



2024:DHC:6415



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

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Reserved on: 31st July, 2024

Pronounced on: 22nd August, 2024

+ **CRL.REV. P. 1312/2019 & CRL.M.A. 43242/2019**

SUHAIL FAZAL

.....Petitioner

Through: Mr. Mukesh Kalia, Ms. Kanika Vohra,
Mr. Nikhil Sharma, Mr. Shivam Sharma
and Mr. Chetan Pangasa, Advs.

versus

THE STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the State
with Adv. Hanumanth Sakhuja Adv.
Sunny Sharma Adv. Anubhav Jain Adv.
Nayan Saini Adv. Shubham Kumar
Adv. Dhruv Goyal Adv. Shristhi Setia
Adv. Savi Abbot Adv. Deepankar
Kataria with SI Rahul along with ASI
Manish, PS Seema Puri.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This revision petition under Section 397 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) assails the order on charge dated 18th October,



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2019 passed by ASJ, Karkardooma Courts in FIR No.127/2017, PS Seemapuri. By this order, charges framed against petitioner under Section 306 of the Indian Penal Code, 1860 (“**IPC**”) were amended to include charges under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“**SC/ST Act**”).

2. The gravamen of petitioner’s challenge is that although an investigation under the FIR was conducted by the Investigation Officer (“**IO**”) for offences under IPC, a charge under Section 3(2)(v) of the SC/ST Act was added midstream, contrary to Rule 7 (1) of the Rules framed under the SC/ST Act i.e. the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (“**1995 Rules**”) which mandates that investigation is to be mandatorily conducted by a police officer, not below the rank of a Deputy Superintendent of Police (“**DSP**”).

Background Facts

3. Petitioner and Dr. Smita Rani (now deceased) were married on 06th April, 2010, and subsequently separated on 30th June, 2010. Proceedings for divorce by way of mutual consent were pending. Thereafter, Smita Rani committed suicide on 22nd April, 2012. FIR No.127/2017 was registered on 22nd April, 2012 under Sections 306/498A IPC. On 22nd June, 2012, anticipatory bail was granted to petitioner.

4. Subsequently, on 12th February, 2018, charge was framed against petitioner under Section 306 IPC and he was discharged under Section 498A



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IPC. Trial commenced and post recording evidence, an application was moved by the State for framing charges under Section 3(2)(v) of the SC/ST Act. The amended charge was framed on 18th October, 2019 which is impugned herein. An objection was taken under Rule 7(1) of 1995 Rules under the SC/ST Act which mandates that offences under the Act can only be investigated by an officer not below the rank of a Deputy Superintendent of Police. The petitioner, therefore, raised an issue that the additional charge will not survive, considering that the investigation had been carried out by the competent officer under the IPC, which is below the rank of DSP.

5. This contention was rejected by the impugned order on the basis that Section 3(2)(v) of the SC/ST Act encompasses offences under the IPC, whereas Rule 7(1) of the 1995 Rules pertains to offences under the SC/ST Act. Therefore, they will be considered in separate silos.

6. The case of the prosecution was based on a complaint by one Prerna who stated that her sister, Dr Smita Rani, called her at 05:00-05:15 P.M. on 22nd April, 2012, telling her, “*main jaa rahi hun aur sabko bye kehna*”. Her sister hung up on the call, and thereafter, Prerna, along with her brother Lalit Kumar, went to the Dilshad Garden residence. They found the door locked from inside. Lalit cut through the iron mesh with the help of a screwdriver, and Prerna unbolted the gate from inside. They saw their sister hanging from the ceiling fan. Both siblings removed her and tried to revive her; she was rushed to the hospital but had passed away.



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7. Prerna mentioned that her sister had a love marriage with the petitioner, which was registered under the Special Marriage Act, 1954 as it was an interfaith marriage. She stated that the petitioner was pressurizing her sister to change her religion and convert to Islam, and would say that she belonged to an SC/ST community and that his family could not accept them. Her sister/the deceased had done her MD and was posted as Senior Resident at Lady Harding Hospital, Delhi. The complainant further stated that a divorce petition was pending in Karkardooma Courts since August 2011, despite which they had been living under one roof for the past three months.

8. After examining 7 witnesses in the trial, an application was moved by prosecution under Section 216 Cr.P.C. for adding a charge under Section 3(2)(v) of the SC/ST Act. A reply was filed by the petitioner stating that the application was devoid of merit. In the impugned order, it was noted that during investigation, the IO had not collected the caste certificate of the deceased. However, during the evidence presented by the father of the deceased/PW-7, a caste certificate was produced as Ex.PW-7/D. It was on this basis that the charge under Section 3(2)(v) of the SC/ST Act was to be added. The objection of the petitioner regarding the investigation by the DSP, as per Rule 7(1), was rejected on the grounds that Section 3(2)(v) of the SC/ST Act did advert to IPC offences.

9. For ease of reference, the relevant provisions of Section 3(2)(v) of the SC/ST Act and Rule 7 (1) of the 1995 Rules are extracted hereunder:



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S.3(2). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe

...(v). Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person of property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine

*x**x**x*

Rule 7. Investigating Officer –

(1) An offence committed under the Act shall be investigated by a police officer, not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/ Director-General of Police/Superintendent of Police after considering his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution/the officer in charge of prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.



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Submissions of Parties

10. Counsel for petitioner is relying completely on Rule 7(1) of the 1995 Rules, which states that all offences must be investigated by a DSP. He submitted that Section 3(2)(v) of the SC/ST Act covers offences under IPC punishable with imprisonment of a term of 10 years or more against a member of the SC/ST and prescribes punishment with imprisonment for life and a fine. He, therefore, stated that the investigation would have to be done *de novo* by the DSP if this charge had to be sustained. In this regard, he relied on the decision in *State of Madhya Pradesh v. Babbu Rathore & Anr* 2020 SCC OnLine SC 42 where an FIR was registered under Sections 302/404/34 IPC and Section 3(2)(v) of the SC/ST Act. At the advanced stage of trial, grievance raised by accused was that they had been charged under Section 3(2)(v) of the SC/ST Act, but investigation had been done by an officer below the rank of DSP, and as per Rule 7(1), the investigation was faulty and illegal. Trial Court held that investigation was without authority and illegal and, therefore, discharged the respondent. The challenge came before the High Court of Madhya Pradesh, which confirmed the Trial Court's order. The Supreme Court, while advertent to various provisions, relied upon an earlier decision in *State of Madhya Pradesh. v. Chunnilal @ Chunni Singh* 2009 SCC OnLine SC 783 and held that the High Court ought not to quash the entire proceedings but ought to proceed for offences punishable under the IPC. However, regarding the offences under the SC/ST Act, the Court did not revive the



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proceedings. In *Chunnilal* (*supra*), a similar direction was passed in context of an FIR registered under Sections 376/506 IPC and Section 3(2)(xii) of the SC/ST Act.

11. In response, the APP for the State contended that the said two decisions of the Supreme Court might not be strictly applicable, as those cases involved FIRs registered for offences punishable under the SC/ST Act. In this case, however, the Trial Court concluded pursuant to the evidence before it, that an offence under the SC/ST Act was established. Consequently, the question of any further investigation did not arise. Moreover, it was stated that Section 306 IPC prescribes punishment of imprisonment up to 10 years, while Section 3(2)(v) of the SC/ST Act encompasses offences under IPC punishable with imprisonment of 10 years or more. This was in response to the petitioner's submission that aside from the fact of the investigation being faulty, Section 3(2)(v) of the SC/ST Act would not apply to offences under Section 306 IPC.

12. In rejoinder, counsel for the petitioner submitted that the caste-based taunt was already alleged in the FIR, but the prosecution did not press it. Therefore, the charge sheet did include Section 3(2)(v) of the SC/ST Act. Moreover, Section 3(2)(v) of the SC/ST Act would not apply to a charge under Section 306 IPC since it encompasses offences for which punishment is of 10 years or more, whereas Section 306 IPC prescribes punishment of up to 10 years (*and not more*). He further contended that this defect in the case could not be cured at a later stage, in this manner, and that the investigation prescribed by the statute by a senior officer has a certain importance and weightage that



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cannot be brushed aside. Moreover, Section 3(2)(v) of the SC/ST Act provided punishment for life and, therefore, the provisions have to be strictly construed.

Analysis

13. Before analysing the provisions, it is pertinent to refer to the allegations made in the FIR, which were later crystallized in the charge sheet, particularly those relating to the SC/ST Act. In the FIR, the complainant (the sister of the deceased) alleged that the petitioner used to tell her sister that she belonged to the “*chamar caste*” and, therefore, the family could not accept her. He was pressuring her sister for divorce due to her caste. The charge sheet also recorded the same allegations. In the testimonies, notably those of PW-3, Prerna /the complainant, it was mentioned that her sister told her that on 22nd April, 2012, that she tried to pacify the matter with her husband/the accused, to which he said that “*You are a hindu and chamar and either you convert to muslim or to give divorce to him*”. She further stated: “*My sister told me that she along with accused had gone to Ajmer some days, before and where accused told my sister to say before the mazhar that she is hindu and chamar and she wish to convert to Islam and when my sister refused, on which accused became violent and as it was a public place, he had not given her beatings otherwise he was so wild that anything could have happened and thereafter, for some time phone disconnected.*”. During cross-examination, the complainant reiterated these statements and stated she had not told this to the police, SDM, or any other authority and even about the deceased’s divorce



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proceedings; this information was deposed for the first time before the Trial Court.

14. Testimony of PW-4/ Lalit Kumar, the brother of the deceased, also confirmed that his sister told him that she was being pressurised to change her religion because of her caste. He stated that she was forced to change her religion and she was harassed for belonging to *chamar caste* and, therefore, his sister committed suicide.

15. PW-7/Shyam Lal, the father of the deceased, stated in his testimony as under: *"I enquired from her about her well-being after her marriage with accused on which she told me that accused used to harass her. I enquired from her why accused used to harass her, on which she told me that accused used to say that she belongs to chamar caste and that his family members will not accept her and asked her to convert her religion"* and *"My daughter came to our house 2-3 times and she told us that same facts that she was being harassed by the accused due to her caste and for her conversion to Muslim."* He had produced his caste certificate of the deceased daughter which was duly exhibited.

16. It is quite clear from Section 3(2)(v) of the SC/ST Act that it seeks to amplify the punishment prescribed for offence committed under the IPC, which was punishable by imprisonment of 10 years or more. If any such offence punishable for 10 years or more committed under the IPC was against an SC/ST person or the property of such person, it would then invite a punishment of



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imprisonment for life and fine. This is the limited mandate of Section 3(2)(v) of the SC/ST Act. Section 3(2)(v) of the SC/ST Act, therefore, merely is a provision of prescription of punishment and does not prescribe an offence.

17. There is some merit in the contention of the petitioner. There is a statutory bar and a mandated prescription for investigation in relation to offences under the SC/ST Act, to be investigated by an officer, not below the rank of DSP. It is quite evident from the FIR that the allegations relating to the caste of the deceased, knowing that she belonged to the SC/ST community were stated by the complainant. At that stage itself, the FIR ought to have been registered under Section 3(2)(v) of the SC/ST Act and the investigation ought to have been conducted by a senior officer, as prescribed. However, it was not done so, for reasons not clear. What has thereafter transpired is that the FIR was registered under Section 306/498A IPC, the charge sheet was filed with respect to the same provisions and charges were framed under Section 306 IPC whereas the accused was discharged under Section 498A. The trial proceeded on the basis of the said charge. It is nobody's case that the aspect of casteist slur or caste-based imputation was not known at the stage when the FIR was registered. The same cannot be corrected at a later stage when the trial has already commenced. The production of a caste certificate by the father of the deceased during the trial does not bring into light a new fact. As mentioned, this fact of the deceased being of the SC/ST category, was known to the accused. Therefore, using powers under Section 216 Cr.P.C. to alter the charge



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could not have been exercised without appreciating the consequences. For this purpose, Section 216 Cr.P.C. is extracted hereunder:

“216.Court may alter charge-

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defense or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

18. Though Section 216 Cr.P.C. states that a court can “*alter or add a charge at any time before judgment pronounced*”, the consequence of adding the



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charge is that *firstly*, such an alteration or addition has to be read and explained to the accused; *secondly*, if the alteration of the charge, in the opinion of the Court, is not likely to prejudice the accused in his defense or the prosecutor in their conduct of the case, then the trial may proceed as if the added charge was part of the original charge; *thirdly*, if in the opinion of the Court, such additional charge is to prejudice the accused, the Court can direct a new trial or adjourn the trial for such period as may be necessary and; *fourthly*, that if the added offence is for which previous sanction is necessary the case cannot proceed till such sanction has been obtained. *Ex-facie*, Section 216 Cr.P.C. itself provides for situations when an added charge can cause prejudice to the accused and how the Court is to modulate the situation subsequently.

19. In this case, the addition of the charge under the SC/ST Act, based on facts that existed at the time of the FIR, introduces a situation where the investigation was not conducted in accordance with Rule 7(1) of the 1995 Rules. The two Supreme Court judgments cited by the petitioner are instructive, in that they endorse that proceedings cannot continue under Section 3(2)(v) of the SC/ST Act, without the investigation being carried out by the senior officer, as prescribed. In both decisions, Supreme Court mandated that trial under IPC proceedings can continue and as regards the offence under Section 3(2)(v) of the SC/ST Act, it was quashed. The Court, therefore, cannot ignore the imperative of this opinion of the Supreme Court.

20. The interpretation given by the Trial Court, that the offences under Section 3(2)(v) of the SC/ST Act were relatable to IPC and not the SC/ST Act,



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may not be correct in light of the Supreme Court's decisions. The fact, that whether it is a situation where Section 3(2)(v) of the SC/ST Act forms part of the FIR and the charge sheet and the investigation was not done by a prescribed officer [as in *Chunnilal* (*supra*) and *Babbu Rathore* (*supra*)] or where Section 3(2)(v) of the SC/ST Act is added later in a situation where the investigation was not conducted by a prescribed officer and the trial is sought to be proceeded ahead with, are both scenarios covered by the principle laid down by the Supreme Court.

21. The contention raised by petitioner was that Section 14 of the SC/ST Act prescribes that the offences be addressed by the Special Court, may not be tenable, since the impugned order has been passed by the ASJ, Special Judge (SC/ST Act) of Karkardooma Courts, Delhi.

22. Therefore, the petition is allowed.

23. The ongoing trial in relation to the said FIR can proceed ahead with respect to the IPC offence. The impugned order dated 18th October, 2019 is set aside regards the addition of the charge under Section 3(2)(v) of the SC/ST Act.

24. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

AUGUST 22, 2024/MK