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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of decision: 12th September, 2024

Lalit Kumar Sharma

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amit Choudhary, Advocate for the appellant.

Mr. A.S. Samra, AAG, Punjab.

Mr. R.D. Rattewal, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 14 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act'), thereby challenging the order dated 19.07.2023 passed by the Special Court, Ludhiana in case arising out of FIR No. 77 dated 23.05.2021 registered under Section 3 of SC/ST Act and Section 66 of Information and Technology Act, 2000 (for short 'IT Act') at Police Station Shimlapuri, District Police Commissionerate Ludhiana, whereby an application filed by the appellant for grant of pre-arrest bail had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of

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written complaint filed by the complainant Jatinder Tandon alleging therein that he was a Journalist by profession. On 24.01.2020, Jatinder Tokia who was also a Journalist, sent him an audio recording of a conversation which had taken place between one Ranjeet Singh and the appellant Lalit Sharma. In this conversation, the appellant had been heard saying that the complainant was a '*chamar*'. He was also heard calling names to the complainant by using abusive language against him and by saying that he was a thief and had played fraud with several persons by collecting money while using the name of his dead father and that he also used to take benefit of Balmiki Samaj and he had been projecting him to be of 'Tandon' caste. The complainant by alleging that the appellant had insulted him and had abused him by uttering the name of his caste within public view, prayed for taking action in the matter. On his complaint, a case under Section 3 of the SC/ST Act and Section 66 of IT Act was registered. Apprehending his arrest, appellant had moved an application for grant of anticipatory bail before the learned Special Court, Ludhiana which was dismissed vide order dated 19.07.2023 by observing that in view of the bar created under Section 18 of SC/ST Act, the appellant was not entitled to concession of bail.

3. Feeling aggrieved, the present appeal has been filed.

4. It is argued by learned counsel for the appellant that he has been falsely implicated in this case. Infact, the FIR of this case has been lodged by the complainant as a counter blast to the civil suit which was filed by Amrinder Singh, Chairman of Shaheed-E-Azam, Sh. Bhagat Singh Journalist Association against the respondent No.2- complainant for causing



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undue loss to reputation of the above named Amrinder Singh by making derogatory statements on social media platforms against him. Ranjit Singh is President of the said association. He had recorded the conversation which had taken place between him and the appellant and sent the same to other persons. The appellant had been implicated only for the purpose of blackmailing himself. He did not make any conversation viral on any social media platform and it is Ranjit Singh who had done the same. He had not uttered anything against the complainant within public view. The utterances made by him to the effect that the caste 'Tandon' belonged to Hindu Khatri and Sikh Khatri did not mean that the appellant had abused the complainant or intended to humiliate him. The provisions of Section 3 of SC/ST Act are not at all attracted, neither the provisions of Section 66 of IT Act are attracted in this case. His custodial interrogation is not at all required. He is ready to join the investigation. No useful purpose would be served by detaining him in custody. Therefore, it is urged that the appeal deserves to be allowed.

5. Status report has been filed by respondent No.1- State. It is argued by learned State counsel that there are specific allegations against the appellant that on social media platform, he uttered caste related remarks against the complainant and also insulted him by saying that he was a fraudster and a thief and also by saying that he had committed fraud with many people by collecting money while using the name of his dead father. It is argued that the provisions of Section 3 of SC/ST Act are *prima facie* attracted in the case as the appellant by calling the respondent No.2-



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complainant as '*chamar*' on social media platform, intended to insult and humiliate him within public view. Therefore, it is argued that the provisions of Section 18 of SC/ST Act were attracted in this case and learned Special Court had rightly dismissed the application moved by the appellant. With these broad submissions, it is urged that the appeal does not deserve to be allowed.

6. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

7. The allegations against the appellant are that he had insulted the respondent No.2-complainant within public view rather to be precise before social media platform by calling him by the name of his caste i.e. as '*chamar*' and then by saying that he was a fraudster and a thief involved in the business of committing frauds with others. The appellant is making prayer for extending him benefit of pre-arrest bail. As per Section 18 of the SC/ST Act, nothing in Section 438 of Code of Criminal Procedure shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the provisions of this Act. Undisputedly, it is a well settled law that anticipatory bail can be granted, if a *prima facie* case for commission of offence under the SC/ST Act is not made out or if it can be shown that the allegations were false and in such a situation the provisions of Section 18 of the Act would not apply. Reference in this regard can be placed on ***Dr. Subhash Kashinath Vs. State of***

Maharashtra (2018) 6 SCC 454 and ***Prathvi Raj Chauhan Vs. Union of***



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India (2020) 4 SCC 727, wherein it was observed so. However, the question that arises for consideration in this case as to whether the provisions of Section 3 of SC/ST Act are *prima facie* attracted in this case or not? In **Swaran Singh and others Vs. State through Standing Counsel and another (2008) 8 SCC 435**, it was observed by Hon'ble Supreme Court that calling a member of the schedule caste as '*chamar*' with intent to insult or humiliate him in a place public view under Section 3(1)(x) of the Act (old Act) and whether there was intent to insult or humiliate by using the word '*chamar*' will ofcourse depend on the context in which it was used. In **Chandra Poojari Vs. State of Karnatka, 1998 Cri. LJ 53**, High Court of Karnataka had observed that merely calling someone by his caste did not attract the provisions of SC/ST Act. It has to be proved that the accused was aware that the complainant belonged to that caste and was also conscious of the fact that the act was committed knowing that the victim belonged to the scheduled caste. The prosecution has also to prove *mens rea* to insult the complainant by calling him by that name. A recording of the audio conversation which is shown to have taken place between the present appellant and one Ranjeet Singh has been given by learned counsel for respondent No.2 to this Court which has been heard in the Court. On hearing the same, this Court is of the *prima facie* opinion that by addressing the respondent No.2- complainant as '*chamar*' and then by saying that he was a fraudster and a thief, the appellant intended to humiliate him within public view. As all these utterances are shown to have been made on social media platform the conversation so recorded had reached at the hands of the

complainant through someone and hence it can reasonably be presumed that this conversation was recorded to be in the domain of the public, thereby attracting the provisions of Section 3(1)(r) & 3(1)(s) of the SC/ST Act. As such, the bar as created under Section 18 of the Act is certainly attracted in this case. The learned Special Court by dismissing the application of the appellant, in view of these facts, therefore, cannot be stated to have committed any illegality. Accordingly, finding no reason to interfere with the order as passed by the learned Special Court, the same is upheld. The appeal is dismissed and it is held that since the provisions of commission of offence under Section 3(1)(r) & 3(1)(s) are shown to have been *prima facie* attracted in this case, therefore, the appellant is not entitled to grant relief of release on pre-arrest bail.

8. It is, however, clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main appeal has been dismissed, pending application, if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

12th September, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No