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

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Date of Decision: 21st March, 2024

+ W.P.(CRL) 1852/2022 and CRL. M.A. 15977/2022

V. P. KOTHIYAL

..... Petitioner

Through: Mr. Brijender Chahar, Senior
Advocate with Mr. Aniruddh Joshi &
Mr. Ramesh Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC
(Crl.) for State with ACP Ashish,
Rajouri Garden and Insp. Yogendra,
PS: Timarpur.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.206/2022 dated 23.03.2022 registered at PS: Inderpuri under Section 3(1)(r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act, 1989') and all proceedings arising therefrom.

2. Brief facts to the extent relevant for adjudication of the present petition and as stated in the petition are that Petitioner was working at Indian Council for Agricultural Research ('ICAR') for almost 22 years with an impeccable service record and retired as Director (Works) on 30.04.2022.



Respondent No.2 was also employed in the same office and was subordinate to the Petitioner. As per the case of the Petitioner, in November, 2021, he called one of his juniors, M.S. Chauhan, UDC, to know the status of settlement of accounts of the works pertaining to IARI, when he found that no work had been done in this regard and Petitioner accordingly, requested Respondent No.2 to guide Mr. Chauhan. Respondent No.2 refused to comply with the request and angrily responded that he was not bound to follow the instructions given by the Petitioner as they were in the same grade. Petitioner came back to his chamber thereafter, where Rakesh Kumar Saha, DEO and Jagannath Singh, STA, IARI were also present. Respondent No.2 followed him to the chamber and started shouting that Petitioner was a corrupt officer and an arrogant person and after abusing, left the chamber. On 30.04.2022 Petitioner retired on superannuation and came to know later that Respondent No.2 had filed a complaint against him.

3. Petitioner received a notice dated 31.05.2022 under Section 41(A) Cr.P.C. for appearance before ACP, PS: Punjabi Bagh and learnt that an FIR was registered against him. Petitioner explained that the allegations were false and only to harass the Petitioner. Respondent No.2 subsequently approached the Petitioner and offered to withdraw the proceedings, if Petitioner paid a sum of Rs.16,00,000/- to him, failing which he would go to jail. Petitioner joined investigation, as and when he was called for the same.

4. Petitioner avers and highlights that the complaint was motivated and was filed on account of professional jealousy, which is evident from the fact that Respondent No.2 had challenged the appointment of the Petitioner to the post of Director (Works) by direct recruitment *albeit* unsuccessfully. The contents of the FIR on a plain reading do not make out an offence under



Section 3(1)(r) and (s) of the Act, 1989 and therefore, Petitioner has approached this Court, seeking quashing of FIR as the criminal proceedings are a sheer abuse of the process of law and are a source of harassment to him at a stage of life when he should be leading peaceful retired life.

5. Learned Senior Counsel appearing on behalf of the Petitioner contends that the allegations made in the FIR do not constitute an offence under Section 3(1)(r) and (s) of the Act, 1989. From a bare reading of the FIR, it is clear that Respondent No.2 does not state as to where, at what time and in whose presence, the alleged humiliating words were uttered by the Petitioner and therefore, it cannot be said that the alleged insulting words were uttered within 'public view', which is one of the essential ingredients of Section 3(1)(r) and (s). The Supreme Court in **Hitesh Verma v. State of Uttarakhand and Another, (2020) 10 SCC 710**, observed that offence under the Act, 1989 is not established merely on the fact that the informant is a member of Scheduled Caste. Unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe, for the reason that the victim belongs to such a caste, no offence is made out. In **Mukesh Kumar Saini & Ors. v. State (Delhi Administration), 2001 SCC OnLine Del 812**, it was held that where the humiliating words were not uttered in public view, ingredients of the offence under Section 3(1)(x) [now Section 3(1)(r) and (s)] were not made out. Reliance is also placed on the judgment of this Court in **Ashwani Kumar v. State & Anr., Writ Petition (Crl.) 1593/2006**, decided on 09.01.2009, for the same proposition.

6. It is further contended that the complaint leading to registration of present FIR was motivated and was filed with an intent to take vengeance, on account of professional jealousy. Respondent No.2 had challenged the



advertisement issued by ICAR for filling up the post of Director (Works) by direct recruitment, on the ground that no direct recruitment could take place on the said post and it should be filled on seniority-cum-fitness basis and that Respondent No.2 was the seniormost in the feeder cadre and fulfilled all essential qualifications as well as experience for the post. The Original Application filed by Respondent No.2 being OA No.38/2000, in which the Petitioner was Respondent No.4, was dismissed by Central Administrative Tribunal, Principal Bench (hereinafter referred to as the 'Tribunal'), on 08.12.2000, holding that Respondent No.2 did not possess the requisite experience in the feeder cadre for promotion to the post of Director (Works) and nor was he selected by the Selection Committee and merely holding current charge of the post did not entitle him to be appointed on regular basis. Review filed against the judgment was also dismissed and therefore, it is clear that the complaint was filed to victimise and harass the Petitioner.

7. Learned Senior Counsel argues that the Supreme Court in ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335***, laid down guidelines to be followed by the Courts while exercising inherent powers under Section 482 Cr.P.C. and categorised cases, by way of illustration, where the power could be exercised and one category of cases is where a criminal proceeding is manifestly attended with *malafide* and/or is maliciously instituted with an ulterior motive for wreaking vengeance on the accused. The present case, it is urged, fits into this category and therefore, Petitioner calls upon this Court to exercise the inherent power and quash the FIR. Attention of the Court is also drawn to the judgment of the Coordinate Bench of this Court in ***Deepa Bajwa v. State & Ors., (2004) 77 DRJ 725***, where the Court has observed that a complaint, on the basis of which the



complainant seeks registration of an FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement.

8. Ms. Rupali Bandhopadhyia, learned ASC (Crl.), on the other hand, relying upon the status report argues that the FIR cannot be quashed merely on a plain reading of its contents as an FIR is not an encyclopaedia and its contents cannot form the only basis to determine at this stage if the essential ingredients of an offence are made out. Charge sheet has been filed and it is open to the Petitioner to argue before the Trial Court at the stage of framing of charge and if he proves his innocence, he shall be discharged. It is also stated that one amongst the three eye-witnesses of the alleged incident has supported the case of the Complainant and has given a statement that accused reached out to him and threatened him with dire consequences, if he did not change his stand.

9. Learned counsel for Respondent No.2, on the other hand, to begin with urges that Respondent No.2 was not party to the case before the Tribunal and therefore, there is no question of any professional rivalry or the present complaint being motivated. He further states that the Court ought not to place reliance only on the FIR to come to a conclusion that ingredients of the offence with which Petitioner is charged, is not made out and this is important because Respondent No.2 had given all details of the time and place of incident as well as of the persons in whose presence the humiliating words were uttered by the Petitioner, but for some unknown reason, the police chose not to incorporate the details in the FIR and Respondent No.2 cannot be blamed for this omission. The last submission is strenuously



refuted by Ms. Bandopadhyaya, who states that the FIR is a verbatim copy of the complaint and the *rukka* and there was no reason for the police to have omitted any detail from the complaint. To support this plea, learned ASC hands over a copy of the complaint to the Court for perusal and comparison. Copy of the complaint is taken on record, with the consent of the parties.

10. I have heard learned Senior Counsel for the Petitioner, learned counsel for the Complainant and learned ASC for the State.

11. By this petition, Petitioner seeks quashing of an FIR registered under Section 3(1)(r) and (s) of the Act, 1989, triggered by the complaint made by Respondent No.2. The first question that arises for consideration before this Court is whether this Court should exercise its inherent jurisdiction under Section 482 Cr.P.C. at this stage, to terminate the pending criminal proceedings by quashing the present FIR. The answer to this question lies in the observations of the Supreme Court in ***Bhajan Lal (supra)***, wherein the Supreme Court elucidated guidelines to be followed by the Courts while exercising inherent powers under Section 482 Cr.P.C. Various categories were carved out, by way of illustration, in paragraph 102 of the judgment, wherein such power could be exercised, either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One such category of cases is where a criminal proceeding is manifestly attended with *malafide* and/or where the proceeding 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. Relevant paragraph of the said judgment is extracted hereunder for ready reference:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of



the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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."

(Emphasis supplied)"

12. Therefore, it is palpably clear that if the Petitioner is able to bring his



case in any one of the categories, illustratively carved out by the Supreme Court, this Court can exercise inherent powers under Section 482 Cr.P.C. and quash the FIR, after examining its contents. Petitioner has categorically averred that Respondent No.2 was working as his subordinate in the same office *albeit* Respondent No.2 states that they were in the same grade. Petitioner has urged that there was a professional rivalry between the two relating to appointment to the post of Director (Works), to which the Petitioner was appointed. Contrary to the argument of learned counsel for Respondent No.2, copy of the order dated 08.12.2000, passed by the Tribunal in OA 38/2000, reflects that Respondent No.2 was the one who had filed the Original Application, laying a challenge to the action of official Respondents to fill up the post of Director (Works) by direct recruitment and Petitioner was impleaded as Respondent No.4. From a reading of the order, it become apparent that Respondent No.2 was an aspirant to the post, but according to the Department he was not qualified despite being seniormost in the feeder cadre and therefore the post was advertised to be filled by direct recruitment. The Tribunal held in favour of the Respondents observing that Respondent No.2 did not have the requisite qualifications and there was thus no embargo in filling the post through direct recruitment to get the best talent. Pursuant to this advertisement, Petitioner was appointed and he admittedly retired as Director (Works). Petitioner has also placed on record copy of the order dated 29.01.2001 passed by the Tribunal, whereby review petition filed by Respondent No.2 was also dismissed. In these facts, there is merit in the contention of the Petitioner that the complaint filed under Section 3(1)(r) and (s) was motivated and actuated by malice, private and personal grudge and case of the Petitioner fits into sub-para (7) of



paragraph 102 of the judgment of the Supreme Court in **Bhajan Lal (Supra)** and it is, therefore, open to the Court to examine the FIR and the background facts to ascertain whether it would be in the interest of justice and to prevent abuse of the process of Court that the criminal proceedings be put to an end by quashing the FIR.

13. Before proceeding further, it would be pertinent to closely look at the contents of the FIR, in view of the contention of the Petitioner that the allegations in the FIR do not constitute an offence under Section 3(1)(r) and (s) of the Act, 1989. For ready reference, relevant paragraphs of the FIR are extracted hereunder:-

"I am working as CTO (T-9) in ICAR from last 24 years, my performance is outstanding, I joined the government job as direct class I group "A", originally belongs to the civil services. I am suffering and tolerating the harassment of SA V.P. Kothiyal from last 20 years. Undersigned was holding the post of T-9 (Director works) for more than a year. Rather than continuing and regularising the undersigned, the council advertised for filling the T-9 post for reserved category. The post was for reserved category. Later the post of T-9 was de reserved, stating the false fact that the T9 post is a single post. There are several posts of T-9 in the council, the post of T-9 was not a single post. At the reserved post Shri V.P. Kothiyal was appointed conditionally and illegally. A fair enquiry against the appointment of Shri V.P. Kothiyal CTO may be ordered. The appointment of Shri V.P.Kothiyal as T-9 (Director Works) is illegal.

2. In the corruption charges. Central Vigilance Commission (CVC) ordered the enquiry against Sh V.P. Kothiyal on the recommendation of CVC he was transferred to CRRRI Cuttack, Odissa and removed/ disassociated from the work/duties of construction of Auditorium at NASC complex, PUSA, New Delhi. Now he himself, keeping in dark the seniors, he issued the order himself and again started looking after the work of Auditorium. What a vested interest of Shri V.P. Kothiyal that should be inquired.

3 Shri Kothiyal is continuously working on same seal/post of managerial post of T-9 (Director works) from last 20 years. This is against the Administrative rules and public interest. Serving and posted for on managerial post for long time has developed the arrogance behaviour/attitude in Sh. Kothiyal, this also increases the chance of corruption.



4 The ICAR management with the approval of Secretary (OARE) and D.G. ICAR vide order number EC/3-14/ 2007 dated 13/5/19 distributed the duties/work of the Works Division for streamlining the division, better output, fast vetting and timely completion of Works of ICAR, better technical advice and monitoring of works projects. The Duties and work of Works division was distributed amongst the three eligible officers of same Grade pay of T-9 PB III level 12: as below. (a) Shri V.P. Kothiyal Zone I, (b) Shri S.P Samuel Zone II, (C) Shri S.P. Manchanda Zone III. By this distribution of works of Works division resulted the better and fast vetting of works projects timely completion of works project of ICAR better co-ordination with CPWD etc. This distribution of works of Works division resulted the better and fast vetting of works projects. timely completion of works project of ICAR, better coordination with CPWD. The performance of all the three officer as mentioned above must be compared by their APAR of that period. S.P Samuel belongs to the Scheduled Tribe performed best to the almost satisfaction of the seniors. After the retirement of Shri Manchanda, and for harassment, atrocity, harm the undersigned. not to allow the smooth functioning and against the council and public interest. Shri V. P. Kothiyal issued the order without taking the prior approval of Secretary (DARE) and D.G. ICAR. He has taken all the works with him and put the undersigned of same grade pay under himself. He just to harm, harassed and atrocity against undersigned Shri V.P. Kothiyal took back all the powers of undersigned and also ordered to work under him. He suppressed and harassed the talent and competency of under signed. This order of Kothiyal resulted the great harassment. depression, atrocity to undersigned elsewhere these orders are against the council and public interest and big, very big loss to our great nation. It is requested to resume the duties and powers of undersigned.

5. This harassment and atrocity order issued by Shri Kothiyal was very inhuman, he issued this order when, undersigned was suffering from Covid 19, very serious condition, on oxygen and was admitted in hospital

6. When undersigned requested Sh. Kothiyal please consider and in interest of all, please resume my duties, then he shouted on me in very insulting and degrading manner. He also challenged my talent and competency and addressed me by Adiwas, neech jati/lower caste.”

14. It would be useful at this stage to allude to the provisions of Section 3(1)(r) and (s) which read as follows:-

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

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

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

15. Reading of the aforesaid provision shows that the basic ingredients for constituting an offence are: (a) there must be an intentional insult or intimidation or abuse; (b) insult/intimidation/abuse must be with an intent to insult/intimidation/abuse a member of a scheduled caste or a scheduled tribe; and (c) the action must be within ‘public view’. In **Ashwani Kumar** (*supra*) this Court was dealing with a similar issue under Section 3(1)(x) [now Section 3(1)(r) and (s)]. It was held that provisions in the Section are penal in nature and have to be given a strict interpretation. Two propositions were laid by the Court i.e., *mens rea* is an essential ingredient of the offence and the humiliating words must be uttered in ‘public view’. Referring to the earlier judgments, the Court went into a detailed analysis of the expression ‘public view’ and finally held after perusing the FIR, that the alleged words were not uttered in ‘public view’ and therefore, the ingredients of Section 3(1)(x) of the Act, 1989 were not made out from the narration of the incident in the FIR and the complaint lacked material particulars. Court also rendered a finding that the complainant had a previous enmity with the Petitioner and had registered two FIRs against him, which could also be a reason for false implication. Court placed reliance on the decision of this Court in **Deepa Bajwa** (*supra*), wherein the Court observed that a complaint, on which complainant seeks registration of an FIR, must disclose essential ingredients of the offence and in case the complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled by obtaining additional complaint or supplementary statement. If such a course is



permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that the initial complaint does not make out the offence alleged for and it would thus be an utter abuse of the process of law. Relevant passages from the judgment in **Ashwani Kumar (supra)** are as follows:-

“7. The expression ‘intentional insult or intimidation with intention to humiliate’ contained in the aforesaid Section makes it crystal clear that *mens rea* is an essential ingredient of the offence and it must be established that accused had the knowledge that the victim was an SC/ST member and the offence was committed for that very reason. If a person is merely called by caste, it would not attract the provisions of SC/ST Act. There should be specific accusation of calling the person by caste with an intention to humiliate against the accused. Provisions contained in this Section are penal in nature and therefore, have to be given a strict interpretation. In case any of the ingredients are found to be missing or lacking, it would not constitute an offence under SC/ST Act.

8. In *Mukesh Kumar Saini and others v. State (Delhi Administration)* - (*supra*), wherein accused had uttered humiliating words to the complainant and his brother and FIR under Section 3(1)(x) of SC/ST Act was registered. The Court observed that as per the FIR, humiliating words were uttered by the accused while brother of the complainant was being dragged inside before the arrival of the neighbours, these words could not have been said to have been uttered in the public view and ingredients of the offence under Section 3(1)(x) of the SC/ST Act were not made out. This Court interpreted Section 3(1)(x) of SC/ST Act as below:

“7. The basic ingredients of the offence under Clause (x) of subsection (1) of Section 3 of the SC/ST Act are: (a) that there must be an “intentional insult” or “intimidation” with “intend” to humiliate SC/ST member by a non-SC/ST member; (b) and that insult must have been done in any place within the “Public view”. The use of expression “intentional insult or intimidation” with “intention” to humiliate, makes it abundantly clear that the *mens rea* is an essential ingredient of the offence and it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason. Merely calling a person by caste would not attract the provisions of this Act. There must be specific accusation alleged against each of the accused. Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating words may not be enough. This being a penal provision has to be



given a strict interpretation. If any of the ingredients is found lacking, it would not constitute the offence.....”

9. *Proposition of law thus is clear. Simply because Section 3(1)(x) of SC/ST Act finds mention in the FIR by itself cannot be a ground to conclude that prima facie an offence under the alone said Section of SC/ST Act has been made out. Judicial scrutiny of the documents in such like cases is permissible to evaluate whether the material relied upon by the prosecution revealed the existence of basic ingredients of the offence or not. For that limited purpose, the Court can sift and weigh the material placed before it, before examining the question whether on the allegations made in the FIR, prima facie any offence under Section 3(1)(x) of SC/ST act is made out.*

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14. *In Smt. Deepa Bajwa v. State & Ors. – (Supra) under such like circumstances, it was observed:*

“6. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence.”

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16. *Now it is to be seen if the words uttered by the petitioner were within ‘public view’. ‘Public view’ does not necessarily mean that there should be large number of persons present at the time of the incident. Even few members of the public can hear and view the offending words being used and in that case also the offence would be made out, provided other ingredients of the section are satisfied.*

17. *Expression “public” is a poli-morphus word which has different meanings, which is used as noun or as an adjective. As noun, “public” means a body of people at large; the community at large, without reference to the geographical limits of any corporation like a city, town or country, the people; the whole body politics, or all the citizens of the state. In other words, the word public does not mean all the people or most of*



the people nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Therefore, public means inhabitants of a particular place, may be all or few or the people of the neighbourhood. As an adjective, 'public' would have meaning upon the subjects to which it is applied. SC/ST Act has been enacted with a view to protect a weaker section of the society from various kinds of atrocities that might be perpetrated against SC/STs which find enumeration in Section 3 of the SC/ST Act as constituting an offence. Court has to keep in mind that offence under the SC/ST Act are quite grave and provide stringent punishment and therefore, stronger proof is required. Court has to adopt an interpretation which suppresses or evades the mischief which might have been played and advances the object of the Act. Therefore, 'public view' appearing in Section 3(1)(x) of SC/ST Act has to be interpreted to mean the presence of the public persons, however small may be, and those persons are 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 have to be excluded from the definition of 'public view'.

18. *In Daya Bhatnagar & Ors. v. State (supra) while in agreement with the interpretation put on the expression "public view" by B.A. Khan, J., in the said case on reference for interpretation of the expression "public view" appearing in Section 3(1)(x) of SC/ST Act by the Division Bench, while hearing the petition seeking quashing of the FIR registered under Section 3(1)(x) of the Act against the petitioners in the said case Sh. S.K. Aggarwal, J. reproduced the relevant portion of the views of B.A. Khan, J., in his order which reads:*

"I accordingly hold that expression within 'public view' occurring in Section 3(1)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

19. *In the reference public view was also further interpreted to mean:*

"Public view" envisages that public persons present there should be independent, impartial and not having any commercial or business relationship, or other linkage with the complainant. It would also not include persons who have any previous enmity or motive to falsely implicate the accused persons. However, merely because a witness, who is otherwise neutral or impartial and who happens



to be present at the house of the victim, by itself, cannot be disqualified.”

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21. *Essential ingredients of Section 3(1)(x) of SC/ST Act are not made out from the narration of the incident in the FIR and the complaint lacks material particulars. The prosecution cannot be allowed to fill in lacuna or deficiency by obtaining additional complaint or supplementary statement and thereafter proceed to register an FIR against the petitioner. Since complaint lacks essential ingredients to make out an offence under Section 3(1)(x) of SC/ST Act, it is a fit case for the Court to exercise its power under Article 226 of the Constitution of India read with Section 482 Cr.P.C. and quash the FIR and the proceedings initiated in consequence thereof.”*

16. From a conjoint reading of Section 3(1)(r) and (s) of the Act, 1989 and the observations of this Court in **Ashwani Kumar (supra)** and **Deepa Bajwa (supra)**, it is luminously clear that the Court while exercising jurisdiction under Section 482 Cr.P.C. can look into the allegations in the FIR to come to a conclusion whether the ingredients constituting the offence are made out. Indisputably, one of the essential ingredients of Section 3(1)(r) and (s) is that the insulting/intimidating/abusive words are uttered by the accused in any place within ‘public view’. Seen and read in this backdrop, reading of the FIR discloses that there is not a whisper by the Complainant as to where, when and in whose presence or and/or public view the alleged humiliating words were uttered by the Petitioner. In fact, the entire FIR is focused on prior disputes between the Complainant and the Petitioner, essentially pertaining to the appointment/promotion to the post of Director (Works) in the Department and towards the end in one line the Complainant refers to the words, allegedly uttered by the Petitioner. It is not the case of Respondent No.2 that when the alleged words were uttered even few people were present in the vicinity. Courts have held that ‘public view’ does not



mean that there must be a large number of persons present at the time of incident and the expression has been interpreted to mean presence of public persons, however small they may be and those persons are independent and impartial and not interested in any party. In other words, persons having any kind of relationship or association with the Complainant have to be excluded from the definition of the 'public view'. But the Section does require at least minimal presence of persons to constitute the offence. The present FIR fails to pass muster as not even a single person is named in the FIR, in whose presence the alleged words were uttered by the Petitioner, humiliating Respondent No.2. The allegations, in my considered view, do not constitute the ingredients of offence under Section 3(1)(r) and (s) of the Act, 1989. Faced with this, counsel for Respondent No.2 canvasses an argument, which though ingenious, cannot be accepted. It is urged that Respondent No.2 had furnished all details pertaining to the time, place and members of the public present, when the alleged words were uttered by the Petitioner, humiliating and insulting Respondent No.2, but the police did not include all the details. There are no allegations against any police official till date that the FIR was registered deliberately omitting some of the details of the complaint and significantly, learned ASC has handed over copy of the complaint, which on a close comparison negates this contention and shows that the FIR was a verbatim copy of the complaint. In fact, the contents of the complaint and the FIR are pointers to the professional rivalry and the service disputes between the Petitioner and Respondent No.2, the motive for the complaint. As held by the Supreme Court in **Bhajan Lal (supra)**, continuing with malicious complaints or those lodged with *malafide* intent and for personal and private grudges should not continue and Courts should exercise powers



under Section 482 Cr.P.C. to interfere and prevent abuse of process of law by such complainants.

17. This Court, therefore, comes to a conclusion that essential ingredients of Section 3(1)(r) and (s) of the Act, 1989 are not made out from the narrative of the alleged incident in the FIR and the same lacks material particulars. Contention raised on behalf of the State that the charge sheet has been filed and Petitioner must wait till the stage of arguments on charge is rejected, being contrary to the binding dictum in *Bhajan Lal (supra)*. I may add that paragraph 11 of the judgment in *Ashwani Kumar (supra)* reflects that even in the said case, charge sheet had been filed, but the Court quashed the FIR as the allegations therein did not constitute the basic ingredients of the offence alleged.

18. For all the aforesaid reasons, this Court in exercise of its power under Article 226 of the Constitution of India read with Section 482 Cr.P.C. quashes FIR No.206/2022 dated 23.03.2022 registered at PS: Inderpuri under Section 3(1)(r) and (s) of Act, 1989 including all proceedings emanating therefrom.

19. Petition stands allowed and disposed of in the aforesaid terms, along with pending application.

JYOTI SINGH, J

MARCH 21, 2024/B.S. Rohella/DO