2025:PHHC:023139

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

254

CRR No.1206 of 2019 (O&M)
Date of decision: 05.02.2025

Navneet Chauhan and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S. Sandhu, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition is preferred against impugned order dated 02.04.2019 passed by the learned Additional Sessions Judge, Ambala whereby charges have been framed against the petitioners under Sections 148 and 323, 325, 506, 427 read with Section 149 IPC and Section 3(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SC/ST Act') in the case stemming from FIR No.39 dated 13.03.2017 at Police Station Shahzadpur, District Ambala.

2. Briefly, the facts, as alleged, are that on 13.03.2017, respondent No.2-complainant Phool Chand was going on his cycle and reached near one Pappu Rana's farm around 1:30 PM, then the petitioners-accused rounded him up and attacked him with iron rods and swords. On receiving the said information, the family members of the respondent No.2 arrived at the spot but they were rounded up by the

petitioners as well. Thereafter, the petitioners caused injuries to the respondent No.2 and his family as they belonged to the Harijan community. Respondent No.2 and his family raised alarm, the accused called respondent No.2 as '*ded gitlow'* and fled from the spot along with their weapons.

3. Learned counsel for the petitioners *inter alia* contends that respondent No.2 is affiliated with the Bahujan Samaj Party and is politically active. In fact, on the date of the alleged occurrence, the petitioners heard some noise and on inspection, found out that respondent No.2 and his accomplices were assaulting petitioner No.2-Narinder, with deadly weapons. A scuffle ensued and the petitioners were admitted to the hospital, as evidenced by MLRs available at Annexure P-2. In order to save themselves, FIR(supra) was registered at the behest of respondent No.2. The petitioners also gave a statement to the police but they did not register a cross version case in FIR(supra). Therefore, the petitioners were compelled to approach the learned Judicial Magistrate Ist Class, Naraingarh, by way of a criminal complaint under Section 148, 149, 323, 324, 325, 326, 506 IPC (Annexure P-4). Furthermore, in order to seek revenge, respondent No.2 sent his accomplices to assault the villagers in the night of 13.03.2017, which resulted in death of one Kanwar Pal and an FIR (Annexure P-5) has been registered in this regard as well. Further still, as a protest to registration of FIR(Annexure P-5), respondent No.2 and his accomplices damaged public property in Ambala City and also committed arson.

4. Learned counsel further contends that final report under Section 173 Cr.P.C. was filed against some other persons and not the petitioners. The prosecution has filed an application under Section 319 Cr.P.C. seeking summoning of the petitioners and some other persons. However, during pendency of the same, a supplementary report was filed arraigning the petitioners as accused. Finally, the offence under the SC/ST Act is not made out against the petitioners as nowhere has it been stated who uttered the derogatory words. It is also unproven that the alleged casteist slurs were uttered in public view, with the intention to humiliate respondent No.2 for belonging to the SC community. Reliance in this regard can be placed on the judgment issued by the Hon'ble Supreme Court in ***Shashikant Sharma and others vs. State of Uttar Pradesh and another 2024 AIR SC 193, Chandra Prakash vs. State of Rajasthan (2014) 8 SCC 340,*** this Court in ***Dr. Onkar Chander Jagpal and another vs. Union Territory, Chandigarh and another 2012(1) R.C.R.(Criminal) 931*** and ***Karamjit Singh Bhullar vs. State of Punjab*** and the Bombay High Court in ***Balu B. Galande vs. State of Maharashtra and another 2007(5) R.C.R.(Criminal) 851.***

5. *Per contra*, learned State counsel contends that the petitioners have been arraigned as accused after conducting further investigation into the matter and supplementary report in this regard has been filed. As such, interference by this Court is not warranted.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioners were arraigned as accused by means of a supplementary

report filed by the police authorities. The petitioners have also instituted a complaint case (supra) against respondent No.2 and his accomplices as their cross-version was not registered by the police due to absence of injuries. However, it is quite evident that there exists an inimical relationship between the parties, which is further established by the fact that one Kanwar Pal was killed as a result of a scuffle that ensued on the very same day of the alleged incident, due to the ongoing grudge between them.

7. Notably, respondent No.2-complianant belongs to the SC community. It appears that the learned Court below has erroneously charged the petitioner with an offence under Section 3(x) of the SC/ST. Firstly, there is no provision such as Section 3(x) of the SC/ST Act. Even if it is overlooked as a typographical error, the offence defined under Section 3(1)(x) of the SC/ST Act does not correspond to the factual matrix of the case as the said provision reads as follows:

> ***Section 3. Punishments for offences atrocities.—***
> *(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
> *xxx xxx xxx*
> *(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;*

It appears that, in spite of the fact that the alleged incident occurred on 13.03.2017, the learned Court below has referred to the SC/ST Act, as it was prior to the Act 1 of 2016, vide which the same was amended w.e.f. 26.01.2016. The pre-amendment provision of

Section 3(1)(x) of the SC/ST Act corresponds to the current Section 3(1)(r) SC/ST Act, which reads as follows:

> ***Section 3. Punishments for offences atrocities.—***
> *(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
> *xxx* *xxx* *xxx*
>
> *(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*

8. *In arguendo*, merely the fact that the victim belongs to a Scheduled Caste or Scheduled Tribe would not be sufficient to attract the offences under the SC/ST Act as the existence of an intention to humiliate the victim due to his caste identity is a *sine qua non* for the same. Reliance in this regard can be placed on ***Hitesh Verma vs. State of Uttrakhand (2020)10 SCC 710*** and ***Ramesh Chandra Vaishya vs. State of Uttar Pradesh and another 2023 SCC OnLine 668.***

9. At no point the petitioners have been accused of uttering the words *'ded gitlow.'* Moreover, there is nothing to suggest that the said phrase was aimed at insulting respondent No.2 on the basis of his caste identity. A two Judge Bench of the Hon'ble Supreme Court in ***Shajan Skaria vs. State of Kerala 2024 SCC OnLine SC 2249*** has explained the phrase '*intent to humiliate*' in context of Section 3(1)(r) of the SC/ST Act and speaking through Justice P.B. Pardiwala, the following was held:

> *"61. The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation.* ***Not every intentional insult or***

intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of `purity' and `pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

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

xxx xxx xxx

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

70. In our considered view, it is in a similar vein that the term `humiliation' as it appears in Section 3(1)(r) of the Act, 1989

must be construed, that is, in a way that it deprecates the infliction of humiliation against members of the Scheduled Castes and Scheduled Tribes wherein such humiliation is intricately associated with the caste identity of such members."

10. Elaborating on the term *'public view,'* as used in Section 3(1)(r) of the SC/ST Act, a two Judge bench of the Hon'ble Supreme Court in ***Karuppudayar vs. State Rep. By The Deputy Superintendent of Police and others 2025(1) R.C.R.(Criminal) 813,*** speaking through Justice B.R. Gavai, opined as follows:

"9. A perusal of Section 3(1)(r) of the SC-ST Act would reveal that for constituting an offence thereunder, it has to be established that the accused intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Similarly, for constituting an offence under Section 3(1)(s) of the SC-ST Act, it will be necessary that the accused abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

10. The term "any place within public view" initially came up for consideration before this Court in the case of ***Swaran Singh and others v. State through Standing Counsel and another, (2008) 8 SCC 435****. This Court in the case of* ***Hitesh Verma v. State of Uttarakhand and another, (2020) 10 SCC 710*** *referred to* ***Swaran Singh (supra)*** *and reiterated the legal position as under:*

"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 v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] . ***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 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*** *(sic) [Ed. : This sentence appears to be contrary to what is stated below in*

the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below:"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."] . The Court held as under : (SCC pp. 443-44, para 28)

"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."*

11. ***It could thus be seen that, to be a place 'within public view', the place should be open where the members of the public can witness or hear the utterance made by the accused to the victim.*** *If the alleged offence takes place within the four corners of the wall where members of the public are not present, then it cannot be said that it has taken place at a place within public view."* (emphasis added)

11. The material available on the record does not illustrate how the allegedly offending remarks connect to the caste identity of respondent No.2. Neither has it been established that the same was used by the accused with an intention to humiliate him nor any specific roles have been attributed to the petitioners. Since the alleged incident

occurred near a farm, but in the company of relatives, the same cannot be said to have occurred in public view in terms of ***Karuppudayar's case (supra).***

12. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a prima facie case exists depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature and judgmental law on this issue, it could be safely concluded that at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C, the learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record if taken at their face value disclose the existence of all the ingredients

constituting the offence. The discharge of the accused is only permissible when the case set up by the investigating agency in the final report filed before the trial Court under 173 of Cr.P.C. has no basis or foundation. The trial Court cannot consider the probable defence of the accused in the case at this stage.

13. The Hon'ble Supreme Court has *in extenso* laid down the principles for the purpose of framing of charges in ***P.Vijayan Vs. State of Kerala (2010) SCC 398***. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in ***State through Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206*** where a two Judge Bench, reiterated that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into.

14. In view of the discussion above, the present petition is allowed and impugned order dated 02.04.2019 passed by the learned Additional Sessions Judge, Ambala is hereby set aside to the extent of charge framed under SC/ST Act.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

05.02.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No