

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 2380 of 2022

**Subhash Tiwari & Anr.
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Debasish Kar
Mr. Subhajit Chowdhury
Ms. Jagori Mitra

For the State : Mr. Debasish Roy, Ld. APP
Mr. Saryati Datta

For opposite Party no.2: Mr. Anit Dey
Mr. Kumar Yasobardhan Shaw
Ms. Ritoma Sarkar

Heard on : 22.07.2024

Judgment on : 29.07.2024

Ajoy Kumar Mukherjee, J.

1. This is an Application where petitioners have prayed for quashing of charge sheet submitted under section 323/341/506/34 of the Indian Penal Code (IPC), Section 3 (1) (r) (s) of SC and ST (prevention of atrocities Act) Act, 1989 (in short Act of 1989) arising out of Jagaddal P.S. Case no. 464 of 2020 dated 27.07.2020 being SPL 4 of 2021.

2. Opposite party no.2 herein preferred an application under section 156 (3) of Cr.P.C. contending that he was married with the daughter of petitioner

no. 1 herein and they were leading their matrimonial life at Lahore. Petitioner alleged that aunt of his wife came to their house and took his wife on 14.12.2019 in the name of performance of ritual and when he went to the house of accused person on 24.12.2019 to take her back, the accused persons abused him with filthy language and assaulted him physically and also abused him in the name of his cast. Again on 4th March, 2020 the petitioner no.1 came to the locality in which the opposite party no.2 resides and physically assaulted him and again abused him with filthy languages in the name of the petitioners cast.

3. On the basis of direction made by learned magistrate, Jagaddal P.S. started a case and subsequently charge sheet submitted and cognizance also taken on 18th May, 2022 and thereafter due to non-appearance, warrant of arrest was also issued against the petitioner by the learned Additional Session Judge 1st Court, Barasat, where the case is presently pending.

4. Mr. Kar Learned counsel appearing on behalf of the petitioners state that the entire allegations in the FIR are false and fabricated and has been made only for the purpose of harassing the petitioner. He further submits that the charge sheet has been submitted without making any investigation and the learned court below took cognizance by not considering the materials in the case record and the entire process was done in a mechanical way. He further submits that the ingredients of the sections of IPC, under which charge sheet has been submitted by the police, does not attract in the present context. He categorically submitted that no such

incident occurred on the dates which have been specifically mentioned in the complaint.

5. Mr. Kar during the course of argument further argued that under section 3 (i) (r) of the Act of 1989, the criminality of the section attracts when anyone who not being a member of a Schedule Caste (SC) or Schedule Tribe (ST) intentionally insults or intimidates with intent to humiliate a member of a SC or a ST in any place within public view. In this context he has further drawn my attention to the petitioner's complain wherefrom it appears that in paragraph 4 it has been alleged that the petitioner/complainant went to the house of accused to bring back his wife on 24.12.2019 but the accused persons used filthy language and assaulted the petitioner by saying that **"tum jaisa nich jat ke sath meri beti nehi jayegi"** **"Bhumij log nich aur chhuddar hota hai"** and it was further alleged in the complaint that the petitioner belongs to Bhumij Tribe and as such it attracts the relevant provision of Act of 1989.

6. Now from the written complain it is clear that even if the contents made in para 4 of the complain is taken to be true, it does not constitute offence under any of the provisions of the Act of 1989 as it was not uttered in a public place but within the house of accused persons. Similarly, he pointed out para 7 of the written complainant and contended that the complainant alleged that on 4.3.2020, the accused no.1 came to the petitioner's locality and threatened his family so that the petitioner might leave and forget his wife forever and assaulted the petitioner physically with fist and blows and also used filthy languages in the name of petitioner's

tribe by saying that **“tum log chhotta jat hai”**. Accordingly petitioner contended that even if said allegation made in para 7 is also taken to be true that the said words were uttered at the petitioners locality which may have been a public place, even then it does not constitutes offence under the Act of 1989 as **“chhotta jat”** does not indicate any particular caste and for which it does not constitute offence under the Act of 1989.

7. He further submits that no preliminary enquiry was conducted by police before initiation of criminal proceeding. Referring judgment reported in **AIR 2023 SC 262 (B. Venkateswaran and others Vs. P. Bakthavatchalam)** he submitted that when a private and civil dispute between the parties is converted into criminal proceedings by inserting the rigorous section under SC and ST Act, then it is nothing but an abusive of process of law and the same deserve to be quashed.

8. In this context he further relied upon **Sri Gulam Mustafa Vs. The State of Karnataka, Binkalbhair Hasmukhbhai Parsana Vs. The State of Gujarat, Dharmendra Rai Vs. State of Jharkhand, Priti Agarwal Vs. State of GNST of Delhi.**

9. Mr. Kar accordingly submits that from the complaint it is clear that offence dated 24.12.2019 did not occur in a public place and the alleged incident dated 04.03.2020 does not constitute offence under the Act of 1989. He further submits that previously some other cases have also been lodged on the basis of false statements. Here no local witness has been cited and without making preliminary enquiry, FIR has been registered. So relying upon **Bhajanlal's Case** reported in **AIR 1992 SC 604** petitioner prayed for quashing the proceeding.

10. Mr. Chowdhury learned counsel appearing on behalf of the opposite party submits that for initiation of a proceeding under the Act of 1989, no enquiry or approval is required under section 18A of the Act of 1989. He further submits that the petitioners admittedly belong to higher caste and they have fully used the derogatory words in order to insult and humiliate the opposite party no.2 by using the words like “chota jat” “ Bhumij” which clearly demonstrate the criminal intention of the petitioner to disgrace the opposite party no.2. In this context Opposite party no.2 relied upon the judgment of the Apex Court in ***Manju Devi Vs. Onkar jit Singh Ahluwalia*** reported in **(2017) 13 SCC 439** (para16) and ***Partha Sarathi Mohanty Vs. State of West Bengal and another*** reported in **2015 SCC Online Cal 3249** (para 9). He also relied upon **2010 (1) CCR 252** (para 3) and **(2008) 8 SCC 435** (para 28). Accordingly he prayed that the application made by petitioner is liable to be quashed.

11. Learned counsel appearing on behalf of the state placed the case diary and submits that after making proper investigation charge sheet has been submitted against the petitioner herein and the truth will come out only after conclusion of trial and as such the present proceeding should not be quashed at its threshold.

12. I have considered submissions made by all the parties.

13. It appears from the Case Diary that police after investigation submitted charge sheet under section 323 /341/506/34 IPC read with section 3 of SC and ST (POA) Act, 1989. It is clear that charge sheet against the petitioner/accused person has not only been submitted under the provision of Act of 1989 but also under the provision of Indian Penal Code.

On perusal of the written complaint, I find that it has been alleged in the written complaint that on 04.03.2020 accused no.1 came to complainant's locality and threatened his family and also assaulted the complainant/private opposite party herein physically with fist and blows and also used filthy languages in the name of complainant's tribe. It is also alleged that on 24.12.2019, when the petitioner went to the house of accused person to bring her wife back, then the accused persons used filthy language and assaulted the petitioner and also abused him in the name of complainant's tribe. Accordingly in the complaint, beside being allegation under the provision of the Act of 1989, there are also the allegations of threat and physical assault. Learned counsel appearing on behalf of the state has drawn my attention to the statements recorded by investigating officer during investigation at page 57, 58 of the Case Diary which states that the complainant was assaulted physically by the accused persons and he was also abused with filthy languages. The statement of the witnesses recorded under section 164 Cr.P.C. by the investigating officer also corroborates the allegation of assault and the allegation of abusing the complainant by mentioning his lower cast.

14. It is now settled law that the power under section 482 of Cr.P.C. is to be used sparingly and that too in a case where the complaint does not disclose any offence. The High Court should normally refrain from giving a prima facie decision where all the facts are incomplete and hazy more so, when the evidence has not been adduced and the issues involved, whether factual or legal are of such magnitude that they cannot be seen in their true perspective without sufficient trial. In fact the inherent power of the High

court is not an unrestricted power to make any order which the High Court desires to pass. Basically this inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice.

15. In the present context since the averments made in the complaint as well as the materials so far collected by the I.O during investigation, discloses the criminal offences for which the accused persons have been chargesheeted, I do not find that it is a fit case where the proceeding should be quashed invoking courts inherent jurisdiction under section 482 of the Code of Criminal Procedure.

16. In such view of the mater **CRR 2380 of 2022** stands dismissed.

17. However this dismissal order will not preclude the petitioner herein to agitate the same grievances before the court below at the time of framing of charge or at an appropriate subsequent stage after framing of charge.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJAY KUMAR MUKHERJEE, J.)