

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 20 of 2023

Basudev Sarkar & Anr.
v/s.

State of West Bengal & Ors.

For the Petitioners:

Mr. Sabir Ahmed, Adv.,
Mr. Abdur Rakib, Adv.,
Mr. Shraman Sarkar, Adv.,
Mr. Tasnim Ahamed, Adv.,
Mr. Dhiman Banerjee, Adv.

For the Opposite Party:

Mr. Niladri Sekhar Ghosh, Adv.,
Ms. Sompurna Chatterjee, Adv.,
Mr. Sourav Mondal, Adv.,
Ms. Labani Sikder, Adv.

For the State:

Mr. Debasish Roy, Ld.PP
Mr. Imran Ali,
Ms. Debjani Sahu, Adv.

Heard on: 24.06.2024

Date: 16.07.2024

SUVRA GHOSH, J. :-

- 1) The petitioners seek quashing of Special case no. 101 of 2022 arising out of Patuli P.S. case no. 235 dated 9th November, 2022 under section 3(1)(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on several grounds.

- 2) Learned counsel for the petitioners has submitted that the first petitioner is a retired Central Government employee of the postal department and the second petitioner is a school teacher and none of them are engaged in the business of promotion. Suit for partition and permanent injunction is pending between the parties. The second petitioner who is one of the Directors of a Private Limited Company in the name and style of Red Pipers Private Limited filed a title suit against the private opposite party and others for recovery of possession, permanent injunction and damages wherein they have claimed to be the owners of 10.5 decimals of land in R.S. & L.R. dag no. 544, R.S. khatian no. 557, L.R. khatian no. 851, Mouza:- Briji, J.L. no. 27, District:- South 24 Parganas and have alleged that the present opposite party along with other defendants in the suit are disturbing their peaceful possession and enjoyment of the property and causing damage to the same. By an order passed on 19th September, 2022, the trial Court granted an order of ad-interim injunction in favour of the plaintiffs therein restraining the defendants from making any further encroachment in the property and interfering with/disturbing the peaceful possession of the plaintiffs therein. Learned counsel has further submitted that the petitioners' company applied for installation of electric connection in the plot in question and the CESC personnel who visited the plot for inspection were restrained from holding such inspection by the opposite party and his men and were in fact driven out of the property upon abusing them in filthy language. The private opposite party lodged a false complaint

against the petitioners as a counter blast to the civil suit filed by one of the petitioners against him. The averments of the opposite party in the complaint do not constitute an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and allowing the said proceedings to continue shall amount to abuse of the process of law. According to the complaint, the alleged incident occurred at the residence of the opposite party and his family members intervened. Therefore it cannot be said that it occurred within public view. Learned counsel has placed reliance on the authorities in *State of Haryana and others v/s. Ch. Bhajan Lal and Others* reported in 1992 SCC (Cri) 426, *Salib alias Shalu alias Salim v/s. State of U.P. and others* reported in 2023 SCC Online SC 947, *Gorige Pentaiah v/s. State of Andhra Pradesh and others* reported in (2008) 12 SCC 531 and *Hitesh Verma v/s. State of Uttarakhand and Another* reported in (2020) 10 SCC 710 in support of his contention.

- 3) Per contra, learned counsel for the private opposite party has submitted that the petitioners used offensive language within public view towards the private opposite party, thereby promoting feeling of enmity, hatred and ill-will against the members of the caste. The petitioners are directors of a company involved in promotion of land and building and the alibi taken by them with regard to their presence at the spot at the relevant time is false. In distinguishing the authorities relied upon by the petitioners, learned counsel has submitted that the Hon'ble Supreme Court has clarified that the place within public view need not be a public place and it is sufficient if the

place of occurrence can be seen by the members of the public. Also, in the authority in *Salib @ Shalu (supra)*, the Hon'ble Supreme Court has insisted upon taking into account the overall circumstances leading to the registration of the case as well as material collected in the course of investigation since the accused was not initially named in the FIR and was subsequently arraigned. In this case, the petitioners are named in the F.I.R.

- 4) I have considered the rival contention of the parties and material on record.
- 5) It shall be convenient to reproduce section 3(1) (u) of the 1989 Act.

“(3) Punishments for offences for atrocities:- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- (u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.” In other words, to constitute an offence under the said provision, the words or signs used ought to promote or attempt to promote feelings of enmity, hatred or ill-will against the members of the Scheduled Caste or Scheduled Tribes.

- 6) The complaint states that the petitioners went to the residence of the private opposite party to grab his land forcibly and illegally for the

purpose of promotion/development. Record reveals that a partition suit is pending between the parties wherein the private opposite party, as one of the plaintiffs, has claimed 13/40th share in the property in question along with the other plaintiffs. The plaint of the partition suit demonstrates that both the parties therein which include the present petitioners and the private opposite party are possessing the property jointly by amicable arrangement. The second petitioner who is one of the directors of Red Pipers Private Limited filed a title suit against the private opposite party and others claiming recovery of possession, permanent injunction and damages wherein the defendants were restrained from making any further encroachment in the suit property and interfering with and disturbing the peaceful possession of the plaintiffs therein in any manner. It further appears that CESC personnel were restrained from holding inspection in the plot for installation of electric connection at the behest of the petitioners by the private opposite party and others, for which a complaint was lodged before Patuli police station on 28th October, 2022. The present complaint was lodged on 3rd November, 2022.

- 7) The authority in State of Haryana and others (supra) has illustrated certain categories of cases where jurisdiction under 482 of the Code of Criminal Procedure can be exercised to prevent abuse of the process of the Court or to secure the needs of justice. One of such illustrations refers to a criminal proceeding which is manifestly attended with malafide and/or where the proceedings 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. The authority in *Gorige Pentaiah (supra)* echoes the said proposition. The Hon'ble Supreme Court, in the authority in *Salib @ Shalu (supra)* has observed that while exercising inherent powers under section 482 of the Code to quash criminal proceedings essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with ulterior motive for wreaking vengeance, the Court should look into the FIR with care and a little more closely because in such cases, the FIR/complaint is very well drafted with all the necessary pleadings. In such cases, the Courts have been advised to not only look into the averments made in the complaint alone but also look into other attending circumstances emerging from the record of the case and with due care and circumspection try to read in between the lines.

- 8) In the present case, it is evident from the record that several litigations are pending between the parties which has led to filing of the present complaint. Lodging of such complaint with malafide intention with an ulterior motive for wreaking vengeance on the petitioners due to personal grudge cannot be ruled out. Also, the words allegedly used in the complaint cannot be said to promote or attempt to promote feelings of enmity, hatred or ill-will against the private opposite party. In fact, obstruction made by the private opposite party to the CESC personnel and disturbance created by him in the peaceful possession of the petitioners in the plot in question have transpired from the material on record.

- 9) Several witnesses were examined under section 161 of the Code of Criminal Procedure in course of investigation and the allegation made by the private opposite party has found corroboration only in the statement made by his wife and other relatives. The independent witnesses have only referred to the land dispute.
- 10) Since allegation against the petitioners is under section 3(1) (u) of the Act and not under section 3(1) (r), whether the alleged incident occurred in any place within public view is irrelevant.
- 11) True, jurisdiction under section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. At the same time, when intervention of the Court is required for prevention of abuse of process or to secure the needs of justice, the Court ought to exercise inherent powers under section 482. The authority in Hitesh Verma (supra) spells out that an offence under the 1989 Act is not established merely on the fact that the informant is the member of the scheduled caste/tribe unless there is an intention to humiliate the member for the reason that he belongs to such caste/tribe.
- 12) In the case in hand, there are civil litigations pending between the parties over title and possession of land. The allegation of hurling abuses has a close nexus with the said litigations as well as obstruction made by the private opposite party in installation of electric connection. Therefore though the private opposite party is a member of the scheduled caste, offence under section 3(1) (u) of the Act is not made out. A principal dispute between a vulnerable section

of the society and an upper caste person and consequential altercations/abuse does not amount to an offence under the 1989 Act unless it is only on account of the person being a member of a scheduled caste. It is not the case herein.

- 13) In the said backdrop, this Court is inclined to hold that the complaint coupled with other attending circumstances emerging from the case record do not disclose an offence under section 3(1) (u) of the Act of 1989 read with section 506/34 of the Indian Penal Code and continuation of such complaint shall amount to abuse of the process of law.
- 14) Accordingly, C.R.R. 20 of 2023 is allowed.
- 15) Proceedings of Special Case no. 101 of 2022 arising out of Patuli police station case no. 235 dated 9th November, 2022 pending before the learned Additional District Judge, First Court, Alipore is quashed.
- 16) There shall however be no order as to costs.
- 17) Copy of this judgment be sent to the learned Additional District Judge, First Court, Alipore for information and necessary action.
- 18) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)