HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 8108 of 2025

Shamshad Ali Khan And 3 Others

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Chandra Jeet Singh
Counsel for Respondent(s)	:	G.A., Narendra Singh

Court No. - 91

HON'BLE SANTOSH RAI, J.

1. Supplementary affidavit filed today in court by learned counsel for the appellants is taken on record.

2. Heard Shri Chandra Jeet Singh, learned counsel for the appellants, Shri Narendra Singh, learned counsel for O.P. No.2 and learned AGA for the State.

3. The present criminal appeal has been filed by the appellants with a prayer to set aside the cognizance/summoning order dated 03.05.2025 passed by Special Judge, SC/ST Act, Budaun in Special Session Trial No.856 of 2025 (State of U.P. vs. Shamshad Ali Khan and others) arising out of Case Crime No.83 of 2025 under Sections 115(2), 352, 351(2) and 117(2) BNS and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, P.S.- Alapur, District- Budaun.

4. In the FIR, four accused persons, namely Shamshad, Mehtab, Altaf and Mustak, have been named. It is alleged that on 08.12.2024, at about 5:00 p.m., the accused-appellants assaulted the complainant/victim and used derogatory words against him.

5. Learned counsel for the appellants submits that the impugned cognizance/summoning order dated 03.05.2025 has been passed mechanically without proper application of judicial mind. The FIR was lodged on 01.03.2025 in respect of an alleged incident dated 08.12.2024, after an unexplained delay of about two months and twenty-two days,

pursuant to an application under Section 156(3) Cr.P.C. It is further submitted that the medical and X-ray reports do not support the prosecution version, and that the alleged incident is a result of previous enmity and a counterblast to the FIR lodged by appellant no. 4 against opposite party no. 2 in respect of a tractor accident involving his granddaughter. The witnesses examined during investigation have allegedly made contradictory statements, and no independent witness has supported the prosecution case. It is also contended that the essential ingredients of the offences under the SC/ST Act are not attracted, as the appellants deny having used any caste-based derogatory words or having committed the alleged offences. Accordingly, the impugned order is liable to be set aside.

6. Learned AGA and learned counsel for opposite party no.2 submit that the appellants assaulted and abused the informant using caste-based derogatory words, and that the investigating officer, after investigation, found a prima facie case and submitted a charge sheet against them. It is contended that the grounds raised by the appellants involve disputed questions of fact, which ought to be examined during trial, and that no interference with the impugned cognizance/summoning order is warranted.

7. During the course of investigation, the statement of the injured was recorded, wherein he reiterated the allegation of assault against the accused persons. The injury report corroborates the allegations made in the FIR and the statement of the injured, as two fractures involving the second and third metatarsals were noted. Admittedly, a cross-case, being Case Crime No. 505 of 2024, was registered on 09.12.2024 against the informant of the present case in respect of the same incident, whereas the FIR in the present case was lodged only on 01.03.2025, after a considerable delay, for which no plausible explanation has been furnished. In the cross-case, it has been alleged that the daughter of Mustak sustained injuries after being hit by a tractor bearing registration No. UP 24 B 7864, which led to an altercation and an alleged incident of marpeet between the parties. Thus, the existence of the cross-case arising out of the same incident is an admitted fact. So far as the offences under Section 3(1)(r) and 3(1)(s) of SC/ST Act are concerned, no specific or

distinct caste-based derogatory words have been attributed to the accused-appellants so as to establish that they intended to insult or humiliate the victim on the ground of his belonging to a Scheduled Caste or Scheduled Tribe. Furthermore, the statement of the victim recorded under Section 180 of the BNSS does not disclose any specific casteist slur indicating that the accused-appellants assaulted or injured him on account of his caste identity.

8. In the case of **Swaran Singh vs State (2008) 8 SCC 435,** the Hon'ble Apex Court drew a clear distinction between the expressions "public place" and "any place within public view." A private place may still be a place within public view if the incident is visible to members of the public. Conversely, merely because an incident occurs in a public building does not automatically satisfy the requirement if it is not within public view. The Supreme Court held that words such as "Chamar", though originally denoting a caste, may amount to an offence if used as a casteist abuse with intent to humiliate a member of the Scheduled Castes. The Court emphasized that words should be understood in their popular and social meaning, not merely their etymological meaning. For attracting Section 3(1)(x) (now Sections 3(1)(r) and 3(1)(s)), there must be intentional insult or intimidation; and intent to humiliate the victim because he or she belongs to a Scheduled Caste or Scheduled Tribe. Mere abuse or quarrel, without the requisite intention contemplated by the Act, is insufficient. The Court reiterated that criminal proceedings should continue only where the allegations disclose a prima facie offence against the particular accused. Proceedings may be quashed where the FIR does not disclose the essential ingredients against an accused.

9. In **Gorige Pentaiah vs state of AP & Ors 2009 Cri.L.J. 350,** Honble Apex court held "when the basic ingredients of the offence are missing in the complaint, then permitting such complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law." In the case of *Hitesh Verma vs. State of Uttarakhand (2020) 10 SCC 710,* the Hon'ble Suprme Court held that 'a dispute that arose inside the private house of a complainant over the possession of the land without the presence of independent public witnesses, does not satisfy the statutory threshold of

Section 3(1)(r).

10. In the case of **Shajan Skraria vs. State of Kerala and another, 2024 SCC Online SC 2249,** the Hon'ble Apex Court by quoting the cases of Hitesh Verma (Supra) has held as under:

> *"13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes 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, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste."*
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> *In Khuman Singh v. State of M.P., (2020) 18 SCC 763*
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> *"15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. Thus, the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who*

> *belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. I say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status."*

11. So far as the offence under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, on a careful consideration of the material placed on record, this Court finds that the essential foundational ingredients of the said provision are not prima facie established. Section 3(2)(va) is attracted where a person, not being a member of a Scheduled Caste or Scheduled Tribe, commits an offence specified in the Schedule to the Act against a person or property belonging to a member of a Scheduled Caste or Scheduled Tribe, while knowing such status. There must be prima facie material connecting the alleged substantive offence with the requirements of the said provision, including the commission of an offence specified in the Schedule and the requisite knowledge contemplated by the statute. In the present case, the complainant, admittedly, does not belong to the Scheduled Caste or Scheduled Tribe category, and no specific caste-based word has been reliably attributed to the appellant to establish an intention to insult or humiliate the victim/injured on the sole ground that he belongs to the SC/ST category. In the present case, the material relied upon by the prosecution, even if taken at its face value, does not disclose such foundational facts.

12. The learned trial court in the present case has taken cognizance under Sections 115(2), 352, 351(2) and 117(2) BNS and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. However, a perusal of the Schedule appended to Section 3(2)(va), as inserted by Act 1 of 2016, shows that Section 352 BNS (corresponding to Section 504 IPC) is not included

amongst the scheduled offences. Consequently, insofar as the offence corresponding to Section 352 BNS is concerned. the statutory requirement for attracting Section 3(2)(va) is not prima facie satisfied on that count as well.

13. Thus, there is no prima facie material demonstrating that the alleged offence falls within the Scheduled offence contemplated by Section 3(2)(va), nor is there sufficient material at this stage to establish the requisite knowledge on the part of the appellants regarding the Scheduled Caste/Scheduled Tribe status of the alleged victim/injured in the manner contemplated by the provision. The statutory presumption under Section 8(c) cannot be invoked in the absence of the foundational factual circumstances necessary for its application.

14. For the reasons recorded hereinabove, this Court is of the considered opinion that the essential ingredients constituting the offence under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act are conspicuously absent from the material collected during investigation, and the continuance of proceedings for the said offences would amount to an abuse of the process of law. Consequently, the appeal under Section 14-A of the SC/ST Act succeeds in part.

15. Consequently, the cognizance/summoning order dated 03.05.2025 passed by Special Judge, SC/ST Act, Budaun in Special Session Trial No.856 of 2025 (State of U.P. vs. Shamshad Ali Khan and others) arising out of Case Crime No.83 of 2025 under Sections 115(2), 352, 351(2) and 117(2) BNS and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, P.S.- Alapur, District- Budaun, is modified to the extent that the appellants stand discharged of the offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act.

16. However, sufficient material is available on record to proceed against the appellants under the provisions of BNS. Accordingly, the proceedings against the appellant under the provisions of Sections 115(2), 352, 351(2) and 117(2) BNS shall continue and be concluded expeditiously in accordance with law. The trial court shall proceed uninfluenced by any

observation made herein on the merits of the case.

17. With the above observation, the appeal is **partly allowed.**

18. If the appellants are not enlarged on bail, they are directed to appear before the court concerned and move bail application, within two weeks from today. It is made clear that no application seeking extension of the aforesaid period shall be entertained by this court.

19. In case, the appellants move bail application before the court concerned, the same shall be considered and decided by the trial court expeditiously and preferably on the same day, in light of principles laid down by the Supreme Court as well as this Court regarding surrender and bail.

20. In case, the appellants fail to appear before the court concerned within the stipulated period, the trial court will be at liberty to adopt appropriate coercive proceedings, in accordance with law, for securing the presence of the appellants.

21. Registrar (Compliance) is directed to serve a copy of this order by FAX/e-mail to the court concerned through District & Sessions Judge, Badaun within 48 hours.

(Santosh Rai,J.)

October 23, 2026
Ankit.

Digitally signed by :-
ANKIT VISHWAKARMA
High Court of Judicature at Allahabad