Unless Caste-Based Insult Intended, Mention Of Victim's Caste Not An Offence Under SC/ST Act: Karnataka High Court

2023 LiveLaw (Kar) 31

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
M. NAGAPRASANNA; J.
CRIMINAL PETITION No.2797 OF 2022; 17 January, 2023
SHAILESH KUMAR V. *versus* **STATE OF KARNATAKA**

Petitioner by Jaysham Jayasimha Rao, Advocate; Respondents by K.P. Yashodha, HCGP for R1

O R D E R

The petitioner is before this Court calling in question registration of crime in Crime No.115 of 2020 for offences punishable under Sections 506, 504, 143, 147, 149, 323, 324 and 363 of the Indian Penal Code, 1860 and has sought quashment of the charge sheet filed for offences punishable under Sections 143, 147, 323, 324, 365, 504, 506 r/w 149 of IPC, Section 3(1)(r) & 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short) and also called in question consequential order of taking cognizance for the aforesaid offences in the charge sheet.

2. Heard Sri Jaysham Jayasimha Rao, learned counsel appearing for the petitioner and Smt. K.P.Yashodha, learned High Court Government Pleader appearing for respondent No.1. Respondent No.2/complainant though served remained unrepresented throughout these proceedings.

3. *Shorn* of unnecessary details, the facts as projected by the prosecution are as follows:-

A complaint comes to be registered by the 2nd respondent on 14-06-2020 alleging that the petitioner along with others had indulged in certain acts which would become punishable under Sections 506, 504, 143, 147, 149, 323, 324 and 363 of the IPC. Though the complaint was that certain abuses were made against the son of the 2nd respondent, the FIR comes to be registered only for offences punishable under the IPC as afore-quoted. The background to the allegation is a game of cricket. The son of the complainant and the petitioner along with their friends had played cricket match in which the son of the complainant and his team had lost the match, due to which, some altercations took place between the petitioner and the son of the complainant and his friends. Several allegations are made to the effect that the son of the complainant was taken away and beaten. It is in that light the FIR comes to be registered against the petitioner and one Punit. The Police conduct investigation, record statements of several persons who during their statements have revealed that certain abuses in filthy language were made by the petitioner and others on the son of the 2nd respondent and others. Based upon those statements a charge sheet comes to be filed including the offences punishable under the Act. The learned Sessions Judge in terms of his order dated 01-03-2021 takes cognizance of the offences so alleged in the charge sheet and registers as Special Case No.55 of 2021 for offences punishable under Sections 143, 147, 323, 324, 365, 504, 506 r/w 149 of IPC and Section 3(1)(r) & (s) of the Act. It is this order of taking cognizance that drives the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would contend with vehemence that there was no hurling of abuses as is alleged and all the allegations sprang

because of a game of cricket that has gone wrong previous day. The complaint comes to be registered initially for offences punishable under the IPC. While recording statements, it appears that several players in the game had made statements before the Investigating Officer that there were abuses hurled while the game was being played and, therefore, the offences under the Act are included. He would submit that mere hurling of abuses without any intention to insult or make casteist remarks would not become an offence under the Act. He would further contend that the entire investigation conducted *qua* the Act is in violation of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 ('the Rules' for short).

5. On the other hand, the learned High Court Government Pleader appearing for the 1st respondent would vehemently refute the submissions to contend that hurling of abuses is proved. Merely because there was rivalry between the son of the complainant and the petitioner and his friends which arose out of cricket match it cannot be made a tool for quashment of the proceedings under Section 482 of the Cr.P.C. She would vehemently oppose the petition to contend that it is always open to the Investigating Officer while filing the final report to add offences that come about during the course of investigation. No fault can be found with the act of the Investigating Officer including the offences under the Act while filing final report. Intention or otherwise of the petitioner in hurling abuses is a matter of trial. Since the charge sheet is already filed, the Court should not interfere with any of the offences so alleged and permit trial to be concluded, as it is for the petitioner to come out clean in the trial.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The complaint comes to be registered by the 2nd respondent on 14.06.2020 alleging that her son had been beaten/kidnapped and assaulted. Based on the complaint so registered by the 2nd respondent, a crime comes to be registered in Crime No.115 of 2020 for offences punishable under Sections 506, 504, 143, 147, 149, 323, 324 and 363 of IPC. Since the crime comes to be registered for the aforesaid offences on the basis of the complaint, I deem it appropriate to notice the complaint. The complaint dated 14-06-2020 reads as follows:

"ರವರಿಗೆ

ಸೂರ್ಯನಗರ ಪೋಲಿಸ್ ಠಾಣೆ
ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ರವರಿಗೆ

ಜಯಮ್ಮ **W/O** ಕೆಂಚಪ್ಪ
#23 ನೇ ವಾರ್ಡ್ I ಕ್ರಾಸ್
ಇಗ್ಲೂರ್ ಜನತಾ ಕಾಲೋನಿ
ಅನೇಕಲ್ ತಾಲೂಕು.

ವಿಷಯ: ನನ್ನ ಮಗನಾದ ಮನೋಜ್‌ನನ್ನು ಮತ್ತು ಅವನ ಸ್ನೇಹಿತ ಪ್ರದಿಪ್ ಅಂಗಡಿಯ ಬಳ ಊಟವನ್ನು ಮಾಡುತ್ತಾ ಕುಳಿತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಅನಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ನಿಂದಿಸಿ, ಹಲ್ಲೆ ನಡೆಸಿದರು KA 51 2410 ಕಾರಿನಲ್ಲಿ ಬಂದು ಅಪಹರಣ ಮಾಡಿರುತ್ತಾರೆ ದ್ವಿಚಕ್ರವಾಹನಗಳೊಂದಿಗೆ 30 ಜನರ ತಂಡದೊಂದಿಗೆ ಬೊಮ್ಮಸಂದ್ರ ಪುನೀತ್ ಮತ್ತು ಶೈಲೇಶ್ ಮತ್ತು ಉಳಿತ 30 ಜನರು ಮಾರಕಾಸ್ತ್ರಗಳಿಂದ ಹಲ್ಲೆ ಮಾಡಿ ತಮ್ಮ ವಾಹನದಲ್ಲಿ ನನ್ನ ಮಗ ಮತ್ತು ಅವನ ಸ್ನೇಹಿತ ಪ್ರದೀಪ್ ನನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದಾರೆ. ಜೊತೆಗೆ ನಮ್ಮನ್ನು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ನಿಂದಿಸಿ ನಮಗೂ ಜೀವಬೆದರಿಕೆಯನ್ನು ಹಾಕಿ ಹೋಗಿದ್ದಾರೆ. ಅವನಿಗೆ ಬೆರ್ ಬಾಟಲ್‌ನಲ್ಲಿ ಒಡೆದಿರುವುದರಿಂದ ರಕ್ತ ಹೋಗಿರುವುದನ್ನು ಅವನ ಸ್ನೇಹಿತ ಮನೋಜ್ ಕನ್ನಾರೆ ಕಂಡಿರುತ್ತಾನೆ ಮತ್ತು ನನ್ನ ...ಗಂಡ ಕನ್ನಾರೆ ಕಂಡಿರುತ್ತಾನೆ ಈ ಘಟನೆ ನಡೆದು ಸುಮಾರು 4:30 ರ:40 ಸಂಜೆ ಆಗಿರುತ್ತದೆ. ಅವನಿಗೆ ಅದಿಕ ರಕ್ತ ಹೋಗಿರುವುದರಿಂದ ದಯ ಮಾಡಿ ಅವನನ್ನು ಹುಡುಕಿ ನನಗೆ ನ್ಯಾಯ ಕೊಡಿಸಬೇಕಾಗಿ ನಿಮ್ಮನ್ನು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ."

The allegation in the complaint is that the son of the complainant one Manoj and his friend Pradeep were having food near a shop on 14-06-2020 at about 4.30 p.m. At that time, the petitioner along with 30 people comes there with two wheeler vehicles and a car and while hurling abuses against the son of the complainant and another attacked them with weapons and beer bottles causing bloodstained injuries and also assaulted them after taking them in the car. There was no complaint made that the petitioner had hurled abuses taking the name of the caste of the son of the complainant. The allegation was only using filthy language and threatening the life of the son of the complainant. Accordingly, the aforesaid crime comes to be registered.

8. The Investigating Officer conducts investigation and while doing so, he records statements of several persons who were participants in the game of cricket. In such statements he comes across certain statements made by the witnesses that abuses were hurled using filthy language that would become offences under the Act. It is, therefore, while filing the charge sheet, the offences under the Act are invoked. The summary of the charge sheet which assumes significance in the light of addition of offences under the Act reads as follows:

"ಮಾನ್ಯ ಘನ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಗೆ ಬರುವ ಸೂರ್ಯನಗರ ಪೋಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರುವ ಆನೇಕಲ್ ತಾಲ್ಲೂಕು, ಅತ್ತಿಬೆಲೆ ಹೋಬಳಿ, ಇಗ್ಗಲೂರು ಗ್ರಾಮದ ವಾಸಿಗಳಾದ ಪಿರ್ಯಾದಿ ಸಾಕ್ಷಿ–1 ಶ್ರೀಮತಿ ಜಯಮ್ಮ, ಸಾಕ್ಷಿ–2 ಮನೋಜ, ಸಾಕ್ಷಿ–3 ಪ್ರದೀಪ, ಸಾಕ್ಷಿ–4 ಕೆಂಚಪ್ಪ ರವರುಗಳು ಪರಿಶಿಷ್ಟ ಜನಾಂಗದ ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿರುತ್ತಾರೆ. ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ಕಂಡ ಆರೋಪಿಗಳಾದ ಎ1 ಮನೀತ್ ರವರು ಬೊಮ್ಮಸಂದ್ರ ಗ್ರಾಮದ ವಾಸಿಯಾಗಿದ್ದು, ಸವರ್ಣೀಯ ಒಕ್ಕಲಿಗ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು, ಎ2 ಶೈಲೇಶ ರವರು ಬಂಡೆನಲ್ಲಸಂದ್ರ ಗ್ರಾಮದ ವಾಸಿಯಾಗಿದ್ದು, ಕುರುಬ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು, ಎ3 ಅಭಿ @ ಅಭೀಶೇಕ್ ರವರು ಬನಹಳ್ಳಿ ವಾಸಿಗಳಾಗಿದ್ದು, ಸವರ್ಣೀಯ ರೆಡ್ಡಿ ಜನಾಂಗಕ್ಕೆ ಸೇರಿರುತ್ತಾರೆ. ಎ4 ಸೋಮು ರವರು ಕಾಚನಾಯಕನಹಳ್ಳಿ ದಿಣ್ಣೆ ವಾಸಿಯಾಗಿದ್ದು, ಪರಿಶಿಷ್ಟ ಜನಾಂಗಕ್ಕೆ ಸೇರಿರುತ್ತಾರೆ. ಎ5 ಸಲೀಂ ರವರು ಕಾಚನಾಯಕನಹಳ್ಳಿ ದಿಣ್ಣೆ ಗ್ರಾಮದ ವಾಸಿಯಾಗಿದ್ದು, ಮುಸ್ಲಿಂ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದ್ದು ಎ6 ಅಮರ್ ಕಾಚನಾಯಕನಗಳ್ಳಿ ದಿಣ್ಣೆ ವಾಸಿಯಾಗಿದ್ದು, ಮುಸ್ಲಿಂ ಜನಾಂಗಕ್ಕೆ ಸೇರಿರುತ್ತಾರೆ.

ದಿನಾಂಕ 14–06–2020 ರಂದು ಆನೇಕಲ್ ತಾಲ್ಲೂಕು ಅತ್ತಿಬೆಲೆ ಹೋಬಳಿ ಇಗ್ಗಲೂರು ಗ್ರಾಮದ ಇಗ್ಗಲೂರು ಕಾಲೋನಿ ವಾಸಿ ಸಾಕ್ಷಿ–1 ರವರ ಅಂಗಡಿಯ ಹತ್ತಿರ ಸಾಕ್ಷಿ–1 ರವರ ಅಂಗಡಿಯ ಹತ್ತಿರ ಸಾಕ್ಷಿ–2, ಸಾಕ್ಷಿ–3, ಸಾಕ್ಷಿ–4 ರವರು ಇದ್ದು ಸಾಕ್ಷಿ–2 ಮತ್ತು ಸಾಕ್ಷಿ–3 ರವರು ಸಂಜೆ 4–30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಅಂಗಡಿಯ ಮುಂದಿನ ಜಗಲಿಯ ಮೇಲೆ ಕುಳಿತು ಊಟ ಮಾಡುತ್ತಿದ್ದಾಗ ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ಆರೋಪಿಗಳಾದ ಎ1, ಎ2, ಎ3, ಎ4, ಎ5 ಮತ್ತು ಎ6 ಆರೋಪಿಗಳು ಮಾರುತಿ ಬ್ರೀಜಾ ಕಾರ್ ನಂ.ಕೆಎ 51 ಎಂಜೆ 2410 ರಲ್ಲಿ ಸಾಕ್ಷಿ–1 ರವರ ಮನೆ ಹತ್ತಿರ ಬಂದು ಸಾಕ್ಷಿ–2 ಮತ್ತು 3 **ರವರು ಕ್ರಿಕೆಟ್ ಆಟದ ವೀಕ್ಷಣದಲ್ಲಿನ ದ್ವೇಷದಿಂದ ಎಲ್ಲರೂ ಜಗಳ ತೆಗೆದು ಅನಾವಶ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ನಂತರ ಹೊಲೆಯ ಮಾದಿಗ ನನ್ನ ಮಕ್ಕಳಾ ಎಂತ ಬೈದು ಜಾತಿ ನಿಂದನೆ ಮಾಡಿ,** ಎ1 ಆರೋಪಿಯು ಸಾಕ್ಷಿ–2 ರವರಿಗೆ ಬಿಯರ್ ಬಾಟಲ್ ನಿಂದ ಹೊಡೆದು ಗಾಯಗೊಳಿಸಿ ಎ2 ಆರೋಪಿಯು ಸಾಕ್ಷಿ–3 ರವರಿಗೆ ಬಿಯರ್ ಬಾಟಲ್‌ನಿಂದ ತಲೆಗೆ ಹೊಡೆದು ಗಾಯಗೊಳಿಸಿ ಎ3, ಎ4, ಎ5, ಎ6 ಆರೋಪಿಗಳು ಸಾಕ್ಷಿ–2 ಮತ್ತು ಸಾಕ್ಷಿ–3 ರವರನ್ನು ಎತ್ತಿ ಎ1 ಆರೋಪಿಯ ಮಾರುತಿ ಬ್ರೀಜಾ ಕಾರ್ ನಂ ಕೆಎ–51–ಎಂಜೆ–2410 ರಲ್ಲಿ ಅಪಹರಣ ಮಾಡಿಕೊಂಡು ಕಾರಿನೊಳಕ್ಕೆ ಹಾಕಿಕೊಂಡು ಬೊಮ್ಮಸಂದ್ರಕ್ಕೆ ಹೋಗಿ ಆರೋಪಿಗಳೆಲ್ಲಾ ಸೇರಿ ಸಾಕ್ಷಿ–2 ರವರಿಗೆ ಎಡಗಡೆ ತೋಳಿಗೆ ಮೊಣಕೈ, ಎಡಗೈ ಬೆನ್ನಿನ ಹಿಂಭಾಗಕ್ಕೆ ದೊಣ್ಣೆ ಮತ್ತು ರಾಡ್‌ನಿಂದ ಹೊಡೆದು ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ರಕ್ತಗಾಯವಡಿಸಿ ಮತ್ತು ಸಾಕ್ಷಿ–3 ರವರಿಗೆ ಎಲ್ಲಾ ಆರೋಪಿಗಳು ಬೆನ್ನಿನ ಹಿಂಭಾಗ, ಬಲಭಾಗದ ಕೆಬ್ಬರಿ ಹತ್ತಿರ, ಹೊಟ್ಟೆಯ ಹತ್ತಿರ ಮತ್ತು ಹಣೆಯ ಮೇಲೆ ರಾಡ್‌ಗಳಿಂದ ಹೊಡೆದು ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ರಕ್ತ ಗಾಯ ಗೊಳಿಸಿ ನೀವು ಇನ್ನು ಮುಂದೆ ನಮ್ಮ ತಂಟೆಗೆ ಬಂದರೆ ನಿಮ್ಮನ್ನು ಮುಗಿಸಿಬಿಡುತ್ತೇವೆಂತ ಪ್ರಾಣ ಬೆದರಿಕೆ ಹಾಕಿ ಗಾಯಗೊಂಡ ಸಾಕ್ಷಿ–2 ಮತ್ತು ಸಾಕ್ಷಿ–3 ರವರನ್ನು ಕಾರಿನಲ್ಲಿ ಕೂರಿಸಿಕೊಂಡು ಚಂದಾಪುರಕ್ಕೆ ತಂದು ಅಲ್ಲಿ ಬಿಟ್ಟು ಹೋಗಿರುತ್ತಾರೆಂತ ಇವುರಿಗೂ ನಡೆಸಿದ ತನಿಖೆಯಿಂದಲೂ, ಪಿರ್ಯಾದಿ ಮತ್ತು ಸಾಕ್ಷಿದಾರರ ಮುಂದುವರೆದ ಹೇಳಿಕೆಗಳಿಂದಲೂ ಎ1 ಎ2 ಎ3 ಎ5 ಮತ್ತು ಎ6 ಆರೋಪಿಗಳ ಮೇಲೆ ಕಲಂ 143, 147, 323, 324, 365, 504, 506 ಜೊತೆಗೆ 149 ಐಪಿಸಿ ಜೊತೆಗೆ ಕಲಂ 3 ಕ್ಲಾಸ್ (1) (ಆರ್) & (ಎಸ್) ಎಸ್.ಸಿ/ಎಸ್.ಟಿ ಆಕ್ಟ್ 2016 ಮತ್ತು ಎ4 ಆರೋಪಿಯು ಮೇಲೆ 323, 324, 365, 504, 506, 149 ಐಪಿಸಿ ರೀತ್ಯಾ ಆರೋಪ ದೃಢಪಟ್ಟಿರುತ್ತೆ.

ಆದ್ದರಿಂದ ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ಕಂಡ ಆರೋಪಿಗಳಾದ ಎ1 ಮನೀತ, ಎ2 ಶೈಲೇಶ, ಎ3 ಅಭಿ @ ಅಭೀಶೇಕ್ ಎ5 ಸಲೀಂ, ಎ6 ಅಮರ್ @ ಅಮಾನ್ ಆರೋಪಿಗಳ ಮೇಲೆ ಕಲಂ 143, 147, 323, 324, 365, 504, 506 ಜೊತೆಗೆ 149 ಐಪಿಸಿ ಜೊತೆಗೆ ಕಲಂ 3 ಕ್ಲಾಸ್(1) (ಆರ್) & (ಎಸ್) ಎಸ್.ಸಿ/ಎಸ್.ಟಿ. ಆಕ್ಟ್ 2016 ರೀತ್ಯ ಹಾಗೂ ಎ4 ಆರೋಪಿ ಸೋಮ ರವರ ಮೇಲೆ 323, 324, 365, 504, 506, 149 ಐಪಿಸಿ ರೀತ್ಯಾ ಹೊರಿಸಲ್ಪಟ್ಟ ದೋಷಾರೋಪಣೆ."

(Emphasis added)

A perusal at the summary of the charge sheet would indicate all offences under the IPC. Insofar the offences under the Act is concerned, what is narrated is only that as an outcome of the game of cricket certain altercations happen between the complainant and the accused and the accused has abused the complainant taking the name of his caste. Except this statement, there is no whisper about the petitioner having hurled abuse taking the name of the caste of the complainant intentionally to insult or humiliate by making castiest remarks.

9. The learned Sessions Judge in terms of his order dated 01.03.2021 takes cognizance of the offences so alleged in the charge sheet and registers it as Special Case No.55 of 2021. The issue is, *whether the allegations would become ingredients of the offences under the Act?*

10. The learned counsel appearing for the petitioner has vehemently contended that there was no intention, even if it is accepted that the abuses were hurled taking the name of the caste. The intention to insult a particular caste is an important ingredient to bring home the offence. The summary of the charge sheet, as quoted hereinabove, only narrates the allegation of assault, kidnapping and fight between the two and the reason for the fight being the game of cricket. While doing so, it is alleged that the petitioner and others have indulged in assaulting the son of the complainant by beer bottles and weapons which would clearly demonstrate that both the son of the complainant and the petitioner were in an inebriated state. The only sentence that is used in the summary of charge sheet is that while hurling of abuses the name of the caste of the son of the complainant is taken. Statements in the charge sheet do not indicate that the name of the caste of the son of the complainant was taken deliberately with an intention to insult the son of the complainant.

11. If there was no intention of the kind to humiliate, it would not become an offence under Section 3(1)(r) & (s), is what the Constitutional Courts have held. Before considering the judgments so rendered by the Constitutional Courts, I deem it appropriate to notice Section 3(1)(r) & (s) of the Act. Section 3 of the Act deals with punishments for offences of atrocities. Section 3(1)(r) and (s) reads as follows:

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

… … … ..

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

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view."

Section 3(1)(r) mandates that whoever intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Section 3(1)(s) would mandate that if any person is seen to have abused the Scheduled Caste or Scheduled Tribe by caste name in any place within public view. Therefore, the soul of the provision is intention. The insult should be intentional and the intimidation should be with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe. As observed hereinabove, the charge sheet or the statements do not narrate any other circumstance except saying that the name of the caste of the son of the complainant was also used when abuses were hurled. There is no narration of any intention to insult or humiliate taking the name of the caste either in the statements or in the summary of the charge sheet.

12. The Apex Court in the case of ***HITESH VERMA v. STATE OF UTTARAKHAND***[1] has held as follows:-

*"**17.** In another judgment reported as Khuman Singh v. State of M.P. [Khuman Singh v. State of M.P., (2020) 18 SCC 763 : 2019 SCC OnLine SC 1104] , **this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste.** The Court held as under:*

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

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

The Apex Court in the aforesaid paragraphs clearly holds that the 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. The Apex Court narrates that both the victim and the accused therein were in a squabble with regard to a land dispute. In the case at hand, there is no indication of any intention to insult or humiliate and the reason for the squabble between the two was the game of cricket. A co-ordinate Bench of this Court in the case of ***LOKANATH v. STATE OF KARNATAKA***[2] has held as follows:

*"**13. Unless the investigation indicates or reveals intention of a person not belonging to scheduled caste or scheduled tribe to commit any of the offences under Section 3 of the Act, in order to oppress or insult or humiliate or subjugate or ridicule a member of scheduled caste or scheduled tribe as such person merely belongs to that caste, the offence under Section 3 cannot be invoked in the charge sheet.** It is not as though in every crime, if victim happens to be a member of scheduled caste or scheduled tribe, an offence under Section 3 of the Act has been committed. If motive for crime is not casteist attack, the accused can only be charge sheeted for any of the offences under Penal Code, 1860 that can be appropriately invoked in the background of the incident of crime or under other law which can be applied as the facts and circumstances indicate. **While the Act is essentially meant for protecting the members of scheduled caste or scheduled tribe from atrocity or oppression, at the same, it cannot be allowed to be misused. Therefore there is greater responsibility on the investigating officer to take decision wisely before filing the charge sheet."***

(Emphasis supplied)

[1] (2020) 10 SCC 710

[2] 2021 SCC OnLine Kar 14896

The co-ordinate Bench also holds that there should be an intention to oppress or insult or humiliate or subjugate or ridicule a member of a Scheduled Caste by taking the name of the caste. If there is no motive or intention to insult it cannot become an offence under the Act. The High Court of Orissa in a judgment rendered on 19-12-2022 in ***SURENDRA KUMAR MISHRA v. STATE OF ORISSA***[3] following the Apex Court judgment in the case of ***HITESH VERMA*** has held that intention is the soul of Section 3(1)(r) & (s) of the Act and if there is no intention the offence cannot even be laid against those accused. The High Court of Orissa has held as follows:

9. In the present case, as it appears the incident happened at a public place when some road work was in progress. Whether at the relevant point of time any other member of the public was present or not is not revealed from Annexure-1. ***Even accepting for a while that the alleged incident was at a time when other members of the public were present, the question would still be whether the petitioner did commit the overt act with any intention to insult and intimidate the informant on account of him belonging to SC or ST? Intention is a sine qua non for the alleged offence to have been committed. In other words, unless the required intention is found to exist with a purpose to insult and intimidate the victim the latter being a member of SC or ST, no offence under Section 3(1)(x) of the SC & ST (PoA) Act can be said to have been made out. The Apex Court in Hitesh Verma (supra) examined the Legislative intention behind the enactment of SC&ST (PoA) Act and noted down the Statement of Objects and Reasons which indicated that the existing laws like protection of Civil Rights Act, 1955 and other provisions of the IPC were found to be inadequate to safeguard the interest and rights of members of SC and ST as crimes have been committed taking advantage of their caste and backwardness. So having regard to the intent and purpose of the law in place meant to protect the statutory and constitutional rights of the marginalized sections of the society, any such offence committed by a person other than a SC or ST must have to have the requisite intention to insult and intimidate his counterpart for him to be from a backward class because of his caste. So it has to be held that all insults or intimidation do not make out an offence under the Act unless it is directed against the person on account of his caste.***

10. The petitioner suddenly out of anger abused the informant under the circumstances narrated in annexure-1. No doubt petitioner took the name of the informant's caste while abusing the latter. By taking the caste name or utterances of abuse by taking the name of one's caste would not be an offence under Section 3(1)(x) of the SC & ST (PoA) Act unless the intention is to insult, intimidate the person being a SC or ST. If the law laid down by the Supreme Court in Hitesh Verma (supra) is read, appreciated and understood in its proper perspective and applied to the case at hand, there appears no such intention on the part of the petitioner for being in dominant position as a man of forward class to insult and intimidate the informant being a member of SC and ST*. If the victim is humiliated within public view for being SC or ST and with that intention, any overt act or mischief is committed, an offence under Section 3(1)(x) of the SC%ST (PoA) Act would be made out otherwise not. Though the informant was abused at a public place or may be within public view by taking his caste name but as it is made to appear from the conduct of the petitioner, it was apparently without any intention to insult, intimidate and to humiliate him. It was pure and simple an abuse by the petitioner under the peculiar facts and circumstances and a sudden outburst and on the spur of the moment without carrying the requisite intention to humiliate the informant so to say. Therefore the contention of Mr. Mohapatra to the aforesaid extent is acceptable and justified and not beyond." (Emphasis supplied)*

[3] (CRLMC No.2628 of 2013)

If the law laid down by the Apex Court, the co-ordinate Bench of this Court and even that of the High Court of Orissa is juxtaposed what would unmistakably emerge is, mere taking the name of the caste of the victim would not make it an offence, unless it is with an intention to insult the person belonging to the said caste. That being conspicuously absent in the case at hand, permitting further proceedings to continue *qua* the offences under the Act would become an abuse of the process of law.

13. Yet another ground that is urged by the learned counsel for the petitioner is with regard to Rule 7 of the Rules. Rule 7 reads as follows:

*"**7. Investigating Officer**.—(1) **An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.***

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer." (Emphasis supplied)

Rule 7 depicts who should be the Investigating Officer. Sub-rule (1) of Rule 7 mandates that the Investigating Officer should be appointed by the State Government after taking into account his past experience, sense of ability and justice to perceive the implications under the Act and investigate along the right lines. Sub-rule further mandates that the investigation should be conducted by a Police Officer not below the rank of Deputy Superintendent of Police.

14. It is an admitted fact that the investigation, in the case at hand, is conducted by the Police Sub-Inspector and charge sheet is filed by the Police Sub-Inspector. Therefore, there is violation of Rule 7 of the Rules, inasmuch as there is no order directing investigation to be conducted by the Deputy Superintendent of Police. This again is in violation of Rule 7, which would vitiate the proceedings is what the Apex Court has held in the case of ***STATE OF MADHYA PRADESH v. BABBU RATHORE***[4]. The Apex Court has held as follows:

***"8.** For appreciating the rival submissions, we need to refer Section 9 of the 1989 Act and Rule 7 of the 1995 Rules which are as under:*

*"**9. Conferment of powers**. — (1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—*

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class of group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and

[4] (2020) 2 SCC 577

in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)." ***

*"**7. Investigating officer**.—(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.*

(2) The investigating officer so appointed under sub rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in charge of prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

9. By virtue of its enabling power, it is the duty and the responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the 1995 Rules provides rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the 1989 Act but the question arose for consideration is that apart from the offences committed under the 1989 Act, if the offence complained are both under IPC and the offence enumerated in Section 3 of the 1989 Act and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure (hereinafter being referred to as "the Code"), the offences under IPC can be quashed and set aside for non investigation of the offence under Section 3 of the 1989 Act by a competent police officer. This question has been examined by a two-Judge Bench of this Court in State of M.P. v. Chunnilal [State of M.P. v. Chunnilal, (2009) 12 SCC 649 : (2010) 1 SCC (Cri) 683] . Relevant para is as under: (SCC pp. 651-52, paras 7-8)

"7. … By virtue of its enabling power it is the duty and responsibility of the State Government to issue a notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigating officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer.

8. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent

police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence." *(Emphasis supplied)*

The Apex Court interpreting Rule 7 holds that it is the duty of the State to issue a notification conferring investigation of cases by notified Police Officers not below the rank of Deputy Superintendent of Police and if it is not, it would clothe other rank Officers to conduct investigation. But, the Apex Court found therein that the investigation was conducted by the Competent Authority. Nonetheless, the Apex Court holds that it is imperative that Rule 7 be adhered to.

15. Long before the judgment of the Apex Court in ***BABBU RATHORE*** *(supra)*, the High Court of Orissa in the case of ***AKSHAYA KUMAR PARIDA v. STATE OF ORISSA***[5] has held as follows:

"6. *The second submission of Mr. Parida is that the order of cognizance must be quashed as the statutory provision of Rule 7 of the Rules has been violated during investigation of the case. Rule 7 of the aforesaid Rules mandates that a case involving offences under S.C. and S.T. (P.A.) Act should be investigated by an officer not below the rank of D.S.P. The case diary shows that investigation of the case was undertaken by one A.S.I. of Mancheswar Police Station and the said officer recorded the statements of the witnesses. At a later stage of investigation, it was found that offence under section 3 of S.C. and S.T. (P.A.) Act is also involved and the Superintendent of Police, Bhubaneshwar directed the I.O. to hand over the investigation of the case to Mr. D.N. Satpathy, D.S.P., Bhubaneswar. The said D.S.P. after taking over the investigation tested the witnesses, made supervision and then submitted charge-sheet.*

... ...

8. In the instant case the investigation as contemplated under Rule 7 of the aforesaid rules in the strict sense was not done by an officer of the rank of D.S.P. So for violation of the mandates contained in Rule 7 of the aforesaid rules, the order of cognizance under section 3 of the S.C. and S.T. (P.A.) Act against the petitioner is legally vulnerable. However, the order of cognizance so far as offences under sections 341, 294 and 506, I.P.C., are concerned, cannot be faulted as investigation of such offence by a police officer below the rank of D.S.P. is not barred." *(Emphasis supplied)*

In the light of the judgments rendered by the Apex Court in the case of ***BABBU RATHORE*** *(supra)* and that of the Orissa High Court in the case of ***AKSHAYA KUMAR PARIDA***, what would unmistakably emerge is that any investigation conducted by an officer below the rank of Superintendent of Police who would not be with particular traits as narrated under sub-rule (1) of Rule 7 of the Rules would vitiate the proceedings.

16. The learned High Court Government Pleader places reliance upon the judgment of the Apex Court in the case of ***RAMVEER UPADHYAY v. STATE OF U.P.***[6] to contend that the proceedings should not be nipped in the bud in exercise of jurisdiction under Section 482 of the Cr.P.C. as in certain cases it would be a matter of evidence. The Apex Court therein had affirmed the order of the High Court which had dismissed the petition which was on the plea that there was political rivalry between the victim and the accused and, therefore, the offences were alleged. Merely because there was political rivalry, the FIR should not be nipped in the bud is what the Apex Court holds.

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[5] 2005 SCC OnLine Ori 282

[6] 2022 SCC OnLine SC 484

The facts obtaining in the judgment of the Apex Court are clearly different from what is obtaining in the case at hand and, therefore, become distinguishable without much *ado*. The case on hand is not at the stage of FIR. The charge sheet is filed and in the charge sheet the offences under the Atrocities Act are alleged. The Apex Court did not consider the question with regard to intention to insult, as the stage of such consideration had not yet arrived in the case before the Apex Court. The Apex Court at paragraph 39 has held as follows:

*"**39.** In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."*

Therefore, the said judgment is of no assistance to the learned High Court Government Pleader.

17. Insofar as the other offences are concerned, there is undoubtedly material right from the complaint till the charge sheet for offences punishable under Sections 323, 324, 365, 504 and 506 of IPC which are all to be tried. There is ample evidence in the statements and the narration in the summary of the charge sheet *albeit prima facie* to bring home those offences. It is for the petitioner to come out clean in the offences under the IPC. Since the offences are grave in nature, there can be no interference insofar as offences under the IPC are concerned.

18. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is allowed in part.

(ii) Charge sheet No.19 of 2020 dated 23-12-2020 of Suryanagar Police Station, Anekal Taluk insofar as it concerns offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands quashed.

(iii) The order taking cognizance by the learned Sessions Judge for offences punishable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 also stands quashed.

(iv) The offences alleged under the IPC are all sustained and further proceedings are permitted to continue *qua* the offences under the IPC before the appropriate Court.