

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3840 OF 2022

BISWANATH MONDAL & Ors.

VS

THE STATE OF WEST BENGAL & Ors.

For the Petitioners : Mr. Dhananjay Banerjee, Adv.
Ms. Arpita Mondal, Adv.
Ms. Richa Pramanik, Adv.

For the Opposite

Party No. 2 : Mr. Subhasis Dey, Adv.
Mr. Victor Mukherjee, Adv.

Last heard on : 19.12.2025

Judgement on : 06.03.2026

Uploaded on : 06.03.2026

CHAITALI CHATTERJEE DAS:-

1. This application for quashing of proceeding has been filed by the present petitioners arising out of New Town P.S. case no. 48 of 2019 dated 2nd April, 2019 which culminated into charge sheet being charge sheet no. 103 of 2019 dated October 31, 2019 under Section 420/ 406/ 465/ 447/ 323/ 325/354B /379/ 506/ 120B of the Indian Penal Code, read with Section 3(1) (c)/(f)

/ (g)/(r)/(s)/(u)/(w) (i)/(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, corresponding to Special (SC/ST) Case No. 05 of 2020 presently pending before the Court of the Learned Special Judge, 1st Court, Burdwan.

The factual matrix of the case

2. The Opposite Party no. 2 is a neighbour of the petitioner no 1 & 2 and her husband Bablu Mondal is in CRPF, posted at CRPF Camp, 165, Battalion, Khragpur. The present petitioners lodged a complaint under Section 156 (3) of the Code of Criminal Procedure 1973 before the Court of Learned Additional Chief Judicial Magistrate, Durgapur against the O.P. no. 2 , her husband and son-in law for the offence committed under Section 447/323/326/325/34 of the Indian Penal Code, 1860 before the learned ACJM Durgapur on 21.2.2019. They had a long standing civil dispute over an issue of boundary of land. Beside this the Opposite Party no. 2 also installed a ground mobile tower in the locality within the close vicinity of the residential area which is densely populated. That apart said mobile tower as installed is a health hazards and the problems being faced the petitioner no. 1 and 2 herein they approached the Opposite Party no. 2 and family with a request to stop such mobile tower but not only they refused to do so but became furious and adamant. Several complaints were made before the authorities by the present petitioner no. 1 and 2 and also mass representations were filed against installation of such mobile tower but yielded no result. The petitioner no 1 lodged a case before SDEM Durgapur Under Section 144 Cr.P.C in the year 2018 against the Opposite Party no. 2 and the B.L. & L.R.O. was directed to

enquire and report .While that matter was sub judice, the Opposite Party no. 2 further filed M.P case under Section 144 Cr.P.C against the petitioner no 1 over the same plot of land and in her case also direction was given to enquire and to report and to maintain peace and tranquillity. On 19.2.2019 from the Office of BL & R.O. an Officer was sent in connection with the case of the complainant, when suddenly she reached at the spot and a chaos was made and the investigating officer left after receiving the documents .After that also the petitioner no. 1 was threatened by the Opposite Party no. 2 and her husband and also physically assaulted him after trespassing into the land of the petitioners. It was alleged that the opposite party is politically motivated and backed by influential persons.

- 3.** The present complaint was filed on March 7,2019 by the Opposite Party no. 2 under Section 156 (3) of the Code of Criminal Procedure, 1973 arraying the present petitioners as accused, alleging humiliation by the present petitioners as she belongs to 'Malo' Sub-caste being a schedule caste .Further allegations were made against the petitioners of forging document, illegal and forceful construction over the suit plot and on the protest being raised by the Opposite Party no. 2 quarrelled with her and on February 19, 2019 at about 17.00 hours they went to the house of the opposite Party no. 2, insulted them with their caste and also threatened with dire consequences. Further allegations levelled against the petitioner no. 3, the son-in-law of the present petitioner no 1 & 2 of stalking and molestation after entering into the house of Opposite Party no. 2 and assault upon her with intent to disrobe and pulled her sari. He also snatched a gold chain from the sister of the complainant who tried to restrain the petitioner no 3. On completion of investigation the chargesheet

has been submitted against all of them under the aforesaid charges .Hence the petitioners have come before this court for quashing .

Submissions

4. The Learned Advocate appearing on behalf of the petitioner strenuously argued before the Court that the entire complaint was lodged with vexatious and malicious intention and out of previous grudge and as a counter blast to the complaint lodged by the present petitioners against the Opposite Party no. 2. It is submitted that in order to strengthen the complaint, the accusations were made under the provisions of SC/ST (POA) Act of 1989 without having any iota of ingredient to constitute such offence. The Learned advocate further relied upon the decision by the Hon'ble Supreme court in ***Hitesh Verma versus State of Uttarakhand and Another*¹** .There has been an inordinate delay in lodging the complaint of about 1 month without any explanation for the same. Further there is no compliance of section 154(3) CrPC for which the cognizance ought not to have been taken. In this regard the Learned Advocate relied upon the decision of ***Anurag Bhatnagar & Another versus State of NCT Delhi and Another*²**. The Learned Advocate further argued that the allegation made in the complaint and the charge sheet are so absurd and improbable on the basis of which no prudent person can ever reach the just conclusion that there is sufficient cause and on that very score the incident proceeding should not be allowed to be continued and is liable to be quashed.
5. It is the contention of the learned Advocate that the charge sheet has been submitted mechanically and on the basis of a table work and further no

¹ (2020) 10 SCC 710

² 2025 INSC 895

independent witnesses has been examined .The Learned Magistrate took the cognizance without adhering to the mandatory direction of the Hon'ble Supreme Court and did not apply his judicial mind for which also the said complaint is liable to be quashed. The petitioner no 3 is their son in law and not a resident of that locality and he has been framed putting false allegations.

6. Per Contra the Learned Advocate appearing on behalf of the Opposite Party No 2. argued that the inherent power under Section 482 has to be exercised for ends of justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial. On the basis of the complaint lodged by the present Opposite Party no. 2 the investigation continued and after collecting the satisfactory materials the charge sheet has been submitted. The petitioner has come before this Court post investigation stage and therefore it can be said that primary allegations are well established against the petitioners and to test the veracity and authenticity of the materials collected, there should be a fair trial. If the proceeding is not allowed to be continued the life of a lady would be at a stake. The Learned Senior Advocate representing the Opposite Party no. 2 relied upon the decision of **State of West Bengal versus S.N. Basak reported in³** and State **of Bihar and ors. vs K.J.D. Singh reported in⁴** and prayed for dismissal of this revisional application with costs .

7. The learned prosecution also relied upon the case diary and argued that in course of investigation the I.O. collected the materials, recorded the statement of the witnesses, seized the caste certificates and thereafter submitted the

³ AIR 1963 Supreme Court 447

⁴ (1994) 1 CALLT 48 (SC)

charge sheet and hence the allegations are primarily found to be well established and the accused must face the trial.

Analysis

- 8.** Heard the submissions of the Learned Counsels. Apparently from the facts and circumstances a chequered history of long standing civil dispute between the parties are well founded over which several litigations are pending filed by both the parties against each other.

The proceeding emerges from the complaint lodged by the de-facto complainant before the Learned Court of Additional Chief Judicial Magistrate in the year 2019 alleging an incident occurred on February 20, 2019 at 7. A.M. in the house of the Opposite Party no. 2 at Paschim Burdwan. The imbroglio originally started when an agreement was executed between the Opposite Party no 2 and Ors. and the petitioner no. 1 Biswanath Mondal and others on January 12, 2012 in respect width of construction of the road width 12 ft. /55ft to connect the plot of the Opposite Party no. 2 and she paid an amount of Rs. 45,000/- to the petitioner no 1 who assured to complete the Registration of the work at an earliest but did not do so.

It was alleged that such registration was not done and the petitioner no. 1 forged some documents putting some forged signature on the original documents. On January 3, 2019 she filed a M.P. case before the Learned Sub-divisional Executive Magistrate under Section 144 of the Code of Criminal Procedure, 1973 and served a legal notice. The said case was filed to build up a chamber which is within the land premises of the complainant and office of B.L. & L.R.O sent a notice to both the parties to be present at the suit

property for field survey on November 19, 2019. Accordingly both the parties appeared before the enquiry officer and submitted the documents to the Enquiry Officer where the brother of the petitioner no.1 admitted he sold the property to the opposite party no1 and an altercation took place .A mass petition dated August 30, 2018 was also submitted by a number of villagers in connection with a mobile tower installed at the land of the Opposite Party no 2 causing health hazards over which the petitioner no 1 also raised objection since 2018 .

The charge sheet as submitted in this case revealed that the Krishna Kantathe other brother in presence of his brother Biswanath Mondal declared that he sold his portion of land to the complainant by executing Registered Deed but Biswanath Mondol illegally and forcefully constructed over the suit plot and when the complainant tried to protest the accused quarrelled with her on 19.2.2019 when they were present before the enquiry officer .The chargesheet primarily does disclose any such statement ,word or gesture of the petitioners which were made to humiliate or insult the opposite party only because she belongs to Schedule Caste at that time when such quarrel took place .

On close scrutiny of the complaint ,four parts of the incident can be found. On the first hand there was an execution of an agreement for sale between the complainant and the petitioner no. 1 & 2 and on assurance of completion the registration work, she paid an amount of 45,000/- in the year 2012 to the petitioner no 1 which was not fulfilled and a legal notice was also issued to them .So the case of the complainant discloses that initially there was no animosity in between the parties being next door neighbour to each other and the petitioners executed such agreement with her and further she paid an

hefty amount on the assurance of the petitioner no 1 but the such cordial relation turned sour after the petitioner did not register the Sale Deed and also did not repay the amount .

The second incident started long after 7 years on January 2019, when the M.P. Case was filed by the Opposite Party no. 2 relating to construction of a chamber within the land premises of the complainant which is the disputed plot and a quarrel took place in presence of the Enquiry Officer and the petitioner no 1 abused her by taking the name of her caste and after he left also the quarrel continued. On that date at about 5 p.m. the petitioner no. 1 and 2 threatened her to be thrown away from the village as she belonged to Scheduled Malo caste and uttered filthy languages and also humiliated her calling her name of the caste in front of her house.

However she did not lodge any complaint in respect of either of the incident happened. The third incident happened on February 20 ,2019 in the morning by the petitioner no3 ,the son in law of the petitioner no 1 , when she opened the gate he followed her ,trespassed into her house and molested her and also pushed her to her bedroom with intent to disrobe, and pulled her saree and on her shouting her sister ,son and daughter came out and then he snatched the gold chain of her sister and assaulted her by fist and blows . After that also she did not lodge any complaint immediately . Again no complaint was filed by the opposite party or her husband. On March 17, 2019 Sunday that is almost after 1 month, in the evening the Petitioner no 3 in an inebriated condition came in front of their house and openly insulted and threatened with dire consequences. She lodged the complaint on March 20, 2019.

So it is glaringly visible that the entire allegations in respect of the incident took place on 20.2.2019 and 17.3.2019 are against the petitioner no 3 and not against the petitioner no 1& 2 but the chargesheet was filed against all the petitioners. Similarly though the allegations of humiliating the complainant by her caste was made out against the petitioner no 1& 2 the charge-sheet was filed against all for commission of those offences. Not only that, in absence of a single allegation made in the petition of complaint, the case was started under all the subsections of section 3(1) of the Scheduled Caste and Scheduled Tribe (prevention of Atrocities) Act, 1989. The overenthusiasm of the Police Officers are very much apparent.

9. Since the charge sheet is submitted under Section 3(1)(c)/(f)/(g)/(r)/(s)/(u)/(w) (i)/(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, along with the other charges of the Indian Penal Code it is necessary at the outset to look into the relevant provisions of the Act of 1989. The object, purpose and reasons for enacting the Act was to prevent the commission of offences of atrocities against the members of the scheduled caste and scheduled tribe and also to improve the socio economic conditions of the vulnerable sections of the society. Section 3 (1) specified that

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,–

(a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;

(b) Dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the

premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;

(c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, Carcasses or any other obnoxious substance in his neighbourhood;

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;

(f) Wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.—For the purposes of clause (f) and this clause, the expression

“wrongfully” includes—

(A) against the person’s will;

(B) without the person’s consent;

(C) with the person’s consent, where such consent has been obtained by putting the person, or any other person

*in whom the person is interested in fear of death or of hurt;
or*

(D) fabricating records of such land;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do “begar” or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—

(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;

(B) not to file a nomination as a candidate or to withdraw such nomination; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(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;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

Explanation.—For the purposes of this clause, the expression

“object” means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary

agreement when the person by words, gestures, or any form of non-verbal communication, Scheduled Tribe whose sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence: Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, bathing ghat, any public conveyance, any road, or passage;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(B) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;

(C) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.’;

(iii) in sub-section (2),—

(a) in clause (v), for the words “on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member”, the words “knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member” shall be substituted;

(b) after clause (v), the following clause shall be inserted, namely:—

“(va) commits any offence specified in the Schedule, against a person or property, knowing 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 such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine.”

From the fore corner of the complaint prima facie no allegations are found to be made against the petitioners for commission of any offence under section 3(1)(a)(b)(c)(d)(e)(i)(j)(j)(k)(l)(m)(n)(o)(q)(t)(v)(x)(z)(zb)(zc) but curious enough the case was started on all the sections and the charge sheet was submitted under section 3(1)(c)(f)(g)(r)(s)(u)(w)(i)(w)(ii) of the schedule Caste and Scheduled Tribes(Prevention of atrocities Act) 1989 .

10. Nowhere in the written complaint any allegations were made which could attract section 3(1) (a)(b) (c) (d) (i) (j) (k) (l) (m)(n)(o)(q)(t)(x) (y) under which the case was started and after investigation also the chargesheet has been submitted under Section (1)(c) of the Act,1989 and it is really surprising as to how the investigating officer could submit the charge sheet under this clause. In the case of **Hitesh Barma (supra)** the charges levelled was under Section 3(1)(r) . In this decision the basic ingredient of the offence under the above

Section was classified as ,no. 1) intentionally insults or intimidate with intent to humiliate a member of a Schedule Caste or a Schedule Tribe and II) it any place within public view. It was held and observed by the Hon'ble Supreme Court that the object of the Act is to improve the socio economic condition of the Schedule Castes and Schedule Tribe as they are denied number of civil rights. Thus an offence under the act would be made out when a member of the vulnerable Section of the society is subjected to indignities, humiliation and harassment.

11. In the said case the disputes between parties over the property were pending before civil courts and the Hon'ble Supreme Court was of the view that such assertion of title is not due to either the indignities, humiliations or harassment. In paragraph 18 of the said decision it was held that:

18. "Therefore, offence under the act is not established merely on the fact that the informant is a member of Schedule Caste unless there is an intention to humiliate a member of Schedule Caste/Schedule Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over decision of the land. The allegation of harling of abuses as against the person who claims title over the property after such person happen to be the SC, the offence under Section 3 (1) (r) of the Act is not made out.

12. The Hon'ble Supreme Court took note of the case of **Gorige Pentaiah vs. State of AP & Ors.**⁵ where there was non-disclosure of caste in the written complaint and it was held that the accused belonging to upper caste was not

⁵ 2008 (12) SCC 531

mentioned in the FIR and therefore evidence under Section 3(1) (xi) of the Act is not made out.

It was further held and observed that the offence under the Act 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 such community for the reason that the victim belongs to such caste. In that case the parties were litigating over the possession of land and the allegation of hurling of abuses was against a person who claimed title over the property. Therefore it was held that if such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

13. The Hon'ble Supreme Court in ***Shajan Skaria v. State of Kerala***⁶, **discussed** the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 Which are:

- a. The accused person must not be a member of the Scheduled Caste or Scheduled Tribe;*
- b. The accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;*
- c. The accused must do so with the intent to humiliate such a person; and*
- d. The accused must do so at any place within public view.*

In the present case the complainant never uttered that the petitioners were not the members of Schedule caste or Scheduled Tribe, no mala fide intention can be found to insult the opposite party no 2 of her being a member of scheduled caste since they had cordial relations earlier and presently that has turned to inimical relations because of the prolong land dispute which relates to the

⁶ 2024 SCC Online SC 2249

boundary of the disputed land and non-refund of the amount of Rs 45,000/- .

So basically the dispute is civil in nature but it is tried to be painted with the colour of criminality.

14. In the case of ***Swaran Singh and ors. vs State through standing counsel and anr.***⁷ the Court draw a distinction between the expression public place and in any place within public view and held that if an offence is committed outside the building like lawn outside a house ,and if the lawn can be seen from the outside the boundary wall ,then the lawn would be a place within the public view . The Hon'ble Court further explained that 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 not by private persons or private parties .The Hon'ble Apex Court was of the view that that accused Swaran Singh did not use the offensive words in the public view as no member of the public present when such words were uttered by the accused.

15. In the present case according to the complainant the incident of humiliation was alleged to have occurred on 19.2.2019 at about 5 p.m. when allegedly the petitioners no 1 and 2 went in front of her house and threatened her to be thrown out from the village since she belongs to Malo Community. No averment regarding presence of any other person was made in the complaint. The question comes whether the front part of her house was open space or not or of the public view. Further allegations made in the complaint about an incident took place on 19.2.2019 at about 11 a.m when both the parties

⁷ (2008)8 SCC 435

appeared for field survey as per notice and an incident of quarrel took place and the petitioner no. 1 abused her and humiliated racism in front of the official's presence therein but she did not lodge any complaint thereafter and the date of occurrence in this complaint is of 20.2.2019 and on subsequent dates. The I.O neither recorded nor any statement of any government official nor cited as witness in the charge sheet.

16. This Court cannot be oblivious of the fact that the petitioner no 1 complained before the DIGP ,Group centre Durgapur against the husband of the Opposite Party about installation of mobile tower on 28.5.22 over the land of his wife that is the present complainant at the close vicinity of the residential area without taking any permission. He also raised objection on 8.10.2020 to the Tower Vision India Pvt Ltd Astra Tower ,plot no 11c/1 ASO 307 ,North Eastern Newtown ,Rajarhat Action area 2C .

It is evident that the complainant did not make any effort to lodge the complaint before the jurisdictional police station. There is no allegation on record that the police refused to receive the complaint . In absence of any such refusal ,the question of approaching or intimating the higher authorities does not arise ,particularly when the husband of the complainant is in CRPF. Thereby there is clear violation of the provision enumerated in Section 154(1) and (3) which are pre condition for lodging the complaint under Section 156(3) of Cr.P.C. She tried to make out that she went to the Newtown P.S. for lodging the written complaint after the incident of 19.2.19 and 20.2.2019 but she did not lodge any complaint. After the incident of 17.3.19 she directly took recourse under of Section 156 (3) of the Code of Criminal without complying

with the section 154 (3) of CrPC as she did not inform the superior authority and the said complaint was placed before the Learned Magistrate on 3.4.2019 .

17. The learned counsel has raised at the outset the basic maintainability of the application under Section 156 clause (3) in view of noncompliance with the settled law laid down in the case of **Priyanka Srivastave versus vs. State of UP**. In a recent case of Anurag **Bhatnagar and Anr. (Supra)** the question was considered before the Hon'ble Supreme Court whether an application under Section 156 (3) Cr.P.C would have been filed without approaching the police authorities. The Hon'ble Supreme Court observed and held in paragraph 22 which reads as follows:

22. A plain and simple reading of Section 154 CrPC as a whole makes it imperative upon the informant to first approach the officer-in-charge of the police station for the purposes of lodging an FIR in respect of a cognizable offence and where the Police refuses to record such information, the remedy is to approach the concerned Superintendent of Police. It is only when no action is taken even by the Superintendent of Police and the information of commission of a cognizable offence is not being recorded by the officer-in-charge of the police station or even by the Superintendent of Police, that the person aggrieved or the informant may move the court of the Magistrate concerned to get the FIR registered and lodged with the concerned police station.

23. Sub-section (3) of Section 156 CrPC simply empowers the Magistrate to order an investigation of a cognizable offence.

24. Section 190 of the CrPC empowers the Magistrate to take cognizance of an offence in three contingencies,

namely: (i) upon receiving a complaint of facts constituting the offence; (ii) upon a police report of such facts; and (iii) upon information received from any person other than the police officer or upon his own knowledge that such an offence has been committed.

In paragraph 33 of the said judgement it was further held that:

33. To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count.

18. Therefore even though the violation is apparent and also the non-application of mind by the Learned Judicial Magistrate, in view of the aforesaid observation that itself may not be a reason for quashing of the proceeding.

19. In the decision relied upon by the Learned Counsel in **State of Bihar vs K.J.D Singh (supra)** it is held that the inherent power under Section 482 Cr.P.C. has to be exercised for ends of justice and should not be arbitrarily exercised to cut short normal process of a criminal Trial. In the case of **State of Haryana vs Bhajanlal**⁸ the Hon'ble Supreme court described the situation where the inherent power can be exercised and in clause no 1,3 and 7 it was mentioned as :

⁸ 1992 supp(1) SCC 335

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

3) 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

7) Where the 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 .

20. In the case of **State of Karnataka vs L. Muniswamy and ors.**⁹ the Hon'ble Supreme Court held that '*the savings of the High Court's inherent powers both in civil and criminal matters is designed to achieve a salutary public purpose which is that the court ought not to be permitted to degenerate into a weapon of harassment or persecution.*'

Conclusion

21. In the present case the materials on record prima facie disclose that the parties were acquainted with each other as neighbour for a considerable period of time and had entered into an agreement of sale pursuant to which certain amount was paid by the complainant to the petitioner no 1. Subsequently due to certain disputes arising between them , both parties began levelling allegations against each other and initiated criminal as well as civil

⁹ (1977) 2 SCC 699

proceedings .In such circumstances the subsequent allegation that the petitioners humiliated the complainant by uttering her caste name appears to be an embellishment and apparent afterthought which prima facie casts serious doubt on the veracity of the complaint .

That apart there was a prior complaint lodged by the petitioner no. 1 against her husband .The record reflects a considerable and unexplained delay in setting the criminal law into motion ,notwithstanding the fact that the husband of the Opposite Party no. 2 is a CRPF personnel . Moreover ,there is nothing on record to demonstrate compliance with the statutory requirement under Section 154 (1) & (2) if taken cumulatively clearly exposes the complaint as a retaliatory and mala fide afterthought and to abuse the process of law for which the charges levelled against the petitioner no 1 and his wife the petitioner no. 2 are liable to be quashed . So far the charges under Section 420 and 406 nothing specific is mentioned and the alleged execution of the agreement is of the year 2012 and since thereafter MP case was filed but she did not lodge any complaint to this extent. .Most importantly the instant complaint is lodged over an incident happened on 20.2.2019 and 17.3 2019 wherefrom no iota of materials can be found which would constitute the offences under Section 465/420 / 406 of the Indian Penal Code against any of the petitioners .

So far the other charges under section 447/323/35B/379 of the Indian Penal Code, 1860 the entire allegations were made against the petitioner no 3 in respect of the incident occurred on 20.2.2019 and 17.3.2019 and whether the petitioner no 3 was present or not can only be ascertained in course of trial.

22. Therefore after cumulative assessment of the entire facts and circumstances and the materials collected in course of investigation and on close scrutiny of the petition of complainant and the chargesheet it is found that if the proceeding is allowed to be continued against the petitioner no. 1 & 2, Biswanath Mondal and his wife in view of the charges levelled against them, it would be sheer abuse of the process of law and hence liable to be quashed.

23. Hence this criminal application is allowed in part.

24. The entire proceedings pending before the Learned Special judge against the petitioner no. 1 & 2 are hereby quashed. The proceeding pending against the petitioner no 3 under the provisions of SC/ST (Prevention of Atrocities) Act 1989 are also quashed. However the proceeding should continue against the petitioner no. 3 under Section 447/323/325/354B/379/506 of the Indian Penal Code.

25. No order as to costs.

26. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)