HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 1600/2018

Shilpa Raj Kundra w/o Shri Raj Kundra, R/o 57/a, Kinara, 1st Floor, Gandhigram Road, Juhu, Mumbai-49.

----Petitioner

Versus

1. State of Rajasthan.
2. Ashok Panwar S/o Sushil Panwar, By Caste Valmiki, R/o Ward No.36, Kotwali Churu, Churu.

----Respondents

For Petitioner(s)	:	Mr. Prashant Patil with Mr. Shakti Pandey, Mr. Gopal Sandhu, Ms. Palak Saxena and Mr. Atishay Jain.
For Respondent(s)	:	Mr. Vikram Rajpurohit, P.P.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Part Oral)

18/10/2024

1. Quashing of an FIR No.258/2017 dated 22.12.2017 lodged at Police Station Kotwali Churu, for the alleged offences under Sections 153(A) of IPC and Section 3(1)(r)(u) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is sought herein.

2. Briefly speaking, relevant facts of the case are that one Ashok Panwar lodged a police complaint alleging therein that he saw an interview of two film actors i.e. Salman Khan and Shilpa Raj Kundra (petitioner herein) on T.V., wherein they used word "*Bhangi*". Said word allegedly hurt the sentiments of the people belonging to the Valmiki community. Basis thereof, FIR in question was registered and investigation ensued.

2.1 It is stated that the Investigating Officer issued notices/letters dated 18.01.2018 and 15.02.2018 to the accused/petitioner to appear/present herself at the jurisdictional police station.

2.2. The above said notices were duly replied by the petitioner stating, inter alia, the FIR itself does not reflect commission of any cognizable offence. Hence continuance of further proceedings in the impugned FIR is abuse of process of law, but to no avail. Thus this petition.

3. In the aforesaid backdrop, I have heard learned counsel for the petitioner as well as learned Public Prosecutor and have gone through the case file and perused the contents of the FIR.

4. Learned counsel for the petitioner argues that, admittedly, the purported interview resulting in the impugned FIR was recorded in the year 2013. Whereas, FIR was belatedly lodged by the respondent no.2 on 22.12.2017 i.e. after more than 3 years. It is a settled proposition of law that unless the delay in FIR is explained, it is per se fatal.

4.1. Furthermore, he points out that offences under Sections 3(1)(r)(u) invoked in the impugned FIR were incorporated in the statute book vide SC/ST Amendment Act, 2015 (No.1 of 2016) (w.e.f. 26.01.2016). Concededly, the so called offending TV interview was shot and telecasted in the year 2013. The impugned FIR came to be lodged in the year 2017 alleging offences under Sections 3(1)(r)(u), *ibid*. Meaning thereby, the said sections were not even in existence at the time of the alleged interview. Hence, the Petitioner cannot be tried under any of the above mentioned offences by invoking non existent section.

4.2. He would argue that not only the delayed FIR raises doubts of embellishment, but even otherwise no offense is attracted under Section 153A IPC. There are no allegations or evidence of intent to promote enmity between groups, nor was requisite government sanction obtained under Section 196 Cr.P.C.

4.3. The SC/ST Act also does not apply, as the alleged remarks lack intent to humiliate based on caste. It is thus contended that the FIR is legally untenable and constitutes an abuse of process.

5. At the outset, Learned Public Prosecutor opposed the submissions made by learned counsel for the petitioner and states that no interference by this Court is required and law will take its own course. He would canvass that, if after investigation any incriminating material is unearthed criminal culpability will be fastened only then. Conversely, he would urge that a negative final report will be filed in case it is found that no offence has been committed.

6. I shall now proceed to deal with the rival contentions and render my opinion thereupon by recording reasons / discussion in the succeeding paragraphs vis-a-vis analysis of the penal section invoked by the prosecution.

6.1 At the very outset, I am unable to persuade myself with the stand taken by learned Public Prosecutor and am in agreement with the aforesaid arguments addressed by learned counsel for the petitioner. Reasons are not far to seek. Let us see how.

7. Perusal of the FIR reveals that even if the contents thereof are taken as gospel, none of the sections invoked therein are attracted. *Ex facie* the allegations and the narrative of the complainant lack the quintessential ingredients for commission of

the purported offences. For better appreciation, before proceeding further, it would also be apposite to see the FIR, which for ready reference is translated here in below:

> *"On the date of 22.12.2017, at 5:05 PM, Mr. Ashok Pawar, son of Mr. Sushil Pawar, caste Valmiki, aged 23 years, resident of Ward No. 36, Churu, appeared at the police station and submitted a written report to the respected Officer-in-Charge of the Kotwali Police Station, Churu (Rajasthan), regarding the registration of a case.*
>
> *Subject: Request for Filing a Case*
>
> *Sir, in connection with the above subject, I watched an interview on TV yesterday featuring film actor Salman Khan and actress Shilpa Raj Kundra. During the interview, Salman Khan and Shilpa Raj Kundra openly referred to our community in a derogatory term "Bhangi", which represents the Valmiki community in a highly objectionable way. This has hurt the sentiments of the Valmiki community and has led to widespread anger within the society, creating a situation of social unrest.*
>
> *If appropriate and strict legal action is not taken against them, the Valmiki community will respond vigorously. There is a recording of the statements made by both actors. Their actions constitute a violation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.*
>
> *Sd/-*
> *Ashok Pawar S/O Sushil Pawar* *Date: 22/12/2017*
>
> *This report is being registered under Section 153A of the Indian Penal Code and Section 3(1)(r)(u) of the SC/ST Act for appropriate action. The original report and FIR will be sent for investigation to Mr. Hukamsingh, CO Churu. Upon entry in the CC-TNS system, the FIR will be assigned a unique number. Copies of the SR/FIR will be issued in accordance with regulations.*
> *SD/-* *Date: 22.12.2017."*

7.1. The contents of the FIR above show that there is neither any evidence nor any malicious intent and nor any mens rea to

commit any offence, as alleged. There is no indication in the FIR or accompanying evidence that the accused intended to demean or insult the Valmiki community. At the most, their interview statements, which appear to have been made casually, are being interpreted and taken totally out of context. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act requires that the accused must act with a specific intent to humiliate, insult, or harm members of the SC/ST community.

7.2 Speaking of the allegedly offending term "Bhangi," though, no doubt offensive in certain context, but it can also be used in an unintended or alternatively colloquial manner. Let us analyse the very etymology of it. The term *Bhangi* is believed to have its origin from the Sanskrit word "*Bhanga*", which apart from meaning the one who belongs to an untouchable cast, also means "broken" or "fragmented." In another context, *Bhanga* also refers to cannabis or intoxicants, so someone consuming bhang could also be termed as "bhangi". As per Oxford Hindi to English dictionary, bhangi also means someone, who consumes Bhang (Bhangar) or even "fraud" or "trick" or "disguise" or even "peculiar or idiosyncratic behaviour". As per Webster English dictionary alternative meaning assigned is user of Bhang. The interpretation of term thus varies across regions. What is offensive in one context might not be so in another, and intent must be judged based on the overall narrative.

7.3 Moreover, one cannot lose sight of the reality that celebrities and public figures invariably tend to speak in a casual tone during interviews, and it is thus essential to consider the broader context rather than isolating specific words. The FIR herein is speculative and lacks any evidence, whatsoever, showing how the statements

led to social unrest or actual harm. The accused thus did not incite violence or discrimination against the community, despite the derogatory statement having been made three years ago. The FIR claims that the statements caused widespread anger and social unrest. There is no instance provided of any protests, violence, or tangible harm to the community. Imposing criminal liability for casual or non-malicious statements uttered years ago can lead to a chilling effect. The assertion that the community will "respond vigorously" appears hypothetical and does not establish a direct link between the statements and societal unrest. Statements made by Public figures are sometimes exaggerated by unknown persons from public just to gain some media attention. Be that as it may, no one can be held criminally liable as long as there is no malice or intent to harm.

8. Aside above, delay in registration of FIR i.e. after more than 3 years is also per se fatal herein. Reference may be had to a Supreme Court judgment in ***Manoj Kumar Sharma Vs State of Chhatisgarh***[1] wherein it is held as under:-

> *"30. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following decision of this Court in Jai Prakash Singh v. State of Bihar [Jai Prakash Singh v. State*

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1 *(2016) 9 SCC 1*

of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468] wherein it was held as under : (SCC p. 383, para 12)

"12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first-hand account of what has actually happened, and who was responsible for the offence in question."

9. Delay apart, even otherwise, adverting again to the merits, qua Section 153A of the IPC, it specifies that an offense is committed when enmity between different groups is promoted on grounds such as religion, race, place of birth, residence, or language. It further states that any act prejudicial to the maintenance of harmony among different religious, racial, linguistic, regional groups, castes, or communities, which either disturbs or is likely to disturb public tranquility, or causes fear or alarm among members of such groups, constitutes an offense under this section.

9.1. In the present case, there is no allegation suggesting the promotion of enmity between groups based on religion, race, or place of birth. A plain reading of the FIR reveals no reference or indication of such promotion, nor do its contents imply it. For an offense under Section 153A of the Indian Penal Code (IPC) to be established, the presence of mens rea, a deliberate and intentional effort to foster enmity or hatred between distinct religious or

social group, is a requisite. However, neither the allegations in the FIR nor its content demonstrate any such intent on the part of the Petitioner to commit the alleged offense under Section 153A. For ease of reference, Section 153A is reproduced below:

> *"**153A.** Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-*
>
> *(1) Whoever-*
>
> ***(a)*** *by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or*
>
> ***(b)*** *commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or*
>
> ***(c)*** *organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*
>
> ***Offence committed in place of worship, etc.-*** *(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."*

9.2. A mere reading of this section, supra, discloses that the essential ingredient is the promotion of feelings of enmity, hatred, or ill-will between distinct groups. Thus, for a prima facie case under Section 153A IPC, it is imperative that two distinct groups be involved. In the present FIR, the complainant (Respondent No. 2) alleges that the sentiments of individuals belonging to the Valmiki community have been hurt by the Petitioner's comments. However, I am of the view that merely offending or hurting the feelings of one community or group, without any incitement, does not satisfy the requirements of Section 153A. The sine qua non for invoking Section 153A IPC is the accused's intent to incite public disorder or instigate violence between distinct communities. In this case, there is no allegation or evidence that the Petitioner harbored such intent. The FIR, thus does not meet the essential criteria of the section, rendering its untenable and legally unsustainable.

10. There is another aspect of the matter i.e. procedural Non-Compliance under Section 196 of Cr.P.C. As per Section 196 ibid, no court can take cognizance of an offense under Section 153A IPC without prior sanction from the Central or State Government. No such sanction was obtained, rendering the FIR liable to be quashed for non-compliance with mandatory legal prerequisites. For ease of reference, Section196 (supra) as it was applicable at the relevant time (corresponding with Section 217 of Bhartiya Nagrik Suraksha Sanhita, 2023, after the repeal of Cr.P.C.) is reproduced below:

> *"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—*

(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),
except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of—
(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."

(emphasis supplied)

10.1. Additionally, bare reading of Section *ibid* sub section(3) thereof mandates a preliminary investigation by a police officer of rank no lower than an Inspector before granting sanction. This

requirement has also not been fulfilled, further vitiating the proceedings.

11. Reverting once again on the invocation of of the SC/ST Act, the said Act was enacted to address atrocities against Scheduled Castes and Scheduled Tribes, ensuring their dignity and protecting them from oppression. The FIR does not establish any violation of the objectives of this Act or any intent on the Petitioner's part to commit atrocities against the SC/ST community. Furthermore, the term "Bhangi," as allegedly used, lacks any context or intent to inflict harm or oppression upon members of the Valmiki community under the SC/ST Act.

12. In light of the absence of essential ingredients for offenses under Section 153A IPC, the failure to adhere to mandatory procedural requirements under Section 196 Cr.P.C., and the lack of applicability of the SC/ST Act, the FIR is patently illegal and deserves to be quashed. The allegations neither substantiate the statutory elements of the cited offenses nor provide any basis for criminal proceedings against the Petitioner.

13. Aside all above, in the context of applicability of SC/ST Act, reference may be also be had to a judgment dated 23.08.2024 rendered by Supreme Court in the case of ***Shajan Skaria Vs. The State of Kerala & Ors***[2]. Relevant thereof, being apposite, is reproduced hereinbelow:

> *"52. Having said so, we would also like to state that the case at hand is of a unique nature and one that falls in a separate category. With the advent of internet and social media, cases like the one we are dealing with are likely to come up more frequently. In the present case, the basis of the FIR is the YouTube video and some other digital materials alleged to have been published by the appellant in the public domain. It is not the case of the*

[2] Criminal Appeal No.2622/2024 (arising out of SLP (Crl) No.8081/2023)

complainant that the appellant subjected him to insults or humiliations in some public gathering, the details of which can only be gathered by recording the statements of witnesses. The entire incriminatory material based upon which the complaint came to be lodged was available in the public domain by virtue of having been uploaded on social media platforms. We had the occasion to threadbare go through the transcript of the YouTube video. We may only say that in cases like the one in hand, the courts should have the discretion to look into the materials based upon which the complaint has been registered, in addition to verifying the averments made in the complaint. If on a prima facie reading of the materials referred to in the complaint and the complaint itself, the ingredients necessary for constituting the offence are not made out, then the bar of Section 18 would not be applicable and it would be open to the courts to consider the plea for the grant pre-arrest bail on its own merits.

iv. Whether the averments in the FIR/complaint in question disclose commission of any offence under Section 3(1)(r) of the Act, 1989?

53. It is the case of the complainant as well as the State that considering the rash and derogatory statements alleged to have been made by the appellant herein, he could be said to have prima facie committed the offence under Sections 3(1)(r) and 3(1)(u) respectively of the Act, 1989.

54. XXXX

"Section 3 of the Act 1989:

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

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

(Emphasis supplied)

55. XXXX
56. <u>It is relevant to note that Section 3(1)(r) of the Act, 1989 is similarly worded as the erstwhile Section 3(1)(x) of the Act, 1989 which was in force prior to its substitution with effect from 26.01.2016</u>.
57 to 60. XXXX
a. Meaning of the expression "intent to humiliate" appearing in Section 3(1)(r) of the Act, 1989.
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 to 69. XXXX

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.

71 to 79. XXXX

80. At the cost of repetition, the words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. As discussed earlier, the offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe. When we are considering whether prima facie materials exist, warranting arrest of the appellant, there is nothing to indicate that the allegations/statements alleged to have been made by the appellant were for the reason that the complainant is a member of a Scheduled Caste."

14. As an upshot of my discussion recorded in the preceding part and guided by the ratio rendered in the Supreme Court judgment, *ibid*, the petition is allowed. FIR No.258/2017 dated 22.12.2017 lodged at Police Station Kotwali Churu, for the alleged offences under Sections 153(A) of IPC and Section 3(1)(r)(u) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, qua the petitioner, is hereby quashed.

15. Pending application, if any, also stands disposed of.

(ARUN MONGA),J

Sumit Sharma/-
Item No.170

Whether Fit for Reporting: Yes / No