

# Ajay Vishwakarma vs State Of U.P. And Another on 28 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28105

Court No. - 74

Case :- APPLICATION U/S 482 No. - 44257 of 2024

Applicant :- Ajay Vishwakarma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Satya Prakash Singh, Seema Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri S.N. Mishra (AoR No.0994/2012) holding brief of Sri S.P. Singh, learned counsel for the applicant and Sri Abhishek Tripathi, learned A.G.A. for the State.
2. This Court by virtue of the order dated 03.01.2025 directed the learned A.G.A. to serve notice upon O.P. No.2 and there is an affidavit filed by the learned A.G.A. dated 24.01.2025 regarding service of notice upon O.P. No.2 on 23.01.2025.
3. Till the dictation of the order, nobody has put in appearance on behalf of O.P. No.2.
4. This is an application under Section 482 of the Code of Criminal Procedure preferred by the applicant for quashing the Charge Sheet dated 05.06.2018 including cognizance order dated 13.02.2019 in S.S.T. No.24 of 2019, State Vs. Ajau Vishwakarma, arising out of Case Crime No.67 of 2018, under Sections 354-B, 323, 506 IPC and Section 3(2)(va) of SC/ST Act, P.S. Devgaon, District

Azamgarh, pending in the court of 2nd Special Judge (S.C./S.T. Act), Azamgarh.

5. Learned counsel for the applicant submits that an FIR stood lodged on 22.04.2018 at 15:47 hours against the applicant under Sections 354-B, 323, 506 IPC and 3(2)(va) of the SC/ST Act, relating to the commission of offence on 15.04.2024, whereby when O.P. No.2 was sleeping with his family members, then at 12:00 in the night, the applicant herein, started behaving in an indecent behaviour and also tried to disrobe his daughter while removing the stole on account whereof there was a ruckus created. Learned counsel for the applicant submits that first of all, none of the offences of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stand made out and further according to him, in view of the judgment of the Hon'ble Apex Court in the case of Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710 in particular paragraph-17, there has to be an act, which tantamounts to act as a catalyst in commission of the offence against SC/ST and merely because the informant/victim is an SC/ST would not be sufficient. He further submits that the present case is nothing but a counterblast, particularly, when proceedings under Section 156(3) CrPC were initiated with respect to an incident dated 20.04.2018, wherein the accused herein was marked as an accused in the said complaint. Apart from the same, one Mukesh son of Sri Ram was also there along with the others and the incident took place on 20.04.2018 at 08:00 hours when the accused therein acted as a gang and with the help of cudgel and wooden stick inflicted injuries and while inviting attention toward Annexure-9 at page 53 of the paper-book, it is submitted that though FIR was lodged but subsequently summons were issued, but the applicant herein got himself medically examined and the nature of the injuries were found to be simple. He submits that it is nothing but a counterblast.

6. Learned A.G.A. on the other hand submits that whatever might be, the submissions made by the applicant, however, what is to be seen is the fact as to whether offences stand committed under the SC/ST Act and the invocation of the penal provisions under Section 3(2)(va) would apply or not is a crucial factor and once, it has come on record that the applicant had attempted to disrobe the daughter of O.P. No.2, then the offences surely are made out. He further submits that the medical report at page-53 of the paper book shows that the applicant was put to medical examination by himself on 20.04.2018, but the duration of the injuries are 2-3 days old. He submits that the theory of counterblast would not come into play, particularly when there happens to be a pinpointed allegation in the FIR.

7. I have heard learned counsel for the applicant as well as the learned A.G.A. The first and foremost question, which would fall for consideration before this Court would be as to whether invocation of the provisions under Sections 3(2)(va) of SC/ST Act would apply or not. Section 3 contains the heading 'Punishment for Offences Atrocities' and clause va deals with the words "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 (45 of 1860) for such offences and shall also be liable to fine". A schedule has been appended according to which 354-B talks about assault or use of criminal force to any woman or abets such act with the intent to disrobe. Interestingly, the words used are "intent to disrobe".

8. Apparently, the allegations contained in the FIR speaks about disrobing the daughter of O.P. No.2 by an act or omission of the applicant. Thus the provisions would come into play. Now, the question arises whether the present case can be termed to be a counterblast or not. Though the applicant has sought to argue that with relation of an incident dated 20.04.2018 at 08:00 hours, the applicant along with his son and others had administered beating with the aid of cuddle and wooden sticks etc. and the applicant had taken himself for getting medically examined, however, the injuries shown are 2-3 days old. In the opinion of the Court, it might be a defence that the applicant can take at the time, when trial commences, showing the fact that a criminal proceeding has unnecessarily been slapped upon him, but at this stage, this Court is not required to go into these factual aspects, as the stage has yet not come. Apart from the same, what is to be seen in the proceeding under Section 482 CrPC/ 528 BNSS is the fact as to whether the offences are made out and once the same is apparent on the face of the record, then delving into factual issues is not required.

9. Accordingly, no interference is required at this stage. The application is consigned to record.

10. At this stage, learned counsel for the applicant submits that a direction be issued for consideration of the bail.

11. This Court has no reason to disbelieve that in case applicant moves appropriate proceedings before the court below for enlargement of bail, then the same may be decided with most expedition in accordance with the law of the land.

Order Date :- 28.2.2025 N.S.Rathour (Vikas Budhwar, J)