Priti Agarwalla vs The State Of Gnct Of Delhi on 17 May, 2024

Author: M. M. Sundresh

Bench: M. M. Sundresh

2024 INSC 437

[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO (S). 348 OF 2021

PRITI AGARWALLA AND OTHERS … APPELLANT(S)

VERSUS

THE STATE OF GNCT OF DELHI AND OTHERS … RESPONDENT (S)

JUDGMENT

S.V.N. BHATTI, J.

I. FACTUAL MATRIX

1. The Olympic Riding and Equestrian Academy, Eastern Jaunapur, New Delhi (for short, "OREA"), is a training facility for enthusiastic equestrian athletes. Mr. Kapil Nath Modi administers and runs the said training facility. Appellant Nos. 2, 3, 6 and Respondent No. 2 were the trainee athletes in OREA. Appellant No. 1 is the mother of Appellant No.

2. Appellant Nos. 4 and 5 are the parents of Appellant No. 6.

2. Date: 2024.05.17 16:06:51 IST Reason:

> Appellant No. 2 was admitted for equestrian training into the Academy in June 2010. Appellant No. 3 was accepted into OREA in the year 2009. Appellant No. 6 has also been receiving training in the Academy for a little over two years. Respondent No. 2, a passionate athlete who dreamt of being the first Olympic champion of dressage, claims to have been receiving training in equestrian sport in OREA since 2015.
>
> 2.1 The equestrian sport dates back to the ancient Greek era and has been an Olympic sport from 1900 onwards. The dressage sport is popularly known as horse ballet. The

> riders and their horses are judged based on their movement, calmness, suppleness and flexibility. One judges the horse's enthusiasm to perform each element with minimum encouragement from the rider. For strangers to the sport, including non-

equestrian athletes, this sport displays the perfect sync between the horse and the rider.

3. The controversy considered in the present appeal reflects whether the athletes under training at OREA, who wanted to control the mind and body of a horse, have lost the calmness, suppleness and flexibility while being trained at OREA. The Criminal Appeal concerns the complaint filed by Respondent No. 2 on 29.04.2018 before SHO P.S. Fatehpur Beri, South Delhi under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989") against the Appellants herein and the application dated 09.05.2018 filed under section 156(3) of the Code of Criminal Procedure, 1973 (for short, "the CrPC") before the Ld. Metropolitan Magistrate, South Saket Court, Delhi. 3.1 A few dates and events between the contesting parties from 03.04.2018 to 09.05.2018 are prefaced to the narrative. On 03.04.2018, Appellant No. 4 filed a complaint before SHO, P.S. Fatehpur Beri, against the administrator of OREA. The said complaint is not made under any specific section of the Indian Penal Code, 1860. The administrator, however, considering the nature of the allegations in the FIR lodged against him before SHO, P.S. Fatehpur Beri, on 06.04.2018, moved an application for anticipatory bail before the Saket District Court, Delhi. On 11.04.2018, the anticipatory bail application of the administrator stood dismissed. On 12.04.2018, Appellant No. 1 and her husband filed yet another complaint against the administrator of OREA, on the alleged ill- treatment meted out to their son/Appellant No. 2 by the administrator. On 14.04.2018 and 15.04.2018, as the calmness of all the persons concerned is noticeably lost, in quick succession, admittedly, yet another complaint alleging sexual harassment, cheating and cruelty towards animals was filed against the administrator by Appellant Nos. 3, 4 and 6. A WhatsApp group "Alliance" was created by Appellant No. 6, which included Appellant Nos. 2 and 3 and one Daksh Mittal, another trainee athlete at OREA. Daksh Mittal wrote a letter dated 21.04.2018 to the administrator, informing the conspiracy being hatched by the members of the "Alliance" WhatsApp group to kill the administrator and attack Respondent No. 2 by pouring acid on Respondent No. 2. The administrator, on 22.04.2018, by referring to the letter dated 21.04.2018, filed a complaint before SHO P.S. Fatehpur Beri for protection and also to prevent any plan being executed either on the administrator or Respondent No. 2 by a few members of the WhatsApp group, "Alliance". It is not preposterous to advert at this stage of the narrative that the complaint dated 22.04.2018 dealt with what is informed through a letter dated 21.04.2018 by Daksh Mittal/trainee athlete at OREA and nothing else.

3.2 On 28.04.2018, Appellant Nos. 3, 5 and 6, along with the police and officers of the Animal Husbandry Department, visited the training facility of OREA at Eastern Jaunapur, New Delhi. On 29.04.2018, Respondent No. 2 filed a complaint before SHO P.S. Fatehpur Beri against the Appellants herein under the Act of 1989, which is the genesis for the present Criminal Appeal.

3.3 The following cases and counter-cases are stated to have been filed/pending by and against the parties herein:

S. Complaint/FIR/ Date Filed By Filed Against Stage No Case i. Complaint 03.04.2018 Appellant The No action before SHO P.S. No. 4 Administrator taken by Fatehpur Beri police ii. Complaint 04.04.2018 The Appellants -

	before SHO P.S. Fatehpur Beri		Administrator	
iii.	Complaint before SHO P.S. Fatehpur Beri	12.04.2018	Appellant No. 1 and Gautam Agarwalla	The Administrator	No action taken by police
iv.	Complaint before SHO P.S. Fatehpur Beri	14.04.2018	Appellant No. 4	The Administrator	No action taken by police
v.	Complaint before SHO P.S. Fatehpur Beri	14.04.2018	Appellant No. 3	The Administrator	Converted into FIR No. 135/2018 on 21.04.2018
vi.	Complaint before SHO P.S. Fatehpur Beri	14.04.2018	Appellant No. 6	The Administrator	Converted into FIR No. 134/2018 on 21.04.2018
vii.	FIR No. 135/2018 u/s 354(A), 509, IPC before P.S. Fatehpur Beri	21.04.2018	Appellant No. 3	The Administrator	Pending at stage of charge Quashing petition filed by Kapil Modi before Delhi High Court [W.P. Crl. 2368/2018]
viii.	FIR No. 134/2018 u/s 354(A), 509, IPC before P.S. Fatehpur Beri	21.04.2018	Appellant No. 6	The Administrator	Pending at stage of charge Quashing petition filed by Kapil Modi before Delhi High Court [W.P. Crl. 2244/2018]
ix.	Complaint before SHO P.S. Fatehpur Beri	22.04.2018	The Administrator	Appellants	FIR not registered
x.	Complaint before SHO P.S.	29.04.2018	Complainant/ Respondent	Appellants	Based on this

	Fatehpur Beri	No. 2			complaint, an application u/s 156(3), CrPC dt. 09.05.2018 was filed by the Complainant/ Respondent
xi.	Praveen Kumar @ Prashant v. Special CP Southern Range (C.T. 627/2018); filed u/s 4, SC/ST Act before	10.05.2018	Complainant/ Respondent No. 2	Special Commissioner by Ld. of Police, SHO P.S. Fatehpur Beri and Sh. Rajender Pathania, ACP, Mehrauli Sub-Division- South District	Dismissed Special Court vide judgement dated 27.08.2018
xii.	Praveen Kumar @ Prashant v. Commissioner of Delhi Police and Ors. (C.T. 536/2018); u/s 4(2) & (3), SC & ST Amendment Act, 2015 r/w Rule 5, 6(2) of SC & ST Rules	25.05.2018	Complainant/ Respondent No. 2	Appellants	Dismissed by Special Court vide judgement dated 05.06.2018.
xiii.	Kapil Modi v. Amir Pasrich and Ors. (CT 13620/2018) u/s 500, 120B, 399, IPC	10.09.2018	The Administrator	Appellants	Dismissed by Ld. MM, Saket Court, Delhi u/s 203 CrPC on 11.11.2021. Challenged by Kapil Modi in Crl. Rev. No. 242/2021.
xiv.	Complaint before P.S. Fatehpur Beri alleging financial misappropriation	28.11.2018	Commander Kuldeepak Mittal	The Administrator and Complainant/ Respondent	Action taken is not available on record.

xv. Complaint before P.S. Fatehpur Beri	06.06.2020	Commander Kuldeepak Mittal	-	-

3.4 The grievance of Respondent No. 2 is that the information lodged on 29.04.2018 was not taken up, inquired, or investigated by the SHO of P.S. Fatehpur Beri. Respondent No. 2, alleges to have sent complaints/grievance petitions complaining inaction on the Complaint dated 29.04.2018, between 29.04.2018 and 08.05.2018, to all the authorities who matter in giving apt and appropriate directions to the SHO of P.S. Fatehpur Beri for timely investigation of the information lodged on 29.04.2018. Respondent No. 2 has a grievance that the inquiry/investigation, on the complaint dated 29.04.2018, did not happen as mandated by the Act of 1989. Hence, on 09.05.2018, Respondent No. 2 filed an application under section 156(3), read with section 200 of the CrPC before the Ld. Chief Metropolitan Magistrate, South Saket Court for the following prayers:

"It is therefore most humbly prayed that this Hon'ble Court may kindly be pleased:

a) To order registration of FIR under appropriate provisions of law and order fullfledged investigation, as may be mandatory and necessary in accordance of law.

b) Pass such further order, as this Hon'ble Court may deem fit, just and proper in the interest of justice."

4. The Chief Metropolitan Magistrate referred the complaint dated 09.05.2018 to the SHO, P.S. Fatehpur Beri. Our attention has been drawn by the respective Counsel appearing for the parties to the complaint dated 29.04.2018 and the application dated 09.05.2018 filed before the Metropolitan Magistrate in detail in support of their respective arguments. The application dated 09.05.2018 under section 156(3) of the Cr.P.C seeks to set in motion the jurisdiction of the competent criminal court on the complaint presented on 29.04.2018 by Respondent No. 2. Having in perspective the rival contentions canvassed by the parties, we deem it appropriate to excerpt the complaint dated 29.04.2018 filed before the SHO, P.S. Fatehpur Beri and also the application dated 09.05.2018 filed before the Magistrate for complete depiction of the alleged commissions or omissions under the Act of 1989. We indicate the change or improvement in the text of the complaint of Respondent No. 2 against the Appellants within the flower brackets of the application dated 09.05.2018. In a controversy as the one now examined by this Court; the narrative must be a mirror reflection of the case stated by Respondent No. 2. The excerpts would do the requirement and the complaint dated 29.04.2018 reads thus:

" , : COMPLAINT ,
( ) 23 ¡ ¢

£ □¥ƒ § International Horse Riding Champion □¥ Dressage Compete □¥ (This is a Olympic event of horse riding) International and National over 30 Medals in International Dressage Development League Competitions.

2015 National and International Dressage Champion Under Training □¥ƒ

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¤ § - ƒ " – ¢
□ ƒ † – Anush Aggarwala □¥ – Priti Aggarwala, Ameera Pasrich □¥ - : Ameer, Shivani Pasrich Shikha Mundkur ƒ

□ § « Anush Aggarwala , Anush Aggarwala
' ¢□£ , ¢ , ¢ § faggot ƒ

□ § « Preeti Aggarwala – Priti, Anush Aggarwala IDDL Competion □ ‹ ' –
Prashant ¡ ¢ £ § « £ "
□ " ‹ " □ ¤ "
· § · □ "
Plastic Gloves ƒ □ § « Amir Pasrich - 17 Amir Pasrich ‹
† ' Dressage □ ¢□£ ¢ ¡
† □ « « § □ §
· ¡ ‹ ‹ ƒ

□ § « Shikha Mundkur § Ameer – 28 2018 ¡ □ £ Riding Xanthos Shikha □ § Ameera ' † Riding □ " "
¡ ‹ § ' □ £ ¢ " § □
You Bloody Mother Fucking Faggot «" □ ‹ " Riding
" ƒ

† " ' ¢ £ IDDL › Champion □¥
§ † ' µ □ ¶ ' Free ƒ §
† £ § ' Olympics □ £ Free
Competition ¡ □ ƒ

' Alliance Whatsapp Group Detailed Chat Record ‹
" Shikha, Ameera, Anush « - Full Support
ƒ † " ' Acid Attack or Torture

□ § † ¢ □ Insult ƒ 22
« 2018 • .• . . 28 3:55PM Kapil Sir Complaint Register
□ † “ □ ƒ ‹ †
ƒ Complaint † “ ƒ

28 « 2018 Shivani, Ameera and Shikha, ‹ Animal
Husbandry « § 6-7 « Shivani ' ° □
› ' “ § □ ¡ “ Trainer
22 « Complaint □ ¢ ¢
§ ƒ

“ ' † “ ‹ ‹ §
‹ □ □ ¢□ ƒ † • ¡ Olympic Dressage
Event Gold Medal □ “ ‹ † “ ' ¤ ¤ ƒ

' † “ « □ , ƒ

‹ ‹ ' † µ § Complaint ,
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† Whatsapp Chat Details Attach † Criminal Plot
□ ƒ

› ( )” “I am Praveen Kumar (Prashant) S/OLate Shri Sitam Singh, age 23 Years, I am a boy from the Chamar caste. And I am a international horse riding champion and compete in Dressage (This is a Olympic event of horse riding). I have won over 30 International and national medals in International Dressage Development league competitions.

From July 205, I have been training under Mr. Kapil Modi who is a and International dressage champions.

From last two years, I have been intentionally abused and humiliated and my self respect was shattered. These dirty and dangerous actions against me were done by 3 students and their parents. These persons belong to very rich families. Their names are: Anush Agarwalla, Priti Agarwalla (mother ofAnush), Ameera Pasrich, her mother and father: Amir, Shivani Pasrich and Shikha Mundkur.

International insult and Humiliation by, Anush Agarwalla on many occasions has publicly abused me by calling me "chuda, Chamar, chakka and faggot "

> International insult Humiliation by Priti Agarwalla (mother of Anush Agarwalla): whenever Priti visited Delhi to watch Anush Agarwalla during IDDL competitions she would tell me "Prashant you are a chamar and we rich Marwari's don't like the fact that untouchables like you come close to us, you are unfit to even act as a sweeper in

> our house. Whenever my son asks you for water/food you must wear plastic gloves and serve him"

International insult and Humiliation by Amir Pasrich: on 17 December when Amir came to the farm house he told me "Prashant sport of Dressage is not meant for chura and chamars like you, this sport is only meant for rich peopie like us. Tum apni aukat mai raha karo and when my daughter comes to ride don't come in front of her"

> International insult and humiliation by Shikha Mundkur and Ameera Pasrich: On 28 January 2018, I was riding a horse called “xanthos”. When Shikha and Ammera saw me riding the horse, both ran towards me hurling abuses at me and pushed me off the horse, they spat on me and said "you bloody mother fucking faggot if you ever dare to ride a horse again then it will have very bad consequences"

All these people are jealous of me because I have become a champion rider via the IDDL and they hate me because I get trained for free. And these people have to pay fees and I have got all the Olympic horses from Kapil sir for competition purposes for free.

When I got the print out of the detailed chat record of a whatsapp group called Alliance which was created by Shikha, Ameera, Anush with full support of their parents. In this group all these persons had planned to acid attack or torture me. on 22 April 2018 DD No. 28B, 3:55pm Kapil Sir had registered a complaint in which he wrote that my life is under threat from these people. Till today police has not taken any action on this copy of the complaint is attached.

On 28 April 20I8 evening Shivani, Ameera & Shikha came to the farm along with officers of animal husbandry and 6-7 police officers. Shivani found a opportune moment and threatened me that she will get me killed and said that you must have seen that inspite of your trainers 22nd April complaint I have come with the police and that I have no status.

These person can get me killed because of these persons my self belief, self respect and self confidence has been totally destroyed. My dream was to get a gold medal for India at Olympic dressage event, but today these people have snatched everything from me.

Pradeep Kumar (Prashant)”

5. Application dated 09.05.2018 before the Metropolitan Magistrate under section 156(3)-

“4. That over the last two years, the applicant has been caste abused being schedule caste and intentionally insulted in public view. The applicant's self respect has been seriously shattered because of such acts of being very badly and intentionally humiliated by three students and their parents who were training along with the applicant, Anush Agarwalla and his mother Priti Agarwalla, Ameera Pasrich, her celebrity mother Shivani Pasrich and father Amir Pasrich who is a influential Supreme Court lawyer and Shikha Mundkur, all of the aforementioned persons are belonging to very elite and rich class families have intentionally & knowingly insulted and

intimidated the applicant within public view with the intent to humiliate and shatter the applicant's self-respect on several occasions as under-·

(i) Intentional insult and Humiliation by Anush Agarwalla: Anush on many occasions during training at Kapil Sir's farm, Anush would abuse the applicant in presence of locals by calling him "chuda, Chamar, chakka and faggot"

> (ii) Intentional insult and Humiliation by Mrs. Priti Agarwalla of Anush Agarwalla): When Priti visited Kapil sir's farm on many occasions, during the IDDL competitions to watch her son Anush compete. Priti had insulted the applicant on a few occasions by telling him that"Prashant you are a chamar and we rich Marwari's don't like the fact that untouchables like you come close to us, you are unfit to even act as a sweeper in our house. Whenever my son asks you for water/food you must wear plastic gloves and serve him.
>
> (iii) Intentional insult and humiliation by Shikha Mundkur and Ameera Pasrich: On 28/01/2018, the applicant was riding a horse "Xanthors" {which in owned in 50:50 partnerships between Shikha and Mr. Modi}. When Shikha and Ameera saw the applicant riding Xanthos, {they both ran towards the applicant and pushed me off the horse}, they spat on the applicant and said "you bloody motherfucking faggot agar tuney agey se Riding karne ki himmat kari to bahut bura hoga"

(iv) Intentional insult and Humiliation by Amir Pasrich (Famous Supreme Court lawyer & father of Ameera Pasrich): on {17/12/2018} when Amir came to the farm house he told the applicant "Prashant his sport of Dressage is not meant for chura and chamars like your, this sports in only meant for rich people like us. Tum apni aukat mein raha karo and when my daughter comes to ride don't come in front ofher".

5. All these abovementioned persons are jealous/envious because they hate the fact that through the IDDL the applicant has become a champion rider, they are jealous because the applicant gets trained for free and they have to pay for training, they are jealous because the applicant is allowed to compete and train on all the imported Olympic horses of Mr. Kapil Modi.

(emphasis supplied)"

6. Vide order dated 05.07.2018, the application under section 156(3) filed by Respondent No. 2, was transferred from the Court of Sh. Anurag Das, Metropolitan Magistrate to the Court of Sh. Gaurav Gupta, Metropolitan Magistrate. On 09.07.2018, the Assistant Commissioner of Police, sub-division, Mehrauli, New Delhi, filed an Action Taken Report (Annexure P-27). The Additional Sessions Judge-02, South District, Saket Court, New Delhi, by the order dated 02.08.2018, held as follows:

> "24. Ld. counsel vehemently argued that the inquiry is conducted by SI S.K. Singh and not by ACP and the complainant was forced to undergo the written interrogation

> in presence of advocate, furthermore the accused Shikha Mundkur, Anush Aggarwala and Preeti Aggarwala were not examined. ACP is the lncharge of the investigation who has filed the action taken report dated 09.07.2018. There is no bar in the law that he cannot take assistance of officers of the rank of SI S.K. Singh. The written interrogation cannot be held as illegal interrogation particularly from the perspective of the complainant, however appears to be proper interrogation considering the fact that the case is for the preliminary inquiry and not the investigation after the registration of the FIR. Furthermore, that interrogation was also done in presence of the advocate of the complainant, therefore the said ATR cannot be brushed aside on the ground of bias and incompetency of the concerned ACP. The ACP Rajender Pathania as noticed is the designated officer to conduct the inquiries under SC/ST Act.
>
> 25. On overall consideration of the facts, I do not find any reasonable ground to reject the ATR dated 09.07.2018 of ACP Rajender Pathania. Therefore, I do not find it fit to issue any direction to concerned police u/s 156(3) Cr.P.C. to register FIR against the alleged accused namely Anush Aggarwala, Preeti Aggarwala, Ameera Pasrich, Ameer Pasrich and Shikha Mundkur.
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> 26. The respondent in present application u/s 156(3) Cr.P.C r/w 200 Cr.P.C is only SHO PS Fatehpur Beri and none of the alleged accused as mentioned above are made respondents/accused in this application/ complaint. The prayer clause of this application is only restricted to order of registration of FIR. There is nothing prayed in the prayer clause that in the alternative to treat this complaint as u/s 200 Cr.P.C for examination of the complainant and his witnesses and further to proceed with trial as per complaint case.

Neither in oral submissions nor in written submissions submitted that this matter be treated alternatively as a complaint u/s 200 Cr.P.C for the purpose of inquiry and trial.

27. Therefore, in these circumstances, this court cannot continue proceedings by treating this as complaint case u/s 200 Cr.P.C. Accordingly, the present application U/s 156(3) Cr.P.C. r/w 200 Cr.PC stands dismissed."

7. Respondent No. 2, aggrieved by the order dated 02.08.2018, filed Criminal Appeal No. 817/2018 before the High Court of Delhi. On 28.04.2020, the High Court allowed the Criminal Appeal filed by Respondent No. 2, and the operative portion reads as follows:

> "61. Accordingly, to meet the end (sic) of justice, this Court hereby directs the SHO of Police Station Fatehpur Beri to register FIR on the Complaint made by appellant and after investigation file report as per law.
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> 62. However, no coercive steps shall be taken agains.t the alleged accused persons.

63. Accordingly, impugned order dated 02.08.2018 passed by learned Special Judge is hereby set-aside.

64. In view above, present appeal is allowed and disposed of.

65. This order be transmitted to the learned counsel/representative of the parties.

66. Pending applications stand also disposed of."

8. By a separate judgment dated 28.04.2020, the High Court directed the prosecution of SHO of P.S. Fatehpur Beri under section 4(2)(b) of the Act of 1989. The operative portion reads thus:

"59. Regarding allegations falling under SC/ST Act, the SHO of Police Station Fatehpur Beri was duty bound to entertain complaint and perform his duty required to be performed under section 4(1) and 4(2) of the SC/ST Act, however, he failed to do so. Moreover, the courts below have ignored the above facts.

60. In view of above discussion and settled legal position of law and statute, this Court is of the view that the then SHO of Police Station Fatehpur Beri is liable to be prosecuted under section 4(2)(b) of SC & ST (Prevention of Atrocities) Act, 1989 as amended up-to-date." 8.1. The State of GNCT of Delhi and the officers filed Criminal Appeal No. 349 of 2021 before this Court against the order dated 28.04.2020 in CRL.A. 667/2018 & CRL.M.A. 11836/2018, 2660-61/2020. The said Criminal Appeal has been heard as a companion appeal and for convenience, disposed of by a separate judgment. Therefore, the instant Criminal Appeal is at the instance of Respondent Nos. 2 to 4 in criminal appeal No. 817/2018 before the High Court of Delhi.

9. We have heard Mr. Siddharth Luthra, Ld. Senior Advocate for the Appellants and Ms. Aishwarya Bhati, Ld. ASG for Respondent No. 1. We have also heard from Mr. Kapil Nath Modi, the Ld. Advocate, who is also the administrator and supervisor of OREA. Mr. Kapil Modi has been noted as a witness on one of the occasions to the casteist slur allegedly made by the Appellants at Respondent No. 2. Therefore, a faint objection to Mr. Kapil Modi appearing as the Counsel for Respondent No. 2 has been raised by Mr. Siddharth Luthra. Mr. Siddharth Luthra in support of his objection to Advocate Kapil Modi appearing in the appeal relied on a decision reported in Kokkanda B. Poondacha & Ors. v. K.D. Ganapathi & Anr.1 In reply, Advocate Kapil Modi invited our attention to section 15A(12) read with section 20 of the Act of 1989 and contended that the prescription in either the Advocates Act, 1961 or Bar Council of India Rules is subject to the special protection granted by section 15A(12) read with section 20 of the Act of 1989 to a victim. To be fair to the Ld. Counsel appearing for the parties, allowing Mr. Kapil Modi to appear as Advocate for Respondent No. 2, is entirely left open to the discretion of this Court.

However, as a principle, it may not be understood that we have considered the rigor of the Advocates Act read with the Code of Conduct on the one hand and section 15A(12) read with section 20 of the Act of 1989 on the other hand, when we allow Advocate Kapil Modi to appear for Respondent No. 2. At this juncture, we advert to an excerpt from Kokkanda B. Poondacha (supra), wherein it was observed that:

> "12. ...Since the client entrusts the whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides, i.e., the utmost good faith, integrity, fairness, and loyalty." Respondent No. 2 rightly believes in Mr. Kapil Modi's training in an equestrian sport and in the effective representation of the case of Respondent No. 2. Without deciding the objection raised by the Counsel for the Appellants, we have proceeded and heard Mr. Kapil Modi, from now on, the Ld. Counsel for Respondent No. 2.
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> 1 (2011) 12 SCC 600.

II. SUBMISSIONS

10. Mr. Siddharth Luthra, firstly, argues that the order under appeal had not appreciated the full conspectus of the controversy preceding the filing of the complaint dated 29.04.2018 or the application dated 09.05.2018 before the Ld. Magistrate. The administrator of OREA has encouraged Respondent No. 2 to file a complaint alleging the commission of offences under the Act of 1989, though none existed over the years. He argues that the trainee Appellants and Respondent No. 2 have been trained at OREA, and nothing is stated to have happened for years, and everything was brought to the fore after the Appellants filed the complaints dated 03.04.2018 and 11.04.2018 against the administrator. The administrator, having been unsuccessful in getting anticipatory bail, etc., in the FIRs filed by the Appellants, has pursued or pressurized Respondent No. 2 to initiate prosecution by filing a complaint dated 29.04.2018 and the application dated 09.05.2018 under the Act of 1989 against the appellants. It is argued that these complaints are false and motivated. An attempt has been made by inviting our attention to the various complaints filed by the Appellants against the administrator of OREA to canvass that Respondent No. 2 has been roped in without any grievance vis-à-vis the Appellants. It is further argued that a bare reading or perusal of either complaint dated 29.04.2018 or application dated 09.05.2018 would be sufficiently clear that no case warranting setting in motion of prosecution under the Act of 1989 is made out. Secondly, the complaint dated 29.04.2018 and the application dated 09.05.2018 do not disclose that an act or omission made punishable by any law for the time being in force has been made out. The offence alleged against Appellants is stated under section 3(1)(r) and 3(1)(s) of the Act of 1989. To constitute an offence under section 3(1)(r) of the Act of 1989, the complaint must aver that the commission or omission has been made in public view. He relied on the decisions reported in Hitesh Verma v. State of Uttarakhand & Anr.2, Pramod Suryabhan Pawar v. State of Maharashtra & Anr.3 (before this Court), State v. Om Prakash Rana & Ors.4, Kusum Lata v. State & Ors.5 and Swaran Singh & Ors. v. State & Anr6, to contend on what and when the "public view" requirement is satisfied. The instant complaints do not satisfy the required ingredients of an offence under the Act of 1989. 10.1 Thirdly, it is argued that the allegations in the complaints are vague and indefinite and do not constitute an

offence arising under the Act of 1989, independent of examination of any other material. Fourthly, it is argued that Respondent No. 2 has moved the court under section 156(3) of the CrPC. The Action Taken Report discloses that no offence has been 2 (2020) 10 SCC 710.

3 (2019) 9 SCC 608.

4 (2013) SCC OnLine Delhi 5107.

5 (2016) SCC OnLine Del 1379.

6 (2008) 8 SCC 435.

made out against the Appellants under section 3(1)(r) of the Act of 1989. Respondent No. 2 has since moved the court of competent jurisdiction; the court of competent jurisdiction is guided by the requirements of section 156(3) of the CrPC in providing with the matter. In other words, the contention proceeds that the Metropolitan Magistrate is expected not to act mechanically but apply judicial discretion to the acts complained against before directing registration of FIR or closure of the complaint as no case is made out.

10.2 Mr. Siddharth Luthra contends that section 156(3) requires the Magistrate to carefully consider and apply its judicious mind and exercise its discretion before issuing any directions to the jurisdictional police station. If the Magistrate believes there is enough reason to proceed immediately, he could issue directions under section 156(3) for the registration of an FIR; on the contrary, if the allegations as made, require calling for a report, the Magistrate is enabled by the discretion in section 156(3) to call for a report. In support, he relies on the following judgements:

> (1) Ramdev Food Products (P) Ltd. v. State of Gujarat7:
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> "22.1. The direction under Section 156(3) is to be issued only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information 7 (2015) 6 SCC 439.

available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued." (2) Kailash Vijayvargiya v. Rajlakshmi Chaudhuri8:

> "83. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court

> in Lalita Kumari (supra).” 10.3 Fifthly, the allegations, even going by the tenor of respective complaints, are not made in public view, no third party or a witness has heard or seen any of the acts complained against the Appellants.

Respondent No. 2, for a reason easily discernable, introduces the administrator and Cdr. Kuldeepak Mittal as witnesses to several incidents spreading over two years. The Counsel commends to the Court to juxtapose the primary complaint, requirements of the Act of 1989 and section 156(3) of the CrPC and decide whether any semblance of an offence is made out warranting registration of FIR/investigation, etc., under the Act of 1989 against the Appellants. If the ingredients of an offence under section 3(1)(r) of the Act of 1989 are made out, there is no gainsaying in drawing inferences on the innocence or otherwise of a person accused of these offences at this stage. In such cases, the motion 8 2023 SCC OnLine SC 569.

set in for prosecution must reach its logical end. The registration of an FIR, investigation and prosecution result in consequences for the accused who are called upon to face investigation and trial, in spite of no charge/ offence being made out from the bare perusal of the complaint. Hence, the Ld. Trial Judge was correct in rejecting the application dated 09.05.2018. specifically adverting to the “Alliance” WhatsApp group chat, he argues that the sharing of views on this application cannot be construed as “public view” and, secondly, the WhatsApp conversation prima facie does not attract any of the ingredients constituting an offence under section 3(1)(r) of the Act of 1989. The Ld. Counsel argues that the entire WhatsApp conversation read together, no offence either under the Indian Penal Code, 1860 or the Act of 1989 is made out. At best, the chat reflects the immaturity of a few of the members of the “Alliance” WhatsApp group. The word ‘faggot’ means a male homosexual but not a casteist slur intended by the Act of 1989.

11. Mr. Kapil Modi, per contra, argues that a casteist remark, is punishable under the Indian Penal Code, 1860. The Parliament, realizing the need to protect the marginalized sections of the Indian society from caste slurs or abetment of offences against people and property, enacted the Act of 1989. Respondent No. 2 is a standalone and one in several million SC/ST citizens of the country aspiring to win a gold medal in dressage in the Olympics. The complaint dated 29.04.2018 does disclose cognizable offences under the Act of 1989. The grievances of Respondent No. 2 made through Complaint dated 29.04.2018 fell on deaf ears of the police; when the recourse to section 156(3) of the CrPC was made, the Court of Metropolitan Magistrate through the order dated 09.07.2018, rendered the prosecution of an offence under the Act of 1989 just impossible. He asserts that the theory of the counter case by Respondent No. 2 for the cause of the administrator, etc., is yet another species employed to defeat the complaints. Ld. Counsel argues that this Court considers the complaints dated 29.04.2018 and 09.05.2018 and the relevant material to appreciate the offence complained against the Appellants herein. For a judicious consideration, the allegations in other FIRs are not looked into or examined by this Court in deciding whether an offence is made out.

11.1 Secondly, the appeals have been filed, either by suppressing material circumstances or by setting out the narrative in a misleading way. Thirdly, the order dated 09.07.2018 of the Metropolitan Magistrate is contrary to the tests of judicial discretion laid down by this Court under

section 156(3) of the CrPC. The Trial Court records a finding as if no offence has been made out even without conducting a mini trial in the matter. Respondent No. 2, considering his background, suffered in silence the slurs alleged at him for months and years, and filed the complaint and application on 29.04.2018 and 09.05.2018, respectively, so the delay, would not lead to any adverse inference on the alleged commission of an offence under section 3(1)(r) of the Act of 1989. The argument on "public view" as sine qua non for attracting section 3(1)(r) is untenable in the circumstances of the case. Although OREA is a private training institute, the utterances satisfy as having been made within the academy. Therefore, these utterances once are made in OREA satisfy as having been made in public view. The absence of names of witnesses or the public who witnessed this slur is not fatal. During the investigation, the names of witnesses can be stated. Respondent No. 2 filed a complaint, which prima facie satisfies the requirements of an offence under section 3(1)(r) of the Act of 1989. The non-mentioning of witnesses who were present when these slurs and insidious comments were made is not fatal to the registration of FIR against the Appellants. The averments in the complaints are not ambiguous, indefinite or uncertain. The WhatsApp chat is also in the public domain, and Daksh Mittal is a third party. Daksh Mittal knows these slurs and knowing amounts to an allegation made in public view. He relies on judgements in Union of India v. State of Maharashtra & Ors.9, National Campaign on Dalit Human Rights & Ors. v. Union 9 (2020) 4 SCC 761.

of India and Ors.10 and Prithvi Raj Chauhan v. Union of India & Ors.11 and prays for dismissing the appeal.

12. We have taken note of the rival submissions and perused the record relevant to the issue arising under the Act of 1989. The above raises the following points for our decision:

> A. Whether the order dated 09.07.2018 of the Metropolitan Magistrate conforms to the material on record and satisfies the mandate of section 156(3) of the CrPC?
>
> B. Whether the complaint(s) dated 29.04.2018/09.05.2018 make out a prima facie case of an offence under section 3(1)(r) and 3(1)(s) of the Act 1989?
>
> C. Whether the impugned order is valid, legal and tenable in the facts and circumstances of the case?
>
> 10 (2017) 2 SCC 432.
>
> 11 (2020) 4 SCC 727.

III. ANALYSIS

13. On 20.03.2018, this Court delivered judgment in Dr. Subhash Kashinath Mahajan v. the State of Maharashtra & Anr.12 In Union of India v. State of Maharashtra13, the directions in Dr. Subhash Kashinath Mahajan (supra) have been substantially reviewed/modified. In the interregnum, the Parliament stepped in and made the amendments vide the Scheduled Castes and the Scheduled

Tribes (Prevention of Atrocities) Amendment Act, 2018 (for short, "Act No. 27 of 2018") to the parent act.

14. The statutory scheme under the Act of 1989, through Act No. 27 of 2018, has undergone a few major changes. Section 18A is one of the sections that has a bearing on the procedure followed by the Trial Court and needs to be appreciated. Section 18A of the Act of 1989 came into effect on 20.08.2018. In the instant appeal, as already noticed, the alleged complaints were made between 29.04.2018 and 02.08.2018, and refer to the allegation made two years prior to the complaints. Respondent No. 2, by moving the application under section 156(3) of the CrPC invoked the jurisdiction of the Magistrate and therefore, the procedure and 12 AIR 2018 SC 1498.

13 (2020) 4 SCC 761.

requirements of section 156(3) are attracted in examining the correctness of the order impugned.

14.1 Let us examine the discretion and jurisdiction of a Magistrate on the application filed under section 156(3), CrPC. Whether the Magistrate has to act and accept mechanically a complaint presented to him and direct registration of FIR or in his discretion, upon the examination of allegations order preliminary enquiry then proceed in the matter. The answer to the question centres around section 156(3) of the CrPC. The position in law is fairly well-settled and we advert to a few decisions on the point. In Priyanka Srivastava & Anr. v. State of Uttar Pradesh & Ors.14, this Court observed that the Magistrate can look into the veracity of an application under section 156(3) because ordering inquiry requires the application of judicial mind and affidavit by the applicant and has held thus:

> "30. In our considered opinion, a stage has come in this country where Section 156(3) of the CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the jurisdiction of the Magistrate. That apart, in an appropriate case, the Ld. Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons..." 14 2015 6 SCC 287.
>
> 14.2 In Khalid Khan & Anr. v. State of U.P. & Anr.15, dealing with a converse situation, the High Court of Judicature of Allahabad observed that when the application under section 156(3) of the CrPC discloses the commission of a cognizable offence, then the concerned Magistrate must direct the registration of the FIR. Under the provisions of section 156(3) of the CrPC, a Judicial Magistrate has the discretion to direct a preliminary inquiry before ordering the registration of the FIR in cases where no cognizable offence is made out. Referring to Priyanka Srivastava (supra), the High Court highlighted the importance of verifying the veracity of allegations levelled in a complaint to keep in check the filing of applications under section 156(3) as a tool to harass people. Thus, from the above judgments, it is crystal clear when

> the application under section 156(3) of CrPC discloses a cognizable offence, then it is the duty of the concerned Magistrate to direct registration of the FIR, which is investigated by the investigation agency, in accordance with the law.

Conversely, when the information received does not prima facie disclose the commission of a cognizable offence, but indicates the necessity for inquiry, in that case, the preliminary inquiry may be conducted in order to ascertain whether the offence complained is cognizable or not. The purpose of the preliminary inquiry is not to verify the veracity or otherwise 15 (2023) SCC OnLine All 2277.

of the information received but only to ascertain whether the information received reveals a cognizable offence or not.

14.3 We do not propose to multiply citations on the point and succinctly stated, the Magistrate, under section 156(3) of the CrPC, asks himself a question: whether the complaint, as presented, makes out a case for directing the registration of an FIR or calls for inquiry or report from the jurisdictional police station. The inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. Therefore, it is fairly well-settled and axiomatic by the decisions rendered under section 156(3) of the CrPC that the Magistrate does not act mechanically and exercises his discretion judiciously by applying mind to the circumstances complained of and the offence alleged against the accused for taking one or the other step. The case on hand principally concerns deciding whether the discretion is invalidly exercised by the Magistrate while ordering a report from the SHO.

15. From careful consideration of material between 29.04.2018 and the application dated 09.05.2018 read with the Action Taken Report, we are of the considered view that the Metropolitan Magistrate did not commit an illegality or irregularity seeking preliminary inquiry or receiving the Action Taken Report from the jurisdictional police station. It is further noted that the controversy before the High Court in Crl. A. 817/2018 was whether the Metropolitan Magistrate was legally correct in ordering a preliminary inquiry and the Action Taken Report on the application dated 09.05.2018, is vitiated or not. The impugned judgement has expanded the discussion and recorded a few findings, which are not need at all. Therefore, the order of the Magistrate calling upon a report in the circumstances set out above is legal.

16. The answer to Point-A would not decide the outcome of the appeal. This Court, in the exercise of its jurisdiction under Article 136 of the Constitution of India, ensures that not only the initiation of the criminal process is continued in just and deserving cases, but also avoids initiation of criminal process where the material does not disclose a prima facie case. What begs the question is that assuming, for deliberation, that the Metropolitan Magistrate was procedurally correct in ordering an inquiry or receiving the Action Taken Report; still this Court examines whether the complaint makes out a cognizable offence under the Act of 1989, and by accepting the report, the Magistrate has aborted the investigation and trial on the complaint dated 09.05.2018? The answer to the said question depends on the very material relied on by the complainant.

17. With the above perspective, we will refer to the allegations against each one of the Appellants as made in the complaints. The following tabular statement is prepared for a quick understanding of the offences specifically and generally alleged against the Appellants:

S. No.	Accusation	Date	Against Whom
1.	“Intentionally abused and humiliated.”	Past 2 years, i.e., 2016-2018	All Appellants
2.	Publicly called the Complainant "chuda, Chamar, chakka and faggot”	“On many occasions”	Anush Agarwalla/ Appellant No. 2
3.	Said to the Complainant "Prashant you are a chamar and we rich Marwari's don't like the fact that untouchables like you come close to us, you are unfit to even act as a sweeper in our house. Whenever my son asks you for water/food you must wear plastic gloves and serve him"	“During IDDL competitions”	Priti Agarwalla/ Appellant No. 1
4.	Said to the Complainant "Prashant this sport of dressage is not meant for chura and chamars like you, this sport is only meant for rich people like us. Tum apni aukat mai raha karo and when my daughter comes to ride don't come in front of her"	17 Dec [year not mentioned]	Amir Pasrich/ Appellant No. 4
5.	The Complainant was riding Shikha and Ameera saw him and ran towards him hurling horse. They spat on him and said "you bloody mother fucking faggot if you ever dare to ride a horse again then it will have very bad consequences"	28 Jan 2018	Shikha Mundkur/ Ameera Pasrich/
6.	The Complainant mentioned the WhatsApp group “Alliance” planned to acid attack or torture him.	-	WhatsApp group created by
7.	Shivani, Ameera & Shikha officers of animal husbandry and 6-7 police officers. Shivani threatened the Complainant stating that she would kill him	28 Apr 2018	Shikha Mundkur/

and saying that despite Kapil Modi's complaint, there are police on the farm and that he has "no status".

18. There cannot be two views on the proposition that to cause or register an FIR and consequential investigation based on the same petition filed under section 156(3) of the CrPC, the complaint satisfies the essential ingredients of the offences alleged. In other words, if such allegations in the petition are vague and do not specify the alleged offences, it cannot lead to an order for registration of an FIR and investigation.

18.1 In National Campaign on Dalit Human Rights (supra) and Union of India v. State of Maharashtra (supra), this Court has held that the constitutional goal of equality for all citizens of this country can be achieved only when the rights of members of the Scheduled Castes and Scheduled Tribes are protected. The prosecution machinery and adjudicatory bodies work to achieve this constitutional goal. The FIR registered and investigation must be taken forward subject to the complaint satisfying the requirements of an offence complained under the Act of 1989. See Usha Chakraborty & Anr. v. State of West Bengal & Anr.16:

> "10. ...There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged..."

19. Sections 3(1)(r) and 3(1)(s) of the Act of 1989 read thus:

> "3. Punishments for offences of atrocities- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
>
> xxx xxx xxx xxx
>
> (r) intentionally insults or intimidates with the intent to humiliate a member of the Scheduled Caste or Scheduled Tribe in any place with public view.
>
> (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;" 19.1 Section 3(1)(r) Section 3(1)(r) makes an intentional insult or intimidation intended to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view an offence. Structured in the golden rule of interpretation, this section flows as follows:

i. Intentionally insults or intimidates.

16 (2023) SCC OnLine SC 90.

ii. With intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe.

iii. In a place within public view.

19.2 Section 3(1)(s)

i. Abuses any member of a Scheduled Caste or a Scheduled Tribe.

ii. By caste name.

iii. In any place within public view.

20. The cumulative effect of the structured application to a given situation is that the intentional insult or abuse coupled with the humiliation is made in any place within public view. The expression “in any place within public view” has an important role to play in deciding whether the allegation attracts the ingredients of an offence or not, and has been the subject matter of consideration in the following decisions:

(1) Swaran Singh (supra)-

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.” (2) Daya Bhatnagar & Ors. v. State17-

"19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(1) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of 'insult', 'intimidation' and 'humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within 'public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded." (3) Pramod Suryabhan Pawar v. State of Maharashtra (before the High Court of Bombay)18- "17. Requirement of section 3(1)(x) of the old Act is intentional insult and intimidation with intent to humiliate the person belonging to Scheduled Caste or Scheduled Tribe in any place within public view. Messages sent on whatsapp cannot be said to be an act of intentional insult or intimidation or an intent to humiliate in public place within public view. As such it is prima facie seen that no offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted in the case in hand." 17 (2004) SCC OnLine Del 33.

18 2016 SCC OnLine Bom 15947.

21. Bearing in mind, the above interpretation, we examine and sum up the factual position as follows:

> The accusation of intentionally abusing and humiliating Respondent No. 2 spans over a period of two years between 2016 and 2018. The allegation prima facie appears to be an omnibus and ambiguous allegation. The specific allegation in the complaint on Appellant No. 2 is that Appellant No. 2 called Respondent No. 2 "chuda", "chamar", "chakka" and "faggot".

The allegation does not refer to the place nor the public view before whom it was made.

21.1 Respondent No. 2 alleges that Appellant No. 1 made an insinuating casteist remark during the International Dressage Development League (IDDL) competitions. The Court ought not to be searching for a complete description of the accusation in a matter such as the present, but the litmus test is the date, time, and year when the incident said to have happened.

21.2 Appellant No. 4 is accused of humiliating Respondent No. 2 with a casteist remark allegedly on 17th December. The date is stated, but the year is not stated, leaving one to infer whether these remarks were made in 2016 or 2017. The accusation against Appellant No. 3 and Appellant No. 6 do not refer to a casteist slur but refer to abuses hurled at Respondent No. 2.

22. The above ex-facie consideration of accusations is kept in our perspective and we also take note of the change made to the allegations in the application filed before the Metropolitan Magistrate under section 156(3) on 09.05.2018. The marked change in incorporation of the words 'public place', in the application filed before the Metropolitan Magistrate. The improvement, at best, may be a verbatim reproduction of the language of section 3(1)(r) and 3(1)(s) of the Act of 1989. An important test for "in any place within public view" is within the view of persons other than the complainant. In this case, we are not examining whether OREA is a private or public place, but to appreciate the alleged offence. We juxtapose the allegation(s) with the requirement of insulting or intimidating in any place within public view is satisfied or not. These allegations read together or individually do not satisfy the requirement of having been made in public view. Serial Nos. 1-4 in the tabular statement intend to attract the offences punishable under the Act of 1989. Serial Nos. 5-7 cannot by any interpretation, whether as standalone or in the company of other allegations, be related to an offence under the Act of 1989.

23. The other allegation in the complaint is regarding the chat/conversation of the "Alliance" WhatsApp group members. In Pramod Suryabhan Pawar (supra; before this Court), this Court dealt with a chat between the complainant and the accused on WhatsApp and considered the effect of the conversation whether it was in public view or not. The relevant portion reads thus:

> "23. Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under the SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged."

24. After appreciating the allegation on the exchange of WhatsApp messages in the group, we are not deciding on whether these allegations were made in public view or not but examine on the intrinsic element of the very accusation covering this aspect of the matter. At the cost of repetition, we quote the very sentence from the complaint:

> "...International insult and Humiliation by, Anush Agarwalla on many occasions has publicly abused me by calling me "chuda, Chamar, chakka and faggot.
>
> xxx xxx xxx xxx International insult and humiliation by Shikha Mundkur and Ameera Pasrich: On 28January 2018 I was riding a horse called "xanthos". When Shikha and Ameera saw me riding the horse, they both ran towards me hurling abuses at me and pushed me off the horse, they spat on me and said "you bloody mother fucking faggot if you ever dare to ride a horse again then it will have very bad consequences..."

25. The insinuation/slur does not cover ingredients of section 3(1)(r) or 3(1)(s) of the Act of 1989. The said word does not take within its fold any of the commissions or omissions made penal by the Act of 1989. 25.1 In his jurisdiction, the Metropolitan Magistrate examined the allegations and the requirements of law from this perspective. Let us now refer to the operative part of the Action Taken Report dated 09.07.2018:

> "During course of enquiry, statement of Mr. Amir Pasrich his wife Ms. Shivani Pasrich and Ameera Pasrich were recorded. Complainant Mr. Praveen @ Prashant was also enquired to verify the facts mentioned in the complaint. No witness named by the complainant in complainant (sic) or in the statement in respect of above allegations, there is no apparent intent to humiliate a member of SC/ST in any place within Public view. Allegation of threats are not made out in presence of Police personnel as per complaint and upon investigation found that those Police Staff did accompany complainants along with animal husbandry department officials of the inspection horses regarding the investigation of Case FIR No. 134/2018 and 135/2018.
>
> It is also pertinent to mention that the Case FIR No. 134 and 135 of 2018 U/s 354A/509 IPC were registered against Mr. Kapil Modi on 21/04/2018 on the complaint of Ms. Ameera Pasrich and Ms. Shikha Mundkar respectively. Just after one day of the registration of said FIR's on 22/04/2018, complaint of Mr. Kapil Modi was received at Police Station and complaint of Complainant Mr. Praveen Kumar @ Prashaht was filed on 02/05/2018, almost after 3 months of the alleged incidents of casteism remarks. WhatsApp group information and review reveals 2 young teenagers, One young adult and one minor in casual quick conversations not pursuing dangerous plans. Complaint had submitted short extract version of conversation without full chat records.
>
> On the basis of material on record and the statements of the parties concerned, the allegations leveled by the complainant could not be substantiated. The complaint seems to have been filed after thought to counter the criminal cases filed by Ms. Ameera Pasrich and Ms. Shikha Mundkar against the trainer of the complainant Mr. Kapil Modi. Therefore, from the enquiry carried out prima facie no case was made out under the provision of SC/ST Prevention of Atrocity Act.
>
> With regard to the application for action for delay in enquiry/non registration of FIR, the matter has already been dismissed by the Hon'ble Court of ASJ Sh. A.K.Jain of Saket Courts vide order dated 05/06/2018. The appeal filed by the present applicant before the Hon'ble Delhi High Court against this order is still pending and is placed on hearing on 25/07/2018.
>
> However, any direction of this Hon'ble Court will be complied with meticulously."

26. From the above consideration, the available conclusion is that firstly, the Metropolitan Magistrate at the relevant point of time was justified in ordering a preliminary inquiry on the application dated 09.05.2018 and receiving the Action Taken Report from the jurisdictional police station. Further, the accusations in the complaints do not satisfy as having been made in any place within public view. Therefore, in a case such as the present, directing registration of FIR and further steps is unsustainable. Points A and B are answered in favour of the Appellants.

27. We have perused the judgment under appeal and the voluminous record filed by the contesting parties to support their respective contentions. Having gone through the record, by a judicious exclusion of material, we do not propose to delve into the reasons assigned by the judgment under appeal or the material relied on by the contesting parties. The observations of the High Court of Delhi directing the registration of an FIR, for the reasons we have recorded in the preceding paragraphs is untenable and warrants interference in the appeal. Accordingly, Point C is answered in favor of the Appellants and consequently, the impugned judgement is held unsustainable.

28. By looking at the number of cases filed, acrimonious allegations and counter-allegations made between parties, a doubt arises whether someone who cannot calm oneself can calm and guide a horse in the horse's enthusiasm to perform each element with minimum encouragement from the rider and be an equestrian. We leave it to the passion and path of the parties.

29. For the above reasons and discussion, the criminal appeal stands allowed, and the order of the Metropolitan Magistrate dated 09.07.2018 is upheld.

.....J. [M. M. SUNDRESH] .....J. [S.V.N. BHATTI] NEW DELHI;

MAY 17, 2024 [NON-REPORTABLE] IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. 349 OF 2021 THE STATE OF GNCT OF DELHI AND OTHERS ... APPELLANTS VERSUS PRAVEEN KUMAR @ PRASHANT ... RESPONDENT JUDGMENT S.V.N. BHATTI, J.

1. The instant Criminal Appeal has been tagged and taken up for hearing along with Criminal Appeal No. 348 of 2021 for the circumstances examined in both the Appeals are same. But for convenience, separate judgments are delivered.

2. On 29.04.2018, the respondent lodged a complaint before the Station House Office, P.S. Fatehpur Beri, New Delhi (for short, "the SHO"). The complaint dated 29.04.2018 narrates alleged offences under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989") against Preeti Agarwalla, Anush Agarwalla, Shikha Mundkur, Amir Pasrich, Shivani Pasrich and Ameera Pasrich (Appellant Nos. 1 to 6, respectively, in Criminal Appeal No. 348 of 2021). On 09.05.2018, the respondent filed an application under section 156(3), read with section 200 of the Code of Criminal Procedure, 1973 (for short, "the CrPC"), before the Ld. Chief Metropolitan Magistrate, South Saket Court, to direct registration of an FIR on the complaint dated 29.04.2018.

2.1 The Respondent, on 25.05.2018, filed a Criminal Miscellaneous Application under sections 4(2) and 4(3) of the Act of 1989 before the Special Court of Shri Ajay Kumar Jain, Special Judge, New Delhi and is directed against the Special Commissioner of Police, Southern Range (for short, "Spl. CP") etc. for registering an FIR and action as deemed just and proper, is taken in accordance with the Act of 1989. In effect and substance, the subject application deals with the alleged commissions and omissions by public servants in the discharge of the duties and functions under the Act of 1989. The miscellaneous application has been numbered as C.T. No. 536/2018. To wit, the respondent impleaded the Spl. CP, the SHO, P.S. Fatehpur Beri, and Shri Anurag Das, the Ld. Metropolitan Magistrate (South), Saket Court, New Delhi, as respondents in the application under Section 4 of the Act 1989 for initiating prosecution against them. The application alleges that the public servants neglected the duties and functions assigned to them by the Act of 1989, viz. register an FIR on the information lodged on 29.04.2018, investigate the allegations and take prompt and timely action, by keeping in perspective the scope and object of the Act of 1989. It would be apposite to refer to the allegations, without diminishing or diluting the grievance stated in C.T. No. 536/2018 by the sole respondent, against the public servants as precisely as possible for our consideration:

> (i) The application alleges that the SHO and staff, allegedly influenced by Amir Pasrich, accused in the complaint dated 29.04.2018, refused to acknowledge the respondent's complaint dated 29.04.2018. The multiple representations said to have been made by the respondent, to all the concerned, after the purported refusal to register the complaint are stated in the application. During the proceedings, the Metropolitan Magistrate vide order dated 22.05.2018 instructed the SHO to submit an Action Taken Report, scheduling the next date of hearing of the application filed under section 156(3) of the CrPC for 19.07.2018. The respondent, after being dissatisfied with the next date of the hearing, applied for an urgent hearing. On 24.05.2018, the respondent was heard, but the Metropolitan Magistrate dismissed the request for dasti. The respondent, then, filed the application under section 4 for the registration of an FIR against the public servants.
>
> (ii) Vide order dated 05.06.2018, the Ld. ASJ, Special Judge, Saket, disposed of the respondent's application under section 4 of the Act of 1989. The ASJ observed that in substance, the respondent's grievance was that the Metropolitan Magistrate did not order the registration of FIR and refused to prepone the matter for filing the Action Taken Report. In this background, it is noticed, that a judicial remedy cannot be sought against the Spl. CP and SHO, P.S. Fatehpur Beri, since they are not judicial officers. The respondent, aggrieved by the rejection of prayer, filed an appeal under section 14A before the High Court of Delhi, praying to call the records of C.T. No. 536/2018 and CC No. 24/01 for perusal, citing the imminent threat of acid attack again.

3. By Order dated 05.07.2018, the Chief Metropolitan Magistrate transferred the application dated 09.05.2018 filed by the Respondent under section 156(3) read with section 200 of the CrPC from the Court of Shri Anurag Das, Metropolitan Magistrate to the Court of Shri Gaurav Gupta, Metropolitan Magistrate. On 06.07.2018, the Metropolitan Magistrate directed the Assistant Commissioner of

Police (for short, "ACP") to furnish the enquiry report on the complaint dated 09.05.2018 of the respondent. On 09.07.2018, the ACP filed an Action Taken Report. By Order dated 02.08.2018, the application dated 09.05.2018 filed under section 156(3) was dismissed by the Court of Metropolitan Magistrate. The order dismissing the application was challenged in Crl.A. 817/2018 before the High Court of Delhi. Through the judgement dated 20.04.2020, the criminal appeal was allowed. The accused, aggrieved by the said judgment, filed Crl.A. No. 348/2021 in this Court. The Metropolitan Magistrate, on the prayers for registering an FIR against the public servants, by a separate order dated 05.06.2018 in C.T. No. 536/2018, held as under:

> "In this factual scenario, at present stage, I do not find any ground to take action u/s 4 SC/ST Act against the respondents as per memo of parties ie Spl. CP Southern Range, SHO PS Fatehpur Beri and Sh Anurag Das, Ld. MM, South. Hence, the present application stands dismissed. However, nothing in this order shall be construed as opinion over the merits of allegations levelled by the complainant against the alleged accused persons mentioned above. Application disposed off accordingly. Copy of this order be given dasti. File be consigned to record room.
>
> (Ajay Kumar Jain) ASJ-02 (South) New Delhi / 05.06.2018"

4. Aggrieved by the order dated 05.06.2018, the respondent, on 06.06.2018, filed Criminal Appeal No. 667/2018 before the High Court of Delhi. The Commissioner of Police, Delhi, the Spl. CP, the SHO, P.S. Fatehpur Beri and Shri Anurag Das, Metropolitan Magistrate-01, (South) Saket Court, New Delhi were added as respondents in the appeal. The grounds of challenge were that the dereliction or negligence of the named public servants was deliberate and willful, facilitated the accused in the main complaint to go scot-free and also defeated the objective of the Act of 1989. The grounds of challenge are adverted to hereunder:

> "(i) The public servants wilfully ignore the statutory duty and functions under the Act 1989.The dictum in Lalitha Kumari v. State of Uttar Pradesh was not followed, while examining the complaint dated 29.04.2018.
>
> That on 29-04-2018 at 12.30pm the appellant went to register his police complaint in P.S Fatehpur Beri the police officials disgracefully refused to recieve and register the complaint and disgracefully turned away the complainanant in the evening the appellant again tweets to the Hon'ble PM and others mentioning that to register his complaint.
>
> That because the public servants, SHO P.S Fatehpur Beri, Spl CP Southern Range and commissioner of Police-as well as Shri Anurag Das Ld. N.M.01 (South) Saket Court wilfully neglected their duties- expected to be performed under section 4(1) & 4(2) of the SC &ST (sic of Atrocities) Act 1989 as amended up to date, The appellant filed a complaint case 536/2018 accordingly before Shri Ajay Kumar Jain,Ld. ASJ-02(South) Spl Judge Saket Court New Delhi on 25- 05-2018 which came up for hearing on 2.6- 05-2 018, On 26-05-2018 matter was heard by Shri Ajay Kr.

Jain Ld. ASJ and initially gave a date for 9th July and only after intensive pleading from the counsel the date was fixed for 4th June for calling of ATR. These acts in fine refer to the alleged commissions and ommissions under the Act 1989 by the public servants."

5. Through the impugned judgment, the criminal appeal filed by the respondent stood allowed, and the operative portion reads thus:

> "57. This Court is conscious of the fact that the complaint in question was dated 29.04.2018, however, as per the Hon'ble Supreme Court in case of Dr. Subhash Kashinath Mahajan (supra) dated 20.03.2018, the Police was not supposed to register FIR straightway, if allegations are falling under section SC/ST Act, but after enquiry if prima facie case is made out. The said directions were in operation till Parliament had brought amendment and said directions were reviewed on 010.10.2019 01.10.2019 by the Hon'ble Supreme Court.

As per directions dated 20.03.2018 of the Supreme Court in Dr. Subhash Kashinath Mahajan (supra), preliminary enquiry must be conducted within 7 days, whereas in the present case, enquiry report was submitted by the ACP on 18.06.2018 i.e. after 59 days.

58. In view of above facts, it is not in dispute that during the sun-set period, on the allegations falls under SC/ST Act, preliminary enquiry was to be conducted but for other allegations and there was no embargo to register FIR. On perusal of complaint dated 29.04.2018, there are allegations falling the other offences of IPC. But, the then SHO of Police Station Fatehpur Beri failed to register FIR for other offences, not under SC/ST Act.

59. Regarding allegations falling under SC/ST Act, the SHO of Police Station Fatehpur Beri was duty bound to entertain complaint and perform his duty required to be performed under section 4(1) and 4(2) of the SC/ST Act, however, he failed to do so. Moreover, the courts below have ignored the above facts.

60. In view of above discussion and settled legal position of law and statute, this Court is of the view that the then SHO of Police Station Fatehpur Beri is liable to be prosecuted under section 4(2)(b) of SC & ST (Prevention of Atrocities) Act, 1989 as amended up-to-date.

61. Accordingly, the impugned order dated 05.06.2018 is hereby set aside and Trial Court is directed to initiate proceedings against the then SHO of Police Station Fatehpur Beri as per law, however, no coercive steps shall be taken against the above said alleged accused.

62. In view of above, present appeal is allowed and disposed of.

63. This order be transmitted to learned counsel/representative for the parties.

64. A copy of this order be transmitted to the learned Trial Court for information and compliance.

CRL.M.As.11836/2018 & 2660-6112/2020

65. In view of the order passed in the present petition, these applications have been rendered infructuous and are accordingly, disposed of."

6. The State and the respondents in Criminal Appeal No. 667 of 2018, hence, filed the instant appeal.

7. The Ld. Additional Solicitor General, Ms. Aishwarya Bhati, appearing for the Appellants contends that the direction in the impugned judgment, calling upon the SHO to register FIR against the then SHO, P.S. Fatehpur Beri, is illegal, untenable and contrary to the mandate of section 4 of the Act of 1989. The direction to initiate proceedings against the then SHO of P.S. Fatehpur Beri ignores the inbuilt protection of section 4 available to a public servant.

7.1 It is vehemently argued that before initiating the proceedings, the viewpoint of the then SHO, P.S. Fatehpur Beri, on the alleged dereliction of duty or function should have been enquired into. 7.2 There has been a denial of opportunity to the public servant and in essence, the principles of natural justice are also violated. 7.3 The mechanism under section 4 of the Act of 1989 is firstly to undertake an administrative enquiry by the competent authority and arrive at a recommendation for initiating legal proceedings against the negligent public servant. In the case on hand, the application was moved before the court, and the Trial Court did not find a reason to order a departmental enquiry or initiate proceedings against the public servants named in CT. No. 536/2018. However, the High Court of Delhi examined each one of the dates and events narrated in the applications and recorded a finding on the public servant, resulting in a direction to initiate proceedings against the then SHO, P.S. Fatehpur Beri. The procedure followed is contrary to section 4 of the Act of 1989. Ms. Aishwarya Bhati made a few submissions on merits against the impugned judgment. For the present consideration, we are of the view that the contentions on merits, if need be, are adverted to and decided.

8. Mr. Kapil Nath Modi, Ld. Counsel appearing for the sole respondent argues that the appeal suffers from serious suppressions on material facts and the grounds raised on violation of principles of natural justice by the Court below is a convenient plea as well as a concocted version pressed before this Court only to avoid facing criminal proceedings for dereliction of duty. In the instant appeal, the public servants have deliberately flouted the duties and functions under the Act of 1989. Enough prevarications and suppressions are stated while invoking the jurisdiction of the Court. Section 4 of the Act of 1989 is intended to make the public servants act and react to a complaint received under the Act of 1989 strictly in accordance with the law. The initiation of criminal proceedings through the impugned Judgment is justified, and no exception could be stated. He prays for dismissing the appeal.

9. In the accompanying Criminal Appeal No. 348 of 2021, filed by the accused, we have referred to the series of complaints and counter- complaints by the athletes, the administrator of OREA and the Respondent herein. We have referred to a few reported judgments of this Court on the object achieved by the Act of 1989. For brevity, these contentions are not adverted to in the instant

judgment.

10. We have perused the record and noted the rival contentions canvassed by the Counsel appearing for the parties. 10.1 In the above narrative, this Court formulates and addresses the following two points:

A. Whether initiating proceedings against the then SHO, P.S. Fatehpur Beri by the impugned judgment conforms to the requirements of section 4 of the Act of 1989?

B. Whether on merits and in the circumstances of the case, the impugned direction to initiate proceedings against the then SHO is justified and tenable?

11. After careful consideration of the arguments and the record, we are of the view that the examination of Point B would be dependent on the outcome of Point A.

12. Section 4 of the Act of 1989 has been substituted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act No. 1 of 2016). To appreciate the change in the procedure, for taking cognizance of an offence punishable for the negligence of duty by a public servant, the unamended and amended section 4 are excerpted here under:-

Section 4, Act of 1989	Section 4, Act of 1989 after
4. Punishment for neglect of duties-	4. Punishment for neglect of duties-
Whoever, being a public servant but not	(1) Whoever, being a public servant but being a member of
a Scheduled Caste or not being a member of a Scheduled	a Scheduled Tribe, wilfully neglects his
Caste or a Scheduled Tribe, wilfully	duties required to be performed by him
neglects his duties required to be	under this Act, shall be punishable with
performed by him under this Act and the	imprisonment for a term which shall not
rules made thereunder, shall be be less than six months but	which may
punishable with imprisonment for a term	extend to one year.
which shall not be less than six months but which may extend to one year.	

(2) The duties of public servant referred to in sub-section (1) shall include—

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the in formant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

> Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-

section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.

13. Section 4(1), interpreted by the golden rule, has the following facets:

> i. Firstly, section 4(1) is meant to operate against a public servant, and the threshold requirement is that the public servant shall not be a member of a Scheduled Caste or a Scheduled Tribe;
>
> ii. Secondly, such a public servant willfully neglects his duties, as mandated under the Act of 1989 and the Rules of 1995.
>
> 13.1 Section 4(2) has set out the duties for performance by a public servant and sub-section (2) uses the word 'include'. The word 'include' is a phrase of extension and not of restrictive connotations. The word 'include' is not equivalent to 'mean'. The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. [See Dilworth v.

Commissioner of Stamps1; South Gujarat Roofing Tiles Manufacturers Association & Anr. v. State of Gujarat & Anr.2; Dadaji alias Dina v. Sukhdeobabu & Ors.3].

13.2 The words and phrases in sub-section (2) must be construed as comprehending not only such acts as they signify according to their natural import but also those which the interpretation clause declares that they shall include. In the case on hand, the dispute is not on whether the alleged commission or omission comes within any of the clauses of sub- section (2) of section 4. The consideration is on the interpretation of the proviso to sub-section (2) of section 4 and consequent cognizance under section 4(3) of legal proceedings. Conversely, whether cognizance of an offence can be directed/carried out without the recommendation of the administrative enquiry.

13.3 In other words, to set in motion the penal proceedings including taking cognizance for an offence of commission and omission under section 4(2) of the Act of 1989, the recommendation of

the administrative enquiry is a sine qua non. The proviso is an inbuilt safeguard to the public servant from initiation of prosecution by every dissatisfied complainant. 1 (1899 AC 99, 105-106 : 79 LT 473 : 15 TLR 61).

2 (1976) 4 SCC 601.

3 (1980) 1 SCC 621.

On appreciation of offences covered by section 3 and the nature of offences conversely dealt with under section 4 of the Act of 1989, it is noted that a complaint under section 3 presupposes insult, accusation, victimization, etc. of a member of the Scheduled Castes and Scheduled Tribes by a non-Scheduled Caste/Tribe person. However, the commission or omission by a public servant is rendered as an offence when the public servant contravenes the duties spelt in section 4(2) of the Act of 1989 read with the Rules of 1995 and by a recommendation made to that effect. The test in an enquiry is whether the public servant willfully neglected the duties required to be performed by the public servant under the Act of 1989 or not.

13.4 A proviso is a clause that introduces a condition by the word 'provided'.4 The main function of a proviso is to put a qualification and to attach a condition to the main provision. It indicates the exceptions to the provision but may aid in explaining what is meant to be conveyed by its part.5 A proviso is "introduced to indicate the effect of certain things which are within the statute but accompanied by the peculiar conditions embraced within the proviso".6 A proviso is enacted to modify the immediately preceding language. It is apposite while reiterating the 4 Webster's Second New International Dictionary1995 (1934). 5 Jamunabai Motilal etc. v. State of Maharashtra & Anr., 1977 SCC OnLine Bom 38. 6 James DeWitt Andrews, "Statutory Construction", in 14 American Law and Procedure 1, 48 (James Parker Hall & James DeWitt Andrews eds., rev. ed. 1948). interpretation of a proviso to refer to the recent judgement of this Court in Union of India & Ors. v. VKC Footsteps (India) (P) Ltd.7:

> "F.4. Construing the proviso
>
> 91. Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation [Justice G.P. Singh, Principles of Statutory Interpretation, (14th Edn., Lexis Nexis, 2016) pp. 215-234.] formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:
>
> "The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by Lush, J.

> [Mullins v. Treasurer of the County of Surrey, (1880) LR 5 QBD 170] : (QBD p. 173) '... When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso.' In the words of Lord Macmillan [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7] : (SCC OnLine PC) '... The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' The proviso may, as Lord Macnaghten [Local Govt.

Board v. South Stoneham Union, 1909 AC 57 (HL)] laid down, be 'a qualification of the preceding enactment which is expressed in terms too general to be quite accurate' (AC p. 62). The general rule has been stated by Hidayatullah, J. [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] , in the following words : (AIR p. 1600, para 9) '9. ... As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.' And in the words of Kapur, J.

[CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713] :

> (AIR p. 717, para 9) '9. ... The proper function of a proviso is that it qualifies the generality of the main

7 (2022) 2 SCC 603.

enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment....' " (emphasis supplied)

92. But then these principles are subject to other principles of statutory interpretation which may supplement or even substitute the above formula. These other rules which have been categorised by Justice G.P. Singh are summarised as follows:

> 92.1. A proviso is not construed as excluding or adding something by implication:
>
> "Except as to cases dealt with by it, a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment." [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 218.] 92.2. A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:
>
> "The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. 'It is a cardinal rule of interpretation', observed Bhagwati, J. [Ram Narain

Sons Ltd. v. CST, AIR 1955 SC 765, p. 769, para 10] , 'that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.' " [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 221.] 92.3. Where the substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning:

"If the enacting portion of a section is not clear, a proviso appended to it may give an indication as its true meaning. As stated by Lord Herschell [West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 at p. 655 (HL)] : (AC p. 655) "Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it;" [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 223.] 92.4. An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution." [Id, p. 226.] 92.5. While ordinarily, it would be unusual to interpret the proviso as an independent enacting clause, as distinct from its main enactment, this is true only of a real proviso and the draftsperson of the statute may have intended for the proviso to be, in substance, a fresh enactment:

"... To read a proviso as providing something by way of an addendum or as dealing with a subject not covered by the main enactment or as stating a general rule as distinguished from an exception or qualification is ordinarily foreign to the proper function of a proviso. However, this is only true of a real proviso. The insertion of a proviso by the draftsman has not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before." [Id, p. 228.]

93. Perhaps the most comprehensive and oft-cited precedent governing the interpretation of a proviso is the decision of this Court in S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] . S. Murtaza Fazal Ali, J. speaking for a three-Judge Bench of this Court held : (SCC p. 610, para 43) "43. ...To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

94. While enunciating the above principles, S. Sundaram Pillai [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] took note of the decision in Hiralal Rattanlal v. State of U.P. [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] where K.S. Hegde, J., speaking for a four-Judge Bench of this Court observed that while ordinarily, a proviso is in the nature of an exception, the precedents indicate that sometimes a proviso is in the nature of a separate provision, with a life of its own. The Court held : (Hiralal Rattanlal case [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] , SCC p. 224, para 22) "22. ... Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd. [CIT v. Bipinchandra Maganlal & Co. Ltd., AIR 1961 SC 1040 : (1961) 2 SCR 493 : (1961) 41 ITR 290] this Court held that by the fiction in Section 10(2)(vii) second proviso read with Section 2(6-C) of the Indian Income Tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income." Besides the decision in CIT v. Bipinchandra Maganlal & Co. Ltd. [CIT v. Bipinchandra Maganlal & Co. Ltd., AIR 1961 SC 1040 :

(1961) 2 SCR 493 : (1961) 41 ITR 290] , the Court in Hiralal Rattanlal [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 :

1973 SCC (Tax) 307] adverted to the earlier decisions in State of Rajasthan v. Leela Jain [State of Rajasthan v. Leela Jain, AIR 1965 SC 1296] and Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar [Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar, AIR 1967 SC 389] ." Interpreting the proviso to sub-section (2) of section 4, on the principles noted above, we notice that the proviso has an important role to play and in the scheme of proceedings under section 4 of the Act of 1989, acts as a condition precedent. Therefore, the commission or omission of any of the duties by the public servant becomes a cognizable offence against the public servant only on the recommendation of the administrative enquiry, for in law, an offence means any act or omission made punishable by any law for the time being in force. A combined reading of sub-sections (1), (2) and (3) of section 4, would demonstrate that the commission or omission by a public servant has penal consequences and the willful neglect is recommended by an administrative enquiry

> and the cognizance can be taken thereafter. The recommendation of administrative enquiry on alleged failure of duty or function by a public servant would make the neglect of an offence clear and the cognizance of such an offence is legal.

The competent court can take cognizance of the commission or omission of any duty specified under sub-section (2) of section 4 when made along with the recommendation and direct legal proceedings. Therefore, to constitute a prima facie case of negligence of duty, the proviso to sub-section (2) of section 4 contemplates an administrative enquiry and recommendations.

14. In law, an administrative enquiry presupposes an enquiry into the circumstances in which a public servant has a reason for not acting as expected by the provisions of the Act or whether willfully neglected the duties assigned to the public servant by the Act of 1989. 14.1 Sub-section (3) of section 4 enables the Special Court or Exclusive Special Court to take cognizance of the dereliction of a duty referred to in sub-section (2) of section 4 by a public servant. The reference to sub- section (2) in sub-section (3) of section 4 would include the requirement in the proviso and the need for recommendation of an administrative enquiry as well. Alternatively, tapering the application of proviso to a later stage, viz., framing the charge, would defeat the very safeguard the proviso intends to accord to a public servant in the matter of registration of an FIR or facing criminal proceedings. The public servants are governed by conduct and discipline rules. The officers in charge of a police station are fastened with obligations, duties and functions in matters relating to crimes, prosecution, etc. The deviation of conduct is called misconduct by a public servant. Normally the word “misconduct”, among other contextual connotations, implies a wrongful intention and not a mere error of judgment. In service jurisprudence, the expression “misconduct” means wrong or improper misconduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanor, etc. [See Baldev Singh Gandhi v. State of Punjab & Anr.8] Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages a breach of discipline, 8 (2002) 3 SCC 667.

although it would not be possible to lay down exhaustively what would constitute misconduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, “improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour”. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law [See Noratanmal Chouraria v. M.R. Murli & Anr.9] 14.2 In the absence of section 4, the dereliction of duty by a public servant would have resulted in disciplinary proceedings and a punishment commensurate to the misconduct found against the public servant. Now for the same set of acts of commission or omission, section 4 makes them punishable and stipulates imprisonment of public servants for a term not less than six months which may extend to one year. The penal action can be set in motion by taking cognizance under section 4(3) of the Act of 1989. Therefore, it is all the more reason that the requirement in the proviso to sub-section (2) of section 4 receives grammatical interpretation and makes a condition precedent for taking cognizance of an offence under section 4(2) of the Act of 1989.

9 (2004) 5 SCC 689.

14.3 At this juncture, we refer to the decision in Bijender Singh v. State and Anr.10 of the High Court of Delhi, which considered a point nearer to the one considered by us in this judgment. We notice with approval the view expressed in Bijender Singh (supra) and the operative portion reads thus:

> "49. The argument of the learned counsel for the complainant is that the word "charges" occurring in proviso to Section 4(2) of the SC/ST Act is to be interpreted that the enquiry report is to be sought before framing of charges and not before the registration of the FIR.
>
> 50. To my mind, the said argument is bereft of merit as the law laid down by the Hon'ble Supreme Court in Charansingh (supra) and as per the proviso noted above, the enquiry report is to be sought before the criminal proceedings are initiated and not before the framing of charges." 14.4 The absence of recommendation would bar taking cognizance by the Court. In a given case, if a complaint without recommendation is filed before the Magistrate, the Magistrate before proceeding further to keep his decision conforming to section 4(2) read with the proviso, calls for a report/recommendation from the Department against the named public servant. The Special Court or the Exclusive Special Court based on an administrative enquiry report can take cognizance of the alleged offence and thereon direct penal proceedings. By keeping in perspective, the language/scheme of section 4, and on the literal interpretation of sub-
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> 10 (2024) 308 DLT 149.

sections (1), (2) and (3) of section 4, it would be legally permissible that the jurisdiction for infraction of sub-section (2) of section 4 is attracted only on the recommendation of the administrative enquiry and then, the cognizance under sub-section (3) of section 4 is ordered.

15. By adhering to the above procedure, we hold that the Magistrate would have the accusation of a party and view of the Department while deciding to take cognizance of the offence or not. At the cost of repetition stated that, the purpose of an administrative enquiry is to find out the conduct of a public servant against whom allegations of failure of duty or function are made and the omission or commission is bonafide or willful.

16. Let us juxtapose the statutory requirement with the chronology of events in the case on hand. On 05.06.2018, the Respondent moved the Court of the Metropolitan Magistrate for action against the named public servant under section 4 of the Act of 1989. The record does not disclose that the Magistrate called for an administrative enquiry report on the dereliction of duties complained against the named public servants. The material records that no case warranting penal proceedings under section 4 has been made out and by the order dated 05.06.2018 the Metropolitan Magistrate dismissed C.T. No. 536/2018. In the above background, let us review the impugned judgment. As noted in paragraph 60 of the impugned judgment, the High Court of Delhi adjudicated the alleged omission or commission by the public servants, and a direction was issued for penal action. Upon due consideration of the method and manner of taking cognizance of an offence against the public

servant under section 4 of the Act of 1989, we note that the impugned judgment, for all purposes, adjudicated the alleged dereliction of duty by the named public servants and directed penal prosecution. These directions are not in conformity with the mandate of law. We are convinced that the direction in the impugned judgment for the above reasons and discussion is unsustainable, and accordingly, Point A is answered in favour of the Appellants.

17. As adverted to in paragraph no. 11 (supra), the consideration of negligence in the performance of duty as a fact is not taken up for consideration by us in this judgment. Taking up the merits of the negligence of duty by the public servant would be without the recommendation of the administrative enquiry and is impermissible. The Metropolitan Magistrate, keeping in perspective the binding precedents under section 156(3) of the CrPC, applied his discretion to the circumstances of the case and concluded that no offence was made out in the complaint and application dated 29.04.2018 and 09.05.2018, respectively, and also in the complaint dated 25.05.2018 under section 4 of the Act of 1989. In our considered view, the decision of the Metropolitan Magistrate is correct and unassailable in the circumstances of the case. Therefore, the impugned judgment, for the above reasons and deliberation, is unsustainable and contrary to the proviso to section 4(2) of the Act of 1989. Hence, the impugned judgment is set aside and the Criminal Appeal is allowed.

.....J. [M. M. SUNDRESH] .....J. [S.V.N. BHATTI] NEW DELHI;

MAY 17, 2024