Kaur

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Tanvir Singh Attariwala, Advocate
for the appellant.

Mr. Randeep Singh Khaira, DAG, Punjab.

Mr. Manish Verma, Advocate for
the complainant.

DEEPAK GUPTA, J. (ORAL)

By way of this appeal, appellant has challenged order dated 14.09.2023 passed by learned Special Judge, Ludhiana, whereby application under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.84 dated 12.08.2023 registered under Sections 302, 323 of the IPC, 1860 {Section 307 of the IPC, 1860 and Sections 3 & 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 added later on}[hereinafter referred as 'SC/ST Act] registered at Police Station Sudhar, District Ludhiana, has been declined.

2. (i) As per prosecution allegations, Inderjit Singh @ Jeeti was the owner of a Banquet Hall, which he sold to Sewak Singh (since deceased) and Pardhan Singh about 17 months prior to the occurrence. However, said Inderjit Singh had not disclosed about the said sale to his family members. Some days ealier, Sewak

CRA-S-2689-2023

Singh had changed the name of the Banquet Hall from 'Dhaliwal Banquet Hall' to 'Jashan Banquet Hall'.

(ii) On 01.08.2023, Sewak Singh along with Jatinder singh, Sukhdev Singh, Ramandeep Singh, Sawaran Singh and Pardhan Singh were sitting outside the Banquet Hall, whereas Inderjit Singh @ Jeeti was present in the kitchen, when family members of Inderjit Singh, on coming to know about the sale of the Banquet Hall, came there and started arguing with Pardhan Singh. Wife of Inderjit Singh, i.e., present appellant Smt. Rajinder Kaur stated that what was their 'aukat' (status) to purchase the palace and uttered casteist words to Sewak Singh, who went inside without saying anything. Inderjit Singh @ Jeeti took his wife from the spot. Later on, Sewak Singh along with others were talking to each other about the said incident, when Inderjit Singh @ Jeeti brought a Swift Car and stuck the same against Sewak Singh. He reversed the vehicle and again struck to him, causing injuries to Sewak Singh. Ramandeep and Jitender took injured Sewak Singh to hospital.

(iii) On the statement made by Sewak Singh to the police, DDR No.24 dated 03.08.2023 under Section 323 of the IPC was recorded. However, during treatment, Sewak Singh complainant - the author of the FIR, succumbed to the injuries on 11.08.2023, at which formal FIR was registered on 12.08.2023. Inderjit @ Jeeti was arrested on 12.08.2023. During investigation, pen drive containing CCTV footage of the incident dated 01.08.2023 was produced, revealing that Inderjit had hit his Swift Car to Sewak Singh with intention to kill him. Accused Rajinder Kaur (petitioner) was also nominated as an accused under Section 3 & 4 of SC/ST Act, vide DDR No.30 dated 14.08.2023, for having uttered derogatory

CRA-S-2689-2023

words against caste of the complainant.

3. An application under Section 438 Cr.P.C. was moved by the appellant seeking anticipatory bail but the same was dismissed on account of bar contained in Section 18 of the SC/ST Act, by learned Special Judge, Ludhiana.

4. Assailing the aforesaid order by way of present appeal, it is contended by learned counsel that all the allegations against the appellant are false. No role is attributed to her. Entire allegations are against the husband of the appellant, who has already been arrested. FIR does not disclose as to what words were used by the appellant, which itself shows the allegations to be vague, having no basis. Besides, there is nothing to show that appellant had any prior knowledge of the caste of the complainant, compelling her to utter any such words and so, prima facie, ingredients of Section 3 & 4 of The SC & ST, Act 1989 are not fulfilled. Besides, the alleged casteist derogatory words have not been used within public view. Learned counsel further pointed out that as per the allegations contained in the FIR itself, appellant was taken away by her husband after the argument and that it was only later on in the evening that alleged incident of collusion of car took place. Learned counsel contends that dispute was regarding ownership and sale of the Banquet Hall between the co-accused Inderjit Singh @ Jeeti and the complainant party, in which appellant has no involvement.

With these submissions, prayer is made to set aside the impugned order dated 14.09.2023 passed by learned Special Judge, Ludhiana and to allow anticipatory bail to the appellant.

5. Learned counsel for the appellant has referred to following authorities:

(i) *Vinod Bindal v. State of Haryana 2023(1) R.C.R.(Criminal)*

CRA-S-2689-2023

392;

(ii) *Hamidi v. State of Haryana 2022(1) R.C.R.(Criminal) 240;*(iii) *Jai Parkash v. State of Haryana 2011(3) R.C.R.(Criminal)*

217;

6. Opposing the appeal, learned State counsel ably supported by learned counsel for the complainant argued that appellant used casteist words against complainant Sewak Singh (now deceased) in derogatory manner, which fact is duly mentioned in the FIR itself lodged on the statement of Sewak Singh and that said statement, after the death of Sewak Singh, is required to be treated as his dying declaration. It is contended that dying declaration is not the weaker kind of evidence and that it stands on the same footing as other evidence. Ld. Counsel placed reliance on *Swaran Singh v. State 2009(2) Mh. LJ 22*. It is further submitted that during investigation, caste certificate of deceased Sewak Singh was taken into possession and that custodial interrogation of the appellant is required to make enquiries about the occurrence; and that in view of the bar contained in Section 18 & 18A of The SC & ST Act, learned Special Judge has rightly declined the anticipatory bail and so, the appeal deserves to be dismissed. Learned counsel for the complainant has relied upon *Ganpat Bakaramji Lad Baka Ramji v. State of Maharashtra 2018(2) R.C.R.(Criminal) 511; and Hitesh Verma v. State of Uttarakhand (SC) 2021 CriLJ 1*.

7. I have considered submissions of both the sides and have perused the record.

8. In *Hitesh Verma v. State of Uttarakhand, 2020(4) RCR (Criminal) 868*, it has been held by the Hon'ble Supreme Court that object of the Act is to punish violators, who inflict indignities, humiliations and harassment against the

CRA-S-2689-2023

vulnerable section of the society and thus, the Act is intended to punish acts of upper caste against vulnerable section of society for reason that they belong to a particular community.

9. Section 18 of the SC& ST Act reads as under:

“Section 438 of the Code not to apply to persons committing an offence under the Act. - Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

10. By way of Act 27 of 2018, w.e.f. 20-8-2018, Section 18A has been inserted in the Act, which reads as under:

“No enquiry or approval required. -- (1) For the purposes of this Act, --
a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.
(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.

11. No doubt that Section 18 & 18A of the SC & ST, Act provides that provisions of Section 438 of the Code of Criminal Procedure shall not apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the SC & ST, Act but the Court is not debarred from considering as to whether, from the accusations made, prima facie offence under Section SC/ST, Act is made out or not.

12. In the present case, the only attribution against the appellant is that she

CRA-S-2689-2023

uttered the words as to what was the status of complainant to purchase the Banquet Hall and used casteist words against him. The said occurrence took place in the Banquet Hall, when only the complainant party; appellant and her family members were present i.e., not within another public view. The question arises as to whether in such circumstances, any of the provision of Section 3 or 4 of SC/ST Act are attracted.

13. Section 4 of the Act is regarding punishment for neglect of duties on the part of public servant and is not at all applicable to the facts of this case qua the appellant.

14. Relevant portion of Section 3(1) of SC & ST Act, 1989 reads as under:-

“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(a) to (q) xxxxxxxxxxxxxxxx [not relevant to this case]

(r) intentionally insults or intimidates with intent to humiliate a member of a Schedules Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.”

15. Thus, necessary ingredients to attract Section 3(1)(r) are: -

- (i) accused does not belong to Scheduled Caste/Schedules Tribe; whereas the concerned person against whom offence is committed, belongs to Scheduled Caste/Schedules Tribe.
- (ii) accused knowingly that the concerned person belongs to SC/ST, causes intentional insult or intimidation with intent to humiliate such a person;
- (iii) in any public place;
- (iv) within public view.

CRA-S-2689-2023

16. In *Hitesh Verma (supra)*, it has been held by the Hon'ble Supreme Court that:

“The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.”

17. Thus, all the insults or intimidation to person would not be offence under the Act, unless such insults or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe and further another important key ingredient of provisions is that the insult or intimidation should be in any place withing public view. In the case before the Hon'ble Supreme Court, the allegations of abusing informant were within four walls of building. There was no other member of public at the time of incident and it was held that the basic ingredient that words were uttered *“in any place within public view”* were not made out. Charge-sheet to that extent was quashed by the Hon'ble Supreme Court.

18. The ingredients to attract Section 3(1)(s) are: -

- (i) accused does not belong to Scheduled Caste/Schedules Tribe; whereas the concerned person against whom offence is committed, belongs to Scheduled Caste/Schedules Tribe.
- (ii) accused abusing member of SC/ST by caste name
- (iii) in any public place;
- (iv) within public view.

19. Thus, accused must know that the complainant or the aggrieved person is a member of Scheduled Caste/Schedules Tribe. Besides, the intentional

CRA-S-2689-2023

insult or intimidation; or abusing must be in any public place within the public view.

20. In “*Gorige Pentaiah v. State of A.P. & others*”, 2008(4) R.C.R. (Criminal) 171, complaint was filed by number of scheduled castes that accused abused him with the name of his caste, without stating as to whether accused was not a member of the scheduled caste or a scheduled tribe or that he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view. Holding that basic ingredients of offence were missing, the complaint was quashed by the Hon’ble Supreme Court. Same view was taken in “*Ishwar Pratap Singh v. State of Uttar Pradesh*”, (2018) 13 SCC 612.

21. In the present case, the perusal of the FIR reveals that there is no allegation that accused Rajinder Kaur i.e., appellant knew that Sewak Singh-complainant- deceased belonged to Scheduled Caste. Besides, no particular caste has been uttered by the appellant so as to insult or humiliate the complainant. Allegations are to have been used casteist words, without specifying as to what words were used.

22. In *Hamidi v. State of Haryana (supra)*, it was not mentioned in the complaint/FIR that accused persons were aware of the fact that complainant belonged to Scheduled Caste, nor specific words were attributed and all persons, in unison had stated casteists slurs/words. It was held by this Court that prima facie bar under Section 18 & 18-A of the SC & ST Act was not applicable because ingredients of Section 3(1) of SC & ST Act were not made out. This Court relied upon ‘*Jai Parkash v. State of Haryana 2011(3) R.C.R. (Criminal) 217*’, wherein also, there was no suggestion that petitioner knew that complainant belonged to the

CRA-S-2689-2023

Scheduled Caste and moreover, the entire occurrence had taken place in a fit of anger. In *Jagir Chand's Case (supra)*, anticipatory bail was allowed by this Court in similar circumstances, when it was found that offence was not committed in public view and complainant did not state that he belonged to the Scheduled Caste and that accused were aware of this fact.

23. Learned counsel for the respondent/complainant referred to *Swaran Singh's case*, wherein it was held that calling a person “Chamar” amounts to intentional insulting that person with intent to humiliate him.

The cited authority is not applicable to this case because here, no particular caste was used by the appellant.

24. Learned counsel has also referred to *Hitesh Verma's case*, wherein the allegations of abusing the informant were within four walls of her building when no member of the public was present. Holding that basic ingredients that the words were uttered in any place within public view, were not made out and so, charge-sheet to that extent was quashed.

This authority rather supports the case of the appellant, because there is no allegation that appellant knew the victim to be belonging to Scheduled Caste. No particular caste has been disclosed. Even otherwise, the alleged casteist words were uttered in Banquet Hall i.e. not in any place within the public view.

25. Having regard to the aforesaid discussion but without commenting anything merits of the case, the present appeal is hereby accepted and the impugned order dated 14.09.2023 passed by learned Special Court is hereby set aside.

26. The appellant is admitted to anticipatory bail and shall be released on

CRA-S-2689-2023

bail in the event of her arrest subject to satisfaction the IO/arresting officer on following conditions:

- a) the appellant joins the investigation, as and when so required by the Investigating Officer.
- b) She shall not contact any person associated with the case to dissuade him from the investigation in any manner whatsoever and nor shall leave the country without prior permission of the Court.
- c) She shall further comply with the conditions stipulated in Section 438(2) Cr.P.C.

Disposed of.

November 06, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No