

Hitesh Verma vs The State Of Uttarakhand on 5 November, 2020

Equivalent citations: AIR 2020 SUPREME COURT 5584, AIR ONLINE 2020 SC 812

Author: Hemant Gupta

Bench: Ajay Rastogi, Hemant Gupta, L. Nageswara Rao

REPORT

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 707 OF 2020
(ARISING OUT OF SLP (CRIMINAL) NO. 3585 OF 2020)

HITESH VERMA

.....AP

VERSUS

THE STATE OF UTTARAKHAND & ANR.

.....RESP

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Uttarakhand at Nainital on 20.7.2020 whereby the petition filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973¹ for quashing the charge-sheet as well as the summoning order dated 25.6.2020 was dismissed.

2. The FIR No. 173 in question was lodged by the respondent No. 2 on 11.12.2019 at 23:24 hours in respect of an incident alleged to have occurred on 10.12.2019 at 10:00 hours against the appellants and others. The FIR was lodged for the offences under Sections 452, 16:30:41 IST Reason:

1 For short, the 'Code' 504, 506 and Section 3(1)(x) and 3(1)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 2. The said FIR, when translated, reads as under:

“Respected SHO with respect of registering of FIR, the complainant is presently resident of Gram New Bajeti Patti Chandak Tehsil & District Pithoragarh. I am constructing my house on my Khet No. 6195, 6196 & 6199 but Banshilal, Pyarelal S/o Late Har Lal, Hitesh Verma S/o Sh. Pyarelal, Pawan Verma S/o Banshilal, Uma Verma w/o Pyarelal and their Nepali Domestic help Raju from past 6 months are not allowing the applicant to work on her fields. All the above persons used to abuse the applicant her husband and other family members and use to give death threats and use Caste coloured abuses. On 10.12.2019 at around 10 am, all these persons entered illegally in to four walls of her building and started hurling abuses on myself and my labourers and gave death threats and used castes’ remarks/abuses and took away the construction material such as Cement, Iron, Rod, Bricks. The Applicant is a Scheduled Caste and all of the above person uses castes’ remarks/abuses (used bad language) and said that you are persons of bad caste and that we will not let you live in this mohalla/vicinity. Respect Sir, the applicant and her family has threat to her life from such persons. Thus, it is requested that an FIR may be lodged against such persons and necessary action may be taken against them.....”

3. Pursuant to the FIR filed by Respondent No. 2, Police filed a report disclosing offences under Sections 504, 506 IPC and Section 3(1)(x) of the Act, cognizance for the same was taken by the Trial Court on 25.6.2020. It is the said order which was challenged along with the charge-sheet before the High Court, which was unsuccessful.

4. On the other hand, on the basis of the statement of Mr. Pawan Verma, an FIR No. 174 at about 23:47 hours was lodged on 2 For short, “the Act”.

11.12.2019 in respect of an occurrence which had taken place allegedly at 9:45 hours on 11.12.2019. A charge-sheet in the said matter has been submitted against respondent No. 2 and others.

Thereafter, the learned Chief Judicial Magistrate, Pithoragarh had taken cognizance for the offences under Sections 323 and 354 IPC against respondent No. 2 and others on 2.7.2020.

5. The Appellant invoked the jurisdiction of the High Court by way of a petition under Section 482 of the Code to challenge the charge- sheet and the order taking cognizance. The Appellant relied upon *Gerige Pentaiah v. State of Andhra Pradesh & Ors.* 3 wherein the allegation was of abusing the complainant in the name of their caste and this Court quashed the complaint. The attention of the High Court was drawn to another judgment reported as *Ashabai Machindra Adhagale v. State of Maharashtra & Ors.* 4 wherein this Court refused to quash the FIR on the ground that the caste of the accused was not mentioned in the first information report. The High Court found that both the abovementioned cases dealt with the same issue with regard to applicability of the provisions of the Act. It was observed by the High Court that the appellant had categorically admitted that the informant belonged to Scheduled Caste and that she and her labourers were abused. Therefore, the provisions of the Act were found to be applicable and accordingly, after investigation, charge-sheet

has been submitted. The High Court dismissed the petition with the aforesaid findings. 3 (2008) 12 SCC 531 4 (2009) 3 SCC 789

6. The learned counsel for the appellant argued that the disputes relating to the property are pending before the Civil Court and that, the present FIR has been filed on patently false grounds by respondent No. 2 only to harass the appellant and to abuse of process of law. It is argued that the allegations levelled in the FIR and the subsequent report submitted by the Police after investigations does not disclose any offence under the Act. Furthermore, it is argued that the report neither discloses the caste of the informant nor the allegations are that they were made in public view. Also, the offending words are not purported to be made for the reason that the informant is a person belonging to Scheduled Caste.

7. The learned counsel for the State on the contrary, submitted that during investigations, certain persons have supported the version of the informant. It is argued on behalf of respondent No. 2 that in fact the appellant and his family are encroacher on the informant's land. Therefore, the appellant was rightly not granted any indulgence by the High Court.

8. Against the backdrop of these facts, it is pertinent to refer to the Statement of Objects and Reasons of enactment of the Act. It is provided as under:

“Despite various measures to improve the socio- economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-

respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check

and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.”

9. The long title of the Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

10. The Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community.

11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act No. 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

“3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors.5.

The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen 5 (2008) 8 SCC 435 by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

“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.”

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or

Scheduled Tribe.

17. In another judgment reported as *Khuman Singh v. State of Madhya Pradesh*⁶, this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

6 2019 SCC OnLine SC 1104 “15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar”-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

19. This Court in a judgment reported as *Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.*⁷ issued certain directions in respect of investigations required to be conducted under the Act. In a review filed by the Union against the said judgment, this Court in a judgment reported as *Union of India v. State of Maharashtra & Ors.*⁸ reviewed the directions issued by this Court and held that if there is a false and unsubstantiated FIR, 7 (2018) 6 SCC 454 8 (2020) 4 SCC 761 the proceedings under Section 482 of the Code can be invoked.

The Court held as under:

“52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be

a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.”

20. Later, while examining the constitutionality of the provisions of the Amending Act (Central Act No. 27 of 2018), this Court in a judgment reported as Prathvi Raj Chauhan v. Union of India & Ors.⁹ held that proceedings can be quashed under Section 482 of the Code. It was held as under:

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

21. In Gerige Pentaiah, one of the arguments raised was non-

disclosure of the caste of the accused but the facts were almost

9 (2020) 4 SCC 727 similar as there was civil dispute between parties pending and the allegation was that the accused has called abuses in the name of the caste of the victim. The High Court herein has misread the judgment of this Court in Ashabai Machindra Adhagale as it was not a case about the caste of the victim but the fact that the accused was belonging to upper caste was not mentioned in the FIR. The High Court of Bombay had quashed the proceedings for the reason that the caste of the accused was not mentioned in the FIR, therefore, the offence under Section 3(1)(xi) of the Act is not made out. In an appeal against the decision of the Bombay High Court, this Court held that this will be the matter of investigation as to whether the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. Therefore, the High Court erred in law to dismiss the quashing petition relying upon later larger Bench judgment.

22. The appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because respondent No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that respondent No. 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by way of a procedure established by law.

23. This Court in a judgment reported as Ishwar Pratap Singh & Ors.

v. State of Uttar Pradesh & Anr.¹⁰ held that there is no prohibition under the law for quashing the charge-sheet in part. In a petition filed under Section 482 of the Code, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice. The Court held as under:

“9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse.

There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed.”

24. In view of the above facts, we find that the charges against the appellant under Section 3(1)(r) of the Act are not made out. Consequently, the charge-sheet to that extent is quashed. The 10 (2018) 13 SCC 612 appeal is disposed of in the above terms.

25. The FIR in respect of other offences will be tried by the competent Court in accordance with law along with the criminal case 11, though separately initiated, for the reason that it relates to interparty dispute and is in respect of same subject matter of property, despite of the fact that two different dates of the incident have been provided by the parties.

.....J. (L. NAGESWARA RAO)J. (HEMANT GUPTA)J. (AJAY RASTOGI) NEW DELHI;

NOVEMBER 5, 2020.