



2024:DHC:8705-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 6th November, 2024
+ **CRL.A. 171/2022 & CRL.M.A. 22351/2024**
SANJEEV KUMARAppellant
Through: Appellant in person.
versus
STATE OF NCT OF DELHI & ORS.Respondents
Through: Mr. Aman Usman, APP for the State.
Mr. Rajat Mangla and Ms. Surbhi
Singla, Advocates for R-2
(M-8860088366).

5 AND
+ **CRL.A. 160/2023, CRL.M.A. 4246/2023, 33544/2023, 1883/2024,
8342/2024, 13335/2024, 13336/2024, 17059/2024, 21322/2024 &
21323/2024**
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8860088366).

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA
JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.

CRL.A. 171/2022 & CRL.A. 160/2023

2. These are two appeals filed by the Appellant- Sanjev Kumar under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter '**SC/ST Act**'). The aforesaid appeals arise

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CRL.A. 171/2022 & CRL.A. 160/2023

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out of **Complaint Case no. 592/2018** before the Id. ASJ, South, Saket Courts.

3. In **CRL.A. 171/2022**, the Appellant challenges the interim order dated 16th October, 2021, passed by the Id. ASJ, South, Saket Courts, in the aforesaid complaint case, whereby the application seeking summoning of SI Satish Lohia as an accused under Section 319 of CrPC was dismissed.

4. Thereafter, in **CRL.A. 160/2023**, the final order dated 26th November, 2022 passed in the same **Complaint Case No. 592/2018** has been challenged by the Appellant. As can be seen from the said final order, the Id. ASJ has dismissed the complaint and discharged the accused - Shyam Yadav, therein.

CRL.A. 171/2022 & CRL.M.A. 22351/2024

5. In view of the fact that **CRL.A. 171/2022** has been filed against an interim order dated 16th October, 2021, passed in the aforesaid complaint, the said appeal is infructuous, since the complaint itself has been finally dismissed on 26th November, 2022. No further orders are called for in the said appeal.

6. Accordingly, **CRL.A. 171/2022** is disposed of as infructuous. Pending applications, if any, are also disposed of.

CRL.A. 160/2023 & CRL.M.A. 4246/2023, 33544/2023, 1883/2024, 8342/2024, 13335/2024, 13336/2024, 17059/2024, 21322/2024 & 21323/2024

7. It is the case of the Appellant that he is a practicing advocate belonging to the SC/ST community. It is stated that on 31st May, 2017, a call was received by Appellant from an unknown number, identifying himself as Mr. Shyam Yadav (Respondent No. 2 herein), who allegedly abused and made casteist remarks against the Appellant. It is further alleged that the said caller informed the Appellant that he and his companions are waiting at the



Karkardooma District Court and threatened to kill the Appellant. The Appellant is stated to have complained to the police authorities on the same day through a call at '100' number, and accordingly, the concerned I.O. from PS Hauz Khas visited the premises of the Appellant.

8. Further, it is alleged that again on 4th June, 2017, the Appellant received a phone call from one Mr. Sunil Yadav, who abused and made casteist remarks against the Appellant. The Appellant is stated to have reported the said call to the concerned police authorities. However, it is alleged by the Appellant that despite his complaints no action was taken by the concerned investigating officer.

9. Accordingly, on 13th March, 2018 the Appellant filed a complaint under Section 200 of CrPC before the Id. MM, South, Saket Courts, alleging offences under Section 499/500/506/34/120-B of IPC and Section 3 & 4 of the SC/ST Act. The Appellant *vide* the said complaint also sought initiation of departmental inquiry against the concerned I.O. for not registering F.I.R. against the accused persons. The said complaint was returned to the Appellant with the direction to file the same before the Sessions Court, and on 7th July, 2018, **Complaint Case No. 592/2018** came to be registered before the Id. ASJ-02, South, Saket Court. The Appellant had also filed an application under Section 156(3) of CrPC seeking registration of FIR in his complaint.

10. An Action Taken Report (hereinafter "**ATR**") dated 27th September, 2018 authored by ACP, PS Hauz Khas, was filed before the Id. Session Court, as per which, during the enquiry, statements of the accused, as also the wife of the Appellant, were recorded. It is also stated that the Appellant is having matrimonial disputes with his wife, and the Appellant attempts to insult and provoke any person who befriends his wife for helping her. It was concluded



from the same that the allegations of the Appellant are not substantiated. The relevant portion of the said report are as under:

*“**Conclusion.** As per enquiry conducted so far, it can be concluded that at the time of telephonic conversation, the alleged and the complainant were in the room. The complainant's wife was present with him, who told that she has not heard any voice from the person who was talking with her husband but her husband was using filthy and objectionable language. The alleged has accepted that he has used the derogatory words to the complainant but he never met the him in his life. He didn't know that the complainant belong to SC/ST category. The alleged further stated that the complainant provoked him to use filthy language. Further, on the complaint of Smt. Alka a case vide FIR No 0093 u/s 498A/323/504/506/509/406/342 IPC PS Ghaziabad (U.P.) has been registered against the complainant (Sanjeev Kumar) and investigation is in progress.*

From above it can be concluded that there a matrimonial dispute between complainant (Sanjeev Kumar) who is practicing advocated by profession, and wife Smt Alka, who so ever befriended with Smt Alka for her help, the complainant Sanjeev gets infuriated and try to insult them and then provoke. Here whatever has happened is not in public view. Further the alleged persons have never met him and the alleged Shyam Yadav even does not know about the cast of complainant Sh. Sanjeev Kumar.

***From the above the allegations levelled by complainant Sanjeev Kumar could not be substantiated.**”*

11. On 12th October, 2018, the Id. Sessions Court heard the Appellant on his application under Section 156(3) of CrPC, and dismissed the same while observing as under:



“Heard. The complainant very much stated that his allegations of telephonic conversations is substantiated through this report. The accused Shyam Yadav made caste remarks, therefore FIR is required to be registered for commission of cognizable offences. Apex court in case titled 'Ramdev Food Products Vs. State of Gujarat, 2015 (6) SCC 439, held that the directions u/s 156(3) Cr.P.C to be issued by the Magistrate only after due application of mind. Therefore, the direction under section 156(3) Cr.P.C is not mechanical act and this court has to see the entire material in its true perspective. There is background dispute of husband and wife, and as per the complaint that the accused do not know the complainant. Further, as per the ATR the incident did not occur in public view and the accused do not know even about the caste of the complainant, therefore in these circumstances, I do not find it proper to direct the police to register FIR u/s 156(3) Cr.P.C. Hence, without prejudice to the merits of allegations the application u/s 156(3) Cr.P.C stands dismissed.

However, list the matter for pre-summoning evidence for 01.11.2018.”

12. The statement of the Appellant was recorded before the Session Court on 1st November, 2018 and summons was issued only to Mr. Shyam Yadav - Respondent No. 2 herein on 16th November, 2018. The said Respondent No. 2 was granted bail on 22nd January, 2019 and the matter was directed to be listed for recording of pre-charge evidence.

13. Arguments on charge were heard in part on 3rd December, 2019 and 17th January, 2020. The Appellant filed another application dated 28th January 2021, seeking liberty to place on record documents from complaint and divorce proceedings initiated by him against his wife before the Saket and



Ghaziabad District Courts, respectively. The said application was considered by the Sessions Court on 28th January, 2021, however, on the said date the Appellant behaved rudely against the Id. ASJ stating that he has no faith in the Court and that his case should be transferred to another Court. Considering the said submissions the Id. ASJ directed the matter to be placed before the Id. Principal District and Sessions Judge, South, Saket District Court. The said order is important and reads as under:

“At this stage, complainant who is an Advocate by profession has again started behaving harshly and submitted that for last many hearings, nothing was done in the present case. He submitted again he does not have any faith in this court and his matter may be transferred to some other court. Earlier also, complainant has been again and again advised to follow proper legal procedure for his remedies, however, he keeps on filing applications seeking various reliefs without following the proper procedure.

In view of the submissions made as the complainant does not seem to have faith in this court, I do not want to proceed further with the trial of the present case.”

14. Vide order dated 29th January, 2021 the Id. Principal Judge transferred the matter back to the Id. ASJ. On 5th March, 2021, the Appellant presented an application for summoning the concerned IO, however, the same neither contained any grounds nor was it accompanied with an affidavit. Accordingly, the Id. ASJ dismissed the said application with liberty to file a proper application. The Appellant filed another application dated 26th March, 2021 under Section 319 of CrPC making various allegations of neglect of duty and criminal conspiracy against the concerned IO. The concerned IO was issued summons on 23rd September, 2021, by the Id. Sessions Court for



making submissions, if any, in respect of the said application. Both the Appellant and the concerned IO were heard by the Session Court on 6th October, 2021 and *vide* order dated 16th October, 2021, the application under Section 319 of the Appellant was dismissed by the Sessions Court. It was observed by the Id. Sessions Court that *vide* order dated 16th November, 2018 after recording of pre-summoning evidence the Court had only issued summons to Respondent No.2 and the concerned IO was not summoned. The said order had attained finality as it was never challenged by the Appellant. The relevant portion of the said order is as under:

*“10. After considering the statement of the complainant and the record, my learned predecessor held vide Order dated 16.11.2018 that prima facie offence punishable under section 3(1)(x) of the SC & ST Act and section 506 IPC was made out. **Accused Sunil Yadav and Shyam Yadav were directed to be summoned. SI Satish Lohia was not summoned as an accused. Complainant did not challenge this Order. After more than two years, the complainant has moved the present application for summoning SI Satish Lohia as an accused under section 319 CrPC.***

[...]

*14. **As already observed above, after recording of pre summoning evidence and considering the record, the Court did not find any ground to summon SI Salish Lohia as an accused in the present case. The said Order dated 16.11.2018 of my learned predecessor was not challenged by the complainant. Now the complainant can not be allowed to circumvent the said order by resorting to Section 319 CrPC. Record as discussed above also shows no ground to proceed against SI Satish Lohia.***

15. In view of the above discussion, the Court does



not find any ground to summon SI Satish Lohia as an accused in the present case. The application dated 26.03.2021 read with application dated 05.03.2021 of the Complainant is dismissed.”

15. The Appellant challenged the said order dated 16th October, 2021 *vide CRL. A. 171/2022*. However, as noted hereinabove, the said appeal is now infructuous.

16. In the meantime, the proceedings before the Id. Sessions Court continued and the Appellant was cross-examined on 13th April, 2022, and 21st July, 2022. The Sessions Court on 23rd November, 2022, played the alleged call recordings on the pen drive submitted by the Appellant. Thereafter, on 26th November, 2022, the Id. Sessions Court discharged the Accused/Respondent No.2 after observing that there is no sufficient material to frame charges against the said Accused for offences punishable u/s 3(1) of the SC/ST Act, 1989 or u/s 506 IPC. Further, it was held that *prima facie*, there is absolutely no material on record to frame charges for the offences punishable u/s 120B/499/500/442/504/34/141 IPC or any other offence. The relevant portions of the said order read as under:

“29. In the present case, there is nothing on record giving rise to any suspicion that the said two calls were made from a public place i.e. Karkardooma Courts in public view. It is also a settled law that if two views are possible and one gives rise to suspicion only, as distinguished from grave suspicion, the Trial Court will be empowered to discharge the accused.

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31. The complainant has failed to make out a prima facie case in his favour that there was an intentional insult and that it was done in a public place within public view. In nutshell, if the audio recordings placed on record by the complainant are accepted as it is, prima facie, the call at 11:39 AM on 31.05.2017 was not made from Karkardooma Courts and admittedly the phone call dated 04.06.2017 was not made by same person who had made the calls dated 31.05.2017. It is also apparent from audio recordings and submissions of the complainant that tempers were high on account of matrimony related disputes and allegations. From the transcript and audio recording of call dated 04.06.2017, it also appears that the complainant had also made several calls at the phone number of accused which prompted the call dated 04.06.2017. It appears that the complete facts in respect of the phone calls including the immediate events that preceded the calls dated 31.05.2017 and the immediate events that took place between 31.05.2017 to 04.06.2017 have not been brought forth by the complainant.

32. The complainant has also sought to invoke Section 500 IPC alleging defamation on the ground that the accused had called him from Karkardooma Courts in presence of public and had used abusive words including casteist slurs. As already discussed above, the transcript of two phone calls at 12:36 PM and 12:37 PM on 31.05.2017 made from Karkardooma Courts show that the caller did not use any abusive language for the complainant. No casteist slur was hurled at that time.

33. The audio recordings also show that the caller was in an agitated state of mind which led to use of angry words. Be that as it may, prima facie,



the threats are not of such nature which would have caused alarm to the complainant as the complainant himself, in the heat of moment, challenged the caller to meet him at Karkardooma Courts and later at his house or police station. There is also no assertion of the complainant that the threats caused any alarm to him or caused him to do an act which he was legally bound to do or omitted to do any act which he was legally entitled to do. Further, the call dated 04.06.2017 does not appear to have been made by the accused. It has been held by Hon'ble Supreme Court of India in *Manik Taneja Vs. State of Karnataka (2015) 7 SCC 423* that mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of Section 506 IPC.

34. There is also nothing on record which would lead to a prima facie conclusion that there was any attempt to extort any money from the complainant through these phone calls. Further, Karkardooma Courts is a public place. Entry of accused there on 31.05.2017 does not constitute house trespass u/s 442 IPC.

35. In view of above discussion, the Court does not find sufficient material to frame charge against the accused for the offences punishable u/s 3(1)(x) of the SC/ST Act, 1989 or u/s 506 IPC. Prima facie, there is absolutely no material on record to frame charge for the offences punishable u/s 120B/499/500/442/504/34/141 IPC or any other offence. The case laws relied upon by the complainant do not help him in any way."

17. The aforesaid order dated 26th September, 2022 has been challenged by the Appellant vide *CRL. A. 160/2023*.



18. The Appellant has been heard. The Id. APP for the State has also made his submissions. The Court has also perused the records and examined the impugned order of the Id. Sessions Court.

19. In the present matter, the incident which was alleged to have taken place on 31st May, 2017, by the Appellant, was duly considered by the Id. ASJ. The Court heard the relevant audio clips placed on record by the Appellant and came to the conclusion that out of the 5 audio clips only two calls were made from Karkardooma Courts. The calls made at 12:36 PM and 12:37 PM on 31st May, 2017, are the said two calls, wherein there was no casteist slur used by the caller. Insofar as the remaining audio clips are concerned, the Id. ASJ has analyzed the same and has come to the conclusion that remarks which were exchanged on the said calls were pursuant to the ongoing family and matrimonial disputes between the parties. Further, it is held that the use of the alleged casteist terms appears to have been made in private telephonic conversations and not in the calls which were made from the Karkardooma Court. Since there was no comment made in the public gaze, the Id. ASJ has rejected the complaint of the Appellant alleging offences under the SC/ST Act.

20. The Court has considered the finding of the Id. ASJ and is of the opinion that the Id. ASJ having gone into all the 5 audio calls in detail and having captured the crux of the same has applied the correct law and principles under the SC/ST Act. The Id. ASJ has referred to the Punjab & Haryana High Court in the judgement titled as *Pardeep Kumar v. State of Haryana & Anr., CRR No. 1354 of 2019 (O&M)* and *CRR No. 1574 of 2019 (O&M), (decided on 14th May, 2020)*, where the Court was dealing with the allegations similar to the present case i.e., the accused persons therein had



made casteist remarks on the phone against the Complainant therein. The High Court has observed as under:

“To constitute the offence under the Act, it must be alleged that the accused intentionally insulted or intimidated with intention to humiliate a member of Scheduled Caste or Schedule Tribe in any public place within public view. In the present case, it is alleged that the offence has been committed by the petitioners by using the caste based remarks over a mobile phone call to the informant, or a member of Scheduled Castes, of which there are no records. Once it’s admitted that the alleged conversation over the mobile phone was not in a public gaze nor witnessed by any third party, the alleged use of caste words cannot be said to have been committed within the public view.

The allegations against the petitioners-accused are that caste based remarks were made by them on mobile phone and when Devi Dayal along with other persons went to the petitioners asking them to respect respondent No. 2, who is a Sarpanch, at that moment the complainant was not present. There is a lot of material on record to indicate that Jasmer Singh father of Pardeep Kumar (one of the accused) had raised finger towards the working of respondent No. 2 as Sarpanch and also against Devi Dayal and this cannot be ignored that on the application of said Jasmer Singh, grant of Rs. 7.00 lacs had to be returned by the Gram Panchayat.

Merely uttering such wrong words in the absence of any public view does not show any intention or mens rea to humiliate the complainant who besides being Sarpanch, belongs to Scheduled Caste community. It would not, thus, ipso-facto,



constitute acts of commission of offence, which are capable of being taken cognizance under the SC and ST Act, 1989.

* * * *

Therefore, in view of the above, it is evident that the prosecution has failed to make out a prima facie case for commission of offence punishable under Section 3 of SC & ST Act.

Moreover, the basic ingredients of the offence in the FIR are that there must be intentional insult, secondly the insult must be done in a public place within public view, which is not in the present case. Thus, the essential ingredients which must be fulfilled, are not found in the present case. Since these are the penal provisions, the same are to be given a strict construction and if any of the ingredients are found lacking, it would not constitute the offence under the SC/ST Act.

Since no offence under Section 3 of the SC & ST Act is found to be made out, the offence under Section 506 IPC read with Section 34 IPC, which stemmed out of the alleged offence under Section 3 of the SC and ST Act, is also not made out.”

(emphasis supplied)

21. Further, the Supreme Court, recently in a judgement, has discussed the necessary ingredients to constitute an offense under Section 3 of the SC/ST Act in the case titled as **Priti Agarwalla And Others v. The State of GNCT of Delhi And Others, 2024 INSC 437**. The discussion and observations of the Supreme Court are reproduced hereunder:



“19. Sections 3(1)(r) and 3(1)(s) of the Act of 1989 read thus:

“3. Punishments for offences of atrocities- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxx xxx
xxx xxx

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

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

19.1 Section 3(1)(r)

Section 3(1)(r) makes an intentional insult or intimidation intended to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view an offence. Structured in the golden rule of interpretation, this section flows as follows:

- i. Intentionally insults or intimidates.**
- ii. With intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe.**
- iii. In a place within public view.**

19.2 Section 3(1)(s)

- i. Abuses any member of a Scheduled Caste or a Scheduled Tribe.*
- ii. By caste name.*
- iii. In any place within public view.*



20. The cumulative effect of the structured application to a given situation is that the intentional insult or abuse coupled with the humiliation is made in any place within public view. The expression “in any place within public view” has an important role to play in deciding whether the allegation attracts the ingredients of an offence or not, and has been the subject matter of consideration in the following decisions:

(1) Swaran Singh (supra)-

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

(2) Daya Bhatnagar & Ors. v. State -

“19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(1) of the Act enumerate various kinds of



atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending “utterances” have been made punishable. **The Legislature required ‘intention’ as an essential ingredient for the offence of ‘insult’, ‘intimidation’ and ‘humiliation’ of a member of the Scheduled Casts or Scheduled Tribe in any place within ‘public view’. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof.** The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. **Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.”**

(3) *Pramod Suryabhan Pawar v. State of Maharashtra (before the High Court of Bombay) -*

“17. Requirement of section 3(1)(x) of the old Act is intentional insult and intimidation with intent to humiliate the person belonging to Scheduled Caste or Scheduled Tribe in any place within public view. Messages sent on whatsapp cannot be said to be an act of intentional insult or intimidation or an intent to humiliate in public place within public view. As such it is prima facie seen that no offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted in the case in hand.”

22. It is clear from the aforesaid that the settled position in law is that the offense under Section 3 of SC/ST Act will be made out if any casteist slur is made in the public gaze alone and not otherwise. The existence of two



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essential ingredients are imperative: (1) it must be an intentional insult and (2) it must be done in a public place within the public view. From the facts and circumstances in the present case, it is evident that the said ingredients are not satisfied in the present case.

23. Moreover, the Appellant is a habitual litigant who has filed several complaints against various persons including his wife, his in-laws, close associates of his wife, police officials, judicial officers, Judges of this Court etc., Today he has also been convicted of criminal contempt and sentenced to four months simple imprisonment in **CONT. CAS.(Crl) 5/2024**. He has clearly converted a matrimonial dispute into multifarious criminal complaints, criminal cases, petitions, revisions, writs etc., occupying substantial judicial time and resources. The present case is another manifestation of the same.

24. Under such circumstances, this Court is of the opinion that the impugned order of the Id. Sessions Court dismissing the complaint of the Appellant, does not warrant any interference.

25. Accordingly, **CRL.A. 160/2023** is dismissed and disposed of.

26. Pending Application(s), if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

NOVEMBER 06, 2024/bsr/pr/ms
(corrected and released on 11th November, 2024)

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