

## B. THE SUPREME COURT OF INDIA

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### 1. The right to life and the marginalized community in India

In today's India, individual makers, such as class, political affiliation, religious beliefs, gender identity, partner preference etc. have become a ground of disqualifying the individual from exercising the equal fundamental rights. The schedule caste and schedule tribe constitute socially and economically deprived caste groups of our society. Such groups generally consist of cultivators, agricultural labourers, artisans etc. The people of lower strata generally become the prey to the Upper caste people. They have been constantly ill-treated, they face violation from other people to smoothly conduct their occupation and due to poor economic condition, they are forced to eat inedible substances, such as human-excreta, mass killing and various sexual offences against women of such group of the society. To tackle them, special legislation has been formulated to check the crime against lower caste people by non-schedule caste and non-schedule tribe.

*[Criminal Appeal no. 707 of 2020 (Arising out of SLP Criminal no. 3585 of 2020),  
Supreme Court of India]*

#### ***I. Facts of the case***

The complainant, who is a respondent in the present case, is a resident of Gram New Bajeti Patti Chandak Tehsil in the district of Pithoragarh. In the registered FIR made in presence of respected SHO (Station House Officer), it was stated that the complainant was constructing a house on the khet (plot) number 6195, 6196 and 6199. During the construction of the house, the complainant was obstructed by Banshilal, Pyarelal son of late Har Lal, Hitesh Verma son of Shri Pyarelal, Pawan Verma son of Banshilal, Uma Verma wife of Pyarelal along with their Nepali Domestic Help, Raju. These above-mentioned people did not allow the complainant to work on her field for the last 6 months. They used to abuse the complainant's husband and her family members and abuse them with caste remarks, due to the lower caste of the complainant. On the morning of 10<sup>th</sup> December 2019, at around 10 a.m., all the

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above-mentioned appellants entered illegally into the four walls of the building of the complainant and started to defame her and use caste remarks on her. They also started to threaten them by giving death threats to the labourers working there and stole the constructing materials, such as cements, iron, rods and bricks. The appellant in this case used abusive language and caste color remarks against the complainant. They said that the complainant is a person of bad caste and threatened that they will not allow the complainant and her family to live in the Mohalla. He urged the Court through FIR that necessary actions needed to be taken against such appellant. The above-said facts were registered in the FIR no. 173 on 11<sup>th</sup> December 2019, at around 11:24 p.m., by the complainant who is a respondent in this case. As per the facts, the FIR contains the following allegations against the appellant, such as section 452, 504, 506 of IPC and section 3(1) (x) and 3(1) (e) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1987.

To counter the complainant FIR, another FIR was registered by the appellant under FIR no. 174 at around 11:47 p.m. on 11<sup>th</sup> December 2019, on the basis of occurrence of the events took place in said Khet on the same date, 11<sup>th</sup> December 2019 at around 9:45 a.m. It charged the complainant under sections 323 and 354 of IPC. Pursuant to considering the above-said, both the FIRs, the learned Chief Judicial Magistrate of Pithoragarh against the complainant (respondent) and others on 2<sup>nd</sup> July 2020. During the proceedings in the High Court of Uttarakhand, both the petitioner and the respondent tried to prove the maintainability of their cases. The Court came to the conclusion that the appellant tried to abuse the complainant, as well as her labourers, by saying caste related remarks.

Following the judgement pronounced by the High Court of Uttarakhand on 20<sup>th</sup> July 2020 by Justice Ravindra Maithani in the favor of complainant, the appellant challenged the High Court's decision by invoking jurisdiction under section 482 of CrPC and approached the Honorable Supreme Court, hoping to get proper justice in his favor by quashing the charge-sheet and summoning the order dated 25<sup>th</sup> June 2020.

The constitutional issue in this case surrounded whether the insult made by the appellant to the complainant in the khet and abuse made to the labourers was done or not, and that too in a place of public view under the SC/ST Act, and hence looked at whether there was a violation of the right to life enshrined in Article 21 of the Constitution of India.

## ***II. Relevant provisions and rulings of the Court***

The learned counsel, on behalf of the appellant, clearly stated that this is a case of civil court regarding the property disputes. Due to the dispute of the said land, the appellant did not allow the complainant to cultivate the land for the last six months. Since the matter is related to the possession of the disputed property, the appellant can't be charged under this Act, unless the victim is abused, intimidated or harassed

on remarks of scheduled caste and scheduled tribes. To establish the appellant cause and its maintainability, the counsel took the help of two cases, in *Prithvi Raj Chauhan v. Union of India*<sup>2</sup>, the Court in exceptional cases can invoke section 482 of CrPC to prevent the misuse of provisions, and in *Union of India v. State of Maharashtra*<sup>3</sup>, it is held that if there is false and unsuitable FIR, then section 482 will be invoked. The learned counsel further argued that as per the FIR registered, that allegation of abusing the informant is within the four walls of the building. There was no member of public (not merely the relatives or friends at the time of the incident). As mentioned by the respondent, those persons uttering the abusing words were not in a place in the public view, therefore in view of the *Swaran Singh* case, it cannot be said to be taken in public view. Counsel, to strengthen his arguments, cited the case *Khuman Singh v. State of Madhya Pradesh*<sup>4</sup>, which held that the offence must be committed against the person belonging to schedule caste and schedule tribe, in order to attract section 3(2)(v) of SCST Act. In the instant case, the complainant belongs to Khangar-schedule caste, which is not disputed; since the act of the accused appellant is not intentional in order to humiliate the members of SC/ST, thus it does not fall under section 3(2)(v) of SCST Prevention Atrocities Act. Therefore, it clearly shows that FIR has been registered falsely in order to harass the appellant and process of law. There was no such statement in FIR, which says that the appellant uses caste remarks on complainant in public and also the report of the police investigation does not disclose any such offence in the Act.

The learned counsels, on behalf of the state representing the complainant, argued that the vulnerable groups of the society, mainly the schedule caste and schedule tribe, are denied the civil rights and are subjected to indignities, humiliations and harassment. Due to their backwardness in the society, they become prey to various, serious crimes and their life and property is being deprived. In order to tackle the socio-economic class, there is SCST Act which protects the schedule caste and the schedule tribe from being harassed and humiliated and to improve socio-economic class of such groups who are denied a number of civil rights. Section 3 of this Act is to punish the violators, as well as the upper caste against the vulnerable section of society who thus intended to harass, humiliate and deprive them of their life. Counsels particularly mentioned section 3(1) (r) of the Act. The basic ingredients of this section are that there must be intentional insult or intimidates with intent to humiliate a member of the schedule caste or the schedule tribe, and second that it is in any place within the public view. In order to prove the fact, it took the help of *Swaran Singh & Ors. v. State through standing counsels and others*<sup>5</sup>; it states that there is a difference between “in public place” and “in any place within public view”.

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<sup>2</sup> *Prithvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727.

<sup>3</sup> *Union of India v. State of Maharashtra*, (2020) 4 SCC 761.

<sup>4</sup> *Khuman Singh v. State of Madhya Pradesh*, (2019) SCC Online SC 1104.

<sup>5</sup> *Swaran Singh & Ors. v. State through standing counsels and others*, (2008) SCC 8 435.

Public place is a place which is owned or leased by Government or municipality or Goan sabha or by the instrumentality of the State and not being under private bodies. For everyone's convenience, the counsel cited an example to make himself understood. If any offence is committed outside the building, *i.e.* in the Lawn, and it is in the purview of the public view, *i.e.* the lawn is seen from the road. And on the contrary, if the offence is being committed inside the building and some members of the public are there, not merely the relatives or friends, then no offence is being committed under section 3(1)(r), as it is not committed in public view. In the instant case, one of the complainants, Vinod Nagar, has been called as "Chamar" by the appellant while he was standing near the car, which was parked near the gate of premises. Since the gate is a place under public view, in our opinion the person was in the radar of public view, as the place where a car is parked near the gate is a public place and the outside had access to it. Moreover, during the investigation, two certain persons have supported the complainant's view. It is clear that the appellant, along with his family members, had encroached the complainants land and abused them, which is a clear violation of SC/ST Act.

As per the above facts, the evidence and the arguments placed by respective counsels, the Court came to the conclusion that abusive caste-colored remarks made by the appellant in a place of a public view has hampered the dignity of the complainant who is a member of the schedule caste and the schedule tribe. Any insult to such category of people within four walls will not amount to offence under the SC/ST Act. Here, the appellant's act was made within the building, which is not seen as outside; the case went in favor of the appellant. Consequently, the Apex Court quashed the charge-sheet to that extent.

### **III. Comments**

As has been misread by the High Court's judgement in the case of *Ashabhai Machindra Adhagale v. State of Maharashtra*<sup>6</sup>, it is not a case of victim, but the FIR does not contain the caste of the accuse. To sustain the maintainability of the appeal made out by the appellant, the Court preferred the case of *Ishwar Pratap Singh & Ors. v. State of Uttar Pradesh & Anr.*<sup>7</sup>; it held that there is no prohibition in law for quashing the charge-sheet and the Court must examine whether the intervention is required for preventing the abuse of process of law and the end of justice.

The Supreme Court's narrow interpretation of the term "within public view", in determining caste-based insults, ignores the realities of members of the Scheduled Castes and Scheduled Tribes. Article 21 of the Indian Constitution has been the *grundnorm* for personal liberty, which guarantees to every individual a dignified life

<sup>6</sup> *Ashabhai Machindra Adhagale v. State of Maharashtra & Ors.*, (2009) 2 SCC (Cri) 20.

<sup>7</sup> *Ishwar Pratap Singh & Ors. v. State of Uttar Pradesh & Anr.*, (2018) 13 SCC 612.

without exploitation. There is no intelligible difference between the wrongs committed at a place within public view and at a place not in public view.

Casteist insults have the same effect in both private and public spaces. In both cases, an accused carries a guilty intention and the victim experiences humiliation, which hampers his/her personal life. The expression “within public view” and its interpretation are both contrary to the intention of the legislature and the Constitutional guarantees. They benefit the accused and those who already dominate the power structures. Moreover, the presence of the words friends or relatives make the provision weaker than the offence of defamation, which protects the perpetrators, instead of the victims. In fact, given the interpretation by the apex court, the incidents of caste-based insults and humiliation within the four walls are likely to increase. Therefore, the expression “within public view” must be omitted from Sections 3(1)(r) and 3(1)(r) (s) of the Act by an amendment. Such judgments dilute the relevance and impact of the Act.