Shajan Skaria vs The State Of Kerala on 23 August, 2024

2024 INSC 625 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2622 OF 2024
(ARISING OUT OF SLP (CRL.) NO. 8081 OF 2023)

SHAJAN SKARIA ……APPELLANT

VERSUS

THE STATE OF KERALA & ANR. ……RESPONDENT(S)

JUDGMENT

J. B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts: -

1. This appeal arises from the judgment and order dated 30.06.2023 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No. 906 of 2023 filed by the appellant herein by which the High Court dismissed the appeal and thereby affirmed the order dated 16.06.2023 passed by the Special Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ernakulam Division declining to grant anticipatory bail to the appellant herein in connection with the First Information Report No. 899 of 2023 lodged by the complainant (Respondent No. 2) at the Elamakkara Police Station, District Ernakulam for the offence punishable under Sections 3(1)(r) and 3(1)(u) respectively of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the "Act, 1989").

A. FACTUAL MATRIX

2. On 24.05.2023, the appellant herein, in his capacity as the Editor of an online news channel named "Marunandan Malayali" published a video on YouTube, an online video sharing platform, levelling certain allegations against the complainant. The English translation of the video transcript is reproduced hereinbelow: -

"Thumb Every one's afraid of P.V. Srinijan who grew up like a mafia don! Title Who made P.V. Srinijan a mafia don?

Content It was before a few days; the outside world knew about the news. The pride of Kerala, Kerala blasters was holding a selection trial which was for children under the age of 17. Children and parents had to wait for hours in front of the stadium at Panampally Nagar, Ernakulam which was owned by the Sports Council.

The Stadium was closed, because P.V. Srinijan, District Sports Council President and MLA of Kunnathunad had alleged that Kerala blasters had a debt to clear with Kerala Sports Council. Media took on the news and people got furious over it. With hesitation the gates were finally opened. Yesterday evening Srinijan said sorry, he said that he knew nothing about the incident and he was being targeted. Former National Sports Star and present Sports Council President, Sharaf Ali came out with strong stand that; one, Kerala blasters didn't owe any money. Two, even if they owed money it's a matter for the sports council to deal with. The most important fact is that there is not any due, because all the grounds belong to the State Sports Council, the District Sports Council doesn't have any relation. Sharaf Ali also said that P.V. Srinijan doesn't have a say in it.

There are no arrears in the contract between Kerala Blasters and Kerala Sports Council. The Kerala State Sports Council has informed the Council in writing. The District Sports Council has no right to block.

So why did Srinijan do the dirty work, who gave him the right to do so? Today evening another news came out. Including the sports hostel at Ernakulam, Panampalli Nagar and district sports development is being obstructed by Srinijan, the former Sports Council President and the National Sports Star Olympian Mercy Kutty said.

The hostel at Panampally Nagar Sports Academy was one of the biggest sports hostels in Kerala. With arrival of Srinijan and the present President the administration got completely changed. After that food was also not served at the hotel. Now vigilance investigation is going on. All the bills are fakes and the Sports Council's investigation is being piled up.

Who should Kerala believe, Sharaf Ali, Mercy Kuttan or Srinijan? Sharaf Ali and Mercy Kuttan have shown their skills.

They are national sports stars and are responsible and know how to act according to the situation at hand. They aren't political, so Kerala is more likely to believe these sports stars.

Srinijan is lying, it's the latest example Srinijan’s dramatic moves to slowly bring it under his control. My question isn't this, whenever a scandal, corruption or illegal activities take place we will find Srinijan name under it. Srinijan is infamous, still the CPM which made Srinijan a candidate should remember he wasn't even a communist. He was a leader of the youth congress. The footage of the DYFI demonstration against Srinijan’s relation to corruption and black money transactions are still available.

First, CPM gives seat to him. Secondly, the people of the locality elect him. The MLA Post is the best example that the people of Kerala would allow any corrupt and black money dealer to become a leader. By being at the MLA position, Srinijan has only done damage to the state.

We know that it is hard for Kerala to invite industries over, because here political parties will raise red flags against it. Therefore, even those industries in Kerala are leaving. There are only a few industries who are born here and pays taxes correctly to the State. One such industry is the Kitex run by Kitex Sabu. The one who made Kitex Sabu to move to Telangana from Kerala was Srinijan.

It was with Srinijan's consent that authorities used to pester Kitex and being a close friend to the CM Pinarayi Vijayan, Sabu had to come out to deal with the issue which

made Sabu to leave the state and move his entire industry into Telangana. This is the situation of an entrepreneur who gave jobs to millions and Srinijan is solely responsible for it. To destroy the enterprise, he made the employees get arrested in false charges, killed a person. The authorities were haunting the enterprise. It is said as Kadambrayar waste water, but investigation hasn't been fruitful. But we know that the waste is being generated from the Bhramapuram Plant which was later burnt. Now the dust and ashes are going to the Kadambrayar Lake. No one has a complaint about it. He made a businessman to move out of the State who was providing jobs to millions. Srinijan has many other allegations against him.

Srinijan's father-in-law was the Chief Justice of Supreme Court.

There are allegations that during those days he made crores illegally which were even raised by the CPM.

Reason for Srinijan's sudden growth in wealth is due to corruption has been come to knowledge. But no one has the guts to start an investigation against him. Because he has high connections even in the judiciary. Even an audio clip came out that he had used his relations in judiciary to bring down the Kitex Industry. The first was the account of Srinijan's destruction of the sports sector in order to bring it under his jurisdiction. The second was the conspiracy to drive out a businessman out of the State.

Viewers might remember the news I have given out about Prithviraj where it talked about the legal notice he had sent me. After receiving the legal notice, I have studied in depth about the film industry. From what I have learnt, there are some shocking facts related to it. I am just waiting for more proof. Knowingly or unknowingly Srinijan has a presence in the film industry.

It is not as we thought, we can see Srinijan at most film sites. Srinijan is the middle man in film industry for many. Which means he is the one who provides funds the most in the film industry.

But he does this with legal security. We are gathering evidences and as we find it true we will publish it.

Just focus on one thing. When Srinijan gave affidavit for participating in the competition he had to struggle to gather money because he had lots of black money. If he were to use it, he would get caught. So, he needed money in his account, so it is said that he borrowed money from some movie producers to show in record. I investigated some of the movie producers listed in the records. These producers borrow from others including Srinijan to make movies.

In short, Srinijan acts as a young mafia don. Srinijan has presence in movie industry, sports sector and politics. Srinijan will go to any extreme to eliminate those who dares to stand against him. Srinijan has high connections in judiciary. We shouldn't question judiciary. But there are some judicial officers who are corrupt and Srinijan aids them. But no one is bold enough to question him.

CPM has given Srinijan more power. Even the opposition is afraid to stand up against him. Even the judiciary is turning a blind eye. Even Kitex Sabu who fought against this leaves at one point.

Why is everyone afraid of him? Why is Kerala letting Srinijan to grow as a young mafia don?"

3. The complainant who is a Member of the Kerala Legislative Assembly representing the Kunnathunad constituency, a seat reserved for the members of the Scheduled Castes, aggrieved by the publication of the aforesaid video, filed a written complaint before the ACP, Central Police Station, Ernakulam alleging inter alia that the video was published by the appellant in order to publicise, abuse and insult the complainant, who is a member of a Scheduled Caste. The contents of the complaint are reproduced as under:

"I am the elected candidate for the Kunnathunad Assembly Constituency. Shri Sajan Skaria (Editor, News Reader and Publisher), Smt. Ann Mary George (Managing Editor & CEO), Shri Riju (Chief Editor) are using the online TV Channel named Marunadan Malayali (TC 17/3164 (11) Pattom Palace P.O., Pattom Thiruvananthapuram, PIN 695004) & are continuously concocting and spreading false news against me through different social media, which have no basis of any kind. Such false news are created and spread in order to ridicule and humiliate me, as a member of the Scheduled Caste Pulaya Community.

Shajan Skaria and aforesaid persons used my photo and uploaded a defamatory video against me through the Youtube Channel named Marunadan Malayali on 24.03.2023 with the title reading 'PV Sreenijan, who rose so suddenly as a Mafia Don' and the same was shared through other social media as well.

He raised a false allegation against me, who is the President of District Sports Council that there is a vigilance inquiry going on against me regarding running of a sports hostel. Besides he also alleged that I am trying to destroy the business ventures and I have falsely implicated and jailed the employees of Kitex. He also made a very serious allegations against me that I have murdered one person.

Shajan Skaria and the aforesaid persons are making efforts through their channel and other social media to me as a murderer, without any basis. That after the aforesaid video was uploaded, many people have shared the same on different social media

platforms. On seeing this video, many persons from within the State of Kerala outside telephoned me and talked about this matter and raised doubts as to whether I am such a person or not. I doubt that the above actions of Shajan Skaria, Smt. Ann Mary George and Shri Riju is a part of their efforts to intentionally destroy the public faith that I enjoy in the society.

The video published through the Online News Channel Marunadan Malayali on 24.05.2023 containing only false news and false averments, is knowingly made with the knowledge that I belong to Scheduled Caste Pulaya community and thus only to deliberately humiliate and ridicule me among the general public. Shajan Skaria, Smt. Ann Mary George, Shri Riju who belongs to Christian Community, knowing it fully well that I belong to Scheduled Caste Pulaya Community, has uploaded and spread the video as aforesaid with the deliberate intention of humiliating, ridiculing me among the general public. The same is an offence and is punishable under Section 3(r) and 3(u) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

That I faced severe humiliation, loss and damages due to the aforesaid actions of Shajan Skaria, Smt. Ann Mary George and Shri Riju. Hence it is prayed that necessary legal action be taken against Shajan Skaria, Smt. Ann Mary George and Shri Riju against creating and spreading of false news through online channel and other social media under the Sections of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, sections of IT Act and Sections of IPC.

Sd/xx P.V. Sreenijan Attaching the CD."

4. On the basis of the aforesaid complaint, FIR No. 899 of 2023 dated 09.06.2023 came to be registered against the appellant and two other persons, who are not parties to the present appeal, for offences punishable under Section 120(o) of the Kerala Police Act (the "KP Act") and Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989.

5. A plain reading of the FIR would indicate that the appellant is not a member of the Scheduled Caste and he is alleged to have published and disseminated a video containing disparaging content about the complainant with a view to publicise, abuse and insult the complainant. The complainant has alleged that the video has caused him a lot of humiliation, mental pain and agony. The complainant has also alleged that the video was uploaded by the appellant with the intention to humiliate and ridicule him among the general public with the knowledge that the complainant is a member of the Pulaya community, which is a Scheduled Caste.

6. Apprehending his arrest, the appellant went before the Court of Special Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, Ernakulam Division, praying for grant of anticipatory bail under Section 438 of the

Criminal Procedure Code, 1973 (the "CrPC"). The Special Judge, vide order dated 16.06.2023, rejected the anticipatory bail application of the appellant, holding that the allegations in the FIR are prima facie sufficient to attract the offence under the Act, 1989 and the bar of Section 18 of the said Act prohibits the court from exercising powers under Section 438 of the CrPC.

7. The appellant challenged the order passed by the Special Judge before the High Court of Kerala, wherein the High Court, vide order dated 30.06.2023 ("impugned order"), affirmed the order passed by the Special Judge and refused to grant anticipatory bail to the appellant. Relevant observations made by the High Court in the impugned order are extracted hereinbelow: -

"8. Now the question arises whether the offence under Section 3(1)(r) will be attracted, in the absence of reference to the caste status of the second respondent in the news item. In my opinion that question cannot be decided, oblivious of the object behind the enactment and the reason for amending the Act in 2019. The Act was brought into force for preventing the commission of atrocities against members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and provide relief and rehabilitation to the victims of such offences. The Act was amended on finding that, despite various measures to improve the socio-economic conditions of the scheduled Castes and Scheduled Tribes, they still remained vulnerable. Of course, as held by the Apex Court in Hitesh Verma and Ramesh Chandra Vaishya (supra), all insults or intimidation will not be an offence under the Act, unless such insult or intimidation is on account of the victim belonging to the Scheduled Castes or Scheduled Tribes. As observed earlier, materials on record do indicate that the video is intended to insult and humiliate the second respondent. At this stage, the court can only go by the allegations in the complaint and the attendant circumstances. The allegation is specific to the effect that the appellant has been insulting and humiliating the second respondent only for the reason that he belongs to the Scheduled Caste. The attendant circumstances are the wanton nature of the allegations and the repeated news items published against the second respondent. Going by the wording of Section 3(1)(r), reference to the caste name of the victim is not necessary for attracting the offence. This is clear from the distinction between the wording of Section 3(1) (r) and 3(1)(s). As such, it is not possible to hold that there are no prima facie materials to attract the offence under Section 3(1)(r).

In view of the finding on Section 3(1)(r), I am not venturing to decide whether the offence under Section 3(1)(u) is attracted or not. For the aforementioned reasons, the impugned order of the Special Court is upheld.

In the result, the Criminal Appeal is dismissed." (Emphasis supplied)

8. In view of the aforesaid, the appellant is before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

9. Mr. Sidharth Luthra and Mr. Gaurav Agrawal, the learned Senior Counsel appearing for the appellant made the following submissions:

a. The appellant had no intention to insult the complainant and merely stated the facts without mentioning the name of the complainant's caste or community. The appellant being a journalist, had published facts gathered through research and sources.

b. The High Court failed to take into consideration that the complainant has not alleged that the appellant intentionally insulted or intimidated him with an intent to humiliate him as a member of the Scheduled Caste or Scheduled Tribe community. A perusal of the telecast makes it clear that the appellant did not refer to the caste or community of the complainant. Even if the statements made in the video are said to be defamatory, the same by itself is not sufficient to attract an offence under the Act, 1989.

c. The complainant has not alleged that the appellant by words, either written or spoken, had promoted or attempted to promote feelings of enmity, hatred or ill-will against the members of the Scheduled Castes or Scheduled Tribes. Thus, no offence under Section 3(1)(u) of the Act 1989 is made out against the appellant.

d. The High Court failed to consider the judgments of the co-ordinate benches in XXX v. State of Kerala reported in ILR 2022 4 Ker. 620 and State of Kerala v. Hassan reported in 2002 (2) KLT 505, wherein it has been reiterated that the offence under Section 3(1)(u) of the Act, 1989 would be attracted only if the feelings of enmity, hatred or ill-will are promoted or attempted to be promoted against members of the Scheduled Castes or Scheduled Tribes as a class and not on criticizing an individual member.

e. The decision of this Court in Hitesh Verma v. State of Uttarakhand reported in (2020) 10 SCC 710 held that an offence under Section 3(1)(r) is not established merely on the fact that the victim is a member of the Scheduled Caste, unless there is an intention to humiliate a member of the Scheduled Caste or Schedule Tribe for the reason that the victim belongs to such caste.

f. The decision of this Court in Ramesh Chandra Vaishya v. State of Uttar Pradesh & Anr. reported in 2023 SCC OnLine SC 668 held that every insult or intimidation would not amount to an offence under Section 3(1)(x) of the Act, 1989 unless, such insult or intimidation is targeted at the victim because he is a member of a particular Scheduled Caste or Scheduled Tribe.

g. The High Court failed to consider the decision of this Court in Prathvi Raj Chauhan v. Union of India reported in (2020) 4 SCC 727 wherein it was held that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989 then the bar created by Section 18 and Section 18A(i) would not apply.

C. SUBMISSIONS ON BEHALF OF THE COMPLAINANT

10. Mr. Haris Beeran, the learned counsel appearing on behalf of the complainant/Respondent No.2 made the following submissions:

a. The appellant is a habitual offender in creating controversies by intentionally propagating false and defamatory campaigns against respectable members of society with the sole purpose of attracting subscriptions to his web platform.

b. The Act, 1989 was enacted with the object to prevent the commission of offences and atrocities against the members of the Scheduled Caste and Scheduled Tribes. Section 3(1)(r) of the Act, 1989 underscores the crucial aspect of intentional insult and intimidation with the specific intent to humiliate a member of the Scheduled Caste or Scheduled Tribe. The primary aim of the Act, 1989 is to ameliorate the socio-

economic conditions of the community as they have been historically deprived of numerous civil rights. Therefore, an offence under the Act, 1989 is established when a member of these vulnerable sections of society is subjected to humiliation and harassment.

c. The appellant had wilfully disseminated the news against the complainant, containing false assertions, deliberately aimed at portraying the complainant in poor light in society on the ground that he was a member of a Scheduled Caste.

d. The false and derogatory remarks were spread with full awareness of the complainant's status as a person belonging to the Scheduled Caste, having been elected as an MLA in 2021 from a seat reserved for members of the Scheduled Caste community. The appellant's deliberate actions of insult and humiliation undeniably constitute the offence under Section 3(1)(r) of the Act, 1989.

e. The appellant himself has stated that the complainant is an MLA representing the Kunnathunad Constituency. This makes his intentions clear as it is common knowledge that the said constituency is reserved for members belonging to the Scheduled Castes.

f. The complainant has been singled out by the appellant for the sole reason that he belongs to a Scheduled Caste. The Appellant has made unsubstantiated allegations and aspersions against the complainant and has gone to the extent of calling him a 'murderer' and 'mafia don'.

g. The appellant has not spared even the former Chief Justice of India who happens to be the father-in-law of the complainant and a person belonging to a Scheduled Caste. The appellant has intentionally humiliated the father-in-law of the complainant, assassinating his character as he also belongs to the Scheduled Caste community. The appellant has not even spared the judiciary by levelling defamatory allegations.

h. The act of the appellant, as alleged, constitutes an offence under Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989 and anticipatory bail cannot be granted in view of the bar under Section 18 of the Act, 1989.

i. Despite many notices issued by the investigating officers, the appellant has failed to turn up for the purpose of interrogation.

j. The appellant could be said to have exhibited a pattern of wilful non-

compliance of the court orders, thereby showcasing a flagrant disregard for the courts. In a different case where anticipatory bail was granted to him, the appellant subsequently stopped attending the court proceedings and failed to cooperate in the investigation. The High Court took note of such behaviour and warned the appellant that his anticipatory bail could be revoked. Therefore, there is a substantial risk in granting anticipatory bail to the appellant.

D. SUBMISSIONS ON BEHALF OF THE STATE

11. Mr. P.V. Dinesh, the learned Senior Counsel appearing on behalf of the State (Respondent No. 1 herein) made the following submissions:

a. The complainant is an MLA from Kunnathunad constituency which is reserved for members of the Scheduled Caste and the telecast of the video was with a clear knowledge that the complainant belongs to a Scheduled Caste community.

b. To constitute an offence under Section 3(1)(r) of the Act, 1989, it is not necessary to mention the caste of the person. The video was uploaded with the intention to cause insult and humiliate the complainant and thereby promote feelings of hatred and ill will.

c. The appellant has filed a petition before the Kerala High Court to quash the FIR and the same is currently pending.

E. RELEVANT STATUTORY PROVISIONS

12. Before adverting to the rival submissions canvassed on either side, it is necessary for us to look into few relevant provisions of the Act, 1989, the CrPC and the KP Act:

> Section 3 of the Act 1989:
>
> Punishments for offences of atrocities.— (1) Whoever, not being 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;

... (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;

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 Section 18 of the Act 1989:

> Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.
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> Section 438 of the CrPC:
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> Direction for grant of bail to person apprehending arrest.— [(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:---
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> (i) the nature and gravity of the accusation;
>
> (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
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> (iii) the possibility of the applicant to flee from justice; and.
>
> (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

> Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.
>
> (1A) Where the Court grants an interim order under sub-

section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court, (1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.] (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including--

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

[(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).] Section 120 of the KP Act:

> Penalty for causing nuisance and violation of public order.— If any person,— ...
>
> (o) causing, through any means of communication, a nuisance of himself to any person by repeated or undesirable or anonymous call, letter, writing, message, e-mail

or through a messenger ;

... shall, on conviction, be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both.

F. ISSUES FOR DETERMINATION

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following issues fall for our consideration:

a. Whether Section 18 of the Act, 1989 imposes an absolute bar on the grant of anticipatory bail in cases registered under the said Act?

b. When can it be said that a prima facie case is made out in a given FIR/complaint?

c. Whether the averments in the FIR/complaint in question disclose commission of any offence under Section 3(1)(r) of the Act, 1989?

d. Whether any offence under Section 3(1)(u) of the Act, 1989 could be said to have been prima facie made out in the FIR/complaint in question?

e. Whether mere knowledge of the caste identity of the complainant is sufficient to attract the offence under Section 3(1)(r) of the Act, 1989?

G. ANALYSIS

i. Evolution of the concept of anticipatory bail

14. The Code of Criminal Procedure, 1898 did not contain any specific provision analogous to Section 438 of the CrPC. In Amir Chand v. The Crown, reported in 1949 SCC OnLine Punj 20, the question before the Full Bench was whether Section 498 of the Criminal Procedure Code, 1898 empowered the High Court or the Sessions Court to grant bail to a person who had not been placed under restraint by arrest or otherwise. The Full Bench answered the reference as under:

"...The very notion of bail presupposes some form of previous restraint. Therefore, bail cannot be granted to a person who has not been arrested and for whose arrest no warrants have been issued. Section 498, Criminal Procedure Code, does not permit the High Court or the Court of Session to grant bail to anyone whose case is not covered by sections 496 and 497, Criminal Procedure Code. It follows, therefore, that bail can only be allowed to a person who has been arrested or detained without warrant or appears or is brought before a Court. Such person must be liable to arrest

and must surrender himself before the question of bail can be considered. In the case of a person who is not under arrest, but for whose arrest warrants have been issued, bail can be allowed if he appears in Court and surrenders himself. No bail can be allowed to a person at liberty for whose arrest no warrants have been issued. The petitioners in the present case are, therefore, not entitled to bail. The question referred to the Full Bench is, therefore, answered in the negative." (Emphasis supplied)

15. Under the 1898 Code, the concept of anticipatory or pre-arrest bail was absent and the need for introduction of a new provision in the CrPC empowering the High Court and Court of Session to grant anticipatory bail was pointed out by the 41st Law Commission of India in its report dated September 24, 1969. The report pointed out the necessity of introducing a provision in the CrPC enabling the High Court and the Court of Session to grant anticipatory bail. It observed in para 39.9 of its report (Volume I):

Anticipatory bail "39.9 The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting detained in jail for some days. In recent times, the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail" We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

In order to settle the details of this suggestion, the following draft of a new section is placed for consideration:

'497-A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the court under sub-section (1).

> (3) If any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.' We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself.

Superior courts will, undoubtedly, exercise their discretion properly, and not make any observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused." (Emphasis supplied)

16. The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced clause 447 in the Draft Bill of the Code of Criminal Procedure, 1970 with a view to conferring express power on the High Court and the Court of Session to grant anticipatory bail. The said clause of the draft bill was enacted with certain modifications and became Section 438 of the CrPC.

17. The Law Commission, in paragraph 31 of its 48th Report (1972), made the following comments on the aforesaid clause:

> "The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.
>
> We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.
>
> It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith." (Emphasis supplied)

18. It is apparent on a plain reading of the Statement of Objects and Reasons accompanying the Bill for introducing Section 438 in the CrPC that the legislature felt that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases. The purpose behind incorporating

Section 438 in CrPC was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court. [See: Siddharam Satlingappa Mhetre v. State of Maharashtra and Others reported in (2011) 1 SCC 694]

19. Discussing in the context of anticipatory bail, this Court, in Siddharam (supra), discussed the relevance and importance of personal liberty as under:

> "36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilised existence.
>
> 37. Origin of "liberty" can be traced in the ancient Greek civilisation. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 BC, an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realise itself as fully as possible through the self-realisation of the individual by way of human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the State was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was natural and necessary to man. Plato found his "republic" as the best source for the achievement of the self-realisation of the people.

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43. A distinguished former Attorney General for India, M.C. Setalvad in his treatise War and Civil Liberties observed that the French Convention stipulates common happiness as the end of the society, whereas Bentham postulates the greatest happiness of the greatest number as the end of law. Article 19 of the Indian Constitution averts to freedom and it enumerates certain rights regarding individual freedom. These rights are vital and most important freedoms which lie at the very root of liberty. He further observed that the concept of civil liberty is essentially rooted in the philosophy of individualism. According to this doctrine, the highest development of the individual and the enrichment of his personality are the true function and end of the State. It is only when the individual has reached the highest state of perfection and evolved what is best in him that society and the State can reach their goal of perfection. In brief, according to this doctrine, the State exists mainly, if not solely, for the purpose of affording the individual freedom and assistance for the attainment of his growth and perfection. The State exists for the benefit of the individual.

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49. An eminent English Judge, Lord Alfred Denning observed:

> "By personal freedom I mean freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasion without hindrance from any person.... It must be matched, of course, with social security by which I mean the peace and good order of the community in which we live."

50. An eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol. 18 (1978), p. 133 observed that "... Liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body."" ii. Whether Section 18 of the Act, 1989 imposes an absolute bar on the grant of anticipatory bail in cases registered under the said Act?

20. The Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989 is extracted hereinbelow:

> "Statement of Objects and Reasons.
>
> 1. Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
>
> 2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc. they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Penal Code, 1860 have been found to be

> inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.
>
> 3. The term 'atrocity' has not been defined so far. It is considered necessary that not only the term 'atrocity' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to· rehabilitate them."

21. It is evident from the aforesaid that the purpose of the Act, 1989 is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, to provide for establishment of special courts for the trial of such offences and to make provisions for the relief and rehabilitation of the victims of such offences.

22. The Act, 1989 could be said to have been enacted to improve the social and economic conditions of the vulnerable sections of the society as they have been historically subjected to various indignities, humiliations and harassment besides deprivation of life and property on account of their caste identity. The legislation, thus, intends to punish the acts committed against the vulnerable sections of the society for the reason that they belong to a particular community.

23. Section 18 of the Act, 1989 which makes the remedy of anticipatory bail unavailable in cases falling under the Act, 1989 reads thus:

> "18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

24. It is manifest from a plain reading of Section 18 referred to above that it bars the applicability of Section 438 of the CrPC in respect of offences under the Act, 1989. The legislature in its wisdom thought fit that the benefit of anticipatory bail should not be made available to the accused in respect of offences under the Act, 1989, having regard to the prevailing social conditions which give rise to such offences and the apprehension that the perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of such offences, if they are allowed to avail the benefit of anticipatory bail.

25. The constitutional validity of Section 18 of the Act, 1989 fell for the consideration of this Court in State of Madhya Pradesh v. Ram Krishna Balothia reported in (1995) 3 SCC 221. The challenge essentially was on the following two grounds:

a. Section 18 is violative of Article 14 of the Constitution as the benefit of Section 438 of the CrPC is available to an accused for offences under the Indian Penal Code, 1860 ("IPC") but the same is not available for offences under the Act, 1989.

b. Section 18 is also violative of Article 21 of the Constitution which protects the life and personal liberty of every person in this country.

26. The Respondents in the aforesaid case had filed writ petitions before the High Court of Madhya Pradesh, challenging the constitutional validity of certain provisions of the Act, 1989. Although the High Court negatived some part of the challenge, yet it held that Section 18 of the Act, 1989 was unconstitutional as it was violative of Articles 14 and 21 respectively of the Constitution of India.

27. The aforesaid decision of the High Court was challenged before this Court which allowed the appeals and held that Section 18 of the Act, 1989 cannot be considered as violative of Articles 14 and 21 respectively of the Constitution. It was held that the offences enumerated under the Act, 1989 fall into a separate and special category. The Court considered Article 17 of the Constitution which expressly deals with abolition of "untouchability" and forbids its practice in any form and took the view that the offences enumerated under Section 3(1) of the Act, 1989 arise out of the practice of "untouchability". Having regard to the same, it was held that Section 18 of the Act, 1989 does not violate Article 14 of the Constitution in any manner.

28. On the aspect of Article 21 of the Constitution, it was held by this Court that although Article 21 protects the life and personal liberty of every person in this country, which also includes the right to live with dignity, yet it cannot be said that Section 438 of the CrPC is an integral part of Article 21. The Court took notice of the fact that there was no provision similar to Section 438 in the Criminal Procedure Code, 1898 and ultimately concluded that anticipatory bail is not granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. Therefore, it was observed, that the non-application of Section 438 to a certain distinct category of offences cannot be considered as violative of Article 21 of the Constitution. Relevant observations made by the Court are reproduced hereinbelow:

"6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its practice in any form. It also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and

> the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. [....] The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.
>
> 7. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code.

[...] Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

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9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of 'untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

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12. In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution." (Emphasis supplied)

29. However, over a period of time, the courts across the country started taking notice of the fact that the complaints were being lodged under the Act, 1989 out of personal and political vendetta. The courts took notice of the fact that the provisions of the Act, 1989 were being misused to some extent for purposes not intended by the legislation. To overcome the bar of Section 18 of the Act, 1989, the persons against whom such complaints were being lodged started invoking the writ jurisdiction of the High Court under Article 226 of the Constitution.

30. Taking note of the aforesaid, this Court in Dr. Subhash Kashinath Mahajan v.

State of Maharashtra and Another reported in (2018) 6 SCC 454, while quashing the proceedings instituted against the appellant therein under the provisions of the Act, 1989 thought fit to issue the following directions:

> "79.1. Proceedings in the present case are clear abuse of process of court and are quashed.
>
> 79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
>
> 79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-

public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the

allegations are not frivolous or motivated. 79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt. 79.6. The above directions are prospective."

31. The Parliament took notice of the aforesaid directions and thought fit to carry out certain amendments in the Act, 1989 vide the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. The relevant portion is extracted hereinbelow:

> "2. After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:— "18A. (1) For the purposes of this Act,—
>
> (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
>
> (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.
>
> (2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.".

32. The provisions inserted by way of carving out Section 18-A of the Act, 1989 referred to above were made the subject matter of challenge in Prathvi Raj Chauhan (supra). In the said case, it was argued before a three-Judge Bench of this Court that Section 18-A inserted by way of amendment was only with a view to nullify the judgment of this Court in Subhash Kashinath (supra) referred to above. This Court noted that it was not in dispute that the bar of Section 18-A in the Act, 1989 had been enacted because of the judgment passed by this Court in Subhash Kashinath (supra) more particularly in view of the directions contained in paragraphs 79.3 and 79.5 therein. The court also noted that the review petitions filed by the Union of India in Subhash Kashinath (supra) were allowed and the directions contained in paragraphs 79.3 to 79.5 referred to above were ordered to be recalled.

33. In such circumstances, this Court observed that the examination of the Constitutional validity of Section 18-A brought by way of the amendment had been rendered academic. However, the Bench proceeded to look into the matter. Justice Arun Mishra, speaking for himself and Justice Vineet Saran held as under:

> "10. Section 18-A(i) was inserted owing to the decision of this Court in Subhash Kashinath [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124], which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons.

This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019 [Union of India v. State of Maharashtra, (2020) 4 SCC 761] . Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in Subhash Kashinath [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail.

11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions.

12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

13. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions."

34. Justice S. Ravindra Bhat, while concurring with the judgment rendered by Justice Mishra, assigned his own reasons which are reproduced hereinbelow:

> "32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.
>
> 33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests : i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

35. Thus, the decision in Prathvi Raj Chauhan (supra) makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, this Court observed that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989 then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons.

36. Justice Ravindra Bhat, in his concurring judgment, observed that while considering any application seeking pre-arrest bail in connection with an offence alleged to have been committed under the provisions of the Act, 1989, the courts should balance two interests – On one hand they should ensure that the power is not exercised akin to the jurisdiction under Section 438 of the CrPC while on the other hand they should ensure that the power is used sparingly in exceptional cases where no prima facie offence is made out as shown in the FIR or the complaint. It was observed that in cases where no prima facie materials exist in a complaint which would warrant the arrest of the accused, the court would have the inherent power to direct a pre-arrest bail.

37. The applicability of Section 438 of the CrPC to cases registered under the Act, 1989 was also dealt with by a two-Judge Bench of this Court in Vilas Pandurang Pawar and Another v. State of Maharashtra and Others reported in (2012) 8 SCC 795. The specific issue framed and answered by this Court was whether an accused charged with various offences under the IPC along with offences under the Act, 1989 would be entitled for an anticipatory bail under Section 438 of CrPC.

38. It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry of the materials on record. The relevant observations are reproduced hereinbelow:

> "9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.
>
> 10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out.

Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence." (Emphasis supplied)

39. A three-Judge Bench of this Court in Rahna Jalal v. State of Kerala reported in (2021) 1 SCC 733 while discussing in the context of Section 7 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, elaborated on the requirement of the existence of a prima facie case under Section 18 of the Act, 1989 for the bar of anticipatory bail to become applicable, as follows:

> "25. Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, where a bar is interposed by the provisions of Section 18 and Sub-section (2) of Section 18-A on the application of Section 438 of the CrPC, this Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in Chauhan (supra) held that the exclusion will not be attracted where the complaint does not prima facie indicate a case attracting the applicability of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989." (Emphasis supplied)

40. This Court, in Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others reported in (1994) 4 SCC 602, while discussing a similarly worded provision in the Terrorist and Disruptive Activities (Prevention) Act, 1985, held as follows:

> "13. We would, therefore, at this stage like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under same (sic some) provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The Designated Courts should always consider carefully the material available on the record and apply their mind to see whether the provisions of TADA are even prima facie attracted." (Emphasis supplied) a. Significance of the expression "arrest of any person" appearing in Section 18 of the Act, 1989

41. It is clear from the aforesaid discussion that Section 18 of the Act, 1989 does not impose an absolute fetter on the power of the courts to examine whether a prima facie case attracting the provisions of the Act, 1989 is made out or not. As discussed, Section 18 stipulates that in any case which involves the arrest of any person on the accusation of having committed an offence under the Act, 1989, the benefit of anticipatory bail under Section 438 of CrPC would not be available to the accused. We have deliberated on the significance of the expression "arrest of any person" appearing in the text of Section 18 of the Act, 1989 and are of the view that Section 18 bars the remedy of anticipatory bail only in those cases where a valid arrest of the accused person can be made as per Section 41 read with Section 60A of CrPC.

42. Section 60A of CrPC provides that no arrest shall be made except in accordance with the provisions of CrPC or any other law for the time being in force and providing for arrest. Section 41 of CrPC confers upon the police the power to arrest without warrant in certain situations as specified

therein. Sections 41(1)(b) and 41(1)(ba) respectively of CrPC read as follows:

> "41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person— xxx xxx xxx
>
> (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
>
> (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
>
> (ii) the police officer is satisfied that such arrest is necessary—
>
> (a) to prevent such person from committing any further offence; or
>
> (b) for proper investigation of the offence; or
>
> (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
>
> (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
>
> (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence."

43. A plain reading of the above provision shows that an arrest can be effected if there is a reasonable complaint, credible information or reasonable suspicion and the police officer has a reason to believe that such offence has been committed by the accused person and the arrest is necessary. It is worth noting that the words 'complaint', 'information' and 'suspicion' are qualified by the adjectives 'reasonable', 'credible' and 'reasonable' respectively. Similarly, the police officer is

required to have a 'reason to believe' based on the information he has received that the accused person has committed the alleged offence.

44. It is settled law that arrest cannot be made merely because it is lawful to do so.

The exercise of the power to arrest has been qualified by a twofold requirement – first, of having a reasonable belief that the accused person has committed the offence and secondly, that there is a need to arrest the accused person. This Court in Satender Kumar Antil v. CBI reported in (2022) 10 SCC 51 held that non-observance of the requirements stipulated under Sections 41 and 41A of CrPC respectively before effecting arrest would entitle the accused to be enlarged on bail. The relevant paragraphs are reproduced hereinbelow:

> "25. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail."

45. In Arnesh Kumar v. State of Bihar and Another reported in (2014) 8 SCC 273, this Court laid emphasis on the phrases "credible information" and "reasonable suspicion" as they appear in Section 41 of CrPC and held as follows:

> "5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.
>
> 6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof.

No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

xxx xxx xxx 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

xxx xxx xxx

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued." (Emphasis supplied)

46. The aforesaid discussion indicates that the term 'arrest' appearing in the text of Section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of police to effect an arrest and the restrictions imposed by the statute and the courts on the exercise of such power. Seen thus, it can be said that the bar under Section 18 of the Act, 1989 would apply only to those cases where prima facie materials exist pointing towards the commission of an offence under the Act, 1989. We say so because it is only when a prima facie case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied.

iii. When can it be said that a prima facie case is made out in a given FIR/complaint?

47. Prima facie is a Latin term that translates to "at first sight" or "based on first impression". The expression "where no prima facie materials exist warranting arrest in a complaint or FIR" should be understood as "when based on first impression, no offence is made out as shown in the FIR or the complaint". This means that when the necessary ingredients to constitute the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie.

48. As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the prima facie reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.

49. In our opinion, the aforesaid is the only test that the court should apply, when an accused prays for anticipatory bail in connection with any offence alleged to have been committed under the provisions of the Act, 1989. In a given case, an accused may argue that although the allegations levelled in the FIR or the complaint do disclose the commission of an offence under the Act, 1989, yet the FIR or the complaint being palpably false on account of political or private vendetta, the court should consider the plea for grant of anticipatory bail despite the specific bar of Section 18 of the Act, 1989. However, if the accused puts forward the case of malicious prosecution on account of political or private vendetta then the same can be considered only by the High Court in exercise of its inherent powers under Section 482 of the Code or in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. However, powers under Section 438 of the CrPC cannot be exercised once the contents of the complaint/FIR disclose a prima facie case. In other words, if all the ingredients necessary for constituting the offence are borne out from the complaint, then the remedy of anticipatory bail becomes unavailable to the accused.

50. The duty to determine prima facie existence of the case is cast upon the courts with a view to ensure that no unnecessary humiliation is caused to the accused. The courts should not shy away from conducting a preliminary inquiry to determine if the narration of facts in the complaint/FIR in fact discloses the essential ingredients required to constitute an offence under the Act, 1989. It is expected of the courts to apply their judicial mind to determine whether the allegations levelled in the complaint, on a plain reading, satisfy the ingredients constituting the alleged offence. Such application of judicial mind should be independent and without being influenced by the provisions figuring in the complaint/FIR. The aforesaid role of the courts assumes even more importance when a prima facie finding on the case has the effect of precluding the accused person from seeking anticipatory bail, which is an important concomitant of personal liberty of the individual.

51. The aforesaid position is also apparent from a plain construction of the text of Section 18 of the Act, 1989. The words “having committed an offence under this Act” denote that it is only when the accusation in the complaint clearly points towards the commission of an offence under the Act, 1989 that the bar of Section 18 would apply. The minimum threshold for determining whether an offence under the Act has been committed or not is to ascertain whether all the ingredients which are necessary to constitute the offence are prima facie disclosed in the complaint or not. An accusation which does not disclose the necessary ingredients of the offence on a prima facie reading cannot be said to be sufficient to bring into operation the bar envisaged by Section 18 of the Act, 1989. Holding otherwise would mean that even a plain accusation, devoid of the essential ingredients required for constituting the offence, would be enough for invoking the bar under Section 18. In our considered view, such an approach would not be in line with the dictum as laid by this Court while upholding the Constitutionality of Sections 18 and 18-A respectively of the Act, 1989.

52. Having said so, we would also like to state that the case at hand is of a unique nature and one that falls in a separate category. With the advent of internet and social media, cases like the one we are dealing with are likely to come up more frequently. In the present case, the basis of the FIR is the YouTube video and some other digital materials alleged to have been published by the appellant in the public domain. It is not the case of the complainant that the appellant subjected him to insults or humiliations in some public gathering, the details of which can only be gathered by recording the statements of witnesses. The entire incriminatory material based upon which the complaint came to be lodged was available in the public domain by virtue of having been uploaded on social media platforms. We had the occasion to threadbare go through the transcript of the YouTube video. We may only say that in cases like the one in hand, the courts should have the discretion to look into the materials based upon which the complaint has been registered, in addition to verifying the averments made in the complaint. If on a prima facie reading of the materials referred to in the complaint and the complaint itself, the ingredients necessary for constituting the offence are not made out, then the bar of Section 18 would not be applicable and it would be open to the courts to consider the plea for the grant pre-arrest bail on its own merits.

iv. Whether the averments in the FIR/complaint in question disclose commission of any offence under Section 3(1)(r) of the Act, 1989?

53. It is the case of the complainant as well as the State that considering the rash and derogatory statements alleged to have been made by the appellant herein, he could be said to have prima facie committed the offence under Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989.

54. We shall first proceed to examine whether the necessary ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are prima face disclosed on a plain reading of the FIR. Section 3(1)(r) reads thus:

> "Section 3 of the Act 1989:
>
> Punishments for offences of atrocities.— [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,— XXX XXX XXX
>
> (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;" (Emphasis supplied)

55. The basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are:

> a. Accused person must not be a member of the Scheduled Caste or Scheduled Tribe;
>
> b. Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;

c. Accused must do so with the intent to humiliate such a person; and d. Accused must do so at any place within public view.

56. It is relevant to note that Section 3(1)(r) of the Act, 1989 is similarly worded as the erstwhile Section 3(1)(x) of the Act, 1989 which was in force prior to its substitution with effect from 26.01.2016.

57. In the case at hand, the appellant is alleged to have published a video on YouTube, containing a slew of reckless statements in the form of allegations levelled against the complainant. We are not supposed to look into the veracity or the truthfulness of such allegations as contained in the video. We are only trying to understand that even if all the statements alleged to have been made by the appellant are believed to be true whether any offence under Section 3(1)(r) of the Act, 1989 could be said to have been prima facie committed. In our opinion, the answer should be in the negative.

58. We say so for the reason that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe. There is nothing in the transcript of the uploaded video to indicate even prime facie that those allegations were made by the appellant only on account of the fact that the complainant belongs to a Scheduled Caste. From the nature of the allegations made by the appellant, it appears that he is at inimical terms with the complainant. His intention may be to malign or defame him but not on the ground or for the reason that the complainant belongs to a Scheduled Caste.

59. In the aforesaid context, we may refer to and rely upon a three-Judge Bench decision of this Court in Hitesh Verma (supra). The relevant observations are reproduced below:

> “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.
>
> xxx xxx xxx

> 17. In another judgment reported as Khuman Singh v. State of M.P. [Khuman Singh v. State of M.P., (2020) 18 SCC 763 : 2019 SCC OnLine SC 1104] , this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:
>
> "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. In the present case, the fact that the deceased was belonging to "Khangar" Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."
>
> 18. Therefore, 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 Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out." (Emphasis supplied)

60. 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. We 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.

a. Meaning of the expression "intent to humiliate" appearing in Section 3(1)(r) of the Act, 1989

61. The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or

intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

62. We would like to refer to the observations of this Court in Ram Krishna Balothia (supra) to further elaborate upon the idea of "humiliation" as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of 'untouchability' and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category. Referring to the Statements of Objects and Purposes of the Act, 1989 it was observed by this Court that the object behind the introduction of the Act, 1989 was to afford statutory protection to the Scheduled Castes and the Scheduled Tribes, who were terrorised and subjected to humiliation and indignations upon assertion of their civil rights and resistance to the practice of untouchability. For this reason, mere fact that the person subjected to insult or intimidation belongs to a Scheduled Caste or Scheduled Tribe would not attract the offence under Section 3(1)(r) unless it was the intention of the accused to subject the concerned person to caste-based humiliation.

63. V. Geetha in her paper titled Bereft of Being: The Humiliations of Untouchability1 describes humiliation as an experience that is "felt, held and savoured in the very gut of our existence." Humiliation, in her understanding, can either be suffered as a one-time occurrence which bruises the self-esteem or pride of an individual, or it can be "suffered as a condition that is degrading and wounding." In the words of Gopal Guru, humiliation is not so much a physical injury but is in the nature of a psychological injury that leaves a permanent scar on the heart.

64. Explaining the social structures that perpetuate humiliation, Gopal Guru, in an introduction to his book2 writes that "humiliation is almost endemic to social life that is active basically through asymmetries of intersecting sects of attitudes – arrogance and obeisance, self-respect and servility and reverence and repulsion. Discussing on how the basis of humiliation varies in different societies, depending upon the social context, he observes that the idea and practice of humiliation "continues to survive in different forms depending upon the specific nature of the social context. For example, in the West it is the attitude of race that is at the base of humiliation. In the East, it is the notion of untouchability that foregrounds the form and content of humiliation." Humiliation: Claims and Context, Oxford University Press, First Edition (2009), pp. 95-107 Humiliation: Claims and Context (supra), pp. 1-22

65. While Gopal Guru makes the aforesaid observation in the context of different societies in relation to one another, such as the East and the West, in our opinion the observations are equally applicable to specific individual societies as well wherein multiple varying grounds of humiliation like gender, caste, race, etc. can co-exist and apply to the same or different individuals and groups.

66. Bhikhu Parekh in his paper titled Logic of Humiliation3 attempts to differentiate humiliation from other concepts that it is generally confused with. He gives the example of the ticket inspector who threw Gandhi off the train in South Africa to argue that humiliation might, but need not, involve physical cruelty. On the contrary, he contends that a man who starves another to death and tortures him, shows cruelty but does not necessarily humiliate him. He argues the same regarding the difference between insult and humiliation and observes that although humiliation generally involves insult, yet insult alone is not sufficient to constitute humiliation.

67. On the social context of humiliation, Parekh writes that "organised or institutionalized humiliation exists when social institutions and practices embody disrespect for, and systematically violate the self-respect of, groups of individuals." Drawing a distinction between systemic and regimented Humiliation: Claims and Context (supra), pp. 23-40 humiliation on the one hand as distinguished from isolated incidents of humiliation on the other, he observes that while the latter is present in modern liberal societies, the former is found in societies structured on the basis of slavery, racial segregation, untouchability, caste system, hierarchical status, etc. According to him, the reason for the same is that the modern liberal societies, though marked by deep economic, political and other inequalities, allow for vertical mobility owing to the fluid nature of the inequalities. Whereas, societies based on race, caste system, etc. are grounded in inequalities like colour, birth, ethnicity, etc. which are unalterable and deeply entrenched in the very foundational fabric of such a society. The inflexible nature of the basis of inequalities leads to the existence of a more structural and systemic form of humiliation, as the perpetrator is assured of its place in the structure of the society owing to its immobility. Since no one can be assured of the same in a modern liberal society which is marked by vertical mobility in the social structure, there is no incentive for anyone to have a regimented system of humiliation.

68. Resistance is internal to humiliation, and some scholars have argued that humiliation is only defined on the basis of the claims made against it. Thus, those who are humiliated also inherently possess the capacity to protest against it. However, those who protest also run the risk of inciting opposition from those who want to push the traditionally humiliated groups to the margins. This apprehension of opposition and push back from the dominant against the marginalised is also evident from the Statements of Objects of the Act, 1989, as discussed by this Court in Ram Krishna Balothia (supra).

69. What appears from the aforesaid discussion is that the expression "intent to humiliate" as it appears in Section 3(1)(r) of the Act, 1989 must necessarily be construed in the larger context in which the concept of humiliation of the marginalised groups has been understood by various scholars. It is not ordinary insult or intimidation which would amount to 'humiliation' that is sought to be made punishable under the Act, 1989. The Parliament, by way of different legislations, has over the years sought to target humiliation based on different grounds and identities which exist in the society. The Protection of Women from Domestic Violence Act, 2005 seeks to punish humiliation based on gender inequalities by specifically including the term 'humiliation' in the definition of "domestic violence". Similarly, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 includes treatment causing humiliation to a female employee and which may likely affect her health and safety within the definition of sexual

harassment.

70. In our considered view, it is in a similar vein that the term 'humiliation' as it appears in Section 3(1)(r) of the Act, 1989 must be construed, that is, in a way that it deprecates the infliction of humiliation against members of the Scheduled Castes and Scheduled Tribes wherein such humiliation is intricately associated with the caste identity of such members.

71. We would also like to refer to Section 7(1)(d) of The Protection of Civil Rights Act, 1955 ("Civil Rights Act") at this juncture to give a more meaningful construction to Section 3(1)(r) of the Act, 1989. The provision reads as follows:

> "7. Punishment for other offences arising out of "untouchability".—(1) Whoever— xxx xxx xxx
>
> (d) insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Caste;

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees."

72. It is clear from a plain reading of the aforesaid provision that any insult against a member of a Scheduled Caste or Scheduled Tribe on the ground of "untouchability" was punishable with imprisonment for a maximum term of six months under the Civil Rights Act. With the passage of time, it was realised by the legislature that the Civil Rights Act was not adequately sufficient to tackle caste-based offences and the practice of "untouchability", leading to the enactment of the Act, 1989 introducing more stringent provisions for combating such practices. Section 3(1)(r) of the Act, 1989 should, thus, be seen in the context of Section 7(1)(d) of the Civil Rights Act. Seen thus, the words "with an intent to humiliate a member of a Scheduled Caste or Scheduled Tribe" become inseparable from the underlying idea of "untouchability" which is sought to be remedied and punished by the Act, 1989.

73. A two-Judge Bench of this Court in Ramesh Chandra Vaishya (supra) explained that for an act of intentional insult to attract the offence under erstwhile Section 3(1)(x) of the Act, 1989 (which is identical to Section 3(1)(r) of the Act, 1989) it was necessary that the insult is laced with casteist remarks. Relevant observations is extracted hereinbelow:

> "18. [...]The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a

> person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. [...]"

74. Having regard to the reprehensible conduct and the nature of the derogatory statements made, the appellant, at best could be said to have prima facie committed the offence of defamation punishable under Section 500 of the IPC. If that be so, it is always open for the complainant to prosecute the appellant accordingly. However, the complainant could not have invoked the provisions of the Act, 1989 only on the premise that he is member of Scheduled Caste, more so, when a prima facie conjoint reading of the transcript of the video and the complaint fails to disclose that the actions of the appellant were impelled by the caste identity of the complainant.

v. Whether any offence under Section 3(1)(u) of the Act, 1989 is prima facie made out in the FIR/complaint in question?

75. Section 3(1)(u) of the Act, 1989 reads thus:

> "Punishments for offences of atrocities.— (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,— xxx xxx xxx (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;
>
> xxx xxx xxx 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" (Emphasis supplied)

76. The basic ingredients for constituting an offence under Section 3(1)(u) of the Act, 1989 are:

> a. Accused should not be a member of the Schedule Caste or Scheduled Tribe;
>
> b. Accused should by words, either written or spoken, or by signs or by visible representation or otherwise;
>
> c. Promote or attempt to promote feelings of enmity, hatred or ill-will against members of the Scheduled Caste or the Scheduled Tribes.

77. In our opinion, there is nothing to even prima facie indicate that the appellant by publishing the video on YouTube promoted or attempted to promote feelings of enmity, hatred or ill-will against the members of Scheduled Castes or Scheduled Tribes. The video has nothing to do in general with the members of Scheduled Caste or the Scheduled Tribe. His target was just the complainant alone. The offence under Section 3(1)(u) will come into play only when any person is trying to promote ill feeling or enmity against the members of the scheduled castes or scheduled tribes as a group and not as individuals.

vi. Whether mere knowledge of the caste identity of the complainant is sufficient to attract the offence under Section 3(1)(r) of the Act, 1989?

78. It was also sought to be argued that the appellant knew very well that the complainant belongs to a Scheduled Caste and despite such knowledge if he went on to make derogatory utterances in the video then the offence under Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989 could be said to have been prima facie made out.

79. We find no merit in the aforesaid submission. Wherever the legislature intended that mere knowledge of the fact that the victim is a member of Scheduled Caste or Scheduled Tribe would be sufficient to constitute an offence under the Act, 1989, it has said so in so many words. We may reproduce some of the relevant provisions where knowledge that the complainant belongs to the Scheduled Castes or Scheduled Tribes is sufficient in itself to constitute the offence:

> "3. Punishments for offences atrocities.-(1) xxx xxx xxx (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." xxx xxx xxx (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,□xxx xxx xxx
>
> (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 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 imprisonment for life and with fine;
>
> (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 (45 of 1860) for such offences and shall also be liable to fine;]" (Emphasis supplied)

80. At the cost of repetition, the words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. As discussed earlier, the offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe. When we are considering whether prima facie materials exist, warranting arrest of the appellant, there is nothing to indicate that the allegations/statements alleged to have been made by the appellant were for the reason that the complainant is a member of a Scheduled Caste.

81. The High Court in its impugned order has observed "materials on record do indicate that the video is intended to insult and humiliate the second respondent." The High Court may be right in observing that the intention of the appellant could have been to insult and humiliate the complainant but the High Court failed to consider whether such insult or humiliation was on account of or for the reason that the complainant belongs to Scheduled Caste. Is it the case of the complainant that had he not belonged to a Scheduled Caste, the appellant would not have levelled the allegations? The answer lies in the question itself.

82. A penal statute must receive strict construction. A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can, therefore, be described as a principle of legal policy formulated as a guide to the legislative intention.

83. Maxwell in The Interpretation of Statutes (12th Edn.) has observed that "the strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

84. William F. Craies in Statute Law (7th Edn. at p. 530) while referring to U.S. v.

Wiltberger [5 L Ed 37 : 18 US (5 Wheat.) 76 (1820)] observes thus:

> "The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislature, and not in the judicial department, for it is the legislature, not the court, which is to define a crime and ordain its punishment." (Emphasis supplied)

85. In Tuck & Sons v. Priester reported in (1887) 19 QBD 629 (CA), which was followed in London and Country Commercial Properties Investments Ltd. v. Attorney General reported in (1953) 1 WLR 312 : (1953) 1 All ER 436, it was observed thus:

> "We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms, they are not enforceable. Also, where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive." (Emphasis supplied)

86. Blackburn, J. in Willis v. Thorp reported in (1875) LR 10 QB 383 observed that “when the legislature imposes a penalty, the words imposing it must be clear and distinct.”

87. We have construed Section 18 of the Act, 1989 keeping in mind the aforesaid principles of statutory construction. We are of the view that taking any other view than the one taken by us would be unreasonable, oppressive and not in tune with the consecrated principles of our Constitution.

H. CONCLUSION

88. For all the foregoing reasons, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is hereby set aside.

89. We direct that in the event of arrest of the appellant by police in connection with the First Information Report No. 899 of 2023 lodged at the Elamakkara Police Station, he shall be released on bail subject to terms and conditions, which the Investigating Officer may deem fit to impose.

90. Pending application(s), if any, shall stand disposed of.

.....J. (J.B. Pardiwala) .....J. (Manoj Misra) New Delhi August 23, 2024