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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 01.08.2023  
Pronounced on: 12.10.2023*

+ **CRL.REV.P. 176/2018**

THE STATE GOVT OF NCT OF DELHI ..... Petitioner

Through: Mr. Naresh Kumar Chahar,  
APP for the State with SI  
Nitin, P.S. Farsh Bazar.  
Ms. Indu & Ms. Chanda,  
Complainants

versus

PREM PAL SINGH & ORS ..... Respondents

Through: Mr. Gaurav Seth, Advocate for  
Accused Pratap Singh.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The instant petition under Section 399 and 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking setting aside of the order dated 04.12.2017 passed by learned Additional Sessions Judge, Special Judge SC/ST Act, FTC, E-Court, Shahdara, Karkardoma Courts, Delhi ('learned ASJ') in Case No. 703/2016 whereby the learned ASJ discharged the



accused persons under Sections 354/379 of the Indian Penal Code ('IPC') and Sections 3/4 of SC/ST Act.

2. Briefly stated, the facts of the present case as per the FIR are that on 27.12.2007, accused Prem Pal Singh and his wife Beena Devi had used castiest remarks against the complainant. It was alleged that the accused persons were trying to give poison to the dog of the complainant and had killed four of their dogs on previous occasions. When complainant Chanda had tried to stop accused persons from giving poison to her dog, accused Prem Pal and his wife Beena Devi had called other accused persons including Hans Raj, Deepak, Manoj, Manoj's wife and the son of one J.P. Singh, who were neighbours of the accused and complainant. Accused persons had then started beating and causing damage to the shop of the complainant and had even robbed the money lying in the shop. It was alleged that the accused persons had also threatened the complainant with dire consequences. Thereafter, upon receiving final opinion on the MLC of Chanda as simple and MLC of her brother Joginder as "grievous", present case FIR bearing no.81/2008 was registered against accused persons under Sections 323/325/34 of IPC.

3. The impugned order was passed by learned ASJ on 04.12.2017 on charge, the relevant portion of the same reads as under:

"...6. Now, first question comes to decide whether there is prima facie case against accused persons u/s 3&4 of SC/ST (Prevention of Atrocities) Act 1989. In this regard it is relevant to note the gist of complaint made by complainant Chanda, which was recorded vide DD no.21A dated 28.12.07, that in the morning of 27.12.17 their neighbour Prem Pal Singh and his wife Beena Devi were calling them as "chamar" and were giving poison to their bitch. When they refused them to do so, they called their immediate neighbor Hans Raj, his son



Deepak, Manoj Kumar Sharma and his wife and stated giving beatings. The caused damage to the shop and robbed rupees lying in their shop. They further said that they would not allow them to live there. Prem Pal Singh and his wife has already given poison to their four dogs and used to say them that they would kill all five of them. They came to police station but neither police got prepared their MLC, nor made efforts to compromise the matter. Their brother Joginder Singh was put behind the jail and they robbed their house. Their entire shop was looted and nobody asked as to what happened with them and one side decision was given and their brother was put behind the bar. It was thus requested that they be saved from Prem Pal Singh, Been Devi, Hans Raj, Smt. Kamlesh, Deepak, Manoj, Anita, Vandana and Geeta.

7. During re-investigation written statement of Kamla Devi, Inda, Joginder Singh and Chanda all of dated 21.05.2012 were recorded and a specific question was put when accused persons quarrel with them and used castiest remarks at that time who else except their family members. were present and it is mentioned therein that refused to answer". The Judgment as relied by Ld. Counsel for accused persons ie. **Ms. Gayatri @ Apurna Singh vs. State & Anr. (supra)** it was held as under and I quote:-

*42. "In Daya Bhatnagar (supra), the majority view taken by the Court was that to attract the offence under Section 3(1)(x) of the SC/ST Act the place where the offending action takes place should be within public view that the place should be within public view that does not mean that the place should be a public place. It could well be a private place, provided the utterance was made within public view. "Public View" is understood to mean a place where public persons are present \_howsoever small in number they may be. Public persons are independent and impartial persons who are not interested in any of the parties. The same has been explained to mean persons not having any kind of close relationship or association with the complainant. Such persons are as good as strangers who do not have any liking for the complainant through any close relationship or any business commercial or other vested interest and who are not participating members with him in any way."*

8. In the present case, the original complaint lodged by complainant Chanda i.e. DD No. 21A dated 28.12.07 does not mention in whose presence the offending words were used by the accused persons. Even in subsequent statements of Joginder Singh dated 21.10.2008, statement of Smt. Kamla Devi, Joginder Singh, Chanda, Indu all dated



21.05.2012 and in protest petition filed by Chanda dated 19.10.2011, the names of such witnesses are not mentioned. There is nothing on record to show that the offending castiest remarks were used in full public view. The basic ingredients of Section 3(X) SC/ST (Prevention of Atrocities) Act, 1989 are missing, therefore accused persons cannot be charged for violation of provisions of SC/ST Act.

9. It is alleged that accused persons while entering in the shop/residence of the complainant committed robbery of articles & rupees but no details of such alleged robbed articles is given.

10. After going through the material placed on record, I am of the opinion that prima facie, a case u/s 323/325/452/427/506/34 IPC is made out against all the accused persons, which is triable by the court of M.M. Charge is framed accordingly to which accused pleads not guilty and claimed trial. Judicial file be sent to the court of Ld. CMM, Shahdara, who may try the case himself or assign to any other MM Court having competent jurisdiction to try the case. Accused persons are directed to appear before the court of Ld. CMM, Shahdara on 15.12.2017 at 2:00 PM...”

4. A perusal of the same reveals that the learned Trial Court though has given a specific finding regarding the charge under Section 3(X) SC/ST (Prevention of Atrocities) Act, 1989, the learned Trial Court has failed to return the finding regarding allegations leveled under Sections 354/379 of IPC in the order so passed. This Court notes that the chargesheet in this case was filed under Sections 352/354/392/323/325/506/34 as well as Sections 3 & 4 of SC/ST Act.

5. After considering, objections filed by the complainant against supplementary chargesheet, the learned Magistrate *vide* order dated 04.12.2017 had taken cognizance under Sections 323/325/354/452/379/427/506/34 of IPC and Sections 3 & 4 of SC/ST Act. When the case came up for hearing before the learned Trial Court, the learned Trial Court was required to pass an order dealing with all the sections mentioned in the chargesheet and the



supplementary chargesheet and pass an order dealing with the sections under which the chargesheet were filed in case the learned Trial Court proposed to discharge the accused persons under same sections of law under which the chargesheet was filed. In the present case, the learned Trial Court has not given any reasons as to why the accused persons had been discharged under other sections of law under which the chargesheet had been filed. In such circumstances, this Court does not have the benefit of knowing and appreciating the reasons which weighed in the mind of the learned Trial Court for discharging them under some Sections of IPC under which chargesheet had been filed against them. In such circumstances, the case is remanded back to the Court of Sessions to hear arguments on behalf of the parties qua the sections of law under which the accused persons have been discharged but the reasons of the same have not been mentioned in the said order dated 04.12.2017.

6. The learned Sessions Court will hear the matter afresh on charge except for the order qua Sections 3 & 4 of SC/ST act and Sections 323/325/452/427/34 of IPC qua which the learned Trial Court has already given its opinion. The learned Trial Court will also afford an opportunity to the complainant to be heard.

7. In view of the same, this case is remanded back to the Court of Sessions.

8. Accordingly, the present petition stands disposed of in above terms.



9. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**OCTOBER 12, 2023/**