

RAMESH CHANDRA VAISHYA

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v.

THE STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 1617 of 2023)

MAY 19, 2023

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[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss. 3(1)(x), 18 – Penal Code, 1860 – ss. 323, 325, 392, 452, 504, 506 – Prosecution case that the appellant was engaged in an altercation with the second respondent-complainant over the issue of drainage of water – It was alleged that during this altercation, the appellant verbally hurled caste related abuses towards the complainant and his family members, and subsequently physically assaulted the complainant causing him multiple injuries – Two FIRs were filed – First FIR by the complainant against the appellant and second FIR by appellant against the complainant – First FIR was registered against the appellant u/ss. 323, 504, IPC and 3(1)(x), the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Charge-sheet filed – Appellant sought quashing of criminal proceedings u/s. 482 Cr.P.C. before the High Court – High Court held that without evidence, it was not possible to ascertain the veracity of the allegations, therefore application u/s. 482 Cr.P.C. was not sustained – On appeal, held: Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son) – Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent – Further, the allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries – Chargesheet neither refer to any eye-witnesses other than complainant’s wife and son nor any medical report – The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet – On the contrary, the appellant had the injuries suffered by him treated immediately after the incident – High Court misdirected itself in failing to appreciate the challenge to the criminal

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- A *proceedings including the charge-sheet in the proper perspective and occasioned a grave failure of justice in rejecting such challenge.*

Allowing the appeal, the Court

- B **HELD: 1.** The first F.I.R., registered at the instance of the complainant, is silent about the place of occurrence and who, being a member of the public, was present when the appellant is alleged to have hurled caste related abuses at the complainant. However, on a reading of the second F.I.R. registered at the behest of the appellant, it appears that the incident took place at the house of the appellant. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21 st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not “*in any place within public view*”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. This Court, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present. [Paras 16, 17][651-C-G]

- G **2.** That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. It was noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The
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legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognisance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21 st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial. [Para 18][651-G-H; 652-A-F]

3. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by

- A the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries “in his hand and other body parts”. If indeed the complainant’s version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise the outcome of the second F.I.R. In any event, the court do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC. [Para 21][652-H; 653-A-D]

Fiona Shrikhande and Anr. v. State of Maharashtra (2013) 14 SCC 44 : [2013] 9 SCR 240 – relied on.

- E *Mohd. Allauddin Khan v. The State of Bihar and Ors.* (2019) 6 SCC 107 : [2019] 5 SCR 876; *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1992 Supp (1) SCC 335 : [1990] 3 Suppl. SCR 259; *Hitesh Verma v. The State of Uttarakhand and Anr.* (2020) 10 SCC 710 : [2020] 9 SCR 593 – referred to.

Case Law Reference

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| F | [2019] 5 SCR 876 | referred to | para 9 |
| | [1990] 3 Suppl. SCR 259 | referred to | para 10 |
| | [2020] 9 SCR 593 | referred to | para 10 |
| | [2013] 9 SCR 240 | relied on | para 22 |

- G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1617 of 2023.

From the Judgment and Order dated 23.05.2022 of the High Court of Judicature at Allahabad in A482 No.38374 of 2018.

- H Ms. Vanshaja Shukla, Abhishek Chaterjee, Advs. for the Appellant.

Ardhendumauli Kumar Prasad, AAG, Adarsh Upadhyay, Divyanshu Sahay, Ashish Madaan, Ms. Pallavi Kumari, Ajay Marwah, Sanjay Shukla, Adhitya Srinivasan, Tapan Masta, Advs. for the Respondents. A

The Judgment of the Court was delivered by

DIPANKAR DATTA, J. B

Leave granted.

2. The present appeal, by special leave, questions the judgment and order dated 23rd May, 2022 passed by a learned Single Judge of the High Court of Judicature at Allahabad (“High Court”, hereafter) dismissing an application under section 482 of the Code of Criminal Procedure, 1973¹ (“Cr. PC”, hereafter) instituted by the appellant seeking quashing of the charge-sheet as well as the pending criminal proceedings². C

3. In a nutshell, the prosecution’s case is that on 14th January, 2016, at about 7.00 am, the appellant was engaged in an altercation with the second respondent (“complainant”, hereafter) over the issue of drainage of water. It is alleged that during this altercation, the appellant verbally hurled caste related abuses towards the complainant and his family members, and subsequently physically assaulted the complainant causing him multiple injuries. Consequently, on 20th January, 2016, a First Information Report (“first F.I.R”, hereafter) was registered against the appellant under sections 323 and 504, Indian Penal Code, 1860 (“IPC”, hereafter) and 3(1)(x), the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SC/ST Act”, hereafter). D E

4. Investigation was conducted by the concerned Circle Officer (“I.O.”, hereafter). Upon investigation, which was completed within a day, the I.O. reached the conclusion that there were materials against the appellant to send him up for trial and consequently, a charge-sheet dated 21st January, 2016 under sections 323, 504, IPC and 3(1)(x), SC/ST Act was filed before the concerned court against him. The court took cognizance of the offence on 3rd May, 2016. F G

5. It is important to emphasize at this juncture that the appellant intended to lodge an F.I.R. arising out of the same incident. According to him, he was badly beaten up by the complainant and his son with canes

¹ Application u/s 482 No. 38374 of 2018

² Case Crime No. 23 of 2016; Criminal Case No. 376 of 2016 H

A and lathis on 14th January, 2016, as a result of which he too sustained injuries. On the same date, when the appellant approached the police station to lodge the F.I.R., it was not registered; instead, the appellant was challaned and kept under detention by the concerned inspector in-charge under sections 151, 107, and 116, Cr. PC. He was subsequently released upon furnishing bail bond. Owing to the failure of the Police to register the F.I.R., the appellant moved an application under section 156(3), Cr. PC. Pursuant to the order passed by the Magistrate, an F.I.R. dated 18th February, 2016 (“second F.I.R.”, hereafter) was registered for the offences under sections 323, 325, 392, 452, 504, 506, IPC against the complainant (second respondent).

C 6. It is also noted that the appellant has instituted a suit³ before the civil court seeking permanent injunction against the complainant’s continued encroachment upon the appellant’s lands. The same is pending consideration before the competent court.

D 7. Aggrieved by the aforesaid charge-sheet, the appellant invoked the jurisdiction of the High Court on 5th October, 2018 by applying under section 482, Cr. PC. He sought quashing thereof as well as the criminal proceedings against him on the grounds that the said charge sheet discloses no offence and the present prosecution has been instituted with *mala fide* intention for the purposes of harassment.

E 8. Having held that a *prima facie* case for grant of interim relief was set up, the High Court, *vide* interim order dated 15th November, 2018, directed that no coercive action be taken against the appellant, pending consideration of the application under section 482, Cr. PC.

F 9. However, upon a contested hearing, the High Court found no material irregularity in the charge-sheet or the procedure followed by the Court below in taking cognizance, and proceeded to dismiss the appellant’s application under section 482, Cr. PC *vide* the impugned judgment and order. The High Court held that, at this stage, it cannot be concluded that a cognizable offence has not been disclosed, as the allegations are factual in nature and would require leading of evidence by the parties. Relying on the decision of this Court in **Mohd. Allauddin Khan vs. The State of Bihar and Ors.**⁴, the High Court emphasized that at the stage of discharge and/or while exercising the powers under

³ C.S. No. 07 of 2017

⁴ (2019) 6 SCC 107

section 482, Cr. PC, the court has limited jurisdiction and it cannot appreciate the evidence in order to determine whether, *prima facie*, a case has been made out against the accused. The High Court noted that without evidence, it is not possible to ascertain the veracity of the allegations at this stage; the application for quashing of a charge-sheet or criminal proceedings under section 482 Cr. PC, therefore, cannot sustain. A B

10. Appearing on behalf of the appellant, Ms. Shukla, learned counsel advanced the following submissions:

- a. The first F.I.R., which was registered after a delay of six days, is an afterthought and creates serious doubts over the allegations of the complainant. C
- b. The charge-sheet was filed on the very next day of registration of the first F.I.R., without conducting proper investigation. The charge-sheet fails to take note of the second F.I.R. registered at the instance of the appellant and the medical report. D
- c. The complainant, being an influential person in the village, maliciously initiated criminal proceedings against the appellant with an ulterior motive to scuttle the already pending civil dispute in the civil court between the parties. E
- d. The Police did not act on the appellant's complaint. The second F.I.R. dated 18th February, 2016 was registered only after an order was passed on the appellant's application under section 156(3), Cr. PC by the Magistrate.
- e. **State of Haryana and Ors. vs. Bhajan Lal and Ors.**⁵ F was placed in support of the contention that if the contents of the F.I.R., taken on their face value, does not make out any case against the appellant, such an F.I.R. registered with ulterior motive deserves to be quashed.
- f. **Hitesh Verma vs. The State of Uttarakhand & Anr.**⁶ G was also placed to support the contention that the High Court ignored the misuse and abuse of the provisions of the SC/ST Act by the complainant; neither the contents of the

⁵ 1992 Supp (1) SCC 335

⁶ (2020) 10 SCC 710

A first F.I.R. nor the charge-sheet discloses the precise content of abusive language employed by the appellant so as to attract the provisions of section 3(1)(x) of the SC/ST Act.

11. It was, accordingly, prayed that relief prayed for by the appellant be granted.

B 12. Mr. Prasad, learned Additional Advocate General appearing for the first respondent (State) while seeking dismissal of this appeal contended as follows:

- a. The appellant had committed a serious crime as a result of which the complainant had sustained multiple injuries in the resultant altercation.
- b. The Police, on the basis of the statement given by the complainant and the investigation that followed, filed the charge-sheet dated 21st January, 2016 before the trial court after following due procedure.
- c. The High Court, *vide* the impugned judgment and order, has rightly dismissed the application for quashing presented by the appellant.
- d. It is settled law that the jurisdiction under Section 482, Cr. PC should be sparingly exercised with complete circumspection and caution and the High Court was not in error in refusing to exercise jurisdiction.

13. Mr. Shukla, learned counsel appearing for the complainant (second respondent) supported the impugned judgment and order of the High Court. According to him, completion of investigation within a day by the I.O. may seem to be unusual but is not an impossibility. He also contended that the charge-sheet having been filed, the law must be allowed to take its own course; and, if at all the appellant is aggrieved by framing of charges, he may seek his remedy in accordance with law. No case for interference having been set up by the appellant, Mr. Shukla prayed for dismissal of the appeal.

14. We have heard the parties and perused the judgment and order of the High Court together with the materials on record.

15. Section 3(1)(x) of the SC/ST Act, prior to its amendment notified vide S.O. 152(E) dated 18th January, 2016, read as follows:

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“3. Punishments for offences of atrocities. — (1) Whoever, A
not being a member of a Scheduled Caste or a Scheduled Tribe,

—

(x) intentionally insults or intimidates with intent to humiliate a B
member of a Scheduled Caste or a Scheduled Tribe in any place
within public view;

***”

16. The first F.I.R., registered at the instance of the complainant, is silent about the place of occurrence and who, being a member of the public, was present when the appellant is alleged to have hurled caste related abuses at the complainant. However, on a reading of the second F.I.R. registered at the behest of the appellant, it appears that the incident took place at the house of the appellant. C

17. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present. D
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18. That apart, assuming *arguendo* that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course G
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- A of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a
- B particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe,
- C *per se*, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for
- D alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes
- E out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognisance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21st January, 2016 does not make out any case of an offence having
- F been committed by the appellant under section 3(1)(x) warranting him to stand a trial.

19. Paragraphs 15 and 16 of the decision in **Hitesh Verma** (supra) cited by Ms. Shukla can be pressed in aid to support the view that we have taken above.

- G 20. The second question that would engage our attention is, whether the criminal proceedings against the appellant should be allowed to be taken further in view of the appellant facing accusation of offences punishable under sections 323 and 504, IPC.

- H 21. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease

or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "*in his hand and other body parts*". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC.

22. What remains is section 504, IPC. In **Fiona Shrikhande and Anr. vs. State of Maharashtra**⁷, this Court had the occasion to hold that:

"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there

⁷ (2013) 14 SCC 44

A should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

B 23. Based on the facts and circumstances of the case, we have little hesitation in holding that even though the appellant might have abused the complainant but such abuse by itself and without anything more does not warrant subjecting the appellant to face a trial, particularly in the clear absence of the ingredient of intentional insult of such a degree that it could provoke a person to break public peace or commit any other offence.

C 24. We record that the High Court misdirected itself in failing to appreciate the challenge to the criminal proceedings including the charge-sheet in the proper perspective and occasioned a grave failure of justice in rejecting such challenge.

D 25. For the reasons aforesaid, we unhesitatingly hold that it would be an abuse of the process of law to allow continuation of Criminal Case No.376 of 2016. While setting aside the impugned judgment and order of the High Court, we also quash Criminal Case No.376 of 2016.

26. Consequently, this appeal succeeds. Parties shall, however, bear their own costs.

Ankit Gyan
(Assisted by : Mahendra Yadav, LCRA)

Appeal allowed.