CASES AND MATERIALS ON THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

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Table of Contents

Case Summaries

I. Section 3(1)(x)

1. *Swaran Singh and Anr. v. State through Standing Counsel and Anr.* (2008) 8 SCC 435

In this case, the complainant had stated in the FIR that he was insulted by appellants 2 and 3 by his caste name (by calling him a `Chamar') when he stood near the car which was parked at the gate of the premises. The Supreme Court held that this was a place within public view and would amount to an atrocity under section 3 (1) (x) of the Act, since the gate of a house is certainly a place within public view. It held that 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 that `place within public view' should not be confused with the expression `public place'. A place can be a private place but yet within the public view.

The Court held that the use of the word 'chamar' is a word of insult, abuse and derision. It held that when we interpret Section 3 (1)(x) of the Act, we have to see the purpose for which the Act was enacted, to prevent indignities, humiliation and harassment to members of the SC/ST community. The popular meaning of the word 'chamar' which is acquired by usage should be considered and not the etymological meaning which would frustrate the very object of the Act and hence that would not be the correct manner of interpretation.

2. *Arumugam Servai vs. State of Tamil Nadu* (2011) 6 SCC 405

In this case, the accused called the complainants who were from the Pallan caste as 'Pallapayal. The court held that the use of the words "Pallan", "Pallapayal", "Parayan" or "Paraparayan" with intent to insult is highly objectionable and is also an offence under the SC/ST Act. The court held that it was obvious that the word 'pallapayal' was used by the Accused to insult the complainant and hence it was clearly an offence under the Act.

On another note, the Court also directed administrative and police officials to take strong actions against acts of caste and religion-based honour killings and to institute immediate criminal proceedings against those responsible. It directed the State government to immediately suspend the District Magistrate / Collector and SSP / SPs of the district as well and other officials and charge-sheet them and proceed against them departmentally if they have not taken action and are held to be directly or indirectly accountable.

3. ***Gayatri vs. State and Ors*. MANU/DE/1823/2017 – Delhi HC**

Here the informant complained about continuous harassment and abuse in the name of caste on social networking sites/Facebook. Though the Delhi High Court quashed the complaint on the ground that it did not make out an offence under Section 3 (1) (x), on the issue of making the statement on Facebook, the High Court laid down that it could be a public view. It held that when a member registered with Facebook changes the privacy settings to "public" from "private", it makes his/ her writings on the "wall" accessible not only to the other members who are befriended by the author of the writings on the "wall", but also by any other member registered with Facebook. However, even if privacy settings are retained by a Facebook member as "private", making of an offending post by the member - which falls foul of Section under Sec. 3 (1) (x) of the Act, may still be punishable. Therefore, it would make no difference whether the privacy settings are set by the author of the offending post to "private" or "public". Pertinently, Sec. 3 (1) (x) of the Act does not require that the intentional insult or intimidation with intention to humiliate a member of the Scheduled Caste or Scheduled Tribe should take place in the presence of the said member of the Scheduled Caste or Scheduled Tribe. Even if the victim is not present, and behind his/ her back the offending insult or intimidation with intention to humiliate him/ her - who is a member of the Scheduled Caste or a Scheduled Tribe- takes place, the same would be culpable if it takes place within public view.

4. ***Daya Bhatnagar and Ors. v. State* MANU/DE/0085/2004 – Delhi HC**

In this case, the Court considered the meaning of the expression "public view" occurring in Section 3(1)(x). The Court held that the legislature required intention as an essential ingredient for the offence of "insult', "intimidation' and "humiliation' of a member of the Scheduled Casts or Scheduled tribe in any place within "public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3 (l) (x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.

It held that the expression within "public view' occurring in Section 3 (l) (x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any

close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way.

It also held that a witness cannot be termed to be "interested', "biased' or "partial' merely because he is made an accused in the counter FIR, unless attending circumstances, prima facie, suggest the same, like simultaneous lodging of cross FIRs, where both the parties are injured or where there is previous enmity or other strong motive for false implication. Lodging FIR against the complainant or the witnesses of the offence under Section 3 (l) (x) of the Act, at the belated stage would not be enough. Otherwise, whenever an offence is alleged to have been committed under Section 3 (1) (x) of the Act, the accused would be always eager to get a counter FIR registered against the complainant or the witnesses by hook or by crook, to defeat the earlier fir against him. This cannot be permitted in law.

5. *Patan Jamal Vali v. The State of Andhra Pradesh*, 2021 SCC Online SC 343

Though in this case, the Supreme Court upheld the acquittal of the accused under the SC/ST PoA Act, it held that the case of rape of a Dalit, blind woman should be seen from an intersectional perspective. It held that when the identity of a woman intersects with her caste, class, religion, disability or sexual orientation, multiple sources of oppression operate cumulatively to produce a specific experience of subordination by the victim which cannot be segregated. It also laid down directions for training of judges, police and prosecutors to make the criminal justice system responsive to women with disabilities facing sexual assault.

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II. Section 3(2)(v)

6. *Asharfi v. State of Uttar Pradesh* (2018) 1 SCC 742

Though in this case, the Court did not find evidence that the accused had committed rape on the ground that the victim belonged to Scheduled Caste, the Court held that the amendment of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act by virtue of Amendment Act 1 of 2016 was brought about on 26.1.2016. The Supreme Court held that if subsequent to 26.01.2016 (i.e. the day on which the amendment came into effect), an offence under the IPC which is punishable with imprisonment for a term of ten years or more, is committed upon a victim who belongs to SC/ST community, the mere knowledge of the Accused that the person upon whom the offence is committed belongs to SC/ST community suffices to bring home the charge Under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act.

7. *Kailas and Ors. v. State of Maharashtra* (2011) 1 SCC 793

In this case, though the High Court set aside the conviction under the SC/ST PoA Act and only upheld the conviction under the IPC offences, the Supreme Court could not go into this issue as the no appeal was filed against that part of the judgment. However, the Supreme Court held that it was surprised that the conviction of the accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical grounds that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done. These appear to be only technicalities and hardly a ground for acquittal.

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III. Section 4

8. *MP Mariappan v. The Deputy Inspector General of Police, Coimbatore Range and Ors*. MANU/TN/0657/2014 - Madras HC

In the above case, the Respondents refused the booking of a mandapam after getting to know that he belonged to a Scheduled Caste. The Court held that based on the facts, the complaint had to be registered under Section 3(1)(x) of the SC/ST Act. The Court also directed the Superintendent of Police to register a case against the Inspector of Police under Section 4 of the SC/ST Act, because he had investigated into the complaint of the Petitioner himself, and had failed to put the files on record for the orders of the Superintendent of Police. The Court noted that this investigation could not have been done by the Inspector of Police, but had to be done by an officer not below the rank of Deputy Superintendent of Police as per Section 7 of the SC/ST Act. The Court also held the State Government responsible for compensating the Petitioner, because the police officials of the State Government had passed an order to bar the Petitioner from entering the village altogether.

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IV. Section 4 - Whether SC/ST PoA Act Would Apply Upon Conversion or Marriage of SC/ST Person

9. *State of Kerala and Anr. v. Chandramohanan* (2004) 3 SCC 429

This was a case where an FIR under Section 3 (1) (xi) of the SC / ST PoA Act was filed for the molesting and outraging the modesty of a young girl from a Schedule

Tribe. In a quashing petition, the allegation was that the parents of the girl had converted to Christianity and that the victim ceased to be a member of the Scheduled Tribe upon conversion. The Supreme Court held that as a broad proposition of law it cannot be accepted that merely by change of religion person ceases to be a member of a Scheduled Tribe, but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the fact of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and tradition of the community, which he earlier belonged to. Under such circumstances, we set aside the order under appeal and remit the same to the Sessions Court, Palakkad, to proceed in accordance with law.

10. ***Rajendra Shrivastava v. The State of Maharashtra*** **MANU/MH/0036/2010 – Bombay HC**

In this case, the question referred to the Full Bench of the Bombay High Court was if a woman belonging to a SC/ST marrying a person belonging to a forward caste is abused in the name of her caste by a member of the public or by her husband or his relatives, whether an offence under the SC/ST PoA Act can be registered against such persons?

The Full bench held that when a woman born in a Scheduled Caste or a Scheduled Tribe marries a person belonging to a forward caste, her caste by birth does not change by virtue of marriage. The Court acknowledged the disadvantages and indignities that a person faces since birth because they were born into a lower caste and held that 'the suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste'. It held that the label attached to a person born into a Scheduled Caste or a Scheduled Tribe continues notwithstanding the marriage and if an interpretation as sought for by the applicant is accepted, it will defeat the very object of enacting the SC/ST PoA Act. Thus, the Court held that a woman born into a Schedule Caste or Scheduled Tribe on marriage is not automatically transplanted into the caste of her husband and she cannot be said to belong to her husband's caste in the context of the SC/ST PoA Act.

V. Whether Caste of Complainant / Accused Needs to Be Mentioned in The Complaint

11. ***Ashabai Machindra Adhagale v. State of Maharashtra and Ors.*** **(2009) 3 SCC 789**

The Appellant had filed an FIR alleging commission of offence punishable under Section 3 (1) (xi) of the SC / ST PoA Act. Thereafter a petition under Section 482 was filed by the accused on the ground that in the FIR the caste of accused was not

mentioned and therefore the proceedings cannot be continued and deserved to be quashed. The Court held that the offence primarily relates to the purported perpetration of crime on the victim because of his or her caste. It is for the accused to show that he does not belong to higher caste and that is a matter of evidence. It is not that in the instant case there was no reference to the caste of an accused as it is clearly mentioned in the FIR that the offence is relatable to Section 3 (1) (xi) of the Act. Therefore, there is a reference, though indirectly, to the caste of the accused and the non-mention of the caste of the accused cannot be a ground to quash the proceedings. The Court held that during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belongs to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even after the charge is framed, at the time of trial, materials can be placed to show that the accused either belongs or does not belong to scheduled caste or scheduled tribe.

12. *Pushpa Vijay Bonde v. State of Maharashtra* 2009 SCCOnline Bom 351 - Bombay HC

Replying on the *Ashabai* judgement of the Supreme Court, a Full bench of the Bombay High Court held that it is not a requirement under Section 3 of the SC / ST PoA Act that the complainant should disclose the caste of the accused in the complaint. If there is no mention of the caste of the accused in the FIR, that cannot be a ground for either not registering the offence under Section 3 of the Atrocities Act or for quashing such complaint.

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VI. Section 14

13. *Hareendran v. Sarada and Ors*. MANU/KE/0320/1994 - Kerala HC

The Court held that Section 14 enables the Special Court to exercise original Jurisdiction. Further the Court held that on account of the fact that Section 14 of the Act specifically provides for speedy trial to prevent the commission of offence of atrocities against the members of the SC/ST by providing Special Court for trial of such offences and as the Act nowhere hints committal proceedings, Section 193 of the Cr. P.C. cannot have any application. In a case where Special Court receives final

report disclosing offence under the Act, it can certainly take cognisance of the same without committal. The Court agreed with the view taken by the Division Bench of the High Court in In Re (1992 (2) K.L.T. 748) which held that committal proceedings are not warranted in a case coming under the Act and triable by the Special Court.

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VII. Section 15 & 15A

14. *Marenna and Ors. v. The State and Ors*. MANU/KA/2555/2020 - Karnataka HC

The Karnataka High Court held that Sub-section (5) of Section 15-A of the SC/ST Act guarantees a right to a victim or dependents to participate in any proceedings thus right of 'Audi Alterm Partem' is conferred. Therefore, where a right of Audi Alterem Partem is conferred on the victim or his dependents, then the court has to give an opportunity/right of audience to the victim or his/her dependent to hear them as to enable them to participate in the proceedings including bail proceedings also. The Court held that a victim or dependent has a right to be heard by the Court enabling the victim or dependents to participate in any proceedings in respect of not only bail proceedings but also in the proceedings of discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing of a case.

The Court held that is able to hear the victim or dependent in respect of a proceedings as enumerated in Sub-section (5) of Section 15-A of the SC/ST Act only when the victim or dependent are made parties in the proceedings, otherwise it cannot be possible for the court to hear the victim/dependents and to receive any written submission as stated in the said provision.

The victim or dependent may participate either personally or through an Advocate or through Public Prosecutor or Special Public Prosecutor or appear himself/herself. As per Section 15 of the SC/ST Act, the Special Public Prosecutor or exclusive Special Public Prosecutor are assigned the duties to represent the State in general but in specific on behalf of the victim or dependent/complainant/first informant to prosecute the case. Sub-section (3) of Section 15-A of the SC/ST Act not only enumerates giving such information to the victim or dependents through Special Public Prosecutor or State Government about any proceedings pending in the court but Sub-section (5) of Section 15-A of the SC/ST Act confers a right on the victim or dependents to make them to participate in the proceedings and to hear their submissions and also to file written submissions in this regard in the proceedings pending before the court. Therefore, unless the victim or dependent as enumerated in Section 2 of the SC/ST Act is made a party in the proceedings in the case pending before any court, it is not possible for the court to hear whatever submission to be put

forth by the victim or dependents in the proceedings before the court. It held that it is also the duty of the State to provide legal assistance to the atrocity victims or their dependents by engaging services of an advocate in any proceedings initiated under the Act.

The High Court passed the following guidelines:

i) A right is conferred on the victim or his/her dependents to participate in the proceedings initiated under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as enumerated in Section 15-A and first informant/complainant/victim or dependents shall be made as a party in the proceedings and the court shall issue necessary notice to the victim or dependents/first informant/complainant/victim or dependents and to hear them in any proceedings as envisaged under Sub-section (5) of Section 15-A of the SC/ST Act.

ii) The Special Courts trying with the offence/s under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall direct the District Legal Services Authority to provide an advocate on behalf of the victim or his/her dependents/first informant/complainant from the Panel Advocates of District Legal Services Authority.

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VIII. Section 18 – Anticipatory Bail

15. *Union of India v. State of Maharashtra and Ors*. (2020) 4 SCC 761

This judgement was passed by the Supreme Court setting aside some of the directions given by the Supreme Court in Subhash Kashinath Mahajan v. State of Maharashtra. (2018) 6 SCC 454.

On anticipatory bail, the Court held that the consistent view of the Supreme Court was that if a prima facie case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under Section 18 is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. It held that requiring the approval of SSP before an arrest is made under the SC/ST PoA Act is not warranted as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. For an arrest of accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the Act of 1989.

It also held that the direction given in the earlier judgement that the Dy. S.P. should conduct a preliminary inquiry to find out whether allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated would also not stand. In case a cognizable offence is made out, the FIR has to be out rightly registered, and no preliminary inquiry has to be made as held in Lalita Kumari (supra) by a Constitution Bench. There is no such provision in the CrPC for preliminary inquiry or under the SC / ST PoA Act, as such direction is impermissible. It therefore held that such directions given earlier encroached upon the field reserved for the legislature and against the concept of protective discrimination in favour of down-trodden classes under Article 15 (4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution and held therefore that the direction Nos.(iii), (iv) and (v) issued by the Supreme Court in Union of India v. State of Maharashtra and Ors., (2020) 4 SCC 761 are recalled.

16. ***Prathvi Raj Chauhan v. Union of India and Ors.*** **(2020) 4 SCC 727**

The Supreme Court held that Section 438 of the Cr.P.C. will not apply to cases under the SC/ST PoA Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the said Act, the bar created by section 18 and section 18-A (i) shall not apply.

Justice Ravindra Bhat in his separate concurring judgment held that while considering any application seeking pre-arrest bail, the High Court has to balance two interests i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. He considered such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament. He held that it is important to re-iterate and emphasis that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness.

17. ***Manju Devi v. Onkarjit Singh Ahluwalia and Ors.*** **(2017) 13 SCC 439**

A complaint was lodged under Sections 323, 354 and 452 of the Indian Penal Code, 1860 and Section 3(1)(xi) of the SC ST PoA Act. Thereafter an FIR was registered and the Respondents prayed for an anticipatory bail.

The words `Harijan' `Dhobi' etc. are often used by people belonging to the so-called upper castes words of insult, abuse and derision. Calling a person by these names is nowadays an abusive language and is offensive. It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone. We, as citizens of this country, should always keep one thing in our mind and heart that no people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. The Court held that though the Constitution of India abolishes `untouchability' but in view of the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail and it is in this context that Section 18 has been incorporated in the SC/ST Act. In view of this discussion the Supreme Court held that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code and held that the High Court committed a grave error in granting anticipatory bail to the respondents and the Supreme Court aside the order of anticipatory bail.

18. *Shakuntla Devi v. Baljinder Singh* (2014) 15 SCC 521

The Supreme Court held that the High Court in granting anticipatory bail did not give any finding that an offence under the SC/ST PoA Act is not made out against the respondent and had granted anticipatory bail, which it held was contrary to the provisions of section 18 of the said Act as well as the decision of the Supreme Court in the Vilas Pandurang Pawar case which held that Section 18 of the SC/ST Act creates a bar on the grant of anticipatory bail, unless the court can establish prima facie that there is no offence made out under the SC/ST Act. Thus, the Supreme Court set aside the order of anticipatory bail.

19. *Bachu Das v. State of Bihar and Ors*. (2014) 3 SCC 471

In this case the High Court had granted anticipatory bail to the accused. Although the accused submitted that no untoward incident had occurred and they were cooperating with investigating officer, the Supreme Court held that, in view of the bar under S. 18 of the SC/ST PoA Act and the decision of the Supreme Court in the Vilas Pandurang Pawar case, since the Magistrate had carefully perused the complaint and the statement of the complainant and four witnesses and arrived at a prima facie conclusion against the accused persons that offence under Section 3 of the Act was made out, the High Court was not justified in granting anticipatory bail. It held that the High Court committed an error in granting anticipatory bail and accordingly cancelled the bail.

20. ***Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors.*** **(2012) 8 SCC 795**

The Supreme Court held that Section 18 of the SC/ST PoA Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence Under Section 3(1) of the SC/ST PoA Act has been prima facie made out. If there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the Accused persons are not entitled to anticipatory bail. The scope of Section 18 of the SC/ST PoA Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST PoA Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail Under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

21. ***State of MP and Anr. v. Ram Kishna Balothia and Anr.*** **(1995) 3 SCC 221**

In this case, the constitutional validity of Section 18 of the SC / ST PoA Act was challenged. The Supreme Court upheld the constitutional validity of Section 18. The Supreme Court held that the offences which counted as “atrocities” and which were punishable under Section 3(1) of the Act did not have the protection of Section 438 of CPC. The Court said that the unavailability of Section 438 of CPC for offences under Section 3 of the SC/ST was a reasonable classification of a “special and separate class” of cases, and was not violative of Article 14. The Court held that considering the prevailing conditions, the offenders are likely to threaten and intimidate the victims if they are allowed to be free on anticipatory bail. Therefore, the classification is reasonable under Article 14.

On Article 21, the Court held that Section 438 of CPC was not an integral part of Article 21 and was not even part of the CrPC originally and was added to the Code only much later. Anticipatory bail was not a matter of right, it was only a discretion of the courts. Looking at the historical background relating to the practice of "Untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons

who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail and to prevent a proper investigation. It held that the offences which are enumerated under Sec. 3 denigrate members of Scheduled Castes and Schedules Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the IPC and Sec. 18 cannot be considered as violative of Articles 14 and 21 of the Constitution.

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IX. General

22. ***National Campaign on Dalit Human Rights and Ors. v. Union of India and Ors.*** **(2017) 2 SCC 432**

In this case, the Court observed that the constitutional goal of equality for all citizens of the country could be achieved only if the rights of SCs/STs are protected. However, while noting the indifferent attitude of the State authorities and their failure to comply with the provisions of the PoA Act and Rules, it passed only a simple direction to the State Government(s) "…to strictly enforce the provisions of the Act… The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of Scheduled Castes and Scheduled Tribes."

investigated under Section 156(3) of the Code of Criminal Procedure. After protracted legal wrangling, Respondent 1 filed an application under Section 482 of the Code of Criminal Procedure for the quashing of the proceedings. As the appellant had not been impleaded as a party, a direction was issued by the High Court on 13-7-2006 to Respondent 1 to implead the appellant as a party. It appears, however, though the appellant was impleaded as a party, no attempt was made to serve a copy of the notice on him with the result that by its order dated 9-8-2006, a Single Judge of the Calcutta High Court quashed the complaint proceedings against the respondents in the absence of the appellant. It is against this order that the present appeal has been filed.

4. We have heard the learned counsel for the parties and gone through the record. The broad facts stated above have not been denied. It, therefore, stands uncontroverted that the proceedings against the respondent-accused had been quashed without notice to the appellant, who was the original complainant. We are, therefore, of the opinion that the order of the learned Single Judge impugned before us must be set aside and we order accordingly. We also remit the case to the High Court for a fresh decision in accordance with law. The appeal is accordingly allowed.

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(2008) 8 Supreme Court Cases 435

(BEFORE ALTAMAS KABIR AND MARKANDEY KATJU, JJ.)

SWARAN SINGH AND OTHERS . . Appellants;

Versus

STATE THROUGH STANDING COUNSEL AND ANOTHER . . Respondents.

Criminal Appeal No. 1287 of 2008†, decided on August 18, 2008

A. **Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x) — Addressing a member of Scheduled Caste by using the word "chamar" — Whether an offence under S. 3(1)(x) — Held, calling a member of the Scheduled Caste "chamar" with intent to insult or humiliate him in a place within public view is certainly an offence under S. 3(1)(x) — Whether there was intent to insult or humiliate by using the word "chamar" will depend on the context in which it was used — Constitution of India, Arts. 17, 21 and 341 & 342**

B. **Interpretation of Statutes — Basic rules — Popular meaning — Adoption of — While construing the relevant provision, held, the popular meaning of the word concerned be adopted where the etymological meaning may frustrate the object of the Act — Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x)**

C. **Interpretation of Statutes — Basic rules — Purposive construction — Construction which may frustrate the object of the Act concerned should be avoided**

† Arising out of SLP (Crl.) No. 987 of 2007. From the Final Judgment and Order dated 22-1-2007 of the High Court of Delhi at New Delhi in Criminal Revision Petitions Nos. 285-87 of 2006

One *V*, a driver who belonged to a Scheduled Caste, lodged an FIR against the appellants alleging that Appellant 2 and her daughter i.e. Appellant 3 called him "chuda-chamar" while he stood at the gate of the premises of his employer. It was also alleged that when *V* complained about this to Appellant 1, who was husband of Appellant 2 and father of Appellant 3, he also said that *V* was a chuda-chamar and that Appellants 2 and 3 did not say anything wrong.

After the investigation was completed, a charge-sheet was filed against the appellants under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, charges were framed against the appellants. Against the order framing charges, criminal revision petitions were filed in the High Court which were dismissed by the impugned judgment. Hence, the present appeals.

While deciding the issue as to quashing of the proceedings in the present case, the primary question which arose for consideration was whether on considering the alleged act of the appellants, an offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was prima facie made out against them or not.

Dismissing the appeals of Appellants 2 and 3, but allowing the one filed by Appellant 1, the Supreme Court

Held :

It is true that chamar is the name of a caste among Hindus who were traditionally persons who made leather goods by handicraft. But today the word "chamar" is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person "chamar" today is nowadays an abusive language and is highly offensive. In fact, the word "chamar" when used today is not normally used to denote a caste but to intentionally insult and humiliate someone. (Paras 13, 21 and 30)

Kaye Watson: *The People of India*; Crooke W.: *The Tribes and Castes of the North-Western Provinces and Oudh*; Mukerji A.B.: *The Chamars of Uttar Pradesh*; Sharma Satish Kumar: *The Chamar Artisans*, *referred to*

This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by the Supreme Court. Hence, the so-called upper castes and OBCs should not use the word "chamar" when addressing a member of the Scheduled Caste, even if that person in fact belongs to the "chamar" caste, because use of such a word will hurt his feelings. (Paras 23 and 29)

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(*x*) of the said Act, what has to be taken into account is the popular meaning of the word "chamar" which it has acquired by usage, and not the etymological meaning. If the etymological meaning is taken into account, it may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation. (Para 22)

Thus, calling a member of the Scheduled Caste "chamar" with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(*x*) of the Act concerned. Whether there was intent to insult or humiliate by using the word "chamar" will depend on the context in which it was used. (Paras 24 and 30)

D. **Criminal Procedure Code, 1973 — S. 482 — Quashing of criminal proceedings — Relevant considerations while exercising power as to, reiterated — Held, proceedings cannot be quashed where on perusal of FIR, treating the allegations made therein to be correct, a criminal offence is prima facie made out against accused — Quashing is permissible in relation to accused against whom no prima facie offence is disclosed in the FIR — Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x) — Constitution of India — Art. 226 — Interference in criminal matters — Quashing of criminal proceedings**

Held :

At this stage where the trial has still to be held, all that the High Court can see in the petition under Section 482 CrPC or in a writ petition is whether on a perusal of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High Court, and that will be seen at the trial. (Para 8)

Indian Oil Corpn. v. *NEPC India Ltd.*, (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188; *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272, *relied on*

Treating the allegations in the FIR to be correct, an offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is prima facie made out against Appellants 2 and 3. Hence, the FIR against Appellants 2 and 3 cannot be quashed. It will be open to Appellants 2 and 3 to put up their defence at the trial, and the trial court may or may not accept the correctness of the allegations made against them in the FIR. (Paras 25 and 26)

But, so far as Appellant 1 is concerned, a perusal of the FIR shows that no prima facie offence is made out against Appellant 1. Hence, the proceedings against him are quashed. (Paras 33 and 34)

E. **Scheduled Castes and Tribes — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x) — Applicability of — Condition that the act in question must have been committed in any place within public view — Expression "place within public view" — Meaning and scope of, explained — Said expression distinguished from the expression "public place" — Considering allegation in FIR that 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 of his employer, held, the said place was certainly a place within public view — Hence, the alleged offence fell within the purview of S. 3(1)(x) in relation to Appellants 2 and 3 — However, since FIR showed that Appellant 1 did not use the offensive words in a place within public view, no prima facie offence under S. 3(1)(x) was made out against him**

Held :

As regards the contention that the alleged act was not committed in a public place and hence does not come within the purview of Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is observed that the aforesaid provision does not use the expression "public place", but instead the expression used is "in any place within public view". There is a clear distinction between the two expressions. Therefore, one must 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. (Paras 27 and 28)

If the offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 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. (Para 28)

In the present case, it has been alleged in the FIR that 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. This was certainly a place within public view, since the gate of a house is certainly a place within public view. However, as regards Appellant 1, a perusal of the FIR shows that he did not use these offensive words in the public view. There is nothing in the FIR to show that any member of the public was present when Appellant 1 uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence, no prima facie offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out against Appellant 1. (Paras 28 and 33)

W-M/38891/CR

Advocates who appeared in this case :
Gaurav Bhatia, Abhishek Chaudhary and Samir Ali, Advocates, for the Appellants;
Ashok Bhan, Ms Asha G. Nair, D.S. Mahra and Vinay Kr. Garg, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188, *Indian Oil Corpn.* v. *NEPC India Ltd.* 440*c*
2. (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272, *State of Orissa* v. *Saroj Kumar Sahoo* 440*c*

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. Leave granted.

2. This appeal has been filed against the impugned judgment and order dated 22-1-2007 passed by the High Court of Delhi in Criminal Revision Petitions Nos. 285-87 of 2006.

3. Heard learned counsel for the parties and perused the record.

4. Appellant 1, Swaran Singh is the husband of Appellant 2, Smt Simran Kaur and father of Appellant 3, Ms Tarjeet. They reside on the first floor of the premises, M-39, Greater Kailash II, New Delhi. The ground floor of the said premises was occupied by one Shri Umesh Gupta, a businessman.

5. It appears that an FIR at Police Station C.R. Park, New Delhi was filed against the appellants by one Vinod Nagar. The FIR read as follows:

"To

SHO

PS Chittaranjan Park

New Delhi

Sub.: Complaint against Smt Simran Kaur and her daughter, resident of M-39, Ist floor, G.K. II, New Delhi.

Sir,

I, Vinod Nagar s/o Shri Ram Singh Nagar r/o A-113, Dakshin Puri, New Delhi work with Shri Umesh Gupta at M-39, Ground Floor, G.K. II as driver since last one year. I belong to Khatik caste. I usually stand near the car which is parked at the gate. Smt Simran Kaur and her daughter (whose name I do not know but I can identify her) whenever cross nearby since last 15-20 days speak that I am a chuda-chamar and whenever they come I should not come in the way. It hurts my emotions and when I tried to tell this to her husband Shri Sarwan Singh he also said that you are actually a chuda-chamar and hence they are not saying anything wrong. When I told the happening to my employer Shri Umesh Gupta and he talked to Sardar Sarwan Singh and on this Sarwan Singh misbehaved and said that he will not let we people stay there. I also came to know that Sarwan Singh has filed a court case against my employer Shri Umesh Gupta. I did not complain earlier because this man may stop saying these words to me. About today on 10-12-2004 around 8.45 a.m. in the morning when I came to duties to the house of Shri Umesh Gupta ji, I took the keys and started cleaning the vehicle. At that time both mother and daughter threw dirty water on me and said that chuda-chamar why did you come and Simran Kaur said that at this time when her daughter goes to office therefore by putting this water on me they were making me to take bath. I have become tense due to this act of their and I feel that I should quit this job but I belong to a poor family and job is my compulsion. Even finding another job is not so easy. When the water was thrown on me at that time guard Albis and Dhan Singh, driver were also present. It is therefore requested that you should take an appropriate action against the abovementioned persons. I shall be thankful to you.

Thanks

Vinod Nagar

s/o Shri Ram Singh r/o A-113

Dakshin Puri

New Delhi"

6. On the basis of the said FIR, investigation was done and a charge-sheet dated 14-6-2005 was filed against the appellants under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act").

7. Thereafter, by the order dated 14-3-2006 charges were framed against the appellants. Against the order of framing charges Criminal Revision Petitions Nos. 285-87 of 2006 were filed in the Delhi High Court which were dismissed by the impugned judgment. Hence, this appeal by special leave.

8. It may be noted that the trial has still to be held and the appellants will have an opportunity of establishing their innocence in the trial. At this stage all that the High Court can see in the petition under Section 482 CrPC or in a writ petition, is whether on a perusal of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar vide *Indian Oil Corpn.* v. *NEPC India Ltd.*[1] (vide SCC para 12), *State of Orissa* v. *Saroj Kumar Sahoo*[2] (vide SCC paras 9 and 10), etc. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High Court, and that will be seen at the trial. It has to be seen whether on a perusal of the FIR, a prima facie offence is made out or not.

9. A perusal of the FIR shows that the first informant Vinod Nagar belongs to the Scheduled Caste. He has alleged in the FIR that Appellants 2 and 3 i.e. Smt Simran Kaur and her daughter Ms Tarjeet told him, whenever they come near him for the last 15 to 20 days, that he is a chuda-chamar and he should not come in their way. When Vinod Nagar complained about this to Appellant 1 Swaran Singh, he also said that Vinod Nagar actually is a chuda-chamar and that Appellants 2 and 3 did not say anything wrong.

10. It is also alleged in the FIR that Smt Simran Kaur and her daughter Ms Tarjeet threw dirty water on the first informant and said "chuda-chamar why did you come...".

11. The question which arises for consideration in this case is whether prima facie an offence has been committed under Section 3(1)(*x*) of the Act. Section 3(1)(*x*) states:

> "3. *Punishments for offences of atrocities.* (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,
>
> (*i*)-(*ix*) * * *
>
> (*x*) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view:
>
> (*xi*)-(*xv*) * * *
>
> shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

1 (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188
2 (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272

12. The question in this case is whether calling a person "chamar" amounts to intentionally insulting with intent to humiliate a member of the Scheduled Caste.

13. It is true that chamar is the name of a caste among Hindus who were traditionally persons who made leather goods by handicraft (vide *The People of India* by Watson Kaye, *The Tribes and Castes of the North-Western Provinces and Oudh* by W. Crooke, *The Chamars of Uttar Pradesh* by A.B. Mukerji, *The Chamar Artisans* by Satish Kumar Sharma, *The Tribes and Castes of the North-Western India* by W. Crooke, etc.) The word "chamar" is derived from the Hindi word "चमड़ा" which means leather.

14. Before the coming of the British into India, the chamars were a stable socio-economic group who were engaged in manufacturing leather goods by handicraft. As is well known, feudal society was characterised by the feudal occupational division of labour in society. In other words, every vocation or occupation in India became a caste e.g. dhobi (washerman), badhai (carpenter), lohar (blacksmith), kumbhar (potter), etc. The same was the position in other countries also during feudal times. Thus, even now many Britishers have the surnames Baker, Butcher, Taylor, Smith, Carpenter, Gardener, Mason, Turner, etc. which shows that their ancestors belonged to these professions.

15. It is estimated that before the coming of the British into India about 40% of the population of India was engaged in industry while the rest of the population was engaged in agriculture. This industry was no doubt handicraft industry, and not mill industry. Nevertheless, there was a very high-level production of goods in India by these handicraft industries before the coming of the British, and many of these goods were exported often up to Europe, the Middle East, China, etc. e.g. Dacca muslin, Murshidabad silk, and other kinds of textiles, etc.

16. A rough and ready test of the level of economic development of a country is to find out how much percentage of the population is engaged in industry, and how much in agriculture. The greater the percentage of population in industry and lesser in agriculture the more prosperous the country. Thus, the USA, the most prosperous country in the world today has only about 2 or 3% of its population in agriculture, while the rest is in industry or services.

17. India was a relatively prosperous country before the coming of the British because a high percentage of the people (which could be up to 40%) was engaged at that time in industry (though no doubt this was handicraft industry, not mill industry). Thus, Lord Clive around 1757 (when the Battle of Plassey was fought) described Murshidabad (which was then the capital of Bengal) as a city more prosperous than London, vide *Glimpses of World History* by Jawaharlal Nehru (Third Impression, p. 416, chapter entitled "The Indian Artisan Goes to the Wall").

18. When the British conquered India they introduced the products of their mill industry into India, and exorbitantly raised the export duties on the

Indian handicraft products. Thereby they practically destroyed the handicraft industry in India. The result was that by the end of the British rule hardly 10% or even less of the population of India was still in the handicraft industry, and the rest of those who were earlier engaged in the handicraft industry were made unemployed. In this way about 30% of the population of India who were employed in handicraft industry became unemployed, and were driven to starvation, destitution, beggary or crime (the thugs and "criminal" tribes were really these unemployed sections of society). As an English Governor General wrote in 1834, "the bones of the cotton weavers are bleaching the plains of India".

19. In this connection it may be noted that in the revenue records in many States in our country one often finds recorded: "*A*, son of *B*, caste lohar (smith), vocation agriculture"; or "*C*, son of *D*, caste badhai (carpenter), vocation agriculture"; or "*E*, son of *H*, caste kumhar (potter), vocation agriculture", etc. This indicates that the ancestors of these persons were in those professions, but later they became unemployed as British mill industry destroyed their handicraft. Some people think that if the British had not come into India an indigenous mill industry would have developed in India, and India would have become an Industrial State by the 19th Century, like North America or Europe, but it is not necessary to go into this here.

20. The chamars also suffered terribly during this period. The British industries e.g. Bata almost completely destroyed the vocation of the chamars, with the result that while they were a relatively respectable section of society before the coming of British rule (because they could earn their livelihood through manufacture of leather goods) subsequently they sank in the social ladder and went down to the lowest strata in society, because they lost their livelihood and became unemployed.

21. Today the word "chamar" is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person "chamar" today is nowadays an abusive language and is highly offensive. In fact, the word "chamar" when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(*x*) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(*x*) of the Act, we have to take into account the popular meaning of the word "chamar" which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic

features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word "chamar" when addressing a member of the Scheduled Caste, even if that person in fact belongs to the "chamar" caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity—so many religions, castes, ethnic and lingual groups, etc.—all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste "chamar" with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(*x*) of the Act. Whether there was intent to insult or humiliate by using the word "chamar" will of course depend on the context in which it was used.

25. A perusal of the FIR clearly shows that, prima facie, an offence is made out against Appellants 2 and 3. As already stated above, at this stage we have not to see whether the allegations in the FIR are correct or not. We only have to see whether treating the FIR allegations as correct an offence is made out or not. In our opinion, treating the allegations in the FIR to be correct an offence under Section 3(1)(*x*) of the Act is prima facie made out against Appellants 2 and 3 because it prima facie seems that the intent of the appellants was to insult or humiliate the first informant, and this was done within the public view.

26. Of course, it will be open to Appellants 2 and 3 to put up their defence at the trial, and the trial court may or may not accept the correctness of the allegations in the FIR. However, at this stage we cannot quash the FIR against them and the trial must proceed.

27. Learned counsel then contended that the alleged act was not committed in a public place and hence does not come within the purview of Section 3(1)(*x*) of the Act. In this connection it may be noted that the aforesaid provision does not use the expression "public place", but instead the expression used is "in any place within public view". In our opinion there is a clear distinction between the two expressions.

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.

29. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities in our opinion are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this Court. In the age of democracy no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country.

30. In this connection it may be mentioned that in America to use the word "nigger" today for an African-American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. In our opinion, even if the word "chamar" was not regarded offensive at one time in our country, today it is certainly a highly offensive word when used in a derogatory sense to insult and humiliate a person. Hence, it should never be used with that intent. The use of the word "chamar" will certainly attract Section 3(1)(*x*) of the Act, if from the context it appears that it was used in a derogatory sense to insult or humiliate a member of SC/ST.

31. The caste system is a curse on our nation and the sooner it is destroyed the better. In fact it is dividing our country at a time when we must all be united as Indians if we wish to face the gigantic problems confronting us e.g. poverty, unemployment, price rise, corruption, etc. The Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 is a salutary legislative measure in that direction.

32. Learned counsel for the appellants submitted that so far as Appellant 1 Swaran Singh is concerned, his case, even treating the allegations in the FIR to be correct, does not attract Section 3(1)(*x*) of the Act. Learned counsel submitted that in the FIR it is mentioned that when the first informant Vinod Nagar complained to Appellant 1 Swaran Singh that his wife and daughter were insulting him by calling him "chuda-chamar", Swaran Singh said that actually he (Vinod Nagar) is a "chuda-chamar" and hence, they did not say anything wrong.

33. We have already stated above that in today's context even calling a person "chamar" ordinarily amounts to intentionally insulting that person with intent to humiliate him. It is evident from a perusal of the FIR that Appellant 1 Swaran Singh joined his wife and daughter in insulting Vinod Nagar, and he also used the word "chamar" in a derogatory sense. However, a perusal of the FIR shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the FIR to show that any member of

the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against Appellant 1.

34. The High Court in the impugned judgment has observed (in para 16) that the question whether the appellants indeed uttered the offending words with the intention to humiliate the complainant, are matters of evidence. We fully agree with this view. Hence, we find no merit in the appeals of Appellants 2 and 3, and they are accordingly dismissed. However, the appeal of Appellant 1 is allowed, and the proceedings against him are quashed. There will be no order as to costs.

(2008) 8 Supreme Court Cases 445

(BEFORE TARUN CHATTERJEE AND H.S. BEDI, JJ.)

ASHOK KUMAR .. Appellant;

Versus

STATE OF BIHAR AND OTHERS .. Respondents.

Civil Appeal No. 3243 of 2008†, decided on May 2, 2008

Constitution of India — Art. 226 — Maintainability — Delay and laches — Sufficient cause — Pendency of the review of State Government's order causing delay of 4 years in filing writ petition — Held, delay sufficiently explained

Allowing the appeal, the Supreme Court

Held :

The writ petition as well as the writ appeal ought not to have been dismissed by the Division Bench as well as the Single Judge of the High Court on the ground of delay and laches because the delay of 4 years in moving the writ application against the decision of the State Government was sufficiently explained by the appellant-writ petitioner. Since the appellant-writ petitioner had filed a representation/review of the decision of the State Government, it was expected by him that an order should be passed on the said representation/review. The High Court committed an error in holding that the pendency of the review/representation of the appellant-writ petitioner could not be taken to be a ground for condoning the delay after 4 years of the decision of the State Government. (Paras 4 and 3)

SS-M/A/38537/C

Advocates who appeared in this case :

H.L. Agarwal, Senior Advocate (Gaurav Agrawal and Dr. Kailash Chand, Advocates) for the Appellant;

Gopal Singh and Manish Kumar, Advocates, for the Respondents.

† Arising out of SLP (C) No. 10445 of 2007. From the Final Order dated 24-1-2007 of the High Court of Judicature at Patna in LPA No. 1348 of 2005

in Haryana, western Uttar Pradesh and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in *Lata Singh case*[5] that there is nothing "honourable" in "honour" killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate "honour" killings should know that the gallows await them.

29. Let a copy of this judgment be sent to the Registrars General/Registrars of all the High Courts who shall circulate the same to all the Judges of the Courts. The Registrars General/Registrars of the High Courts will also circulate copies of the same to all the Sessions Judges/Additional Sessions Judges in the States/Union Territories. Copies of the judgment shall also be sent to all the Chief Secretaries/Home Secretaries/Directors General of Police of all States/Union Territories in the country. The Home Secretaries and Directors General of Police will circulate the same to all SSPs/SPs in the States/Union Territories for information.

(2011) 6 Supreme Court Cases 405

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

ARUMUGAM SERVAI . . Appellant;

Versus

STATE OF TAMIL NADU . . Respondent.

Criminal Appeals No. 958 of 2011[†] with No. 959 of 2011[‡], decided on April 19, 2011

A. **Constitution of India — Arts. 15(2), 17 and 21 — Freedom from discrimination and right to live with dignity — Insulting/hurting anyone's feelings on account of his caste, religion, tribe, language, etc., deprecated — One of the main causes holding up India's progress is linked to mental attitude of Indian society to regard a section of their own countrymen as inferior — This mental attitude is simply unacceptable — SCs, STs, OBCs and Minorities — Generally (Paras 1 and 8)**

Kailas v. *State of Maharashtra*, (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401, *relied on*

B. **Constitution of India — Arts. 15(2), 17 and 21 — Caste-based bias — Two tumbler system prevalent in many parts of State of Tamil Nadu, where in many tea shops and restaurants, there are separate tumblers for serving tea or other drinks to SCs and non-SCs — Held, is highly objectionable and**

† Arising Out of SLP (Crl.) No. 8084 of 2009. From the Judgment and Order dated 25-1-2008 of the High Court of Madras in Crl. A. No. 536 of 2001

‡ Arising Out of SLP (Crl.) No. 8428 of 2009

an offence under SC/ST Act — Directions for fixing accountability on all related administrative and police officers, not taking necessary measures against such practice, issued — Hence, those practising it, must be criminally proceeded against and given harsh punishment if found guilty — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3 (Para 10)

C. **Constitution of India — Arts. 25, 19(1)(a) and 21 — Rights to freedom of conscience and freedom of expression — Right to marry person of one's choice — Inter-caste/religion marriages — "Khap Panchayats" ("Katta Panchayats" in Tamil Nadu) decreeing or encouraging honour killings of or other atrocities in institutionalised way against boys and girls of different castes and religions, who wished to get married or had been married, or interference with personal lives of such people — These are acts of barbarism and feudal mentality — Need for ruthlessly stamping them out — Necessary directions to prevent such atrocious acts, issued — Penal Code, 1860 — S. 302 — Human and Civil Rights — Right to marry**

Held :

"Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. This is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case*, (2006) 5 SCC 475, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way, such acts of barbarism and feudal mentality, can be stamped out. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal. (Paras 11 and 12)

Lata Singh v. *State of U.P.*, (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478. *followed*

Hence, the administrative and police officials are directed to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/ Collector and SSP/SPs of the district as well as other officials concerned and charge sheet them and proceed against them departmentally, if they do not (*1*) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (*2*) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as they will be deemed to be directly or indirectly accountable in this connection. (Para 13)

D. **SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(x) — Case of insulting person of Scheduled Caste, by calling him by his caste name in a derogatory sense to insult, and causing injuries thereafter — Conviction confirmed — On an altercation between appellant-accused (belonging to Backward Caste) and complainants PWs 1 and 2 (belonging to Scheduled Caste), appellant *A* insulted PW 1 by saying "you are a pallapayal and eating**

deadly cow beef", and thereafter, appellants caused injuries to both of them — Held, appellants belonged to Backward Caste, whereas complainants belonged to "Pallan" caste, which is a Scheduled Caste in Tamil Nadu — Word "Pallan" no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone — Even calling a person a "Pallan", if used with intent to insult a member of Scheduled Caste, is an offence under S. 3(1)(x) — To call a person as a "pallapayal" in Tamil Nadu is even more insulting, and hence is even more an offence — Hence, use of words "Pallan" or "pallapayal", with intent to insult, is highly objectionable and is also an offence under SC/ST Act — It is just unacceptable in this modern age — Appellants behaved like uncivilised savages, and hence, deserve no mercy — Copy of instant judgment directed to be widely circulated

(Paras 4 to 7, 9, 14 and 15)

Swaran Singh v. *State*, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527, *relied on*

Appeals dismissed Y-D/47958/CR

Advocates who appeared in this case :

C.S. Rajan, Senior Advocate [S.D. Dwarakanath (for Dr. Kailash Chand), P.V. Yogeswaran and S. Thananjayan, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401, *Kailas* v. *State of Maharashtra* 408*f-g*
2. (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527, *Swaran Singh* v. *State* 408*g*
3. (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478, *Lata Singh* v. *State of U.P.* 409*g-h*, 411*c*

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.—

"*Har zarre par ek qaifiyat-e-neemshabi hai*
Ai saaki-e-dauraan yeh gunahon ki ghadi hai"

— Firaq Gorakhpuri

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator by certain inalienable rights, that among these are life, liberty, and the pursuit of happiness."

— *American Declaration of Independence, 1776*

Over two centuries have passed since Thomas Jefferson wrote those memorable words, which are still ringing in history, but a large section of Indian society still regard a section of their own countrymen as inferior. This mental attitude is simply unacceptable in the modern age, and it is one of the main causes holding up the country's progress.

2. Leave granted. These appeals have been filed against the common judgment and order of the Madras High Court dated 25-1-2008 in Criminal Appeals Nos. 536-37 of 2001 upholding the judgment of the learned 4th Additional District and Sessions Judge, Madurai.

3. The allegation against the appellants is that on 1-7-1999, there was an altercation between the appellants and the complainants PW 1, Panneerselvam and PW 2, Mahamani in a temple festival regarding the method of tying bullocks in the Jallikattu. The appellant, Arumugam Servai then insulted PW 1 by saying "you are a pallapayal and eating deadly cow

beef". Then Accused 1, 7 and 9 attacked PW 1 with sticks causing him injuries on his left shoulder. When PW 2 Mahamani intervened he was attacked by the accused with sticks, and he sustained a fracture on his head, on which there was a lacerated wound. Apart from the two injured eyewitnesses, there are 3 other eyewitnesses to the occurrence. The doctor has testified to the injuries. The head fracture on Mahamani indicates the deadly intent of the accused.

4. Both the courts below have believed the prosecution case, and we see no reason to differ. We have carefully perused the testimony of the witnesses, and we see no reason to disbelieve them.

5. The accused belong to the "Servai" caste which is a Backward Caste, whereas the complainants belong to the "Pallan" caste which is a Scheduled Caste in Tamil Nadu. The word "Pallan" no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word "Chamar" denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a "Pallan", if used with the intent to insult a member of the Scheduled Caste is, in our opinion, an offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act"). To call a person as a "pallapayal" in Tamil Nadu is even more insulting, and hence is even more an offence.

6. Similarly, in Tamil Nadu there is a caste called "Parayan" but the word "Parayan" is also used in a derogatory sense. The word "paraparayan" is even more derogatory.

7. In our opinion use of the words "Pallan", "pallapayal", "Parayan" or "paraparayan" with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words "Nigger" or "Negro" are unacceptable for African-Americans today (even if they were acceptable 50 years ago). In the present case, it is obvious that the word "pallapayal" was used by Accused 1 to insult Panneerselvam. Hence, it was clearly an offence under the SC/ST Act.

8. In the modern age nobody's feelings should be hurt. In particular in a country like India with so much diversity (see in this connection the decision of this Court in *Kailas* v. *State of Maharashtra*[1]) we must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong.

9. In *Swaran Singh* v. *State*[2] this Court observed (vide SCC paras 21-24) as under: (SCC pp. 442-43)

> "*21.* Today the word 'Chamar' is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person 'Chamar' today is nowadays an abusive language and is highly offensive. In fact, the word 'Chamar' when used

1 (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401
2 (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527 : (2008) 12 SCR 132

today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(*x*) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(*x*) of the Act, we have to take into account the popular meaning of the word 'Chamar' which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity so many religions, castes, ethnic and lingual groups, etc. all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(*x*) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used."

10. We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamil Nadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practising it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

11. In *Lata Singh* v. *State of U.P.*[3] this Court observed (vide SCC paras 14-18) as under: (SCC pp. 479-80)

"*14.* This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There

3 (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478

is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

15. We are of the opinion that no offence was committed by any of the accused [the couple who had an inter-caste marriage] and the whole criminal case in question is an abuse of the process of the court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above), the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

12. We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case*[3], there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (*1*) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (*2*) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

14. The appellants in the present case have behaved like uncivilised savages, and hence deserve no mercy. With these observations the appeals are dismissed.

15. A copy of this judgment shall be sent to all Chief Secretaries, Home Secretaries and Directors General of Police in all States and Union Territories of India with the direction that it should be circulated to all officers up to the level of District Magistrates and SSPs/SPs for strict compliance. A copy will also be sent to the Registrars General/Registrars of all the High Courts who will circulate it to all Hon'ble Judges of the Court.

2017 SCC OnLine Del 8942 : (2017) 165 DRJ 128

In the High Court of Delhi at New Delhi
(BEFORE VIPIN SANGHI, J.)

Ms. Gayatri @ Apurna Singh ..... Petitioner

Mr. Puneet Mittal, Mr. Aman Sareen, Ms. Nidhi Raj Bindra & Ms. Aarushi Tangai, Advocates.

v.

State & Anr. ..... Respondents

Ms. Nandita Rao, ASC along with ACP Diwan Chand Sharma, for the State.

Mr. Hem C. Vashishst, Advocate for respondent No. 2.

W.P.(CRL) 3083/2016

Decided on July 3, 2017, [Judgment reserved on : 09.02.2017]

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act,1989 — S. 3(1)(x) — Ingredients of offence — There should be intentional insult or intimidation by a person, who is not a member of SC or ST — Insult must be with an intent to humiliate member of SC or ST

Complainant alleging that accused continuously harassing her by abusing her caste on social network sites/facebook — Complainant enclosed certain printouts, wherein accused claimed that she belongs to Rajput community and that persons belonging to 'Dhobi' community have no standard of living — Pertinently, S. 3(1)(x) of Act does not require that intentional insult or intimidation with intention to humiliate a member of Scheduled Caste or Scheduled Tribe should take place in presence of said member of Scheduled Caste or Scheduled Tribe — Even if victim is not present and behind his/her back, offending insult or intimidation with intention to humiliate him/her takes place, same would be culpable provided it takes place within public view — It would make no difference whether privacy settings are set by author of offending post to "private" or "public" — Complainant does not claim that utterances made by petitioner on her facebook 'wall' were made in full public view directed against her, or that there were witnesses when said utterances were so made and directed against her, or till time offending posts remained on wall of facebook account of petitioner — She does not name any other person, a member of public who may have read allegedly offending posts of petitioner put up on facebook wall — Necessary ingredients of offence constituted under S. 3(1)(x) of Scheduled Castes & Scheduled Tribes Act, are not made out on reading of complaint/FIR — FIR as well as proceedings qua petitioner, are liable to be quashed.

(Paras 45, 48 and 49)

D.P. Vats v. *State*, 2002 (99) DLT 167; *State* v. *Om Prakash Rana*, 2014 (1) JCC 657; *Daya Bhatnagar* v. *State*, 2004 (109) DLT 915; *Smt. Usha Chopra* v. *State*, 115 (2004) DLT 91; *Kanhaiya Paswan* v. *State*, 2012 (4) ILR (Del) 509; and *Kusum Lata* v. *State*, 2016 (4) AD (Delhi) 362; *Ram Nath Sachdeva* v. *Govt. of N.C.T. of Delhi*, 2001 (60) DRJ 106; *Ram Babu* v. *State of Madhya Pradesh*, (2009) 7 SCC 194, referred to.

Manoj Kumar Sharma v. *Sate of Chhattisgarh*, 2016 (97) ALLCC 926; *State of Haryana* v. *Ch. Bhajan Lal*, 1992 Supp (1) SCC 335 : AIR 1992 SC 604; *Swaran Singh* v. *State*, (2008) Cri LJ 4369; *Indian Oil Corporation* v. *NEPC India Ltd.*, (2006) 6 SCC 736 : AIR 2006 SC 2780 (vide para 12); *State of Orissa* v. *Saroj Kumar*, (2005) 13 SCC 540, relied on.

The Judgment of the Court was delivered by

VIPIN SANGHI, J.:— The petitioner has preferred the present writ petition to seek a writ quashing FIR No. 1162/2015 registered at Police Station - Saket, New Delhi under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST Act" for short), and the proceedings

arising therefrom. The aforesaid FIR has been registered on the complaint of respondent No. 2.

2. The petitioner/accused and the respondent No. 2/complainant are co-sisters. They are married to two brothers. According to the petitioner, the mother-in-law of the petitioner severed her relationship from the husband of respondent No. 2 sometime in August 2015 and disowned him from all her movable and immovable properties. The said development has led to respondent No. 2 becoming inimical towards the petitioner and her family members.

3. The case of the complainant/respondent no. 2 in her complaint-on the basis of which the aforesaid FIR has been registered, is that the petitioner:

> *"is continuously harassing and abusing on my caste on social network sites/facebook). Since 18 July 15 till today 1 Aug 15 she is updating a bad words like cheap, kutta, donkey etc for DHOBHI's. As I also belong from DHOBHI category, it is unacceptable for me. I want you to take a legal action according to SC/ST Act as it is very insulting & dominating updates put by her for DHOBHI community."*
>
> (emphasis supplied)

4. Along with her complaint, the complainant also enclosed certain printouts, wherein the petitioner/accused claimed that she belongs to Rajput community, and that persons belonging to the 'Dhobi' community have no standard of living and they are cheap people. The aforesaid printouts are from the facebook account of the petitioner. The complainant made the aforesaid complaint dated 02.08.2015, which was diarised on 03.08.2015 vide Diary No. 872-LC.

5. Since, it is the utterances attributed to the petitioner on her facebook "Wall" which form the basis of the FIR in question, I consider it appropriate to set out the posts attributed to the petitioner on her facebook 'wall'. The same are as follows:

> *"Gayatri Singh*
>
> *July 28 at 11 : 53pm Edited*
>
> *Pehla Gadha : Yaar Main Jis Dhobi Ke Ghar Kaam Karta Hoo, Vo Mujhe Bahut Marta Hai.*
>
> *Doosra Gadha : Tu Ghar Chor Kar Bhaag Kyo Nahi Jata.*
>
> *Pehla Gadha : Kya Batau Yaar Dhobi Ki Ek Ladki Hai, choti DHOBAN Vo Jab Bhi Shararat Karti Hai To Dhobi Kehta Hai Ki Teri Shaadi Kisi Gadhe Se Kar Dunga.*
>
> *Bas Yeh Soch Kar Ruka Hua Hoo.*
>
> *Moral of the story that Dhoban is Brand ambassador of fools & donkeys and only they r follow her always"*
>
> (Emphasis supplied)
>
> *"Gayatri Singh*
>
> *12 hrs Edited*
>
> *U hv find many DHOBI jokes on biggest social site of Google like DHOBI ka kutta na ghar ka na ghaat ka, u understand na what I want to say so please increase ur level of education first bcoz I am not a Kid I am a daughter of Rajput - feeling super."*
>
> *"Gayatri Singh*
>
> *July 29 at 11 : 13pm*
>
> *Joke : one Fb user apne dost se apne dushman ke bare mein baat karte hue kahta hai who hamesha mera fb account check karta rahta hai aur mujhe follow karta hai par mujhe to yein sab karne mein koi interest nahi ...*
>
> *Kamina Dost : agar tum bhi uska fb account check nahi karte rahte ho to how do u know that he checked always????*
>
> *Moral of the story : for example If u can eat ashirwad mill flour so that's not*

mean that nobody can eat that bcoz every one prefer brand 1st who live the life with hight standard always but low standard people always try to prove it and speak again & again that I hv standard. It's called cheep people and only one brand available for these people : DHOBI BRAND - feeling naughty."

(emphasis supplied)

6. Ms. Rao, learned ASC, who appears for the State has tendered in Court the aforesaid printouts, which show that they have been printed by accessing the facebook page of the petitioner by a person disclosing her identity as "Veronica". The said printouts have been taken between 31.07.2015 and 01.08.2015.

7. The submission of the petitioner is that a reading of the complaint - on the basis of which the aforesaid FIR has been registered; the FIR, and; the contents of the aforesaid printouts, does not disclose commission of an offence under Section 3(1)(x) of the SC/ST Act.

8. Section 3(1)(x) of the SC/ST Act at the relevant time, i.e. in July 2015 read as follows:

"3.(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- ... ...

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

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

(emphasis supplied)

9. I may observe that Section 3(1) has been substituted by Section 4(i) of Act 1 of 2016 with effect from 26.01.2016.

10. The submission of Mr. Mittal, learned counsel for the petitioner is that to constitute an offence under Section 3(1)(x) of the SC/ST Act, it is essential that the accused should intentionally insult, or intimidate with intention to humiliate "*a member of a Scheduled Caste or a Scheduled Tribe*". He submits that the use of the expression "*a member*" shows that the Legislature intended to make an offence - the insult, or intimidation with intention to humiliate, a particular member of the Scheduled Caste, or a Scheduled Tribe, and not a generalized community of Scheduled Caste, or Scheduled Tribe.

11. Mr. Mittal submits that in the present case, the facebook posts attributed to the petitioner, even if they are assumed to be true to have been posted by the petitioner on her facebook wall, do not disclose the intentional insult or humiliation - with intention to humiliate any individual, much less, the complainant as there is no mention of the name of any individual. There is no basis to claim that the said post was directed against, and obviously against, the complainant.

12. Mr. Mittal submits that in the post attributed to the petitioner of 28.07.2015 at 11 : 53 p.m., the objectionable content is as follows:

"Moral of the story that Dhoban is Brand ambassador of fools & donkeys and only they r follow her always"

13. Mr. Mittal submits that the said post is directed against the females of the 'Dhobi' community in general, and not against any specific individual, much less against the complainant.

14. Similarly, Mr. Mittal submits that the post attributed to the petitioner of 29.07.2015 at 11 : 13 p.m., does not name or refer to the complainant, and the only alleged insulting or intimidating words are "*it is called cheep people and only one brand available for these people : DHOBI BRAND -... ... ...*", which is also a generalised comment and not directed against any individual, much less, the complainant.

15. Mr. Mittal submits that in the present case, the facebook pages relied upon by

the complainant have apparently been accessed with the identity of 'Veronica'. He submits that the petitioner had blocked respondent No. 2 from accessing her facebook account - meaning thereby, that she would not be able to access the facebook account of the petitioner, and not read the posts found on the facebook 'wall' of the petitioner. This itself shows that the allegedly offending posts were certainly not insults or intimidations intended to humiliate the complainant, as they were not directed at her, and were not intended to be seen or read by her. However, respondent No. 2, had deliberately used a pseudo name and a false identity to be able to open the facebook account of the petitioner, and to read the posts on the facebook 'wall' attributed to the petitioner.

16. Mr. Mittal submits that the petitioner is entitled to her views and to share her views within her own friend circle, who are members/subscribers on facebook. He submits that if someone ventures into the facebook account of another, uninvited, and by assuming a pseudo name, such a person does so at his/her own peril and cannot claim that the posts on the facebook 'wall' of the member's account accessed were intentional insults, or intimidations with intention to humiliate such a person, who is a member of a Scheduled Caste or a Scheduled Tribe. In support of his submissions, Mr. Mittal has placed reliance on a Division Bench judgment of this Court in *D.P. Vats* v. *State*, 2002 (99) DLT 167.

17. Mr. Mittal submits that, firstly, there has to be intentional insult, or intimidation with intention to humiliate a particular person. The person accused of the offence under Section 3(1)(x) of the SC/ST Act should have knowledge that the particular person/victim is a member of a Scheduled Caste, or a Scheduled Tribe. If he had no knowledge that the caste of the person against whom the intentional insult, or intimidation with intention to humiliate is directed, was a scheduled caste or scheduled tribe, no offence under Section 3(1)(x) of the SC/ST Act would be made out.

18. Similarly, if utterances of the accused were not directed against a particular member of SC/ST - in contradistinction with the community of SC/ST as a whole, the offence under Section 3(1)(x) of the SC/ST Act would not be made out. Mr. Mittal submits that in *D.P. Vats* (supra), the expression "*a member*" has been interpreted by the Division Bench to mean that the intentional insult, or intimidation with intention to humiliate must be directed against an individual member, and not against a group of members, or the crowd, or public in general - though they may comprise of persons belonging to SC/ST community. If the intentional insult, or intimidation with intention to humiliate when made is in generalized terms against all and sundry, and not against a specific individual of the particular SC/ST community, it would not make out an offence under Section 3(1)(x) of the SC/ST Act.

19. Mr. Mittal submits that in the facts of the present case, the alleged intentional insult, or intimidation with a view to cause humiliation was not made against the complainant in particular - who belongs to the Dhobi community. This is for the reason that the petitioner had not added the complainant as a friend and, therefore, she would not get to see the posts put up by the petitioner/accused on her facebook 'wall' automatically. In fact, the petitioner had blocked the complainant, and she could not have accessed the facebook account 'wall' of the petitioner, except by faking her identity - which she did. The petitioner/accused had no reason to assume that the complainant would, of her own volition, visit the facebook page/wall of the petitioner to read the petitioner's posts by assuming a false identity. Mr. Mittal submits that in these circumstances, there was no question of the petitioner having the intention of insulting, or intimidating with a view to cause humiliation to any specific person, much less respondent No. 2. Moreover, since the facebook posts attributed to the petitioner do not specifically mention the complainant directly, or by obvious implication, it cannot be said that the intentional insult/intimidation with a view to cause

humiliation, was directed against respondent No. 2 on account of her being a member of the Dhobi community. Like in the case of *D.P. Vats* (supra), in the present case, the utterances/posts attributed to the petitioner on her facebook 'wall' are in generalized terms, and not attributed directed against any particular person, much less respondent No. 2.

20. Mr. Mittal in support of his contention that the provisions of the SC & ST Act are not attracted, places reliance on *State* v. *Om Prakash Rana*, 2014 (1) JCC 657.

21. Mr. Mittal further submits that the said insult or intimidation, with intention to humiliate, should take place at a place which is "*within public view*". He submits that the alleged posts are claimed to have been put up by the petitioner on the 'wall' of her facebook account which, according to Mr. Mittal, is not "*a place within public view*". Mr. Mittal submits that the posts put up on his 'wall' by the facebook account holder member/subscriber - even when the privacy setting is set to "public", must be shown to have been read by a member of the public, i.e. it must be claimed to have been read by a member of the public, which is not the case in hand. Mr. Mittal submits that the posts on his/her facebook 'wall' put up by a member/subscriber are accessible to those who are befriended by the member/subscriber. Merely because the facebook profile of the petitioner shows that the same had been edited to 'public' - so as to make it accessible to the public generally, the same cannot be labeled as a place within public view, since, to view the said post a member of the public would have to visit the facebook account of the petitioner by disclosing his or her identity. Anybody, who does not so access the facebook account of the petitioner would not become aware of what has been posted by the petitioner on her facebook 'wall'. He submits that it is not the case of respondent No. 2/complainant that any member of the public who is a stranger to the petitioner and the complainant/respondent No. 2 has visited the facebook page of the petitioner and viewed the posts put up by the petitioner on her facebook "wall".

22. Mr. Mittal places reliance on several cases dealing with the interpretation of the expression 'public view' - viz. *Daya Bhatnagar* v. *State*, 2004 (109) DLT 915; *Smt. Usha Chopra* v. *State*, 115 (2004) DLT 91; *Kanhaiya Paswan* v. *State*, 2012 (4) ILR (Del) 509; and *Kusum Lata* v. *State*, 2016 (4) AD (Delhi) 362.

23. Mr. Mittal submits that the privacy setting of the facebook account of the petitioner, even though edited to 'public' - to enable any other facebook user to view the petitioner's posts on her 'wall', does not make the same a "place within public view". Mr. Mittal also placed reliance on *Ram Nath Sachdeva* v. *Govt. of N.C.T. of Delhi*, 2001 (60) DRJ 106, wherein the learned judge observed as follows:

> *"5. … Thus, as per the prosecution case, only the complainant who was accompanied by Shashi Pal, was present inside the house at the time the petitioner allegedly insulted him by uttering the remarks as noted in complaint. In my view, such insult not being 'within public view' would not attract said clause(x) of Section 3(1) of the Act. As laid down in the decision in* State of Haryana *v.* Ch. Bhajan Lal, *1992 Supp (1) SCC 335 : AIR 1992 SC 604 one of the categories wherein power under section 482 Cr.P.C. can be exercised is where the allegations made in the FIR or complaint even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused…".*

24. The State has opposed the petition. Learned ASC submits that on a perusal of the allegations contained in the FIR, it cannot be said that the ingredients of the offence under section 3(1)(x) of the SC/ST Act are not present. She submits that the present petition is premised on disputed questions of fact, which would require a trial.

25. Ms. Rao places reliance on *Ram Babu* v. *State of Madhya Pradesh*, (2009) 7 SCC 194, in support of her submission that at this stage when the investigation is in progress and the charge sheet has not even been filed, this Court would not examine

whether there is any truth in the allegations made. The only question that this Court would consider is whether, on the basis of the allegations contained in the FIR, a cognizable offence or offences are made out against the petitioner/accused. The allegations made in the complaint are to be taken as they are, without adding or subtracting anything and only if this Court finds that no cognizable offence is made out even if the allegations are considered to be truthful, would this Court quash the FIR and the proceedings arising therefrom in exercise of powers u/s 482 Cr PC. Ms. Rao submits that the intention of the petitioner while making offending posts on the 'wall' of her facebook account was clearly to insult and/or intimidate with an intent to humiliate respondent no. 2, whom she knows is a member of a Scheduled Caste, namely, "Dhobi" caste. She submits that the petitioner has herself narrated that she and respondent no. 2 are co-sisters i.e. they are married to two brothers and there is acrimony between the two families. It is precisely for this reason that the petitioner had picked the "Dhobi" community for making insulting and humiliating statements. The petitioner was aware of the fact that respondent no. 2 and others of her community could log into the facebook account of the petitioner and view the posts uploaded by the petitioner on her facebook 'wall'.

26. Ms. Rao submits that the petitioner deliberately edited the privacy status of her account from 'private' to 'public', so as to enable the reading of her insulting and humiliating posts against the members of the 'Dhobi' community by the public. The offending posts uploaded by the petitioner are directed against, and only against respondent no. 2, since respondent no. 2 belongs to the 'Dhobi' community; is the sister-in-law of the petitioner, and; has an acrimonious relationship with the petitioner. Otherwise, there was no reason for the petitioner to harbor ill-will against the members of the 'Dhobi' community.

27. Ms. Rao further submits that during the course of investigation, petitioner/Gayatri Singh was examined in the presence of her husband and lady officer, and she accepted the fact that she made the facebook posts in question by using her mobile phone, model name Lenovo S850, which was later thrown away by her, by claiming that the same was damaged by her daughter. Consequently, Section 201 IPC was added in the FIR. Respondent No. 2 has adopted the aforesaid submissions of Ms. Rao.

28. In *Manoj Kumar Sharma* v. *Sate of Chhattisgarh*, 2016 (97) ALLCC 926, the Supreme Court re-stated the factors to be considered by the Court while examining a prayer for quashing of an F.I.R. The Court observed as follows:

> *"In* State of Haryana *v.* Bhajan Lal *1992 Supp (1) SCC 335, wherein this Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power Under Section 482 of the Code for quashing of the FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; where there is an expressed legal bar engrafted in any of the provisions of the Code; and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too. in the rarest of rare cases: the Court also warned that the Court would*

not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice."

(emphasis supplied)

29. Further, the Supreme Court in *Swaran Singh* v. *State*, (2008) Cri LJ 4369, has observed in paragraph 8 as under:

"It may be noted that the trial has still to be held and the appellants will have an opportunity of establishing their innocence in the trial. At this stage all that the High Court can see in the petition under Section 482 Cr.P.C. or in a writ petition, is whether on a perusal of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar vide Indian Oil Corporation *v.* NEPC India Ltd. *(2006) 6 SCC 736 : AIR 2006 SC 2780 (vide para 12);* State of Orissa *v.* Saroj Kumar *(2005) 13 SCC 540 (vide paras 9 and 10), etc. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High Court, and that will be seen at the trial. It has to be seen whether on a perusal of the FIR a prima facie offence is made out or not".*

(emphasis supplied)

30. In the light of the aforesaid settled legal position, this Court would proceed to examine the submissions of learned counsels on the assumption that the facebook posts attributed to the petitioner, which are set out in para 5 above, were indeed made by the petitioner on the 'wall' of her facebook account, and the same were open to view by any member of the public, on account of the privacy settings having been changed from 'private' to 'public'. Though the petitioner claims - and this claim has not been refuted by respondent no. 2/complainant, that the complainant had been blocked by the petitioner from accessing the facebook account of the petitioner, and that is why she accessed the petitioner's facebook account by a fake name and identity of "Veronica", this Court would also assume against the petitioner that she had not blocked respondent no. 2 from being able to see her posts on her facebook 'wall'.

31. Section 3(1)(x), though quoted herein above in para 8, may be once again set out for ready reference, which reads as follows:

"3.(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- ... ...

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

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

(emphasis supplied)

32. The ingredients of the aforesaid offence were culled out in *Daya Bhatnagar* (supra) as follows:

"15. Basic ingredients for the offence under Clause (x) of Subsection (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows : (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any

place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present… …".

(Emphasis supplied)

33. In *D.P. Vats* (supra), the Division Bench examined whether the uncontroverted allegations made in the FIR in that case - even if taken on face value, would constitute the alleged offence under Section 3 of the SC/ST Act, or for that matter, under the IPC. The ingredients of Section 3(1)(x) and Section 3(1)(xi) of the SC/ST Act were taken note of by the Division Bench in the following words:

"9. … … …

(a) A person making the alleged derogatory utterance must know that the person whom he was intentionally insulting, intimidating with intent to humiliate him was a member of SC/ST.

(b) Such intentional insult, intimidation or humiliation must be directed against and made to a member of SC/ST and for being member of SC/ST.

(c) The utterance must be made at any place within "public view"."

(emphasis supplied)

34. The Division Bench observed in paragraphs 10, 12 and 13 of this decision as follows:

"10. In the present case, we are concerned with the first two ingredients and it emerges therefrom that a case would fall under the first sub-section only when the person making the derogatory utterance knows that the person whom he was intentionally insulting or intimidating or humiliating in the name of the caste was a member of SC or ST. If he had no knowledge of his caste status, the offence under sub-section (1)(x) would not be constituted. Similarly if his utterance was not directed against a member of SC/ST in contradistinction to a group of members of SC/ST or the community as a whole, it would not again make out an offence under sub-section (1)(x). The word "a member" occuring in the provision assumes crucial importance in this context and leaves no scope for doubt that it must be directed against the individual member and not against a group of members or the crowd or the public in general though these may comprise of SC/ST. If it is made in generalized terms against all and sundry and is not individual specific in the name of caste, it would not make out an offence under the first sub-section, the rationale being that intentional insult, intimidation and humiliation made in the name of caste was liable to be caused to a person and in this case to an individual member of SC/ST and not to a group of members or public in general.

11. x x x x x x x x x

12. That being so, we hold that derogatory utterance made in generalized terms in a public gathering, even in the name of caste would not attract an offence u/s 3(1)(x) unless it was directed against an individual member of the caste/Tribe and the person making it knew that the victim belonged to SC/ST. For sub-section (xi) also, it was an essential requirement that the person using force or assaulting a women of SC/ST must know that she belonged to that caste/Tribe.

13. It does not, therefore, appear to us that uncontroverted allegations contained in FIR No. 678/01, even if taken on face value, would attract an offence under sub-sections (1)(x) or (1)(xi) of SC/ST (POA) Act 1989. This is so because petitioner had made the utterance "CHUDE CHAMARON TUMHE MAAR DUNGA MAIN TUMSE NAHIN DARTA" in generalised terms. It was not

directed against any particular member of SC/ST to attract the offence u/s 3(1)(x) of the Act. Nor was it shown or known whether he knew anyone in the group or crowd to be a member of SC or ST to whom the utterance could be linked. The same holds true of the alleged offence under the other sub-section. The allegations in the FIR nowhere disclose that petitioner had assaulted or used force against any woman in the gathering whom he knew to be belonging to SC/ST. That is not to suggest that allegations made in the FIR had to state all the ingredients of the offence. But the allegations were required to lay at least the factual foundation for attracting the offence under section 3(1)(x) and (xi) which is lacking in the present case."

(Emphasis supplied)

35. The case of the complainant, as stated in her complaint, is that the petitioner:

"is continuously harassing and abusing on my caste on social network sites/facebook). Since 18 July 15 till today 1 Aug 15 she is updating a bad words like cheap, kutta, donkey etc for DHOBHI's. As I also belong from DHOBHI category, it is unacceptable for me. I want you to take a legal action according to SC/ST Act as it is very insulting & dominating updates put by her for DHOBHI community."

(emphasis supplied)

36. From the aforesaid complaint itself it would be seen that the complaint of the complainant/respondent no. 2 is not that the petitioner had insulted, or intimidated her with intent to humiliate her in particular, i.e. individually, by writing the offending words on her facebook 'wall'. The complaint of the complainant/respondent no. 2 is that the petitioner is "*harassing and abusing on my caste on social network sites/facebook*" and that she is using bad words "*for Dhobi's*". It is because respondent no. 2/complainant is a member of the Dhobi community, that she has taken affront, as the statements of the petitioner were not acceptable to her. Thus, it is not even the complainant's case in her complaint that the petitioner has intentionally insulted or intimidated with intent to humiliate her individually or "a member" of a scheduled caste i.e. Dhobi caste/community. It is not the complainant's case that she was a friend of the petitioner on the facebook. Consequently, the posts put by the petitioner on her facebook wall did not automatically show up on the complainant's facebook account. The offending posts put by the petitioner on her facebook 'wall' do not, directly or indirectly, name or refer to respondent no. 2/complainant. Even if one were to accept that the background in which the petitioner has put up her posts on her facebook 'wall' is that the petitioner and respondent no. 2 are co-sisters - married to two brothers, and there is acrimony between them in the family, in my view, that would not suffice to conclude that the posts put by the petitioner on her facebook 'wall' are intentional insults or intimidation with intent to humiliate the complainant.

37. A perusal of the offending posts put by the petitioner on her facebook 'wall' do not show that they were directed against any individual member of any scheduled caste or scheduled tribe. In *D.P. Vats* (supra), the Division Bench set out the ingredients of the offence u/s 3(1)(x) and 3(1)(x)(1) of the SC/ST Act which have been taken note of herein above. To constitute an offence under the said provision, the person making the alleged derogatory utterances must know that the person whom he was intentionally insulting or intimidating with intent to humiliate was a member of the SC/ST. Secondly, the intentional insult or intimidation to humiliate must be directed against and made to a member of the scheduled caste or scheduled tribe on account of the fact that the said person is a member of the scheduled caste or scheduled tribe. The Division Bench specifically observed that if utterances was not directed against a member of scheduled caste or scheduled tribe, but were directed

against members of scheduled caste or scheduled tribe or the community as a whole, it would not make out an offence u/s 3(1)(x). The Division Bench in *D.P. Vats* (supra) deliberated on the words "a member" occurring in section 3(1)(x) and observed that the said words leave no scope for doubt that the utterances should be directed against the individual member and not against a group of members or crowd or public in general, though they may comprise of members of scheduled caste and scheduled tribe. Generalized statements against all and sundry, and not against specific individual belonging to the scheduled caste or scheduled tribe, would not make out an offence u/s 3(1)(x) of the SC/ST Act.

38. Thus, in my view, the first two ingredients of the offences u/s 3(1)(x) - as set out in *D.P. Vats* (supra), viz. (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST, are not present in the facts of the present case.

39. I now proceed to consider the second limb of the submission of Mr. Mittal that the facebook 'wall' of a member cannot be described as a place within public view. The issue as to what constitutes a place within public view was considered in *Daya Bhatnagar* (supra).

40. *Daya Bhatnagar* (supra) was a decision rendered by the learned Single Judge on a reference being made to him on account of a difference of opinion between two learned Judges constituting the Division Bench. The learned Single Judge S.K. Aggarwal, J. concurred with the view of B.A. Khan, J and disagreed with the view of V.S. Aggarwal, J.S.K. Aggarwal, J. approved the following observation of B.A. Khan, J. in his opinion:

> *"If the accused does not know that the person whom he was intentionally insulting or intimidating or humiliating is a member of SC or ST, an offence under this section would not be constituted. Similarly, if he does not do all this at any place within "public view", the offence would not be made out. Therefore, to attract an offence under Section 3(i)(x), an accused must know that victim belongs to SC/ST caste and he must intentionally insult, intimidate and humiliate him/her at a place within "public view". The place need not be a public place. It could be even at a private place provided the utterance was made within "public view"."*
>
> (emphasis supplied)

41. S.K. Aggarwal, J. proceeded to examine the meaning of the expression "public view" used in section 3(1)(x) of the SC/ST Act. He referred to the meaning of the word "public" found in legal dictionaries, and also referred to the Statement of Object and Reasons of the SC/ST Act. After analyzing the provisions of the SC/ST Act and in particular sub-clause (x) of section 3(1) of the said Act - which makes "utterances punishable", he observed:

> *"The Legislature required 'intention' as an essential ingredient for the offence of Insult', "intimidation' and "humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant*

portion of his judgment reads as under:

> *"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used.*
>
> *(emphasis supplied)"*

42. In *Daya Bhatnagar* (supra), the majority view taken by the Court was that to attract the offence under Section 3(1)(x) of the SC/ST Act the place where the offending action takes place should be within public view that does not mean that the place should be a public place. It could well be a private place, provided the utterance was made within public view. "Public view" is understood to mean a place where public persons are present - howsoever small in number they may be. Public persons are independent and impartial persons who are not interested in any of the parties. The same has been explained to mean persons not having any kind of close relationship or association with the complainant. Such persons are as good as strangers who do not have any liking for the complainant through any close relationship or any business commercial or other vested interest and who are not participating members with him in any way.

43. When a member registered with facebook changes the privacy settings to "public" from "private", it makes his/her writings on the "wall" accessible not only to the other members who are befriended by the author of the writings on the "wall", but also by any other member registered with facebook. However, even if privacy settings are retained by a facebook member as "private", making of an offending post by the member - which falls foul of Section under Section 3(1)(x) of the Act, may still be punishable if any of the befriended facebook members do not suffer from the limitations carved out in *Daya Bhatnagar* (supra), i.e. if any of the befriended facebook members of the author of the offending post is an independent and impartial and not interested in any of the parties, i.e. is not a person having any kind of close relationship or association with the complainant. Therefore, to my mind, it would make no difference whether the privacy settings are set by the author of the offending post to "private" or "public". Pertinently, Section 3(1)(x) of the Act does not require that the intentional insult or intimidation with intention to humiliate a member of the Scheduled Caste or Scheduled Tribe should take place in the presence of the said member of the Scheduled Caste or Scheduled Tribe. Even if the victim is not present, and behind his/her back the offending insult or intimidation with intention to humiliate him/her - who is a member of the Scheduled Caste or a Scheduled Tribe takes place, the same would be culpable if it takes place within public view.

44. The next issue that arises for consideration is whether, on a reading of the complaint/FIR in question, it could be said that the same discloses facts sufficient to constitute the offence, in the light of the essential requirement that the intentional insult or intimidation with intention to humiliate should take place in any place within public view.

45. Pertinently, the complainant does not claim that the utterances made by the petitioner on her facebook 'wall' were made in full public view directed against her, or that there were witnesses when the said utterances were so made and directed against her, or till the time the offending posts remained on the wall of the facebook account of the petitioner. She does not name any other person - a member of the

public who may have read the allegedly offending posts of the petitioner put up on the petitioner's facebook wall.

46. In *Om Prakash Rana* (supra), the Court observed:

> *"9. In* Deepa Bajwa *v.* State *(supra), where quashing of FIR under section 3 of SC/ST Act, 1989 was sought, it was held by this court that for ascertaining that a complaint on the basis of which the complainant seeks registration of FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the FIR ... ...*
>
> *10. In the present case, the original complaint lodged by the complainant does not mention in whose presence the offending words were used by the respondents/accused persons... There is nothing on record to show that the offending words were used in full public view. The names of alleged witnesses are not mentioned in the complaint dated 18.7.2012. The witnesses i.e. Meenakshi and Durga Dutt have alleged themselves to be the eye witnesses. But their names have not been stated by the complainant in her complaint. The supplementary statement dated 27.8.2012 of the complainant giving the names of alleged witnesses can't fill up the lacuna. There is also delay of 3 days in lodging the FIR. The delay is not explained. The basic ingredients of Section 3(x) of the SC/ST Act are missing in the present case ... ..."*
>
> (emphasis supplied)

47. Thus, the complaint of respondent no. 2/complainant does not even satisfy the test laid down in *Om Prakash Rana* (supra).

48. In the light of the above discussion, I am of the considered view that the necessary ingredients of the offence constituted under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes Act, as discussed above, are not made out on the reading of the complaint/FIR.

49. For all the aforesaid reasons, the aforesaid FIR as well as the proceedings qua the petitioner under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are hereby quashed.

MANU/DE/0085/2004

Equivalent Citation: 109(2004)DLT915

IN THE HIGH COURT OF DELHI

Crl.W. No. 402 of 2001

Decided On: 17.01.2004

Appellants: **Daya Bhatnagar and Ors.**
Vs.
Respondent: **State**

Hon'ble Judges/Coram:
Surinder Kumar Aggarwal, J.

Counsels:
For Appellant/Petitioner/plaintiff: Anil Kumar Jha, Binay Kumar Das and Girdhar Govind, Advs

For Respondents/Defendant: Pawan Sharma, Adv.

JUDGMENT

Surinder Kumar Aggarwal, J.

1. This reference has been made consequent upon a difference of opinion on the interpretation of the expression 'public view' in Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act or SC/ST Act'), in the Division Bench of this Court, consisting of Hon'ble Mr. Justice B.A. Khan and Hon'ble Mr. Justice V.S. Aggarwal (as His Lordship then was), while hearing the petition seeking quashing of the First Information Report (for short 'FIR') under Section 3(1)(x) of the Act against them. Brief resume of facts, necessary for appreciation of the controversy, are as follows:

2. Petitioners and complainants are neighbours residing in the same complex at Vikaspuri Extension, Delhi. On 14.3.2001 there was some dispute amongst them, which resulted in registration of two cross cases on 28.3.2001. One under Section 3(1)(x) of the Act against petitioners and other under Sections 354/34 of the Indian Penal Code, against the complainant and some witnesses of earlier case. Prosecution case is that on 14.3.2001 Babu Lal (since deceased) resident of flat No. 2-A, Vikaspuri lodged a report to the police complainant that at about 7.15 p.m. he was sitting in the adjoining flat No. 1A along with Rakesh Kumar, Dr. C.P. Kohli, Rakesh Nagpal, N. Kukreja and H.C. Saini residents of flat Nos. 1A to 6A, when Mrs. Veena Das, Madhu Srivastava and Prem Shankar Madan residents of flat Nos. 3D, 3C and 3B of Pocket-A (petitioners 9, 11 and 15), came there and called him "Chura Chamar Babu Lal Chura Chamar" (hereinafter 'the offending words') without any reason. This complaint was signed by Babu Lal, as well as four witnesses. On 15.3.2001 (next day), Babu Lal's wife Mrs. Meena Kumari lodged another report alleging that on 14.3.2001 at about 7.20 p.m., she was present at her flat, along with her children, when a group of 25-30 ladies came there and banged the door, saying "Churi Chamari come out of the house, you are not up to our standard and you cannot live in this block". She was humiliated and insulted on the basis of her caste; she became unwell and had to go to the doctor to take medicine. Surnames of fourteen ladies of

that group were mentioned in the complaint, along with their respective flat numbers (petitioners 1 to 14). Babu Lal, thereafter sent reminders to the senior police officials on 15th and 20th March, 2001 praying for suitable action. On 28th and 29th March, 2001, he also sent a telegram and then a complaint to the Commissioner of Police, alleging that he was being pressurised to withdraw his complaint and was threatened of false implication in some cases.

3 . On 19.3.2001, Mrs. Prabha Malhotra, Veena Das, Anita Gupta and Madhu Srivastava (petitioner Nos. 6, 9, 10 and 11) had also given a report to the police, alleging that on 14.3.2001 they had gone to the house of Babu Lal, for collecting monthly subscription, as he was not paying the same for the past few months; Babu Lal came out in underwear and at his asking they went inside the house where they found Mr. Kohli, Nagpal and Saini (three of the witnesses mentioned in Babu Lal's complaint, referred above), taking liquor. It is alleged that Babu Lal held Veena Das from her blouse, laughed and started pulling her towards him; when Mrs. Srivastava came to her rescue, Nagpal pushed her towards him saying "it was a good piece'; Kohli then pushed Prabha Malhotra and started kissing the complainant.

4 . On the above three reports, on 28.3.2001, two cases were registered at Police Station Tilak Nagar. The first case under Section 3(i)(x) of the Act on the reports of Babu Lal dated 14.3.2001 and his wife Meena Kumari dated 15.3.2001 against the petitioners vide FIR No. 14/2001 which is sought to be quashed and the second under Sections 354/34, IPC on the report of petitioners 6, 9 and 11 against Babu Lal and the witnesses mentioned in his complaint vide FIR No. 144/2001. Fifteen petitioners by a joint petition sought quashing of FIR No. 143/2001 under Section 3(i)(x) of the Act praying that ingredients of the offence are not made out and registration of FIR is an abuse of the powers vested in the police.

5 . Hon'ble Justice V.S. Aggarwal (as His Lordship then was) after exhaustively dealing with facts and the law referred to the meaning of the words "public" and "view" as explained in Corpus Jurisdiction Secumdum, Black's Law Dictionary (6th edition) page 1568, Stroud's Judicial Dictionary of Words and Phrases (6th Edition Volume 3) and observed that the expression "public view" does not necessarily mean that large number of persons should be present to constitute public; and that even when one or two members of the public hear and view the offending words being used, offence would be made out, provided other ingredients of section are satisfied. It was held:

> ".....In other words, it is patent that, Therefore, to bring a matter within the scope and ambit of expression "public view" firstly the words must be uttered at a place which is within public view and it is unnecessary that the number of public persons herein should be more than one. Even if one or two members of the public hear and view, as the case may be, the same and the other ingredients of section are satisfied, the case would fall within the ambit of said provision."

6 . The learned Judge thereafter found that in the report of Meena Kumari wife of Babu Lal, basic ingredient of "public view" for the offence under Section 3(i)(x) of the Act is not made out as the offending words were not used, in the presence of any public person and her complaint is liable to be quashed. But, on the report of Babu Lal it was held that the offending words were used in the presence of four persons, named in the complaint, Therefore, requirement that the offending words should be used within "public view" is satisfied and the Trial Court was directed to proceed with

the trial.

7. However, Hon'ble Justice B.A. Khan while interpreting the expression "public view" in Section 3(i)(x) of the Act went a step further. Learned Judge after referring to the principles governing interpretation of statutes as laid down by the Supreme Court in RMD Chamarbaugwalla v. Union of India, MANU/SC/0020/1957 : [1957]1SCR930 and Commissioner of Income Tax, Orissa v. N.C. Budharaja and Company and Anr., MANU/SC/0914/1994 : [1993]204ITR412(SC) , held that the report of Babu Lal is also liable to be quashed, inter alia, on. the grounds; (i) that persons present with Babu Lal were his associates, friends, participating members and were not independent persons so as to constitute "public" within the meaning of Section 3(i)(x) of the Act, particularly when these four witnesses are accused in the counter FIR No. 144/2001; and (ii) that even otherwise, Babu Lal's complaint would not survive after his death as it would be farcical to allow it to continue and to subject the accused to rough and tumble of protracted Court process which could amount to its abuse and result in miscarriage of justice.

8. On the above difference of opinion, the learned Court framed the following two questions and placed the matter before Hon'ble the Chief Justice for an appropriate reference under the Rules:

> "(1) What is the correct and real meaning of expression "public view" occurring in Section 3(i)(x) of SC/ST (POA) Act, 1989 and whether it would include the view of the accused in a counter FIR?
>
> (2) Whether FIR No. 143/2001 arising out ofcomplaint of Babu Lal (deceased) would survive or was to be quashed?"

9. I have heard learned Counsel for the parties and have been taken through the record. Mr. D.C. Mathur and Mr. S.S. Gandhi, Senior Advocates and Mr. Sushil Bajaj, learned Counsel appearing in the connected petitions also rendered valuable assistance.

10. What is the true meaning and scope of the expression "public view" used in Section 3(i)(x) of the Act? Is it necessary that the derogatory or humiliating words to constitute an offence, should be uttered in the presence of the independent persons? Or would it be sufficient, if these are used, in the presence of any one or two members of the public, whether they are relatives, friends, associates or otherwise connected with the complainant? These are questions which require determination.

11. Law with regard to the interpretation of the statute is well settled by several authoritative pronouncements of the Supreme Court. While interpreting any statute, the aspects which need consideration are (i) what was the law applicable before the Act was passed; (ii) what was the mischief or the defect for which the law earlier did not provide; (iii) what was the remedy the Legislature provided; and (iv) the reason for the remedy. The Court is required to adopt a construction which suppresses the mischief and advances the remedy and to add force, life, cure and remedy pitfalls, if any, according to the true intent of the makers of the Act. For this, reference may be made to seven-Judge Bench decision of the Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar, MANU/SC/0083/1955 : [1955]2SCR603 ; and Directorate of Enforcement v. Deepak Mahajan, MANU/SC/0422/1994 : 1994CriLJ2269 .

12. It is also well settled that FIR can be quashed, if the allegations taken in entirety at their face value, prima-facie do not constitute any offence; if the allegations are

absurd or inherently improbable, if there is any legal bar to the institution of such proceedings; and if the criminal proceeding is manifestly attended with mala fide and/or maliciously instituted with ulterior motive for wreaking vengeance, etc. In this regard reference may be made to the principles laid down by the Supreme Court in State of Haryana v. Bhajan Lal MANU/SC/0012/1992 : AIR1992SC81 , and several other judgments.

13. It would be helpful to re-call the procedure required to be adopted where the Judges of the Court of appeal are equally divided. It is provided in Section 392, Cr.P.C. The Supreme Court in Union of India v. B.N. Ananthapadamanabhiah, MANU/SC/0207/1971 : 1971CriLJ1287 , while approving the law laid down in its earlier decision in Hethubha v. State of Gujarat, MANU/SC/0129/1970 : 1970CriLJ1138 , laid down that the third Judge could not only deal with the difference between the two learned Judges but could also deal with the whole case. The same principle would apply here.

14. Now, the state is reached to reproduce Section 3(i)(x) of the Act, containing the words 'public view', which call for an interpretation. It reads:

> "3. Punishments for offences of atrocities--
>
> (1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,--
>
> (i) to (ix). xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.
>
> (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, in any place within public view:
>
> (xi to (xv) xxxxxxxxxxx
>
> shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.
>
> (2) xxx xxx xxx"

15. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows: (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present. I find myself in agreement with the following observations of learned brother Mr. Justice. B.A. Khan while expounding the ingredients of the offence:

> >"If the accused does not know that the person whom he was intentionally insulting or intimidating or humiliating is a member of SC or ST, an offence

under this section would not be constituted. Similarly, if he does not do all this at any place within "public view", the offence would not be made out. Therefore, to attract an offence under Section 3(i)(x), an accused must know that victim belongs to SC/ST caste and he must intentionally insult, intimidate and humiliate him/her at a place within "public view". The place need not be a public place. It could be even at a private place provided the utterance was made within "public view"."

16. The difficulty only is as of what is the true and correct import of the expression "public view" which is used by the Legislature in contra distinction to the expression "private view". The 'view' here means sight or vision and hearing. Only meaning of the word "public" is left to be found in the context in which it is used.

17. The expression "public" is a polymorphous word, which assumes different colours in different context. Judges and jurists have so far not found it possible to work out a complete logical definition of the words "public" universally applicable to all situations. Corpus Jurisdiction (page 844) defines "public" as under:

"PUBLIC AS A NOUN does not have a fixed or definite meaning; it is a convertible terms.

In one sense, the "public" is everybody; and accordingly "public" has been defined or employed as meaning the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or country; the people; the whole body politic; the whole body politic, or all the citizens of the state.

In another sense the word does not mean all the people, or most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place, the people of the neighborhood.

'B. As an adjective--1. In General. It is said to be very difficult, if not impossibly to frame a definition for the word "public" that is simpler or clearer than the word itself; a convertible term, used variously, depending for its meaning upon the subjects to which it is applied. It has two proper meanings."

18. The SC/ST Act was enacted as the laws like the Protection of Civil Rights Act, 1955 and provisions of the Indian Penal Code was found inadequate to arrest the commission of atrocities against members of Scheduled Castes and Scheduled Tribes. A special legislation to check and deter crimes committed by non-Scheduled Castes and Scheduled Tribe members thus became necessary. The statement of objects and reasons of the Act reads:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. Because of the awareness created amongst the Scheduled Castes and the

> Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on the mass, killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes."

19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of Insult', "intimidation' and "humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

> "I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

20. In the light of the above discussion, one part of the first question under reference, namely, "What is the correct and real meaning of expression "public view" occurring in Section 3(i)(x) of SC/ST (POA) Act, 1989," stands answered.

21. The second part of the above question; "whether it would include the view of the accused in the counter FIR?" still remains to be addressed. In my considered view a witness cannot be termed to be 'interested', 'biased' or 'partial' merely because he is made an accused in the counter FIR, unless attending circumstances, prima facie,

suggest the same, like simultaneous lodging of cross FIRs, where both the parties are injured or where there is previous enmity or other strong motive for false implication. Lodging FIR against the complainant or the witnesses of the offence under Section 3(i)(x) of the Act, at the belated stage would not be enough. Otherwise whenever an offence is alleged to have been committed under Section 3(i)(x) of the Act, the accused would be always eager to get a counter FIR registered against the complainant or the witnesses by hook or by crook, to defeat the earlier FIR against him. This cannot be permitted in law.

22. The above interpretation finds support from the following decisions of this Court in (i) Surinder Nath and Anr. v. State of Delhi and Anr., (Crl.W. No. 687/ 2001), decided on 26.7.2002. Petitioner was working as an accounts officer. On the report of two employees of the same department, FIR under Section 3(i)(x) of the Act was registered. The employees alleged that when they approached the petitioner for sanction for withdrawal of money from their Provident Fund account; he and the Superintendent working under him refused to entertain their application, on the ground that the same was not forwarded by the concerned office in charge; when they raised objection, petitioner allegedly used humiliating words 'Chamar Ki Bachi' against them. On these facts, it was held that ingredient of the offence was not made out, as it was not committed in "public view". The Division Bench held that the FIR was liable to be quashed; (ii) In Ram Nath Sachdeva v. Government of NCT of Delhi, MANU/DE/0713/2001 : 93(2001)DLT741 , the complainant along with one Shashi Pal went to the house of accused persons where the offending words were allegedly used. The FIR was quashed. It was held that alleged offending words were not used in the "public view". (Justice V.S. Aggarwal, however, found himself in disagreement with this view); and (iii) In Mukesh Kumar Saini and Ors. v. State (Delhi Administration), MANU/DE/0745/2001 : 94(2001)DLT241 , there was a fight between the two groups while one Mukesh was being dragged, he alleged that the accused person uttered humiliating words. It was held that neighbours had not arrived by then, Therefore, ingredient of 'public view' were not made out and bail was granted.

23. Applying the above principles to the facts at hand, here there is nothing to even prima facie show that the four witnesses mentioned in the complaint had any business, or commercial, or any other link with complainant. Or that they had other vested interest, so as to deprive them of the status of being independent persons within the meaning of the expression "public view". From the mere fact that witnesses were present at the house of the complainant when the offending words were allegedly used, by itself, is not enough to conclude that they were complainant's associates or not independent persons. No such presumption can be raised. This could be probed during investigation, and can be shown during the trial. It may be recalled at the risk of repetition that on 14.3.2001, after the incident, police reached the spot. When the FIR was lodged by Babu Lal, it was also signed by four other persons, who are witnesses. Babu Lal sent several reminders to the police apprehending that he was being threatened of false involvement in some case, if he does not withdraw his complaint. Mrs. Prabha Malhotra, Mrs. Veena Das, Mrs. Anita Gupta and Mrs. Madhu Srivastava, (petitioner Nos. 6, 9, 10 and 11) respectively, submitted a complaint to the police for the first time, on 19.3.200 alleging that on 14.3.2001 (five days earlier), the complainant Babu Lal and the witnesses in the earlier case had outraged their modesty and a counter case under Sections 354/34, IPC was registered by the police on this complaint only on 28.3.2001. Thus, neither this delayed FIR nor the mere presence of these witnesses at the house of Babu Lal, prima facie, are enough, to categorize them as interested and biased, so as to exclude them from being the 'public', within the meaning of the expression "public

view" under Section 3(i)(x) of the Act.

24. The other ground on which FIR lodged by Babu Lal (deceased), has been ordered to be quashed by learned brother Justice A.B. Khan, finds its roots in the second question under reference: "whether FIR No. 143/2001 arising out of complaint of Babu Lal (deceased) would survive or was to be quashed?" Petitioners and complainant are living in the same complex. It appears that there was some quarrel amongst them on 14.3.2001. Police was called and Babu Lal lodged the report. It was argued that Babu Lal, unfortunately, died in an accident in the same complex. True, the primary evidence in the case would have been his statement, which would not be available during trial. But there are four other witnesses mentioned in the complaint itself, namely Dr. C.P. Kohli, Rakesh Nagpal, N.N. Kukreja and H.C. Saini. After investigation challan has been filed and cognizance has been taken. The question as to what value can be attached to their statements cannot be gone into at this stage and no case is made out for quashing the FIR on this ground as well.

25. To conclude, I am in complete agreement with the interpretation put by Hon'ble Mr. Justice B.A. Khan to the expression "public view" in Section 3(i)(x) of the Act. But, with great respect to the learned brother Justice Khan, I have not been able to persuade myself to agree to the conclusion reached by him on facts. "Public view" envisages that public persons present there should be independent, impartial and not having any commercial or business relationship, or other linkage with the complainant. It would also not include persons who have any previous enmity or motive to falsely implicate the accused persons. However, merely because a witness, who is otherwise neutral or impartial and who happens to be present at the house of the victim, by itself, cannot be disqualified. Again, lodging of the counter FIR by the accused against witnesses of the earlier case would not ipso facto deprive them of their status as neutral witnesses, unless the attending circumstances suggest otherwise, like simultaneous lodging of cross FIRs where both parties are injured. Further, FIR also cannot be quashed because the complainant has died. Here the prosecution case is based not only on his statement but also the statement of four other persons. In short, each case would depend on its own facts and no strait-jacket formula of universal application can be laid down. In view of the above, no case for quashing of the FIR, at this stage, is made out and the matter should be left to be dealt with by the Trial Court where the challan has been filed and cognizance taken. More so, when on the report of some of the petitioners, in the counter case under Sections 354/34, IPC challan against the witnesses has also been filed.

26. No other point was urged. For the foregoing reasons, the petition for quashing the FIR is liable to be dismissed. The reference stands answered accordingly. Any observation made herein, would not affect merits of the case during trial in any manner.

27. Let the matter be placed before the appropriate Bench, subject to the orders of the Hon'ble the Chief Justice, for further orders on 13th February, 2004.

2021 SCC OnLine SC 343

In the Supreme Court of India
(BEFORE D.Y. CHANDRACHUD AND M.R. SHAH, JJ.)

Patan Jamal Vali ... Appellant;

Versus

The State of Andhra Pradesh ... Respondent.

Criminal Appeal No 452 of 2021 (Arising out of SLP(Crl) No 1795 of 2021)

Decided on April 27, 2021

The Judgment of the Court was delivered by

D.Y. CHANDRACHUD, J.:— This judgment has been divided into the following sections to facilitate analysis:

A Factual Background

B Proceedings before this Court

C Analysis

C.1 Intersectionality : The Different Hues of Identity

C.2 Disability and Gender : Twin Tales of Societal Oppression

C.3 The 'Caste' that is Difficult to Cast Away : Protection of Members of Scheduled Castes and Scheduled Tribes

C.4 Section 3(2)(v) of SC & ST Act

C.5 Punishment under Section 376 of the IPC

D Conclusion and Summary of Findings

A Factual Background

2. Leave granted.

3. This appeal arises from a judgment of a Division Bench of the High Court of Andhra Pradesh dated 3 August 2019. The High Court has affirmed the conviction of the appellant for offences punishable under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989[1] and Section 376(1) of the Penal Code, 1860.

4. The appellant has been sentenced to suffer imprisonment for life for each of the above offences, the substantive sentences being directed to run concurrently. In addition, the appellant has been sentenced to pay a fine of Rs. 1,000 for each of the offences and in default to suffer imprisonment of six months.

5. The appellant was residing in Gajulapalli village and was engaged in carrying out manual work for two years prior to the incident. PW2 who is blind since birth used to live with her mother (PW1) and brother (PW3). PW3 and LW5 are the sons of PW1. They were also engaged in manual work together with the appellant, at the same place. The appellant, according to the prosecution, lived in the same village and regularly visited the house of PW1 due to his acquaintance with her sons.

6. At about 9 am on 31 March 2011, PW1 was attending to her household chores at a public tap which was within a distance of fifty feet and her sons were cutting fire wood in the vicinity. The appellant is alleged to have enquired about her sons when PW1 replied that her spouse and sons were chopping fire wood and asked him to wait for a while. After half an hour, on hearing the voice of her daughter (PW2) in distress, she rushed to the house and found that the door was locked from inside. Upon raising an alarm her husband and sons rushed to the house. The appellant opened the door and tried to escape but was apprehended at the spot. Upon entering the house, PW1

observed that PW2 was lying on the ground in a nude condition and was bleeding from her genitals. The clothes of PW2 were torn and stained with blood. Upon enquiry, PW2 is alleged to have stated that the appellant came to the house and enquired about her brothers; he locked the door and fell on her, gagged and raped her.

7. The case of the prosecution is that at 10 am, the Sub-Inspector of Police (PW9), Mahanandi Police Station, who received a call from PW4, a cousin of PW1, rushed to the scene of the occurrence. By that time, the Circle Inspector of Police, Nandyal Rural Police Station had also arrived and the villagers handed over the appellant to him. PW1 furnished a written report to the police which was registered as Crime No 28/2011. PW11 sent the victim to the Government Hospital where she was examined by PW10, the Civil Surgeon at the District Hospital. The medical examination revealed that PW2 was blind. The medical report of the examination of PW2 has been extracted in the judgment of the Sessions Judge and the High Court and reads as follows:

> "(1) Contusion of 1 × 1 cm on left cheek, red in colour, (2) Pubic Hair develop, breast develop (3) Axillary Hair developed. On examination of vagina is lacerated at 4-00 O' clock position, bleeding present. 3 swabs and slides taken from Hymeneal Orifice Vaginal canal and near cervix, vaginal wall sutured with 10 Chromicatgut, hair and nail clippings taken and she i1ssued the wound certificate under Ex.P.6 and gave her final opinion under Ex.P.8 after receiving the report from A.P.F.S.L. and she opined that the evidence is suggestive of penetration of male genital parts."

8. Charges were framed against the appellant under Section 376(1) of the Penal Code and Section 3(2)(v) of the SC & ST Act. To substantiate its case, the prosecution examined eleven witnesses, PWs 1 to 11 in addition to which, it relied on exhibits P1 to P12 and MOs 1 to 8. On the closure of the evidence, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973. By a judgment dated 19 February 2013 the Special Judge for the Trial of Cases under the SC - ST (POA) Act - Cum - VIth Additional District and Sessions Judge convicted the appellant for offences under Section 3(2)(v) of the SC & ST Act and Section 376(1) of the Penal Code. Based primarily on the testimonies of PW1, PW2 and PW3 the learned Sessions Judge held that:

(i) The appellant had access to PW2 since he was acquainted with her brothers and was regularly visiting the house where she lived with her family;

(ii) The evidence of PW1 and PW2 was corroborated by PW3, the brother of PW2;

(iii) The narration of the incident by PW1 was duly corroborated by an independent witness and neighbour, PW5;

(iv) The oral testimony of the witnesses established that the appellant was apprehended at the scene of occurrence and when PW1 who was accompanied by PW3 and PW4 opened the door of the house, the appellant was apprehended while attempting to escape and PW2 was found bleeding from her injuries lying in a nude condition on the ground;

(v) PW2 who was blind by birth had identified the appellant by his voice which was familiar to her since the appellant was regularly visiting the house;

(vi) PWs 1, 3, 4, 5 apprehended the appellant handed him over to PW11 and the appellant was taken to Mahanandi Police Station;

(vii) PW5 is the neighbour whose house was opposite to that of PW1 and was a natural witness. PW4 though related to PW1 had also corroborated the testimony of PW1;

(viii) The clothes of PW2 had been duly seized;

(ix) The narration of the incident by PW2 was trustworthy and was duly corroborated by PW1 and PW3; and

(x) The oral testimony was consistent with the medical evidence and the deposition of PW10, the doctor at the government hospital who deposed in that regard.

9. The Sessions Judge, in coming to the conclusion that an offence under Section 3 (2)(v) was established observed thus:

"39. Coming to the facts of the present case P.W.11 in the cross examination stated that P.W.1 and P.W.2 did not state before him that since P.W.2 belongs to scheduled caste, accused committed the offence. The learned defence counsel argued that in view of the evidence of P.W.11, the prosecution failed to prove that the accused committed the offence on the ground that the victim belongs to scheduled caste. I do not find any merit in the above argument for the reason that Ex. P.1 discloses that the victim belongs to Madiga of Scheduled Caste. P.W.1 the mother of the victim girl is an illiterate village rustic woman simply because she has not mentioned in the report or in the statement to the police that accused did commit the offence on the ground that the victim belong to scheduled caste is no way fatal to the case of the prosecution to establish the guilt of the accused for the offence under section 3 (2) (v) of SC/ST (POA) Act.

40. It is needless to say that if the victim belongs to upper caste than the caste of the accused, particularly in village atmosphere, I am of the considered view that he would not have done the act and dared to pounce upon her, and commit the offence of rape at her own house at about 9.30 am in morning when her mother was working near the house at public tap and her house is situated in the residential locality. This court is of the view that as the victim girl is helpless, blind and belongs to scheduled caste, so that the accused developed evil eye on her and taken advantage of her loneliness committed the heinous crime of rape against her. Hence I am not convinced with the argument of the learned defence counsel and this court held that the accused committed the act of rape on the victim un-married girl of 19 years at the time of the incident and blind by birth and he did commit the act on the ground that she belongs to scheduled caste and on the impression that she cannot do anything against him. Hence, the prosecution has established the guilt of the accused for the offence under section 3 (2) (v) of SC/ST (POA) Act."

10. On the aspect of sentence, the Sessions Judge observed:

"When questioned about the quantum of sentence in respect of the. offence under section 376 (1) IPC, the accused pleaded to take lenient view stating that he is a poor person and eking out his livelihood by doing coolie work.

In view of the facts and circumstances of the case that it is a heinous crime of rape committed against a blind un-married girl of 19 years of age, I am not inclined to exercise my discretion to give lesser punishment to the accused as it is not a fit case to take a lenient view.

The accused is sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- i/d SI for 6 months for the offence punishable under section 376 (1) of IPC and also sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- i/d SI for 6 months for the offence under section 3 (2) (v) of SC/ST (POA) Act. Sentences shall run concurrently for the whole life. M.0.1 to M.0.8 shall be destroyed after the expiry of appeal time."

11. The High Court by its judgment dated 3 August 2019 affirmed the conviction and sentence imposed by the Sessions Court. The High Court has held that the testimonies of PW1, the mother of PW2; and of PW2 were consistent and duly corroborated by PW3, the brother of PW2 and by PW4 and PW5. The High Court adverted to the medical evidence and, in particular, the deposition of PW10. The prosecution was held to have established its case beyond reasonable doubt.

12. Before the High Court, it was urged that the ingredients of the offence under Section 3(2)(v) were not established as the offence was not committed "on the

ground" that PW2 belongs to a Scheduled Caste. The High Court declined to accede to the submission, observing:

> "Section 3(2)(v) of the Act provides that the offence gets attracted if it is committed against a person knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such members. Even otherwise still the offence under Section 376(1) I.P.C. is made out."

B Proceedings before this Court

13. On 19 February 2021, this Court at the preliminary hearing of the Special Leave Petition adverted to the submissions of the learned Counsel appearing on behalf of the appellant and passed the following order:

> "2 Mr Harinder Mohan Singh, learned counsel appearing on behalf of the petitioner, has adverted to the findings contained in paragraph 39 of the judgment of the Sessions Court dated 19 February 2013 (Annexure P-12). Learned counsel submits that in view of the expression "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe" in Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, which has been interpreted in the decisions of this Court, an offence under this provision has not been established. Hence, the imposition of a sentence of life imprisonment in respect of an offence under Section 376 of the Penal Code, 1860 1860 was not in accordance with law.
>
> 3 Issue notice, confined to the aforesaid submission, returnable in six weeks.
>
> 4 Liberty to serve the Standing Counsel for the State of Andhra Pradesh, in addition."

14. Notice has been issued by this Court confined to the above submission. However, before we proceed to analyse the submission, we are unequivocally of the view that the offence under Section 376(1) has been proved beyond reasonable doubt. The testimonies of PW1, the mother of PW2 and of PW 2, who was sexually assaulted, are clear and consistent. The oral account has been corroborated by the evidence of PW3, PW4 and PW5. The medical evidence, more particularly, the deposition of PW10 clearly establishes that PW2 was sexually assaulted. The appellant was apprehended at the spot in close proximity of the commission of the offence. The offence under Section 376 has been established beyond reasonable doubt. This Court shall now proceed to deal with the question of the conviction and sentence under the SC & ST Act.

C Analysis

C.1 Intersectionality : The Different Hues of Identity

15. The experience of rape induces trauma and horror for any woman regardless of her social position in the society. But the experiences of assault are different in the case of a woman who belongs to a Scheduled Caste community and has a disability because the assault is a result of the interlocking of different relationships of power at play. When the identity of a woman intersects with, *inter alia*, her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds. Transwomen may face violence on account of their heterodox gender identity. In such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind Scheduled Caste woman.

16. A movement for recognition of discrimination and violence emanating from the effects of the interaction of multiple grounds was pioneered by African American women in United States. Kimberly Crenshaw has been credited for coining the term intersectionality. In her seminal work on the subject, she describes the principle with the help of the following hypothetical:

> "Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination." [2]

17. In her article, Crenshaw argues that sex discrimination and race discrimination statutes, as well as the judicial opinions in the United States that she studied are narrowly tailored and address the claims of the most privileged within the targeted group. She states:

> "With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. I want to suggest further that this single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race discrimination cases, discrimination tends to be viewed in terms of sex-or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.""[3] (emphasis added)

18. She further highlights the intersectional nature of gender violence, where she states that:"[t]he singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror."

19. Intersectionality can be defined as a form of "oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone...".[4] While the model of intersectionality was initially developed to highlight the experiences of African-American women, there is a growing recognition that an intersectional lens is useful for addressing the specific set of lived experiences of those individuals who have faced violence and discrimination on multiple grounds. A single axis approach to violence and discrimination renders invisible such minority experiences within a broader group since it formulates identity as "totemic" and "homogenous".[5] Laws tend to focus on a singular identity due to the apparent clarity a monistic identity provides in legal analysis where an individual claiming differential treatment or violence can argue that "but for" that identity, they would have been treated in the same way as a comparator. Therefore, their treatment is irrational and unjustified.[6] However, such essentialization of experiences of identity groups creates a problem where intersectional discrimination or violence has occurred. This is because the evidence of discrete discrimination or violence on a specific ground may be absent or difficult to prove.[7] Nitya Iyer has argued that law based on single axis models forces claimants to ignore their own lived reality and "caricaturize themselves so that they fit into prefabricated, rigid categories".[8] Their claim will fail if they are not able to simplify their story to accord with the dominant understanding of how discrimination or violence on the basis of a given characteristic occurs.[9]

20. It is important to note that an analysis of intersectionality does not mean that we see caste, religion, class, disability and sexual orientation as merely "add ons" to the oppression that women may face. This is based on the assumption that gender oppression is oppressive in the same way for all women, only more so for women suffering marginalization on other grounds. However, an intersectional analysis requires us to consider the distinct experience of a sub-set of women who exist at an intersection of varied identities. This is not to say that these women do not share any commonalities with other women who may be more privileged, but to equate the two experiences would be to play down the effects of specific socio-economic vulnerabilities certain women suffer. At its worse it would be to appropriate their pain

to claim a universal subjectivity.

21. There is a fear that intersectionality would open a Pandora's box of "endless new discrete identity categories for every possible permutation of identity"[10]. We can avoid this trap by eschewing an identity-based conception of intersectionality in favour of a systems-based conception. Specifically, as Gauthier De Beco argues, instead of focusing on identity-categories, the intersectionality enquiry should focus on "co-constituted structures of disadvantage that are associated with two or more identity-categories at the same time".[11] By exhibiting attentiveness to the 'matrix of domination'[12] created by the intersecting patterns at play, the Court can more effectively conduct an intersectionality analysis. A legal analysis focused on delineating specific dimensions of oppression running along a single axis whether it be caste, disability or gender fails to take into account the overarching matrix of domination that operates to marginalise an individual. The workings of such a structure have been aptly stated by a woman with visual impairment (due to Albinism) in the following words:

> "I can never experience gender discrimination other than as a person with a disability; I can never experience disability discrimination other than as a woman. I cannot disaggregate myself nor can anyone who might be discriminating against me. I do not fit into discrete boxes of grounds of discrimination.
>
> Even when only one ground of discrimination seems to be relevant, it affects me as a whole person"[13]

22. Intersectionality merely urges us to have "an open-textured legal approach that would examine underlying structures of inequality"[14]. This requires us to analyse law in its social and economic context allowing us to formulate questions of equality as that of "power and powerlessness" instead of difference and sameness.[15] The latter being a conceptual limitation of single axis analysis, it may allow certain intersectional claims to fall through the cracks since such claims are not unidirectional in nature.

23. Intersectional analysis requires an exposition of reality that corresponds more accurately with how social inequalities are experienced. Such contextualized judicial reasoning is not an anathema to judicial inquiry. It will be useful to note the comments of Justice L'Heureaux-Dubé and Justice McLachlin in the Canadian Supreme Court's judgment in *R.* v. *S (RD)*[16] that, "[j]udicial inquiry into the factual, social and psychological context within which litigation arises is not unusual. Rather, a conscious, contextual inquiry has become an accepted step towards judicial impartiality…this process of enlargement is not only consistent with impartiality; it may also be seen as its essential pre-condition."

24. Single axis models of oppression are a consequence of how historically movements aiming for legal protection of marginalized populations developed. Most political liberation struggles have been focused on a sole characteristic like anti-caste movements, movements by persons with disabilities, feminism and queer liberation. Many such movements have not been able to adequately address the intra-group diversity leading to a situation where the needs of the relatively privileged within the group have received more than a fair share of spotlight. When these liberation struggles were adopted in law, the law also developed into mutually exclusive terrains of different statutes addressing different marginalities failing to take into account the intersectional nature of oppression.

25. In India, the fundamental guarantees under the Constitution provide for such a holistic analysis of discrimination faced by individuals. One of us (Justice DY Chandrachud), in *Navtej Johar* v. *Union of India*[17] applied the intersectional lens to Article 15(1) of the Constitution. In doing so, Justice DY Chandrachud observed that:

> "36. This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the State to claim

that the discrimination was based on sex and another ground ('Sex plus') and hence outside the ambit of Article 15. Latent in the argument of the discrimination, are stereotypical notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex *and* height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics."

(emphasis supplied)

26. Noting how the discrimination caused by intersecting identities amplifies the violence against certain communities (gendered/religious/otherwise), the Justice J.S Verma Committee appointed in the aftermath of the Nirbhaya incident to suggest reforms in Indian criminal law, observed that:

"34. We believe that while certain measures may have been taken over a period of time but they have been too far and too few and they certainly have not attempted to restructure and transform society and its institutions. If there has to be a society which is based on equality of gender, we must ensure that not only does a woman not suffer on account of gender but also not suffer on account of caste or religion in addition. Thus a woman may suffer a double disadvantage - a) because she is a woman, and b) because she belongs to a caste/tribe/community/religion which is disadvantaged, she stands at a dangerous intersection if poor."[18]

27. While intersectionality has made considerable strides in the field of human rights law and anti-discrimination law, it has also emerged as a potent tool to understand gender-based violence. In 1991, Crenshaw applied the concept of intersectionality to study violence against women of colour. She showed how race, gender, poverty, immigrant status and being from a linguistic minority interacted to place these women in violent relationships.[19]

28. To deal with cases of violence against women from intersectional backgrounds, Shreya Atrey proposes the model of intersectional integrity. She notes:

"Intersectional gender violence is about : (i) rejecting violations of bodily and mental integrity when perpetrated based on people's multiple and intersecting identities (intersectionality); and (ii) recognizing that violence should be understood as a whole taking into account unique and shared patterns of violations yielded by intersections of gender, race, caste, religion, disability, age, sexual orientation etc(integrity)."[20]

29. She points out that a failure to consider violence perpetrated based on multiple identities results in an inaccurate portrayal of the violence at issue which may impact the ability to obtain relief. On the other hand, a comprehensive appraisal of the intersectional nature of the violence can translate into an appropriate legal response. [21]

30. The above analysis stresses on the need for the Court to address and unpack the qualitative impact of the various identities an individual might have on the violence, discrimination or disadvantage being faced by them in the society.

C.2 Disability and Gender : Twin Tales of Societal Oppression

31. For many disabled women and girls in India, the threat of violence is an all-too-familiar fixture of their lives, contracting their constitutionally guaranteed freedom to move freely and curtailing their ability to lead full and active lives. This threat of

violence can translate into a nagging feeling of powerlessness and lack of control, making the realization of the promises held by Parts III and IV of our Constitution a remote possibility for women with disabilities.

32. In saying so, we do not mean to subscribe to the stereotype that persons with disabilities are weak and helpless, incapable of charting the course of their lives or to deprive them of the agency and bodily autonomy that we all possess and are entitled to exercise. Such a negative presumption of disability translating into incapacity would be inconsistent with the forward-thinking conceptualization of disabled lives embodied in our law and, increasingly, albeit slowly, in our social consciousness. As Saptarshi Mandal notes, in critiquing the fashion in which the Punjab and Haryana High Court dealt with the testimony of a mentally disabled and partially paralyzed prosecutrix[22], stamping a prosecutrix with the badge of complete helplessness, merely on the basis of disability, is an inapposite course of action. He notes:

> "the entire rationale behind the conviction of the accused turned on sympathy for the helpless prosecutrix and her inability to physically resist the aggressor. Even if one agrees with the judge that there cannot be a single standard of burden of proof for the disabled and the able-bodied, a differentiated scale of burden of proof must be based on the concept of vulnerability, not victimhood."[23]

33. Instead, our aim is to highlight the increased vulnerability and reliance on others that is occasioned by having a disability which makes women with disabilities more susceptible to being at the receiving end of sexual violence. As the facts of this case make painfully clear, women with disabilities, who inhabit a world designed for the able-bodied, are often perceived as "soft targets" and "easy victims" for the commission of sexual violence. It is for this reason that our legal response to such violence, in the instant case as well as at a systemic level, must exhibit attentiveness to this salient fact.

34. As the analysis by the Sessions Judge and High Court makes clear, a critical feature of this case is the fact that PW2 is blind since birth. It would be overly simplistic and reductionist to reduce her personality to her disability alone. Equally, however, the Court has to exhibit sensitivity to the heightened risk of violence and abuse that she was rendered susceptible to, by reason of her disability. We would like to utilize the facts of this case as a launching point to explore a disturbing trend that this case brings into sharp focus and is symptomatic of - that of sexual violence against women and girls with disabilities and to set in motion a thought process for how the structural realities resulting in this state of affairs can be effectively addressed. In this part of the judgment, we will first highlight the unique reasons that make these women more vulnerable to being at the receiving end of sexual violence, with the help of some illustrations. Thereafter, we will outline some challenges that are faced by such women in accessing the criminal justice system generally and the judicial system in particular. We will then outline some measures that can be taken to lower the barriers faced by them. We will finally conclude by outlining the judicial approach which should be adopted for assessing their testimony.

Unique vulnerability of women and girls with disabilities

35. An April 2018 report by Human Rights Watch, titled 'Invisible Victims of Sexual Violence : Access to Justice for Women and Girls with Disabilities in India''[24] offers a thoroughgoing assessment of the problem of sexual violence against women with disabilities. The report documents the stories of 17 survivors of sexual violence - 8 girls and 9 women - who live with a spectrum of physical, sensory, intellectual and psychosocial disabilities.[25]

36. As the report points out, women and girls with different disabilities face a high risk of sexual violence:

> "Those with physical disabilities may find it more difficult to escape from violent

situations due to limited mobility. Those who are deaf or hard of hearing may not be able to call for help or easily communicate abuse, or may be more vulnerable to attacks simply due to the lack of ability to hear their surroundings. Women and girls with disabilities, particularly intellectual or psychosocial disabilities, may not know that non-consensual sexual acts are a crime and should be reported because of the lack of accessible information. As a result, they often do not get the support they need at every stage of the justice process : reporting the abuse to police, getting appropriate medical care, and navigating the court system."[26]

37. In India, no disaggregated data is maintained on the extent of violence against women and girls with disabilities. This poses a formidable obstacle to understanding the problem better and designing suitable solutions. As Rashida Manjoo, the United Nations Special Rapporteur on violence against women, noted, this lack of data "renders the violence committed against women with disabilities invisible."[27]

38. The HRW report points to two studies that quantify the scale of this problem. A 2004 survey in Orissa conducted in 12 districts with 729 respondents found that nearly all of the women and girls with disabilities surveyed were beaten at home, and 25 percent of women with intellectual disabilities had been raped.[28]

39. In the same vein, a 2011 study found that 21 percent of the 314 women with disabilities surveyed had faced emotional, physical or sexual violence from someone other than their intimate partner.[29]

40. The HRW Report brings to light several harrowing examples of circumstances in which a survivor's disability was exploited by those perpetrating sexual violence. To illustrate, the report describes the story of a woman with low vision from Bhubaneshwar, Odisha who alleged that she was raped in June, 2013. The report notes:

"The police did not help ...get legal aid. The staff of the [residential shelter home] helped her to find a lawyer, but the lawyer they found was not free of cost. It has been tough for her to continue with the lawyer. This has affected the progress of the case."[30]

Interaction of disabled survivors of sexual violence with the criminal justice system and the judiciary

41. In the wake of the Nirbhaya rape incident that shocked the conscience of the nation, Indian criminal law underwent a series of changes. The Justice J.S. Verma Committee, set up to suggest amendments to the law, attached special emphasis to creating an enabling environment to enable women with disabilities to report cases of sexual violence and to obtain suitable redress. As the Committee noted:

"6. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons is also an urgent need. Amendments to the Code of Criminal Procedure, which are necessary, have been suggested."[31]

42. The Committee's suggestions translated into changes in the Penal Code, 1860 and the Criminal Procedure Code. Some key changes were as follows:

(i) When the victim of the offences specified in the provision is either permanently or temporarily mentally or physically disabled, the FIR shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of a special educator or an interpreter, as the case may be.[32] Such information may also be video-graphed.[33]

(ii) The same accommodations, as outlined above, have also been made as regards the recording of confessions and statements.[34] Further, as regards those who are physically and mentally disabled, such a statement shall be considered a statement in lieu of examination-in-chief, obviating the need for it to be recorded

at the time of trial.

(iii) The amendments also sought to put in place a framework to enable victims with disabilities to participate in a test identification parade. In such cases, a judicial magistrate will oversee the procedure to ensure the witness is supported in identifying the accused with a means they find comfortable.[35] This process must be video-graphed.[36]

43. Further, guidance issued by the Union Ministry of Health and Family Welfare notes the challenges faced by survivors with disabilities in reporting cases given the barriers to communication, their dependency on caretakers, their complaints not being taken seriously and the lack of an appropriate environment which encourages them to express their grievances and complaints.[37] In addition, unfamiliar and stressful court environments pose a heightened challenge, during protracted cases, for such women. Lack of information about their entitlements under the law, as well as the right to seek legal representation, compels them to be mute and helpless spectators.[38]

44. Certain concerns have also been highlighted by the Committee on the Rights of Persons with Disabilities in its concluding observations on the initial report on India. These include lack of measures to identify, prevent and combat all forms of violence against persons with disabilities; lack of disaggregated statistical data in National Crime Records Bureau on cases of gender-based violence against women and girls with disabilities, including violence inflicted by intimate partners; limited availability of accessible shelters for women with disabilities who are victims of violence; and lack of effective remedies for persons with disabilities facing violence, including rehabilitation and compensation.[39]

45. While changes in the law on the books mark a significant step forward, much work still needs to be done in order to ensure that their fruits are realized by those for whose benefit they were brought. In this regard, we set out below some guidelines to make our criminal justice system more disabled-friendly.

(i) The National Judicial Academy and state judicial academies are requested to sensitize trial and appellate judges to deal with cases involving survivors of sexual abuse. This training should acquaint judges with the special provisions, concerning such survivors, such as those outlined above. It should also cover guidance on the legal weight to be attached to the testimony of such witnesses/survivors, consistent with our holding above. Public prosecutors and standing counsel should also undergo similar training in this regard. The Bar Council of India can consider introducing courses in the LL.B program that cover these topics and the intersectional nature of violence more generally;

(ii) Trained special educators and interpreters must be appointed to ensure the effective realization of the reasonable accommodations embodied in the Criminal Law Amendment Act, 2013. All police stations should maintain a database of such educators, interpreters and legal aid providers, in order to facilitate easy access and coordination;

(iii) The National Crimes Record Bureau should seriously consider the possibility of maintaining disaggregated data on gender-based violence. Disability must be one of the variables on the basis of which such data must be maintained so that the scale of the problem can be mapped out and tailored remedial action can be taken;

(iv) Police officers should be provided sensitization, on a regular basis, to deal with cases of sexual violence against women with disabilities, in an appropriate way. The training should cover the full life cycle of a case involving a disabled survivor, from enabling them to register complaints, obtain necessary accommodations, medical attention and suitable legal representation. This training should emphasize the importance of interacting directly with the

disabled person concerned, as opposed to their care-taker or helper, in recognition of their agency; and

(v) Awareness-raising campaigns must be conducted, in accessible formats, to inform women and girls with disabilities, about their rights when they are at the receiving end of any form of sexual abuse.

46. We hasten to add that these suggestions are not a reflection of the manner in which the investigation, enquiry and trial were conducted in the instant case. They simply represent our considered view on the systemic reforms needed to ensure that cases such as the instant one are dealt with in the most appropriate way.

Testimony of disabled prosecutrix:

47. Another feature of the case that we would like to dwell on relates to the testimony of the prosecutrix, PW2. In his judgment, the Sessions Judge noted as follows:

> "21. Identification of the accused by the victim girl : - It is needless to say that identifying the accused basing on the voice is weak type of evidence. Coming to the present facts and circumstances of the case, P.W.2 is blind by birth as the access of the accused to victim proved by the prosecution she can easily identify the accused by hearing his voice. Moreover, P.W.I, P.W.3, P.W.4 and P.W.5 and some others caught hold the accused when he opened the door of the house of P.W.I, on the date of the incident and the evidence of the police officials also corroborates with the witnesses who caught hold of the accused and handed over him to P.W.II and on the instructions of P.W. II, the accused was taken to Mahanandi Police Station. It was suggested to P.W.2 that her statement that she identified the accused with his voice is false. In view of the categorical evidence of P.W.I, P.W.3, P.W.4, so also the admission made by the accused in 313 Cr.P.C examination that he used to visit the house of P.W.I to call the brothers of the victim for doing coolie work, the above suggestion has no legs to stand. The above evidence would amply prove that the victim has successfully identified the accused and her evidence cannot be doubted simply because she is a blind girl."

48. In the High Court, the defense sought to cast doubt on the testimony of the prosecutrix by arguing that she would have been unable to identify the accused due to her disability. While the above plea was not pressed by the appellant in this Court, we would like to take this opportunity to affirm the conclusion of the Sessions Judge and to clarify the position of law on this point.

49. There have been instances where the testimony of a disabled prosecutrix has not been considered seriously and treated at an equal footing as that of their able-bodied counterparts. One such instance is the judgment of this Court in *Mange* v. *State of Haryana*[40], where the testimony of a thirteen year-old girl who was deaf and mute was not recorded and the conviction was confirmed on the account of an eye witness and supported by medical evidence. This Court in affirming the conviction noted that the non-examination of the prosecutrix was not a major infirmity in the prosecution's case "apart from being a child witness, she was also deaf and dumb and no useful purpose would have been served by examining her." We are of the considered view that presumptions of such nature which construe disability as an incapacity to participate in the legal process reflect not only an inadequate understanding of how disability operates but may also result in a miscarriage of justice through a devaluation of crucial testimonies given by persons with disabilities. The legal personhood of persons with disabilities cannot be premised on societal stereotypes of their supposed "inferiority", which is an affront to their dignity and a negation of the principle of equality.

50. A survey and analysis of High Court judgments by Saptarshi Mandal indicates that the testimony of the disabled witnesses is devalued by not recording the

testimony of the prosecutrix at all; or recording it without adherence to correct legal procedure, thereby rendering it ineffectual; dismissal of the testimony for its lack of intelligibility or for not being supported by the condition of her body.[41]

51. This kind of a judicial attitude stems from and perpetuates the underlying bias and stereotypes against persons with disabilities. We are of the view that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered weak or inferior, only because such an individual interacts with the world in a different manner, vis-a-vis their able-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight. It goes without saying that the court appreciating such testimony needs to be attentive to the fact that the witness' disability can have the consequence of the testimony being rendered in a different form, relative to that of an able-bodied witness. In the case at hand, for instance, PW2's blindness meant that she had no visual contact with the world. Her primary mode of identifying those around her, therefore, is by the sound of their voice. And so PW2's testimony is entitled to equal weight as that of a prosecutrix who would have been able to visually identify the appellant.

C.3 The 'Caste' that is Difficult to Cast Away : Protection of Members of Scheduled Castes and Scheduled Tribes

52. Social movements in India for securing justice to those who have suffered centuries of caste-based discrimination paved way for the enactment of the SC & ST Act in 1989 to prevent commission of atrocities against members of the Scheduled Caste and Scheduled Tribe[42] communities. The Act also falls within the purview of Article 17 of the Constitution, which prohibits untouchability. The Statement of Objects and Reasons of the Act states the following:

"1. Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of un-touchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and' more often these people become victims of attacks by the vested interests of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the protection of Civil Rights Act, 1955 and the normal provisions of the Penal Code, 1860 have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

3. The term 'atrocity' has not been defined so far. It is considered necessary that

not only the term 'atrocity' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining, on the States and the Union territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them."

(emphasis added)

53. While the Statement of Objects and Reasons of the Act specifically mentions commission of rapes against SC & ST women as a form of atrocity committed against the SC & ST communities, it does not specifically articulate the distinct disadvantage women of these communities face on account of casteism, patriarchy and poverty at the same time. Shreya Atrey notes that while the anti-caste movements began in early 1900s and saw active participation of SC & ST women, their oppression was imagined only on the basis of caste rather than patriarchy[43]. On the other hand, the mainstream feminist movement also failed to take into consideration the specific forms of oppression that SC & ST women face not only at the hands of upper caste men but also upper caste women. To reframe the words of the Combahee River Collective Statement, a classic text in US anti-racist feminism - the SC & ST women *struggled together with* SC & ST men against casteism, while they also *struggled with* men about sexism.[44] Adrija Dey in her work has specifically highlighted that class, caste, geography and religion play a pivotal role in how gender violence is perceived and how punishments are meted out in the criminal justice system.[45] How pervasive sexual violence is against women from SC & ST community is emphatically stated by V. Geetha in extract her book titled 'Undoing Impunity':

"As for sexual violence, Dalit women activists understood it to be part of a continuum of violence that Dalit women experienced : in a life-world where food, water, clean living spaces are routinely denied to Dalit women, where their labour was exploited, and no protection available in their places of work, where to be in bondage to a landlord or petty trader was commonplace, and at all times they are viewed as sexually available, and humiliated in their bodily being, sexual violence emerged as not an exceptional act of violence, but the most concentrated expression of a fundamental animus against Dalits"[46]

54. The above discussion highlights the social and economic context in which sexual violence against women from SC & ST communities occurs. This contextualized legal analysis has to be adopted by the Court which is sensitive to the nature of evidence that is likely to be produced in a case where various marginalities intersect. In the present case, a distinct individualized experience for PW2 is created on account of her gender, caste and disability due to her association with wider groups that face a societal disadvantage.

C.4 Section 3(2)(v) of SC & ST Act

55. Section 3(2)(v) of the SC and ST Act as it stood at the material time read as follows:

"3. Whoever not being a member of a Scheduled Caste or Scheduled Tribe ...

(v) commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

56. Under Section 3(2)(v), an enhanced punishment of imprisonment for life with fine is provided where

(i) The offence is committed by a person who is not a member of a Scheduled Caste or Scheduled Tribe;

(ii) The offence arises under the Penal Code and is against a person or property and is punishable with imprisonment for a term of ten years or more; and

(iii) The offence is committed "on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe" or such property belongs to such a person.

57. The key words are "on the ground that such person is a member of a SC or ST". The expression "on the ground" means "for the reason" or "on the basis of". The above provision (as it stood at the material time prior to its amendment, which will be noticed later) is an example of a statute recognizing only a single axis model of oppression. As we have discussed above, such single axis models require a person to prove a discrete experience of oppression suffered on account of a given social characteristic. However, when oppression operates in an intersectional fashion, it becomes difficult to identify, in a disjunctive fashion, which ground was the basis of oppression because often multiple grounds operate in tandem. Larrisa Behrendt, an aboriginal legal scholar from Australia, has poignantly stated the difficulty experienced by women facing sexual assault, who are marginalised on different counts, to identify the source of their oppression:

> "When an Aboriginal woman is the victim of a sexual assault, how, as a black woman, does she know whether it is because she is hated as a woman and is perceived as inferior or if she is hated because she is Aboriginal, considered inferior and promiscuous by nature?"[47]

58. Being cognizant of the limitation of Section3(2)(v) - as it stood earlier - in dealing with matters of intersectionality, we are however bound to apply the standard that has been laid down in the law. The expression "on the ground" was considered in a two-judge Bench judgment of this Court in *Dinesh Alias Buddha* v. *State of Rajasthan*[48], where the Court speaking through Justice Arijit Pasayat held:

> "15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste."

59. The Court held that in the absence of evidence to that effect, the offence under Section 3(2)(v) would not stand established. This principle was subsequently followed in a two judge Bench judgment of this Court in *Ramdas* v. *State of Maharashtra*[49] where it was held that merely because a woman belongs to the SC & ST community, the provisions of the SC & ST Act would not be attracted in a case of sexual assault. This Court observed that there was no evidence to prove the commission of offence under Section 3(2)(v) of the SC & ST Act.

60. The contours of the terms "on the ground of" have been explicated by this Court in the following cases. In *Ashrafi* v. *State of Uttar Pradesh*[50], a two judge Bench of this Court held that conviction under Section 3(2)(v) of the SC & ST Act cannot be sustained because the prosecution could not prove that the rape was committed only on the ground that the woman belonged to the SC & ST community. This Court speaking through Justice R Banumathi held:

> "9. The evidence and materials on record do not show that the Appellant had committed rape on the victim on the ground that she belonged to Scheduled Caste. Section 3(2)(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW-3 Phoola Devi belonged to Scheduled Caste community. In the absence of evidence proving intention of the Appellant in committing the offence upon PW-3-Phoola Devi only because she belongs to Scheduled Caste community, the conviction of the Appellant Under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained." (emphasis added)

61. In another judgment of this Court in *Khuman Singh* v. *State of MP*[51], Justice R Banumathi speaking for this Court held:

> "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."
>
> '(emphasis supplied)

62. In the above two extracts, this Court has interpreted Section 3(2)(v) to mean that the offence should have been committed "only on the ground that the victim was a member of the Scheduled Caste." The correctness of this exposition. Is debatable. The statutory provision does not utilize the expression "only on the ground". Reading the expression "only" would be to add a restriction which is not found in the statute. The statute undoubtedly uses the words "on the ground' but the juxtaposition of "the" before "ground" does not invariably mean that the offence ought to have been committed only on that ground. To read the provision in that manner will dilute a statutory provision which is meant to safeguard the Scheduled Castes and Scheduled Tribes against acts of violence which pose a threat to their dignity. As we have emphasized before in the judgment, an intersectional lens enables us to view oppression as a sum of disadvantage resulting from multiple marginalized identities. To deny the protection of Section 3 (2) (v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalized invisible. It is to grant impunity to perpetrators who on account of their privileged social status feel entitled to commit atrocities against socially and economically vulnerable communities. This is not to say that there is no requirement to establish a causal link between the harm suffered and the ground, but it is to recognize that how a person was treated or impacted was a result of interaction of multiple grounds or identities. A true reading of Section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence. In the view which we ultimately take, a reference of these decisions to a larger bench in this case is unnecessary. We keep that open and the debate alive for a later date and case.

63. If the evidence in this case was sufficient to establish the commission of the offence on the ground that PW2 was a member of a Scheduled Caste, a fresh look at the judgments in *Ashrafi* (supra) and *Khuman Singh* (supra) would have been warranted. However, a close look at the evidence would demonstrate that the prosecution has not led evidence to prove the ingredients of section 3(2)(v). Unfortunately, there has been a serious gap in the evidence on that count. In the present case, PW11 who was the Investigating Officer deposed:

> "PW 1 and PW2 did not state before me that since she belongs to Schedule Caste the accused committed the offence. Part 1 C.D does not disclose in specific that the accused was handed over to the Circle. 'Inspector of police. Witness adds by the time he reached the scene of offence the Sub Inspector and Circle inspector of police were present and the witnesses present there handed over to the accused to them in turn he instructed them to take the accused to Mahanandi Police Station. It is not true to suggest that my statement that the accused was handed over to Sub Inspector of police or Circle Inspector of police is false as accused was not present

at the scene of offence."

64. The Sessions Judge noticed the deposition of PW11. However, the Sessions Judge noted that Exhibit P-1 disclosed that PW 2 belongs to a Scheduled Caste. The Sessions Judge also observed in paragraph 39 of the judgment that PW1, who is the mother of PW2 is an "illiterate village rustic woman" and merely because she did not mention in the report or statement to the police that the accused committed the offence on the ground that PW2 belonged to the Scheduled Caste is not fatal to the case of the prosecution under Section 3(2)(v) of the SC & ST Act. The Sessions Judge has also made observations in that regard in paragraph 40 of the judgment which has been extracted earlier where he stated that the accused would not have dared to commit the crime if PW2 belonged to an upper caste community particularly in a village atmosphere. In appeal, the submission that the ingredients of the offence under Section 3(2)(v) were not established was specifically urged before the High Court. The submission was dismissed with the observation that "even otherwise still the offence under Section 376(1) of the Penal Code is made out". Both the Sessions Judge as well as the High Court have failed to notice the crucial ingredient of Section 3 (2)(v) (as it stood at the material time prior to its substitution by Act 1 of 2016)[52].

65. The issue as to whether the offence was committed against a person on the ground that such person is a member of a SC or ST or such property belongs to such member is to be established by the prosecution on the basis of the evidence at the trial. We agree with the Sessions Judge that the prosecution's case would not fail merely because PW1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman. However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW2. While it would be reasonable to presume that the accused knew the caste of PW2 since village communities are tightly knit and the accused was also an acquaintance of PW2's family, the knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of Section 3(2)(v) as it stood at the time when the offence in the present case was committed. As we have discussed above, due to the intersectional nature of oppression PW2 faces, it becomes difficult to establish what led to the commission of offence - whether it was her caste, gender or disability. This highlights the limitation of a provision where causation of a wrongful act arises from a single ground or what we refer to as the single axis model.

66. It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "*on the ground of*" under Section 3(2) (v) have been substituted with "*knowing that such person is a member of a Scheduled Caste or Scheduled Tribe*". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise. The amended Section 8 reads as follows:

> "8. Presumption as to offences. - In a prosecution for an offence under this Chapter, if it is proved that
>
> (a) the accused rendered [any financial assistance in relation to the offences committed by a person accused of], or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;
>
> (b) a group of persons committed an offence under this Chapter and if it is

proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

[(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.]"

67. The Parliament Standing Committee Report on Atrocities Against Women and Children has observed that, "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration" and recommends inclusion of provisions of SC & ST Act while registering cases of gendered violence against women from SC & ST communities[53]. However, as we have noted, one of the ways in which offences against SC & ST women fall through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression. This is especially the case when courts tend to read the requirement of "on the ground" under Section 3(2)(v) as "only on the ground of". The current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the Act by replacing the causation requirement under Section 3(2)(v) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these.

68. However, since Section 3(2) (v) was amended and Clause (c) of Section 8 was inserted by Act 1 of 2016 with effect from 26 January 2016 these amendments would not be applicable to the case at hand. The offence in the present case has taken place before the amendment, on 31 March 2011. Therefore, we hold that the evidence in the present case does not establish that the offence in the present case was committed on the ground that such person is a member of a SC or ST. The conviction under Section 3(2)(v) would consequently have to be set aside.

C.5 Punishment under Section 376 of the IPC

69. Mr Harinder Mohan Singh, learned Counsel has submitted that as a sequel to the setting aside of the conviction under Section 3(2)(v), the imposition of a sentence of imprisonment for life for the offence under section 376 needs to be modified. In this context, learned Counsel relied upon the provisions of Section 376(1).

70. Now Section 376(1), as it stood at the material time prior to its substitution by Act 13 of 2013, was substituted by the Criminal Law (Amendment) Act 1983 (Act 43 of 1983) with effect from 25 December 1983. Section 376(1) as substituted by the amendment read as follows:

"376. Punishment to rape : (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."

71. Essentially, the submission which has been urged on behalf of the appellant is that under Section 376(1) as it then stood, Parliament had made provisions for:

(i) A minimum sentence of seven years;

(ii) The imposition of a sentence of imprisonment for a term of less than seven years for adequate and special reasons to be recorded by the Court;

(iii) A term of imprisonment extending to ten years; and

(iv) A term of imprisonment for life.

72. In the context of (iii) and (iv) above, the words used in Section 376(1) were "but which may be for life or for a term which may extend to ten years".

73. On behalf of the appellant it has been urged that in the present case the Sessions Judge proceeded to impose a term of imprisonment for life on the basis that an offence under Section 3(2)(v) was established. If it is held that the offence under Section 3(2)(v) has not been established, the Sessions Judge, it was urged, erred in taking the view that the court was not inclined to exercise its discretion "to give lesser punishment to the accused". In other words, it was submitted that the Sessions Judge proceeded on the basis that a sentence of imprisonment for life was the norm and there was a discretion to award a lesser punishment, which is erroneous.

74. In evaluating the submission, it is necessary to note that the Sessions Judge came to the conclusion that the appellant was guilty of an offence under Section 3(2)(v) of the SC and ST Act and, independent of that, also of an offence punishable under Section 376(1) of the Penal Code. In considering the sentence to be imposed in respect of the two distinct offences, the Sessions Judge held that:

(i) A sentence of imprisonment for life should be imposed for the offence under Section 376(1); and

(ii) A sentence of imprisonment for life would have to be imposed for the offence under Section 3(2)(v) of the SC and ST Act.

75. For the reasons which we have indicated earlier we have come to the conclusion that the ingredients of the offence under Section 3(2)(v) of the SC and ST Act were not established. The issue which survives for consideration is as to whether the punishment of imprisonment for life in respect of the offence under Section 376(1) should have been imposed.

76. On a plain reading of Section 376(1), as it stood after its insertion with effect from 25 December 1983 by Act 43 of 1983, it is evident that a sentence of imprisonment for life is one of the sentences contemplated by the provision. The Criminal Law Amendment Act 1983 was introduced with the aim of bringing widespread amendments to the laws of rape in the country, making it difficult for the offenders to escape conviction. The stated object and purpose of the Act was:

"There have been pressing demands inside and outside Parliament for the amendment of the law relating to rape so that it becomes more difficult for the offenders to escape conviction and severe penalties are imposed on those convicted. [...]

2. [...] The changes proposed in the Bill have been formulated principally on the basis of the following considerations:—

[...]

(3) minimum punishments for rape should be prescribed;"

77. Pursuant to the above-mentioned objective, Section 376(1) provided that except for cases covered by sub-Section (2), a person committing rape shall be punished with imprisonment of either description for a term which shall not be less than seven years. However, the proviso stipulated that the court may for 'adequate and special reasons' to be mentioned in the judgment impose a sentence of imprisonment for a term of less than seven years. The minimum sentence of seven years could, in other words, be reduced to a lesser term only for adequate and special reasons to be recorded in the judgment. This Court has time and again noted that adequate and special reasons depend on the facts and circumstances of each case. These special and adequate reasons are an exception to the rule and must be used sparingly and interpreted strictly as held by this Court in *State of Madhya Pradesh* v.

Bala[54]. Section 376(1) however also stipulated that the term of imprisonment "may be for life or for a term of ten years".

78. Subsequently, in 2013, post the *Nirbhaya case*, the Criminal Law Amendment Act 2013 was brought into force which amended Section 376(1). The Parliament sought to take a tougher stand on crime against women and limited the discretion of the judiciary regarding imposition of sentences for offences involving rape by providing a minimum punishment of seven years and a maximum punishment of life imprisonment, without any exceptions for reduction of sentence. In 2018, Section 376 has been further amended by the Criminal Law Amendment Act 2018 (Act 22 of 2018) by which the minimum punishment has been enhanced to ten years, with the maximum punishment remaining the same.

79. Having detailed the amendments in Section 376 by the Parliament, we are cognizant that we must apply the law as it was at the time of occurrence of the crime. The range of punishment within which we must exercise our judicial discretion is the imposition of a minimum punishment of 7 years (or less on existence of adequate and special reasons), or 10 years or imprisonment for life. In determining the appropriate sentence, this Court has consistently laid down that we must of necessity be guided by all the relevant facts and circumstances including

(i) The nature and gravity of the crime;

(ii) The circumstances surrounding the commission of the sexual assault;

(iii) The position of the person on whom the sexual assault is committed;

(iv) The role of the accused in relation to the person violated; and

(v) The possibility of the rehabilitation of the offender.

80. The above factors are relevant for the determination of the quantum of punishment as held in *Ravji* v. *State of Rajasthan*[55], *State of Karnataka* v. *Krishnappa*[56], and *State of Punjab* v. *Prem Sagar*[57] among others.

81. In addition to these factors, we must also be alive to the intersectional identity of PW2 and the underlying societal factors within which the offence was committed. PW2 is a woman who is blind since birth and is a member of a Scheduled Caste. These intersectional identities placed her in a uniquely disadvantageous position. The Chhattisgarh Pradesh High Court in *Tekan* v. *State of Madhya Pradesh (Now Chhattisgarh)*[58] dealt with the conviction of a person accused of raping a blind woman on multiple occasions, on the promise of marriage. The High Court was acutely aware of the misuse of the woman's disability by the accused and sentenced him to 7 years of rigorous imprisonment. The conviction and sentence were later upheld by this Court[59]. This Court also dealt with the question of compensation to be paid to the prosecutrix and the physical disadvantage accruing to her on account of her disability. In doing so, Justice M Y Eqbal, speaking for the two-judge bench, noted:

> "15. Coming to the present case in hand, victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National Commission for Women and follow up for relief and rehabilitation. Accordingly, the victim, who has already suffered a lot since the day of the crime till now, needs a special rehabilitation scheme." (emphasis supplied)

82. Similarly, we are also aware of the disadvantage faced by women (and persons generally) belonging to the Scheduled Castes and Scheduled Tribes. As explained above, it is difficult and, in our opinion, artificial to delineate the many different identities of an individual which overlap to place them in a disadvantaged position of power and create the circumstances for heinous offences such as rape to occur. At this

point, it would be relevant to note that a series of decisions of this Court rendered by three-judge benches[60] and two-judge benches[61], have stated that "*socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy*". However, it is necessary to understand the context in which this finding was made. In all of these cases, the Court was dealing with the plea of mitigation of sentence awarded by the High Courts or the lower courts on the ground of existence of 'adequate and special reasons' *on account of the accused* being a member of the scheduled caste/tribe; belonging to a rural background; or being illiterate. It is on this count that the Court rejected such a plea given the heinous nature of the crime of rape and the gravity of the criminal act. In our opinion, these judgments do not bar us from taking a holistic view of the various intersectional identities which form a vital part of the facts and circumstances of the act and speak to the nature of the crime.

83. In the present case, several circumstances bearing on the sentence must be borne in mind. First, PW2, who was subjected to a sexual assault was blind since birth. Second, the appellant was known to the brothers of PW2, including PW3. The appellant used to visit the house in which PW2 resided with her parents and brothers. Bereft of eye-sight, PW2 was able to identify the appellant by his voice with which she was familiar. Third, shortly before entering the home of PW2, the appellant enquired of PW1 where her sons were, when he was told that they were not at home. PW1 proceeded with her chores at a public water tap. Taking advantage of the absence of the members of the family from the family home, the appellant entered the house and subjected PW2 to a sexual assault. PW1 has deposed that when she entered the house together with PW3, PW4 and PW5 she found PW2 in a nude condition on the ground bleeding from the injuries sustained on her genitals. The nature and circumstances in which the offence has been committed would leave no manner of doubt that the appellant had taken advantage of the position of the PW2 who was blind since birth. He entered the house, familiar as he was with members of the family, in their absence and subjected PW2 to a sexual assault. PW2 belongs to a Scheduled Caste. The prosecution has not led evidence to prove that the offence, as we have noticed, was committed on the ground that she belongs to a Scheduled caste within the meaning of section 3(2)(v) of the SC and ST Act. This is a distinct issue. But the fact that PW2 belonged to a Scheduled Caste is not a factor which is extraneous to the sentencing process for an offence under Section 376. It is in that context, that we must read the observations of the Sessions Judge with a robust common sense perception of ground realities. The appellant was 27 years old, a mature individual who was working as a coolie together with the brothers of PW2 for a couple of years. The nature and gravity of the offence in the present case is serious in itself and it is compounded by the position of PW2 who was a visually disabled woman. A heinous offence has been committed on a woman belonging to Scheduled Caste. The imposition of a sentence of imprisonment for life cannot be faulted.

D Conclusion and Summary of Findings

84. For the above reasons we have come to the conclusion that the conviction under Section 376(1) and the sentence imposed by the Sessions Judge must be affirmed. In the circumstances we order as follows:

(i) The conviction of the appellant for an offence under Section 3(2)(v) of the SC and ST Act and the sentence imposed in respect of the offence is set aside and the appeal allowed to that extent; and

(ii) The conviction of the appellant for an offence punishable under Section 376(1) of the Penal Code and the sentence of imprisonment for life is upheld. The fine of Rs. 1,000/- and default imprisonment of six months imposed by the Sessions Judge and affirmed by the High Court shall also stand confirmed.

85. The appeal is disposed of in the above terms.

86. Pending application(s), if any, stand disposed of.

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[1] "SC & ST Act"

[2] K. Crenshaw, *Demarginalizing The Intersection Of Race And Sex : A Black Feminist Critique Of AntiDiscrimination Doctrine, Feminist Theory, And Anti-Racist Policies*, University of Chicago Legal Forum, Vol. 4 (1989) 149 ("Crenshaw, Demarginalizing Intersection of Race and Sex").

[3] Id at p. 146.

[4] Mary Eaton, *Homosexual Unmodified : Speculations on Law's Discourse, Race, and Construction of Sexual Identity, in* Legal Inversions : Lesbians, Gay Men and the Politics of the Law, Didi Herman and Carl Stychin eds. (Philadelphia : Temple University Press 1995), p. 46.

[5] Ben Smith, *Intersectional Discrimination and Substantive Equality : A Comparative and Theoretical Perspective*, The Equal Rights Review, Vol. 16 (2016) 74 ("Smith, Intersectional Discrimination").

[6] Ibid, 83.

[7] Ibid, 81.

[8] Nitya Iyer, *Categorical Denials : Equality Rights and the Shaping of Social Identity*, Queen's Law Journal, Vol. 19 (1993-1994) 179.

[9] Ibid.

[10] Smith, Intersectional Discrimination, *supra n.* 5, p. 84.

[11] Gauthier de Boco, *Harnessing the Full Potential of Intersectionality Theory in Human Rights Law : Lessons from Disabled Children's Right to Education in* Intersectionality and Human Rights Law (Shreya Atrey & Peter Dunne, Hart Publishing 2020).

[12] PH Collins, *The Difference That Power Makes : Intersectionality and Participatory Democracy*, 8(1) Revista de Investigaciones Feministas (2017), p. 22, noting:"Intersectionality's emphasis on intersecting systems of oppression suggests that different forms of domination each have their own power grid, a distinctive "matrix" of intersecting power dynamics."

[13] D. Pothier, *Connecting Grounds of Discrimination to Real People's Real Experiences*, 13(1) Canadian Journal of Women and the Law (2001), p. 39, 51.

[14] Smith, Intersectional Discrimination, *supra n.* 5, p. 84.

[15] Ibid.

[16] (1997) 3 S.C.R. 484 at 506-507.

[17] (2018) 10 SCC 1.

[18] Justice JS Verma (Retd.), Justice Leila Seth (Retd.) & Gopal Subramanium, Report of the Committee on Amendments to Criminal Law, 23 January 2013, p. 38 ("JS Verma Committee Report").

[19] K Crenshaw, *Mapping the Margins : Intersectionality, Identity Politics, and Violence against Women of Color*, 43 *Stanford Law Review* 1241 (1991), 1246-50.

[20] Shreya Atrey, *Lifting as We Climb : Recognising Intersectional Gender Violence in Law*, 5 Oñati Socio-legal Series 1512 (2015), 1519-20.

[21] Id at 1531.

[22] *Samitri* v. *State of Haryana*, 2010 SCC OnLine P&H 2245.

[23] Saptarshi Mandal, *The Burden of Intelligibility : Disabled Women's Testimony In Rape Trials*, Indian Journal of Gender Studies, 20 No. 1 (2013) : 1-29, p. 20 ("Mandal, Disabled Women Testimony in Rape Trials").

[24] Human Rights Watch, "*Invisible Victims of Sexual Violence : Access to Justice for Women and Girls with Disabilities in India*", *available at* https : //www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities, 3 April 2018 ("HRW Report").

[25] HRW Report, *supra n.* 24, p. 12.

[26] *Id* at p. 4.

[27] UN Human Rights Council, "*Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*," A/HRC/26/38/Add.1. *available at* http : //www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-38-Add1_en.doc, 1 April 2014, para 72.

[28] S. Mohapatra and M. Mohanty, "*Abuse and Activity Limitation : A Study on Domestic Violence Against Disabled Women in Odisha*," *available at* http : //swabhiman.org/userfiles/file/Abuse%20and%20Activity%20Limitation%20Study.pdf, 2004 referred in HRW Report, *supra n.* 24, at footnote 19.

[29] CREA, "*Count Me In! Violence Against Disabled, Lesbian, and Sex-working Women in Bangladesh, India, and Nepal*", http : //www.creaworld.org/sites/default/files/The%20Count%20Me%20In%21%20Research%20Report.pdf, 2011 referred in HRW Report, *supra n.* 24, at footnote 20.

[30] HRW Report, *supra n.* 24, p. 8.

[31] JS Verma Committee Report, *supra n.* 18.

[32] CrPC, Section 154(1) proviso 2, (a).

[33] CrPC, Section 154(1) proviso 2, (b).

[34] CrPC, Section 164 (5A) (a), provisos 1 and 2.

[35] CrPC, Section 54A, proviso 1.

[36] CrPC, Section 54A, proviso 2.

[37] Ministry of Health and Family Welfare, Guidelines and Protocols : Medico-legal care for survivors/victims of sexual violence, 16 May 2019, *available at* https : //main.mohfw.gov.in/sites/default/files/953522324.pdf, p. 14.

[38] HRW Report, *supra n.* 24, p. 7.

[39] Committee on the Rights of Persons with Disabilities, *"Concluding Observations on the Initial Report Of India"*, GE.19-18639(E) *available at* https : //digitallibrary.un.org/record/3848327?ln=en, 29 October 2019, para 34.

[40] (1979) 4 SCC 349.

[41] Mandal, Disabled Women Testimony in Rape Trials, *supra n.* 23, p. 6.

[42] "SC & ST"

[43] Shreya Atrey, Intersectional Discrimination, Oxford University Press) 2019, p. 69.

[44] Combahee River Collective, *The Combahee River Collective Statement, in* Home Girls : A Black Feminist Anthology, Barbara Smith ed., (New York : Kitchen Table/Women of Color Press, 1983; reprint, New Brunswick, N.J. : Rutgers University Press 2000) 267. The original quote read, "We struggle together with Black men against racism, while we also struggle with Black men about sexism."

[45] A. Dey. *'Others' Within the 'Others' : An Intersectional Analysis of Gender Violence in India*, Gender Issues 36, 357-373 (2019).

[46] V. Geetha, Undoing Impunity : Speech After Sexual Violence, (Zubaan, 2016), Chapter 11.

[47] Larissa Behrendt, *Aboriginal Women and the White Lies of the Feminist Movement : Implications for Aboriginal Women in Rights Discourse*, 1 Australian Feminist Law Journal 1, (1993), p. 35.

[48] (2006) 3 SCC 771.

[49] (2007) 2 SCC 170.

[50] (2018) 1 SCC 742 ("Ashrafi").

[51] Criminal Appeal 1283 of 2019 decided on 27 August 2019 ("Khuman Singh").

[52] Section 3(2)(v) of the SC & ST Act, prior to its amendment, read:

"(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, (v) commits any offence under

the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member shall be punishable with imprisonment for life and with fine"

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, w.e.f 26 January 2016, amended Section 3(2)(v) and currently states:

"(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, (v) commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member] shall be punishable with imprisonment for life and with fine".

[53] Parliament Standing Committee Report on Atrocities Against Women and Children, 15 March 2021, 107 *available at* https : //rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/15/143/230_2021_3_14.pdf.

[54] (2005) 8 SCC 1.

[55] (1996) 2 SCC 175.

[56] (2000) 4 SCC 75.

[57] (2008) 7 SCC 550.

[58] 2014 Cri LJ 1409. Physical disability has been considered as an aggravating factor in sentencing by other High Courts as well. *See, for e.g.*, *Rabindrayan Das* v. *State*, 1992 Cri LJ 269, Orissa High Court.

[59] (2016) 4 SCC 461.

[60] *State of Karnataka* v. *Krishnappa* (2000) 4 SCC 75; *State of Madhya Pradesh* v. *Basodi* (2009) 12 SCC 318.

[61] *State of Karnataka* v. *Raju* (2007) 11 SCC 490; *State of Rajasthan* v. *Vinod Kumar*, (2012) 6 SCC 770; *State of Madhya Pradesh* v. *Santosh Kumar* (2006) 6 SCC 1.

(2018) 1 Supreme Court Cases 742

(BEFORE RANJAN GOGOI AND R. BANUMATHI, JJ.)

ASHARFI .. Appellant;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Appeal No. 1182 of 2015†, decided on December 8, 2017

A. SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(2)(v) [prior to amendment by Act 1 of 2016] — Intention of accused to belittle person belonging to SC/ST community — Requirement of, for punishment under S. 3(2)(v) — Absence of any evidence proving such intention — Conviction under S. 3(2)(v), set aside

On the intervening night of 8-12-1995/9-12-1995, appellant-accused and one *U*, allegedly, forcibly opened the door and entered inside the house of PWs 3 & 4 and committed rape on PW 3 keeping PW 4 away on the point of pistol — On raising alarm, neighbours came there and accused persons ran away — Trial court convicted both accused under Ss. 450, 376(2)(g) & 323 IPC and under S. 3(2)(v), 1989 Act — For conviction under S. 376(2)(g) IPC, they were sentenced to undergo RI for 10 years with fine and default clause, and for conviction under S. 3(2)(v), 1989 Act, to undergo life imprisonment with fine of Rs 10,000 with default clause — Sentence of imprisonment was also imposed for other offences under IPC — High Court upheld the conviction and sentence

Held, regarding conviction under S. 376(2)(g) IPC, based upon evidence of PWs 3 & 4 and medical evidence, both courts below recorded concurrent findings and charge of rape stands proved, hence, no interference is required with the same and also the sentence of 10 years' RI imposed upon appellant Also, there is no perversity with respect to conviction and sentence of appellant regarding other offences under IPC

Further, herein, unamended S. 3(2)(v), 1989 Act, is applicable, as the occurrence was on the night of 8-12-1995/9-12-1995 From unamended provisions of S. 3(2)(v), it is clear that the statute laid stress on intention of accused in committing such offence in order to belittle the person as he/she belongs to SC or ST community Evidence and materials on record do not show that appellant had committed rape on victim on ground that she belonged to SC community S. 3(2)(v) can be pressed into service only if it is proved that rape was committed on ground that PW 3 belonged to SC community In absence of evidence proving intention of appellant in committing offence upon PW 3 only because she belonged to SC community, his conviction under S. 3(2)(v), cannot be sustained, hence, set aside As appellant has already undergone more than 10 yrs' sentence, he is ordered to be released forthwith

† Arising from the Judgment and Order in *Asharfi* v. *State of U.P.*, 2013 SCC OnLine All 13093 : (2013) 82 ACC 91 (Allahabad High Court, Crl. A. No. 8270 of 2007, dt. 29-1-2013)

unless required in any other case Penal Code, 1860, Ss. 450, 376(2)(g) and 323 (Paras 6 to 11)

Asharfi v. *State of U.P.*, 2013 SCC OnLine All 13093 : (2013) 82 ACC 91, *modified*

B. **SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(2)(v) [after amendment by Act 1 of 2016] — Charge under — Condition for — What is — Held, after the amendment, mere knowledge of accused, that the person upon whom the offence is committed belongs to SC/ST community, suffices to bring home charge under S. 3(2)(v) (Para 7)**

Appeal partly allowed Y-D/59561/CR

Advocates who appeared in this case :
Vikrant Singh Bais (Amicus Curiae), Advocate, for the Appellant.

Chronological list of cases cited ***on page(s)***

1. 2013 SCC OnLine All 13093 : (2013) 82 ACC 91, *Asharfi* v. *State of U.P.* 743*c d*, 744*a*

The Judgment of the Court was delivered by

R. BANUMATHI, J. This appeal arises out of the judgment of the Allahabad High Court in *Asharfi* v. *State of U.P.*[1] dated 29-1-2013 in and by which the High Court affirmed the conviction and sentence of the appellant awarded by the trial court. The trial court vide its judgment dated 30-11-2007 convicted the appellant for the offences under Sections 450, 376(2)(g) and 323 IPC and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC/ST Prevention of Atrocities Act"). For conviction under Section 376(2)(g) IPC, the appellant was sentenced to undergo rigorous imprisonment for ten years with a fine of Rs 8000 with default clause and, for conviction under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, the appellant was sentenced to undergo life imprisonment with a fine of Rs 10,000 with default clause. The appellant was also imposed sentence of imprisonment for other offences under the Penal Code, 1860.

2. The case of the prosecution is that on the intervening night of 8-12-1995/9-12-1995, appellant Asharfi and one Udai Bhan are alleged to have forcibly opened the door and entered inside the house of PW 3 Phoola Devi and PW 4 Brij Lal and said to have committed rape on PW 3 Phoola Devi. PW 4 Brij Lal was kept away on the point of pistol. On raising alarm, neighbours (PW 1 Rassu and PW 2 Baghraj) came there and on seeing them, the accused persons ran away threatening the witnesses.

3. Based on the complaint lodged by the complainant Brij Lal, FIR was registered in Case Crime No. 76 of 1996 under Sections 376/452/323/506 IPC and under Section 3(1)(*xii*), SC/ST Act against the appellant and one Udai Bhan. After completion of investigation, charge-sheet was filed against the appellant and the said Udai Bhan for the abovesaid offences. As noted above, the appellant and Udai Bhan were convicted for various offences by the trial

1 2013 SCC OnLine All 13093 : (2013) 82 ACC 91

court. In the appeal preferred by the appellant before the High Court, the High Court[1] affirmed the conviction of the appellant and the said Udai Bhan.

4. We have heard the learned Amicus Curiae appearing for the appellant. None appeared on behalf of the respondent. We have carefully perused the impugned judgment and materials on record.

5. So far as the conviction under Section 376(2)(*g*) IPC is concerned, based upon the evidence of PW 3 Phoola Devi and PW 4 Brij Lal and the medical evidence, both the courts below recorded concurrent findings that the charge of rape has been proved. We are not inclined to interfere with the same and also the sentence of ten years of imprisonment imposed upon him. We also find no perversity with respect to the conviction and sentence of the appellant with respect to other offences under the Penal Code.

6[*]**.** In respect of the offence under Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act, the appellant had been sentenced to life imprisonment. The gravamen of Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act is that any offence, envisaged under the Penal Code punishable with imprisonment for a term of ten years or more, against a person belonging to Scheduled Caste/ Scheduled Tribe, should have been committed on the ground that "*such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member*". Prior to the Amendment Act 1 of 2016, the words used in Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act are "*... on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe*".

7. Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act has now been amended by virtue of Amendment Act 1 of 2016. By way of this amendment, the words "*... on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe*" have been substituted with the words "*... knowing that such person is a member of a Scheduled Caste or Scheduled Tribe*". Therefore, if subsequent to 26-1-2016 (i.e. the day on which the amendment came into effect), an offence under the Penal Code which is punishable with imprisonment for a term of ten years or more, is committed upon a victim who belongs to SC/ST community and the accused person has knowledge that such victim belongs to SC/ST community, then the charge of Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act is attracted. Thus, after the amendment, mere knowledge of the accused that the person upon whom the offence is committed belongs to SC/ST community suffices to bring home the charge under Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act.

8. In the present case, unamended Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act is applicable as the occurrence was on the night of 8-12-1995/9-12-1995. From the unamended provisions of Section 3(2)(*v*) of the SC/ST Prevention of Atrocities Act, it is clear that the statute laid stress on

1 *Asharfi* v. *State of U.P.*, 2013 SCC OnLine All 13093 : (2013) 82 ACC 91

[*] **Ed.**: Para 6 corrected vide Official Corrigendum No. E3/Ed.B.J./110/2017 dated 12-2-2018.

the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community.

9. The evidence and materials on record do not show that the appellant had committed rape on the victim on the ground that she belonged to Scheduled Caste. Section 3(2)(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW 3 Phoola Devi belonged to Scheduled Caste community. In the absence of evidence proving intention of the appellant in committing the offence upon PW 3 Phoola Devi only because she belongs to Scheduled Caste community, the conviction of the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained.

10. In the result, the conviction of the appellant under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the sentence of life imprisonment imposed upon him are set aside and the appeal is partly allowed.

11. So far as the conviction of the appellant under Section 376(2)(*g*) IPC and other offences and sentence of imprisonment imposed upon him are confirmed. As the appellant had already undergone more than ten years' imprisonment, the appellant is ordered to be released forthwith unless he is required in any other case.

(2011) 1 Supreme Court Cases 793

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

KAILAS AND OTHERS . . Appellants;

Versus

STATE OF MAHARASHTRA
THROUGH TALUKA P.S. . . Respondent.

Criminal Appeal No. 11 of 2011†, decided on January 5, 2011

A. Penal Code, 1860 — Ss. 452, 354, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Appreciation of evidence — Conviction confirmed — PW 4 victim, a tribal woman of 25 years giving evidence that accused persons on being enraged by her illicit relationship with PW 9 (a member of higher caste) entered her house, beat, abused, removed/tore off her clothes and paraded her naked in village from her house to a place in front of the shop of PW 3 — PW 9 not supporting actual incident but corroborating her evidence regarding illicit relationship — PW 8 proving medical certificate that there were two contusions on PW 4 — PW 2 proving panchnama of seized articles from the spot i.e. torn clothes and broken bangles of victim — Witnesses turning hostile due to fear and inducement as accused persons were powerful persons in village — Evidence of PW 4 corroborated by medical evidence of PW 8, panchnama evidence of PW 2 and partly corroborated by evidence of PW 9, held, credible — There is no reason to disbelieve PW 2 who proved the spot panchnama — Conviction of appellants by courts below, therefore, upheld — Criminal Trial — Appreciation of evidence — Corroboration — Part corroboration of victim's evidence whose modesty was outraged — When relevant — Witnesses — Injured witness — Evidentiary value of injured victim — Crimes Against Women and Children — Outraging modesty

B. Penal Code, 1860 — Ss. 354, 452, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Appreciation of evidence — Plea based on inferiority of tribal people that they live in torn clothes or no proper clothes, held, is not admissible — Mentality of persons who regard tribal people as inferior or sub-humans is totally unacceptable in modern India — SCs, STs, OBCs and Minorities — Generally — Attitudes towards tribals

Dismissing the appeal of the accused persons, the Supreme Court

Held :

There is no reason to interfere with the judgment of the High Court convicting the appellants under Sections 452, 354, 323, 506 Part II IPC read with Section 34 IPC and imposing fine of ₹5000 on each accused to be paid to the victim. Rather the sentence imposed was too light considering the gravity of the offence. The victim in the present case is a young woman of 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after

† Arising out of SLP (Crl.) No. 10367 of 2010. From the Judgment and Order dated 10-3-2010 of the High Court of Bombay, Bench at Aurangabad in Crl. A. No. 62 of 1998

tearing off her blouse and brassiere and then got paraded in naked condition on the road of a village while being beaten and abused by the accused herein. (Paras 8, 5 and 3)

Although many of the witnesses turned hostile, there is no reason to disbelieve the evidence of the PW 4, the victim, herself. (Para 9)

Even though PW 9 did not support the actual incident of the victim being beaten and paraded naked in the village by the accused persons, his evidence at least on the points admitted by him corroborates the evidence of the victim. PW 9 supported the prosecution case to some extent. He has accepted his illicit relations with the victim and admitted that he had a daughter from her and she was pregnant for a second time through him. (Para 9)

The accused are powerful persons in the village inasmuch all the eyewitnesses have turned hostile out of fear or some inducement. (Para 11)

PW 8 proved his medical certificate, Ext. 26 and stated that there were two contusions on the person of the victim. (Para 11)

There is no reason to disbelieve PW 2 who proved the spot panchnama, Ext.12. It was drawn in front of the house of the victim, PW 4. PW 4 showed the entire area of the crime from her house to the place in front of the shop of PW 3. The police seized torn clothes and pieces of bangles. (Para 10)

The mentality of the accused who regard tribal people as inferior or sub-humans is totally unacceptable in modern India. The appellants alleged that the people belonging to the Bhil community live in torn clothes as they do not have proper clothes to wear. (Para 13)

C. **Penal Code, 1860 — Ss. 354, 452, 323, 506 Pt. II r/w S. 34 — Outraging modesty of a tribal woman — Need for harsher punishment and special protection to tribals, stressed — Surprise expressed over State Government not preferring appeal for imposition of harsher punishment — Surprise expressed over setting aside of conviction on hypertechnical grounds for offences under SC & ST Act — But said acquittal not interfered with as no appeal preferred thereagainst — SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3 — Acquittal under, on technical grounds — Deprecated**

Instances like the present one deserve total condemnation and harsh punishment. The parade of a naked tribal woman on the village road in broad daylight is shameful, shocking and outrageous. (Paras 31 and 12)

It is surprising that the State Government did not file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge. (Para 12)

It is surprising that the conviction of the accused under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hypertechnical grounds that the caste certificate was not produced and investigation by a police officer of the rank of Deputy Superintendent of Police was not done. These appear to be the only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, it need not be gone into. (Para 8)

D. **Constitution of India — Arts. 15(4), 15(5), 16(4), 16(4-A) and 46 — Protection of STs — Rationale and need for special protection, stated — Held, historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status — Giving only formal equality to all groups or communities in India would not result in genuine equality — Duty of all people in this regard pointed out — SCs, STs, OBCs and Minorities — Affirmative action — Tribal rights and their upliftment — Need for genuine equality and not mere formal equality, stressed — Criminal Law — Particular offences — Crimes against Scheduled Tribes — Need of special protection, stressed (Paras 26 and 30)**

Samatha v. *State of A.P.*, (1997) 8 SCC 191, *referred to*

E. **SCs, STs, OBCs and Minorities — Protection of STs — Need for tolerance and equal respect for, stressed — STs being original inhabitants, but constituting about 8% of population, their vulnerability and deplorable status, stated (Paras 25, 3 and 15)**

F. **SCs, STs, OBCs and Minorities — Protection of STs — Their origin and oppression, discussed — Evidence was cited to point out that Dravidians may not be original inhabitants — Original inhabitants are *pre-Dravidian aborigines* i.e. the ancestors of the present tribals or Adivasis (Scheduled Tribes) — Human and Civil Rights — Tribal Rights (Paras 3, 19, 21, 14 and 28)**

The Cambridge History of India (Vol. I), *Ancient India*, *referred to*

[**Ed.**: Google search of the keywords "The original inhabitants of India" referred to. Reference is probably to *http://en.wikipedia.org/wiki/ dravidian peoples*]

Article "World Directory of Minorities and Indigenous Peoples — India: Advasis"; Story of Eklavya in the Adiparva of the Mahabharat, *referred to*

G. **SCs, STs, OBCs and Minorities — Protection of STs — Ethnic diversity in India — Compared with near homogeneity in China — India a country of immigrants like USA and Canada — Reasons for migration into India and not the reverse way, explained (Paras 22 to 24 and 16 to 18)**

Urdu poet Firaq Gorakhpuri, *quoted*

SS-D/47170/CR

Advocates who appeared in this case :
Dilip A. Taur and Anil Kumar, Advocates, for the Appellants.

Chronological list of cases cited ***on page(s)***

1. (1997) 8 SCC 191, *Samatha* v. *State of A.P.* 801*g-h*

JUDGMENT

1. Leave granted. This appeal has been filed against the final judgment and order dated 10-3-2010 in Criminal Appeal No. 62 of 1998 passed by the Aurangabad Bench of the Bombay High Court.

2. Heard the learned counsel for the appellants.

3. This appeal furnishes a typical instance of how many of our people in India have been treating the tribal people (Scheduled Tribes or Adivasis), who are probably the descendants of the original inhabitants of India, but

now constitute only about 8% of our total population, and as a group are one of the most marginalised and vulnerable communities in India characterised by high level of poverty, illiteracy, unemployment, disease and landlessness. The victim in the present case is a young woman Nandabai, 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after tearing off her blouse and brassiere and then got paraded in naked condition on the road of a village while being beaten and abused by the accused herein.

4. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 5-2-1998 under Sections 452, 354, 323, 506 Part II read with Section 34 IPC and sentenced to suffer RI for six months and to pay a fine of ₹100. They were also sentenced to suffer RI for one year and to pay a fine of ₹100 for the offence punishable under Sections 354/34 IPC. They were also sentenced under Sections 323/34 IPC and sentenced to three months' RI and to pay a fine of ₹100. The appellants were further convicted under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of ₹100.

5. In appeal before the High Court the appellants were acquitted of the offence under Section 3 of the SC/ST Act, but the conviction under the provisions of IPC was confirmed. However, that part of the order regarding fine was set aside and each of the appellant was directed to pay a fine of ₹5000 only to the victim Nandabai.

6. The prosecution case is that the victim Nandabai who belongs to the Bhil community was residing with her father, handicapped brother, and lunatic sister. She had illicit relations with PW 9, Vikram and had given birth to his daughter and was also pregnant through him for a second time. Vikram belongs to a higher caste and his marriage was being arranged by his family with a woman of his own caste. On 13-5-1994 at about 5.00 p.m. when the victim Nandabai was at her house the four accused went to her house and asked why she had illicit relations with Vikram and started beating her with fists and kicks. At that time the accused, Kailas and Balu held her hands while accused, Subabai @ Subhadra removed her sari. The accused Subhash then removed her petticoat and accused Subabai tore the blouse and brassiere of the victim Nandabai. Thereafter the accused Subabai and Balu paraded the victim Nandabai on the road of the village and at that time the four accused herein were beating and abusing the victim Nandabai.

7. At about 8.40 p.m. an FIR was lodged at Taluka Police Station and after investigation a charge-sheet was filed. After taking evidence the learned Additional Sessions Judge convicted the accused. As already mentioned above, the conviction under the provisions of IPC has been upheld but that under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been set aside.

8. We are surprised that the conviction of the accused under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hypertechnical grounds that the caste certificate was

not produced and investigation by a police officer of the rank of Deputy Superintendent of Police was not done. These appear to be the only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, we are now not going into it. However, we see no reason to interfere with the judgment of the High Court convicting the appellants under various provisions of IPC and imposing fine on them. In fact, we feel that the sentence was too light considering the gravity of the offence.

9. There is the evidence of the victim Nandabai, PW 4 herself and we see no reason to disbelieve the same. Although many of the witnesses have turned hostile, we see no reason to disbelieve the statement of the victim Nandabai. In fact, PW 9 Vikram supported the prosecution case to some extent. He has accepted his illicit relations with victim Nandabai and admitted that he had a daughter from her and she was pregnant for a second time through him. Even though he did not support the actual incident, we are of the opinion that Vikram's evidence at least on the points admitted by him corroborates the evidence of victim Nandabai.

10. PW 2, Narendra Kalamkar has proved the spot panchnama, Ext. 12. He stated that the panchnama was drawn in front of the house of PW 4, the victim Nandabai. At the time of the panchnama, Nandabai was accompanied by the police and she had shown the entire area from her house to the place in front of the shop of PW 3, Shankar Pawar. The police seized the clothes in torn condition, produced by PW 4 Nandabai. There were pieces of bangles lying in front of the house. Hence there is no reason to disbelieve PW 2 Narendra Kalamkar.

11. It appears that the accused are powerful persons in the village inasmuch as that all the eyewitnesses have turned hostile out of fear or some inducement. However, PW 8, Dr. Ashok Ingale proved the medical certificate, Ext. 26 and stated that there were two contusions on the person of the victim.

12. The parade of a tribal woman on the village road in broad daylight is shameful, shocking and outrageous. The dishonour of the victim Nandabai called for harsher punishment, and we are surprised that the State Government did not file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge.

13. It is alleged by the appellants that the people belonging to the Bhil community live in torn clothes as they do not have proper clothes to wear. This itself shows the mentality of the accused who regard tribal people as inferior or sub-humans. This is totally unacceptable in modern India.

14. The Bhils are probably the descendants of some of the original inhabitants of India living in various parts of the country particularly southern Rajasthan, Maharashtra, Madhya Pradesh, etc. They are mostly tribal people and have managed to preserve many of their tribal customs despite many oppressions and atrocities from other communities. It is stated in the article "World Directory of Minorities and Indigenous Peoples — India: Adivasis", that in Maharashtra Bhils were mercilessly persecuted in the

17th century. If a criminal was caught and found to be a Bhil, he or she was often killed on the spot. Historical accounts tell us of entire Bhil communities being killed and wiped out. Hence, Bhils retreated to the strongholds of the hills and forests.

15. Thus Bhils are probably the descendants of some of the original inhabitants of India known as the "aborigines" or Scheduled Tribes (Adivasis), who presently comprise of only about 8% of the population of India. The rest 92% of the population of India consists of descendants of immigrants. *Thus India is broadly a country of immigrants like North America*. We may consider this in some detail.

India is broadly a country of immigrants

16. While North America (USA and Canada) is a continent of new immigrants, who came mainly from Europe over the last four or five centuries, India is a country of old immigrants in which people have been coming in over the last ten thousand years or so. Probably about 92% people living in India today are descendants of immigrants, who came mainly from the North-West, and to a lesser extent from the North-East. Since this is a point of great importance for the understanding of our country, it is necessary to go into it in some detail.

17. People migrate from uncomfortable areas to comfortable areas. This is natural because everyone wants to live in comfort. Before the coming of modern industry there were agricultural societies everywhere, and India was a paradise for these because agriculture requires level land, fertile soil, plenty of water for irrigation, etc. which was in abundance in India. Why should anybody living in India migrate to, say, Afghanistan which has a harsh terrain, rocky and mountainous and covered with snow for several months in a year when one cannot grow any crop? Hence, almost all immigrations and invasions came from outside into India (except those Indians who were sent out during British rule as indentured labour, and the recent migration of a few million Indians to the developed countries for job opportunities). *There is perhaps not a single instance of an invasion from India to outside India.*

18. India was a veritable paradise for pastoral and agricultural societies because it has level and fertile land, hundreds of rivers, forests, etc. and is rich in natural resources. Hence for thousands of years people kept pouring into India because they found a comfortable life here in a country which was gifted by nature. As the great Urdu poet Firaq Gorakhpuri wrote:

"Sar zamin-e-hind par aqwaam-e-alam ke firaq
Kafile guzarte gae Hindustan banta gaya"

Which means

"In the land of Hind, the caravans of the peoples of the world kept coming in and India kept getting formed."

19. Who were the original inhabitants of India? At one time it was believed that the Dravidians were the original inhabitants. However, this view has been considerably modified subsequently, and now the generally accepted belief is that *the original inhabitants of India were the*

pre-Dravidian aborigines i.e. the ancestors of the present tribals or Adivasis (Scheduled Tribes). In this connection it is stated in *The Cambridge History of India* (Vol. I), *Ancient India* as follows:

> "... It must be remembered, however, that, when the term 'Dravidian' is thus used ethnographically, it is nothing more than a convenient label. It must not be assumed that the speakers of the Dravidian languages are aborigines. In Southern India, as in the North, the same general distinction exists between the more primitive tribes of the hills and jungles and the civilised inhabitants of the fertile tracts; and some ethnologists hold that the difference is racial and not merely the result of culture. Mr Thurston, for instance, says:
>
> > '*It is the pre-Dravidian aborigines, and not the later and more cultured Dravidians, who must be regarded as the primitive existing race*.... These pre-Dravidians ... are differentiated from the Dravidian classes by their short stature and broad (platyrhine) noses. There is strong ground for the belief that the pre-Dravidians are ethnically related to the Veddas of Ceylon, the Toalas of the Celebes, the Batin of Sumatra, and possibly the Australians. (*The Madras Presidency*, pp. 124–25.)'
>
> *It would seem probable, then, that the original speakers of the Dravidian languages were invaders*, and that the ethnographical Dravidians are a mixed race. In the more habitable regions the two elements have fused, while representatives of the aborigines are still in the fastnesses (in hills and forests) to which they retired before the encroachments of the newcomers. If this view be correct, we must suppose that these aborigines have, in the course of long ages, lost their ancient languages and adopted those of their conquerors. The process of linguistic transformation, which may still be observed in other parts of India, would seem to have been carried out more completely in the South than elsewhere.
>
> The theory that the Dravidian element is the most ancient which we can discover in the population of Northern India, must also be modified by what we now know of the Munda languages, the Indian representatives of the Austric family of speech, and the mixed languages in which their influence has been traced (p. 48). Here, according to the evidence now available, *it would seem that the Austric element is the oldest*, and that it has been overlaid in different regions by successive waves of Dravidian and Indo-European on the one hand, and by Tibeto-Chinese on the other. Most ethnologists hold that there is no difference in physical type between the present speakers of Munda and Dravidian languages. This statement has been called in question; but, if it is true, it shows that racial conditions have become so complicated that it is no longer possible to analyse their constituents. Language alone has preserved a record which would otherwise have been lost.

At the same time, there can be little doubt that Dravidian languages were actually flourishing in the western regions of Northern India at the period when languages of the Indo-European type were introduced by the Aryan invasions from the north-west. Dravidian characteristics have been traced alike in Vedic and Classical Sanskrit, in the Prakrits or early popular dialects, and in the modern vernaculars derived from them. The linguistic strata would thus appear to be arranged in the order—Austric, Dravidian, Indo-European.

There is good ground, then, for supposing that, before the coming of the Indo-Aryans, speakers of the Dravidian languages predominated both in Northern and in Southern India; but, as we have seen, older elements are discoverable in the populations of both regions, and therefore the assumption that the Dravidians are aboriginal is no longer tenable. Is there any evidence to show whence they came into India?

No theory of their origin can be maintained which does not account for the existence of Brahui, the large island of Dravidian speech in the mountainous regions of distant Baluchistan which lie near the western routes into India. Is Brahui a surviving trace of the immigration of Dravidian-speaking peoples into India from the west? Or does it mark the limits of an overflow from India into Baluchistan? Both theories have been held; but as *all the great movements of peoples have been into India and not out of India*, and as a remote mountainous district may be expected to retain the survivals of ancient races while it is not likely to have been colonised, the former view would a priori seem to be by far the more probable." (emphasis supplied)

(See "Brahui" on Google.)

20. In Google, "The original inhabitants of India", it is mentioned:

"A number of earlier anthropologists held the view that the Dravidian people together were a distinct race. However, comprehensive genetic studies have proven that this is not the case.

The original inhabitants of India may be identified with the speakers of the Munda languages, which are unrelated to either Indo-Aryan or Dravidian languages." (emphasis supplied)

21. Thus the generally accepted view now is that the original inhabitants of India were not the Dravidians but the pre-Dravidians Munda aborigines whose descendants presently live in parts of Chottanagpur (Jharkhand), Chhattisgarh, Orissa, West Bengal, etc., the Todas of the Nilgiris in Tamil Nadu, the tribals in the Andaman Islands, the Adivasis in various parts of India (especially in the forests and hills) e.g. Gonds, Santhals, Bhils, etc.

22. It is not necessary for us to go into further details into this issue, but the facts mentioned above certainly lend support to the view that *about 92% people living in India are descendants of immigrants* (though more research is required). It is for this reason that there is such tremendous diversity in India. This diversity is a significant feature of our country, and the only way to explain it is to accept that India is largely a country of immigrants.

23. There are a large number of religions, castes, languages, ethnic groups, cultures, etc. in our country, which is due to the fact that India is a country of immigrants. Somebody is tall, somebody is short, some are dark, some are fair complexioned, with all kinds of shades in between, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. There are differences in dress, food habits and various other matters.

24. We may compare India with China which is larger both in population and in land area than India. China has a population of about 1.3 billion whereas our population is roughly 1.1 billion. Also, China has more than twice our land area. However, all Chinese have Mongoloid features; they have a common written script (Mandarin Chinese) and 95% of them belong to one ethnic group, called the *Han Chinese*. Hence there is a broad (though not absolute) homogeneity in China. On the other hand, as stated above, India has tremendous diversity and this is due to the large-scale migrations and invasions into India over thousands of years. The various immigrants/ invaders who came into India brought with them their different cultures, languages, religions, etc. which accounts for the tremendous diversity in India.

25. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our Founding Fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Articles 14 to 17), liberty (Article 21), etc.

26. However, giving formal equality to all groups or communities in India would not result in genuine equality. The historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status. It is for this reason that special provisions have been made in our Constitution in Articles 15(4), 15(5), 16(4), 16(4-A), 46, etc. for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalised in India are the Adivasis (STs), who, as already mentioned, are the descendants of the original inhabitants of India, and are the most marginalised and living in terrible poverty with high rates of illiteracy, disease, early mortality, etc. Their plight has been described by this Court in *Samatha* v. *State of A.P.*[1] (vide SCC paras 12-13 : AIR paras 12-15). Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimised for thousands of years by terrible

1 (1997) 8 SCC 191 : AIR 1997 SC 3297

oppression and atrocities. The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India.

27. The bravery of the Bhils was accepted by the great Indian warrior Rana Pratap, who held a high opinion of Bhils as part of his army.

28. The injustice done to the tribal people of India is a shameful chapter in our country's history. The tribals were called "rakshas" (demons), "asuras", and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc. And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive.

29. The well-known example of the injustice to the tribals is the story of Eklavya in the Adiparva of the Mahabharat. Eklavya wanted to learn archery, but Dronacharya refused to teach him, regarding him as low born. Eklavya then built a statue of Dronacharya and practiced archery before the statue. He would have perhaps become a better archer than Arjun, but since Arjun was Dronacharya's favourite pupil Dronacharya told Eklavya to cut off his right thumb and give it to him as "guru dakshina" (gift to the teacher given traditionally by the student after his study is complete). In his simplicity Eklavya did what he was told. This was a shameful act on the part of Dronacharya. He had not even taught Eklavya, so what right had he to demand "guru dakshina", and that too of the right thumb of Eklavya so that the latter may not become a better archer than his favourite pupil Arjun?

30. Despite this horrible oppression on them, the tribals of India have generally (though not invariably) retained a higher level of ethics than the non-tribals in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribals do. They are generally superior in character to the non-tribals. It is time now to undo the historical injustice to them.

31. Instances like the one with which we are concerned in this case deserve total condemnation and harsh punishment.

32. With these observations the appeal stands dismissed.

END OF THE VOLUME

MANU/TN/0657/2014

Equivalent Citation: 2014WritLR328

IN THE HIGH COURT OF MADRAS

W.P. No. 36775 of 2007

Decided On: 26.02.2014

Appellants: **M.P. Mariappan**
Vs.
Respondent: **The Deputy Inspector General of Police, Coimbatore Range and Ors.**

Hon'ble Judges/Coram:
P.R. Shivakumar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Mr. V. Arun

For Respondents/Defendant: Mr. M.S. Ramesh, Additional Govt. Pleader for R1 to R7 and Mr. A.K. Kumarasamy for R8 to R12, 14, 15, 17 & 19

ORDER

P.R. Shivakumar, J.

1. Invoking the jurisdiction of the Court under Article 226 of the Constitution of India, the writ petitioner has sought for the issuance of a writ of certiorarified mandamus for quashing of the order of the Sub-Collector and Sub-Divisional Magistrate, Gobichettipalayam, the 4th respondent herein, made in proceedings Na. Ka. 15462/07-B2 dated 20.11.2007 and further directing the respondents to pay adequate compensation to the petitioner for the alleged discrimination shown to the petitioner in denying him the use of Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, Gandhipuram, Nambiyur on 21.11.2007 for the ear-boring ceremony of his daughter, who was then 6 years old. Following are the brief averments made by the petitioner in the affidavit filed in support of the writ petition;

> When the petitioner approached the 8th respondent on 07.10.2007 for booking Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, Gandhipuram, Nambiyur for the ear-boring function of his daughter, the 8th respondent enquired about the community of the petitioner and ascertained that the petitioner was a member of Arunthathiyar community, a scheduled caste. On coming to know that the petitioner belonged to Arunthathiyar community, the 8th respondent refused to book the mandapam for the above said function and on the other hand, he went to the extent of proclaiming that Arunthathiyar community people could not conduct any function in the mandapam belonging to caste Hindus. On such refusal on the part of the 8th respondent, the petitioner preferred a complaint on the file of Nambiyur Police Station. After the lodging of such complaint, the 8th respondent agreed to receive a sum of Rs. 1,000/- as advance out of the rent of Rs. 2,000/- since the mandapam had not been booked by any one else for any other function to be held on 21.11.2007. However, after the petitioner had made all arrangements for the function slotted to be held on 21.11.2007, the

caste Hindus of Nambiyur, especially the respondents 8 to 19, caused a threat to the petitioner to withdraw the reservation of the mandapam for the above said function on the premise that the mandapam was meant for upper caste people alone. When the petitioner pleaded with the respondents 8 to 19 pointing out the fact that he had a right to equality guaranteed as a fundamental right by the Constitution of India, they chose to abuse him in the name of his caste. It made the petitioner approach the Sub-collector, Gobichettipalayam (4th respondent) and the Deputy Superintendent of Police, Gobichettipalayam (5th respondent) for immediate action for the acts of the respondents 8 to 19 showing discrimination on grounds of caste and abusing the petitioner in public in the name of caste. The petitioner also made representations to the Deputy Inspector General of Police, Coimbatore Range and the District Collector of Erode District (the first and second respondents). No action was taken against the respondents 8 to 19 and on the other hand, the 4th respondent, namely the Sub-Collector and Sub-Divisional Magistrate of Gobichettipalayam Division obtained a report from the Tahsildar, Gobichettipalayam Taluk (6th respondent) and based on the report, he passed the impugned order dated 20.11.2007 under Section 144 of the Code of Criminal Procedure restraining the writ petitioner and 12 others and also respondents 8 to 19 from entering the village limits of Nambiyur from 20.11.2007 till 30.11.2007. Under the said circumstances alone, the petitioner has to approach the High Court for the issuance of a writ of certiorarified mandamus.

2 . On behalf of the official respondents, namely respondents 1 to 7, the 5th respondent filed a counter containing, in brief, the following averments:

Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, Gandhipuram, Nambiyur was booked by the petitioner for the ear-boring ceremony of his daughter to be held on 21.11.2007. But the management of the Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam refused to give it for the function on the premise that it was likely to be used by the petitioner for convening a party meeting. The contention of the petitioner that on 07.10.2007 when the petitioner approached the 8th respondent for booking the Kalayana Mandapam for the ear-boring ceremony of his daughter, the 8th respondent refused to book it and hence, the petitioner preferred a police complaint pursuant to which the mandapam was booked in the name of the petitioner for the ear-boring ceremony of his daughter proposed to be held on 21.11.2007 is substantially correct. However, the 5th respondent received reliable information that the petitioner and other members of 'Vidudhalai Sirutthaigal' party were planning to conduct a political meeting at the venue on the above said date and time in the guise of ear-boring ceremony of the daughter of the petitioner and hence, the trouble between the petitioner and the management of the Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam started. Only in order to prevent any untoward incident, on the submission of a report by the 6th respondent (Tahsildar), the 4th respondent (The Sub-Collector & Sub Divisional Magistrate, Gobichettipalayam) passed the impugned order dated 20.11.2007 under Section 144 of the Code of Criminal Procedure. Even after the passing of the impugned order based on the complaint of the petitioner, a case was registered in Crime No. 180 of 2007 on the file of Nambiyur Police Station for an offence under Section 7(1) (b) of the Protection of Civil Rights Act (in short PCR Act) and the final report was taken on file as C.C. No. 58 of 2008 on the file of Judicial Magistrate No.

II, Gobichettipalayam. The order of the 4th respondent was perfectly valid. The Kalayana mandapam, being one belonging to a particular community, the same cannot be construed to be a public building and the petitioner could approach the Civil Court claiming damages for the breach of contract, if any.

3 . On behalf of the private respondents, the 8th respondent has filed a counter affidavit containing, in brief, the following averments :

The members of Senguthamudhaliar community of Nambiyur Village formed an association and built a Kalyana Mandapam out of their own funds in order to help people of their community for conducting auspicious functions as such as marriages at a concessional rate. The mandapam, known as Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, is managed by elected body of persons among the members of Senguthamudhaliar community of Nambiyur village; that the 8th respondent was the elected secretary of the kalyana mandapam that on 07.10.2007, some of the local leaders of a political party founded on caste basis, approached the 8th respondent for booking the kalyana mandapam to conduct a party meeting and that the 8th respondent represented that the kalyanamandapam was being given only for their community people, that too, for auspicious functions and not for conducting party meetings. Pursuant to the same, the then Sub-Inspector of Police of Nambiyur Police Station by name Subramanian took the 8th respondent to the police station stating that a complaint had been lodged against him by two persons under the Protection of Civil Rights Act. While he was being enquired in the police station, the writ petitioner and 3 other persons were present and the above said Sub-Inspector of Police demanded a sum of Rs. 4,000/- for not foisting a case against the 8th respondent under the provisions of the Protection of Civil Rights Act. On the refusal of the 8th respondent to make payment as per the illegal demand, the above said Sub-Inspector of Police directed the other party people to get the receipt book of the Kalyana Mandapam from the shop of the 8th respondent. On the above said direction of the Sub-Inspector of Police, the writ petitioner and three other persons went to the shop of the 8th respondent and the receipt book was forcibly acquired by them from the wife of the 8th respondent. When they brought it to the police station, Subramaniam, the then Sub-Inspector of Police, Nambiyur Police Station caused a threat to register a case under the Protection of Civil Rights Act and forced the 8th respondent to prepare a bill as if he received an advance of Rs. 1,000/- from the writ petitioner for his daughter's ear-boring ceremony to be held on 21.11.2007. The said receipt dated 07.10.2007 was forcibly taken by the writ petitioner from the 8th respondent with the help of the police. Hence the 8th respondent informed the other office bearers of his community people and a complaint was lodged with the Sub-Collector and other higher officials about the illegal act of Subramaniam, the then Sub-Inspector of Police, Nambiyur Police Station. The same resulted in a tension between the two communities. Hence, at the instructions of the 4th respondent, a peace committee meeting was convened by the Tahsildar, Gobichettipalayam, the 6th respondent, but no agreement could be reached. The Tahsildar submitted a report revealing an imminent community clash and based on the report, an order under Section 144 Cr.P.C. was validly passed. Such an order would be in force for two months alone. In case of any grievance against the impugned order, it was open to the petitioner to move the concerned Magistrate or his successor in office or any Magistrate

subordinate to him to cancel or modify the order under Sub-Section 5 of Section 144 Cr.P.C. Without doing it, the writ petition has been filed based on misconception and with false allegations. The 8th respondent and others had also filed a private complaint against the writ petitioner and others before the learned Judicial Magistrate, No. II, Gobichettipalayam alleging commission of offences punishable under Sections 147, 148, 342, 368, 384, 383, 193 r/w. 506(i) IPC. The said complaint has been referred to the police for investigation. Under the said circumstances, the 8th respondent prays for the dismissal of the writ petition.

4 . Mr. A.V. Arun, learned counsel for the petitioner, Mr. M.S. Ramesh, learned Additional Government Pleader representing the official respondents, namely respondents 1 to 7 and Mr. A.K. Kumarasamy, learned counsel for the private respondents advanced their arguments in line with the respective averments of the concerned party/parties. The arguments advanced on behalf of the parties were taken into consideration. This Court also considered the materials placed for its perusal by the parties concerned.

5 . The writ petitioner M.P. Mariappan, is a resident of Piliampalayam Village, Nambiyur, Gobichettipalayam Taluk, Erode District and he belongs to Arunthathiyar community, declared by the Presidential notification as a scheduled caste. V. Ayyasamy, the 8th respondent, is the secretary/manager of Sri Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam at Gandhi Nagar, Nambiyur. According to the writ petitioner, he wanted to take the said mandapam as the venue for conducting ear-boring ceremony of his younger daughter, which was proposed to be held on 21.11.2007 and he approached the 8th respondent on 07.10.2007 for booking the above said Kalyanamandapam for his function. It is his further contention that the Kalyanamandapam had not been booked by any other person for any other function for the above said date i.e., 21.11.2007 and the said fact was also ascertained by the writ petitioner from the 8th respondent, but the 8th respondent, after ascertaining the fact that the writ petitioner belonged to Arunthathiyar community, refused booking of the said mandapam for the function of 21.11.2007, stating that the mandapam was meant for caste Hindus and the members of Arunthathiyar community would not be permitted to conduct their functions in the said mandapam. It is his further contention that even when he pleaded with 8th respondent to consult the President of the Kalayanamandapam in this regard, the 8th respondent besides refusing to allow the booking of the Kalyanamandapam for the function of the writ petitioner, caused humiliation to the writ petitioner in the name of his caste; that pursuant to the same, the writ petitioner lodged a complaint on the file of Nambiyur Police Station and that only after lodging of such a complaint, 8th respondent received a sum of Rs. 1000/- as advance out of the rent of Rs. 2000/- and booked the mandapam for the ear-boring ceremony of daughter of the writ petitioner scheduled to be held on 21.11.2007. The further contention of the writ petitioner is that after such booking, the private respondents, namely respondents 8 to 19 made a threat to the writ petitioner stating that he would have to face serious consequences if he did not cancel the reservation of the hall for his function on 21.11.2007, since according to them, the said hall was meant for upper caste people alone.

6. Under the said circumstances, according to the writ petitioner, he had to approach the respondents 4 and 5 who in turn, asked him to contact the 6th respondent, namely the Tahsildar of Gobichettipalayam Taluk and the various representations sent to the official respondents did not evoke any response and on the other hand, the 4th respondent, namely the Sub-collector and Sub-divisional Magistrate,

Gobichettipalayam Division, chose to pass the impugned order dated 20.11.2007 in his proceedings Na. Ka. 15462/07/B2 directing the petitioner and 12 other persons and respondents 8 to 19 not to enter the village limits of Nambiyur from 20.11.2007 till 30.11.2007, as a result of which he was not allowed to conduct the function in the said Kalyanamandapam on 21.11.2007 even though he had printed the invitation and distributed the same to his friends and relatives.

7. Learned counsel for the writ petitioner further argued that the respondents 8 to 19 chose to deny permission to the petitioner to use the Kalyanamandapam for his daughter's ear-boring ceremony, after he had booked the same, on the ground that the mandapam was intended for the use of caste Hindus and no member of the scheduled caste would be allowed to conduct his function in the said mandapam. It is also his contention that besides practicing untouchability by refusing permission to use the mandapam for the function of the writ petitioner on communal basis, the respondents 8 to 19 had also committed offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Learned counsel for the writ petitioner vehemently contended that when such a practice of untouchability and commission of atrocity on a member of scheduled caste was brought to the knowledge of the official respondents, instead of taking appropriate action against the offenders, the officials wanted to protect the offenders and as the culmination of such an indifferent attitude on the part of the official respondents, the Sub-Collector and Sub-Divisional Magistrate, namely the 4th respondent herein chose to pass an order purportedly under Section 144 of the Criminal Procedure Code, after getting a report from the 6th respondent, namely the Tahsildar of Gobichettipalayam Taluk, to the effect that the situation was tense and passing such an order was necessary to avoid any untoward incident. It is the further contention of the learned counsel for the writ petitioner that the said act on the part of the fourth respondent is a mala fide exercise of power done with the hidden object of helping the private respondents in their act of denying permission to use the Kalyanamandapam for the function of the writ petitioner, a member of a Schedule caste and that the fourth respondent failed to perform his duties under the provisions of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. Learned counsel for the writ petitioner drew the attention of the Court to the fact that though clear averments were made in the complaint made by the writ petitioner that untouchability was being practiced by the private respondents and he was also humiliated in front of others in the name of caste attracting the penal provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, no case was registered by the police for any offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the complaint was also not investigated by an investigating Officer appointed in accordance with Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

9. Copy of the complaint dated 07.10.2007 lodged by the writ petitioner on the file of Nambiyur Police Station, which has been included as the Document No. 1 in the typed-set of papers filed by the writ petitioner, shows that on 07.10.2007 itself, after the 8th respondent refused booking of the mandapam for the function of the writ petitioner, the said complaint was given to the police. It is also obvious from the copy of the receipt issued in the said police station assigning the said complaint C.S.R. No. 192 of 2007. It is also obvious from the copy of the statement given by the 8th respondent to the Sub-Inspector of Police, Nambiyur Police Station on 07.10.2007, during the enquiry on the said complaint, that he received a sum of Rs.

1000/- as advance out of Rs. 2000/- fixed as rent in receipt No. 57 dated 07.10.2007. In the said statement, it had also been stated that when the writ petitioner approached him for booking the mandapam for his function to be held on 21.11.2007 informing that he belonged to scheduled caste, he had informed the writ petitioner that he would give an answer after consulting the Secretary. However, after the complaint was lodged and an enquiry was made by the Sub-Inspector of Police, he seems to have received advance and issued a receipt. In the said statement itself, he had stated that the writ petitioner should clean the mandapam after the function would be over.

10. The copy of the statement and the receipt issued by the 8th respondent as the Manager of the Mandapam have been produced at pages 3 and 4 in the typed-set of papers. Copy of the invitation printed and distributed by the writ petitioner for the said function is also available at Page 5 of the typed-set of papers. It is not in dispute that the said receipt was issued for the function of the writ petitioner scheduled to be held on 21.11.2007 and the writ petitioner started issuing invitations for the ear-boring ceremony of his daughter Harini. However, the private respondents, namely respondents 8 to 19 wanted to wriggle out of the commitment, passed a so called resolution to the effect that the Kalyanamandapam was booked in the name of the writ petitioner in the guise of using it for the ear-boring ceremony of the daughter of the writ petitioner, whereas the writ petitioner and other party cadres of a political party with a communal background, namely "Viduthalai Chiruthaigal" party wanted to use the venue for conducting a party meeting; that therefore, they have taken a decision not to allow the Kalyanamandapam to be used by the writ petitioner and that in this regard, complaints were given to the Sub-Collector as well as the Deputy Superintendent of Police.

11. From a copy of the said resolution passed in the General Body produced in the typed-set of papers filed by the private respondents, it is seen that the resolution contains reference to an alleged complaint to the Sub-Collector on 19.10.2007 and complaint given to the Deputy Superintendent of Police on 31.10.2007. Of course, a copy of the complaint allegedly given by the 8th respondent to the Deputy Superintendent of Police, Gobichettipalayam is found at Pages 3 to 5 of the typed-set of papers of the private respondents. The same bears the date 31.10.2007. A copy of the complaint allegedly given to the Sub-Collector, Gobichettipalayam on 19.10.2007 is found in Pages 1 and 2 of the said typed-set. It is obvious from the copy of the said complaint allegedly addressed to the Sub-Collector that though the 8th respondent was described as the Secretary of Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, in the Sender's address, at the end of the complaint, 8th respondent has signed it as President of the Governing Body of Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam. In the complaint allegedly given to the Deputy Superintendent of Police on 31.10.2007, the date of complaint given to the Sub-Collector of Gobichettipalayam has been referred to as 18.10.2007, which is contrary to the date found in the copy of the complaint which bears the date 19.10.2007. It is also obvious from the impugned order passed by the 4th respondent that the order does not refer to any such complaint lodged by the 8th respondent either on 18.10.2009 or 19.10.2007. On the other hand, in the reference portion, the report of the Tahsildar, Gobichettipalayam and the letter of the Deputy Superintendent of Police alone have been noted. It is also pertinent to note that the officer by name M. Bharatham, who passed the impugned order, was not the regular Sub-Collector and on the other hand he was only incharge of the post of Sub-Collector, Gobichettipalayam. It is also obvious from a copy of an order dated 20.11.2007 itself, which is found at Page 17 of the typed-set of papers of the private

respondents, that the Incharge Sub-Collector, without an authority, had chosen to pass an order appointing Thiru R. Rangasamy as the Exercise Officer, Gobichettipalayam Division as Executive Magistrate. The private respondents have also chose to include a copy of the private complaint allegedly submitted to the Judicial Magistrate II, Gobichettipalayam, which was forwarded by the said Magistrate to the Deputy Superintendent of Police for investigation. No Criminal Miscellaneous Petition is found and no document showing registration of a case based on the said complaint is also furnished.

12. In this regard, the contention of the writ petitioner seems to be uniform and cogent. According to the writ petitioner, when he first approached the 8th respondent, who was the Manager of the Karpaga Vinayagar Kamatchi Amman Kalyana Mandapam, for reserving it for his daughter Harini's ear-boring ceremony scheduled to be held on 21.11.2007, the 8th respondent after ascertaining from the writ petitioner that he was a member of Arunthathiyar community, a scheduled caste, refused to book the Kalyanamandapam for the said function stating that the Mandapam was not meant for people belonging to Arunthathiyar community and on the other hand the same was meant for caste Hindus. It is his further version that since his appeal to the 8th respondent, at least to consult the President and Secretary of the Kalyanamandapam, did fell in deaf ears, he was constrained to lodge a complaint on the file of Nambiyur Police Station; that only thereafter, in order to escape from the criminal liability, the 8th respondent booked the Kalyanamandapam for the function of the writ petitioner and issued a receipt for the same and that subsequently, the respondents 8 to 19 belonging to a particular community wanted him to cancel the booking and threatened with dire consequences if he refused to do so. It is also his further contention that the private respondents, namely respondents 8 to 19, did so practicing untouchability by informing the writ petitioner that their community people would not allow the Kalyanamandapam to be let out for the functions of members of Arunthathiyar community, a scheduled caste and that when the writ petitioner confronted them by inviting their attention to the fact that the practice of untouchability has been abolished and by virtue of fundamental rights guaranteed by the constitution, he was entitled to seek booking of the Kalayanamandapam for his family function on 21.11.2007, the respondents 8 to 19 humiliated the writ petitioner in the presence of others by calling him using his caste name and stating that Chakliyers could not be permitted to conduct any function in the mandapam meant for caste Hindus even though there was no booking had been made by any other person for that day.

13. As against the clear and cogent story propounded by the writ petitioner, the stand taken by the private respondents seems to be lacking in those aspects. First of all, as pointed out supra, no acknowledgment for having lodged a complaint with the Sub-Collector of Gobichettipalayam on 19.10.2007 has been produced. The copy of the complaint produced by the private respondents contains the date 19.10.2007, whereas in the copy of the complaint dated 31.10.2007, allegedly given to the Deputy Superintendent of Police, Gobichettipalayam by the 8th respondent, the date of complaint given to the Sub-Collector is found noted as 18.10.2007, which is quite contrary to the date found in the copy produced as copy of the complaint given to the Sub-Collector. In the copy of the complaint allegedly given to the Sub-Collector, it has been stated that one Thangavel, Union Secretary, Viduthalai Chiruthaigal Party and one V.T. Rangasamy of Vellalapalayam approached the 8th respondent at 09.30 a.m. on 07.10.2007 and informed that they needed the Kalyanamandapam for conducting a party meeting, for which they were replied that it was not the practice of letting out the mandapam for party meetings and that, if they wanted they would

consult the Executing Committee members and inform them; that thereafter the said persons went to Nambiyur Police Station and gave a complaint as if the booking of the kalayanamandapam for the ear-boring ceremony of the daughter of the writ petitioner to be held on 21.11.2007 was refused; that the Sub-Inspector of police took him to the police station in the guise of enquiry on the complaint lodged by the writ petitioner and made the receipt book which was kept in the shop of the 8th respondent to be brought to the police station after detaining the 8th respondent in the police station, by sending Thangavel, Rangasamy and Mariappan to the shop of the 8th respondent for bringing it to the police station; that after the receipt book was brought to the police station, the Sub-Inspector demanded a bribe of Rs. 4000/- on the promise that in case of the 8th respondent making such payment, no action under the Protection of Civil Rights Act based on the complaint of the writ petitioner would be taken; that when the 8th respondent expressed his inability to arrange a sum of Rs. 4,000/-, the Sub-Inspector, caused a threat and that pursuant to such a threat, the 8th respondent under duress and coercion issued a receipt.

14. In this regard, it is pertinent to note that the complaint refers to the presence of three persons, namely Thangavel, V.T. Rangasamy and M.P. Mariappan, the writ petitioner in the Police Station besides the Sub-Inspector and it has been stated that the above said three persons alone went to the shop of the 8th respondent and brought the receipt book defying the resistance made by the wife of the 8th respondent. Nowhere in the said complaint presence of any person by name Pazhaselvam was referred to. However, in the copy of the complaint dated 31.10.2007, allegedly given to the Deputy Superintendent of Police, besides quoting a different date of the complaint given to the Sub-Collector, the 8th respondent has referred to the presence of the 4th person by name Pazhaselvam besides Thangavel, V.T. Rangasamy and M.P. Mariappan, the writ petitioner, as the persons who came along with the Sub-Inspector Subramanian and forcibly took him to the police station. In the alleged complaint given to the Sub-Collector, it has been stated that the Sub-Inspector came and took him forcibly to the police station, whereas in the alleged complaint given to the Deputy Superintendent of Police, besides including the name of 4th person, it has been stated that all the four persons by names Thangavel, V.T. Rangasamy, M.P. Mariappan and Pazhaselvam came along with the Sub-Inspector Subramaniam and all of them forcibly took him to the police station. In the copy of the complaint allegedly given to the Sub-Collector, it has not been mentioned that he did not receive Rs. 1000/- as advance as mentioned in the receipt, whereas in the complaint allegedly given to the Deputy Superintendent of Police, it has been stated that though the receipt was issued as if a sum of Rs. 1000/- was received as advance, no amount was paid to him. It is also pertinent to note that in the complaint allegedly given to the Sub-collector it has been stated that Thangavel, V.T. Rangasamy and M.P. Mariappan (the writ petitioner) are the three persons who went to the tailor shop of the 8th respondent, after he was detained by the Sub-Inspector of Police in the Police station, to bring the receipt book. On the other hand, in the complaint dated 31.10.2007 allegedly given to the Deputy Superintendent of Police, it has been stated that after he was asked to sit in the police station, Thangavel, V.T. Rangasamy, Pazhaselvam and M.P. Mariappan, the writ petitioner, totally four in number, were sent to the shop of the 8th respondent and all of them went there and brought the receipt book defying the resistance made by the wife of the 8th respondent.

15. Furthermore, when no amount was paid as advance, he being the Manager of the Marriage Hall answerable to the members of the Managing Committee, could have refused to sign the receipt without payment of the advance. It is also pertinent to

note that though the receipt was issued on 07.10.2007, it took about 12 more days for the 8th respondent to send a complaint to the Sub-collector and 24 days to submit a complaint to the Deputy Superintendent of Police. The learned counsel for the petitioner also pointed out the fact that the General body of the Community members of the respondents 8 to 19 was convened only on 06.11.2000, which would show deliberation and afterthought resulting in stage by stage improvement in the stand taken by the private respondents.

16. Of course the writ petitioner has raised a contention of discrimination on the ground of caste and practice of untouchability on the part of the private respondents, namely respondents 8 to 19 and the respondents 8 to 19 have taken a stand that in the guise of conducting ear-boring ceremony, the members of Vidudhalai Sirutthaigal party wanted to conduct a party meeting and that was the reason why the private respondents refused booking for the alleged function of the writ petitioner. It is true that contentious issues may not be suitable for resolution in a writ petition. But, it must be noticed that in this writ petition above said contentious issue is not going to be finally resolved. Whether the act on the part of the official respondents in the given situation was bona fide or it was mala fide in order to shield the private respondents and whether the official respondents have failed in discharge of their duties are to be considered in this writ petition. Article 15 of the Constitution abolishes discrimination by the state on the ground of religion, race, caste, sex or place of birth. However, the very same provision permits the state to make special provision by law for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes relating to their admission to educational institutions including private educational institutions whether aided or unaided other than minority educational institutions. By article 17 of the constitution of India untouchability in any form stands abolished and forbidden. It reads as follows:

> 17. Abolition of Untouchability: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

In this regard, two important legislations have been passed by the Parliament. They are: I) Protection of Civil Rights Act and 2) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

17. It is obvious that a complaint was lodged by the writ petitioner alleging that when he approached the 8th respondent for booking the Kalyanamandapam for the ear-boring ceremony of his younger daughter Harini scheduled to be held on 21.11.2007, the 8th respondent, after ascertaining the fact that he belonged to Arunthathiyar community, refused to book the Kalyanamandapam stating that Arunthathiyar community people could not conduct a function in the mandapam belonging to caste Hindus. When such a complaint was given, sensing trouble that he would be facing prosecution not only under the provisions of Protection of Civil Rights Act, but also under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, he allowed him to book the mandapam and issued a receipt after receiving 50% of the rent as advance. Thereafter, the private respondents, who did not want to allow the writ petitioner to use the mandapam for his function, wanted to prevent it by directing him to cancel the booking and when he refused to do so, they had taken a stand that the Kalyanamandapam booked for the ear-boring ceremony of Harini was in fact purported to be used for a political party meeting.

18. In this regard, it is the contention of the private respondents that two persons belonging to Vidudhalai Sirutthaigal party wanted to book the mandapam for a meeting of their party, which was refused and they, in order to have the venue, had chosen to lodge a complaint in the name of the writ petitioner and obtained a receipt booking the mandapam for 21.11.2007 for the alleged purpose of conducting ear-boring ceremony of the daughter of the writ petitioner whereas the hidden agenda being one to conduct the party meeting of Vidudhalai Sirutthaigal party. Quite contrary to the above said contention, averments are made in the alleged complaint given to the Deputy Superintendent of Police on 31.10.2007 to which a copy of the invitation printed and distributed by the writ petitioner came to be attached. It had been stated in the said complaint that the writ petitioner was distributing the invitation printed with the photograph of Vijayakanth, the leader of DMDK party. The private respondents have taken a stand on the one hand that the mandapam was sought to be booked for the party meeting of Vidudhalai Sirutthaigal party and on the other hand have stated in their complaint that the writ petitioner was distributing invitation for the ear-boring ceremony of his daughter, in which the photograph of DMDK party leader Vijayakanth had been printed. They themselves were not sure as to whether any political party meeting was proposed to be held in the mandapam.

19. Simply because a person showing allegiance to a particular political party wants his party leader to come and grace the occasion, the function will not be converted into a party function. Almost it is common in Tamil Nadu that majority of the family functions are tinged with traces of political affiliation. Similarly, because the photograph of the leader of a particular political party has been printed in the invitation for the family function, it cannot be assumed that the venue was sought to be used for a party meeting. As pointed out supra, the private respondents themselves were not sure as to whether any political party meeting was sought to be held and if so the meeting of which political party - whether Vidudhalai Sirutthaigal party or DMDK. If at all they were determined not to allow the mandapam to be used as a venue for the meeting of the political party, they could have very well imposed a condition in this regard while allowing the writ petitioner to go on with the proposed function. In this case, if they still apprehend that the venue would be used for the political meeting and the same would trigger a commotion, they would have very well appraised the authorities and the authorities could have very well obtained an assurance from the convenor of the function that he would use it purely for his domestic function and he would not allow the use of the mandapam as a venue for political party meeting.

20. It is also quite obvious from the counter statement of the official respondents that in the peace committee meetings neither the writ petitioner nor any one supporting him declared that they wanted to use the mandapam on the occasion of the ear-boring ceremony of Harini, the younger daughter of the writ petitioner, as a venue for any party meeting of Vidudhalai Sirutthaigal party or any other political party. It transpires that the writ petitioner was holding out that purely for a domestic function, namely ear-boring ceremony of his daughter, the mandapam was booked and that the same was sought to be prevented by the private respondent as they did not want a member of Arunthathiyar community, a scheduled caste, to use the mandapam for his family function. Of course, the private respondents were holding out that in the guise of ear-boring ceremony, the members of Vidudhalai Sirutthaigal party wanted to conduct a party meeting and that was the reason why they were not prepared to allow the use of the mandapam for the proposed function of ear-boring ceremony. When such were the stands taken by the parties to the peace committee, the officials could have very well taken an undertaking from the writ petitioner that

the function arranged by him would be purely a domestic function and no meeting of the political party would be allowed to be conducted during the time allotted to him. Similarly, the private respondents also could have given undertaking that they would not disturb the domestic function if conducted in accordance with the undertaking of the writ petitioner. The private respondents could have pleaded for the deployment of police personnel and other officials to see that the function was conducted as per the undertaking and none of the undertaking was violated. In stead of doing it, the 4th respondent, seems to have passed an order a day before the date fixed for the function arranged by the writ petitioner, directing him and 12 others being his friends and relatives and also respondents 8 to 19 not to enter the limits of Nambiyur village from 20.11.2007 to 30.11.2007. By passing such a prohibitory order under Section 144 Cr.P.C., the fourth respondent has helped the private respondents in their attempt to prevent the use of the Kalyanamandapam for the domestic function of the writ petitioner. The time at which the order came to be passed will have a bearing on the bona fide or otherwise of the exercise of the power under Section 144 Cr.P.C. by the 4th respondent. It is also pertinent to note that the said order came to be passed not by the regular Sub-Collector, but by the Sub-Collector Incharge. It is also obvious from the fact that the Sub-collector, while passing the order under Section 144 Cr.P.C. prohibiting the entry of the petitioner and 12 other persons and the respondents 8 to 19 into the limits of Nambiyur from 20.11.2007 till 30.11.2007, chose to pass an order appointing the Excise Officer of the Division as the Executive Magistrate to carry out the directions. That itself will show that there is no bona fide on the part of the Incharge Sub-collector in passing the impugned order.

21. The writ petitioner has also produced copies of the complaints sent to the Inspector General of Police, Coimbatore. The contents of the complaint and the representation made to the first respondent make it clear that the petitioner made accusations that there was practice of untouchability and the private respondents refused to allow him to use the mandapam booked by him for his daughter's ear-boring ceremony solely on the ground that he belonged to Arunthathiyar community, a scheduled caste. Allegations had also been made to the effect that the 8th respondent and also the private respondents humiliated him in the name of his caste. It has also been alleged that even Tahsildar, namely the 6th respondent, who held the peace committee meeting before whom the private respondents proclaimed that they would not allow an Arunthathiyar community to conduct his/her function in the mandapam as they had not allowed earlier, also informed the writ petitioner that when the members of the community to which the private respondents belonged were not prepared to give their Kalyanamandapam for the function of the writ petitioner, he should not insist upon holding the function in the said Kalyanamandapam. The said allegations are enough to initiate action not only under the provisions of the Protection of Civil Rights Act, but also for the atrocities punishable under section 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

22. When such a complaint was made, the said complaint should have been dealt with in accordance with the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. For any offence punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the case should be investigated upon by an officer not below the rank of Deputy Superintendent of Police appointed by the Government/Director General of Police/Superintendent of Police. In this case, it is found from the counter affidavit of the respondents, official as well as private, that the complaint given by the writ petitioner was investigated upon by the Inspector of Police and not by an

officer of the Police Department not below the rank of Deputy Superintendent of Police. It has also been stated in the counter affidavit of the official respondents that a case was registered based on the complaint of the writ petitioner for an offence under Section 7(1)(b) of the Protection of Civil Rights Act and the final report submitted by the police, namely the Investigating officer was taken on file by the Judicial Magistrate II, Gobichettipalayam as C.C. No. 58 of 2008. It is quite obvious from the same that the complaint alleging commission of an offence under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was not properly dealt with in accordance with the procedure contemplated under the said Act and an incompetent person acted as the Investigating Officer. As rightly contended by the learned counsel for the writ petitioner, the Inspector of Police ought to have placed the CD file for orders of the Superintendent of Police for appointment of an Investigating Officer in accordance with Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) rules. Unfortunately, the Inspector of Police failed to do it. Even after the matter was brought to the notice of the official respondents, no action under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was taken and the investigation was allowed to be conducted by an incompetent officer, namely, the Inspector of Police. The same will show failure to perform their duties.

23. Since the period during which the prohibitory order passed by the fourth respondent was to be in force has lapsed and the order is not in force as on today, except declaring that the order passed by the 4th respondent was not a bona fide one, no useful purpose will be served in quashing the said order. In respect of the prayer of certiorari seeking quashment of the order dated 20.11.2007 made by the fourth respondent, the writ petition has become infructuous since the said order is no longer in force. However, in a writ petition, the High Court can mould the relief by declaring that the said order was not a bona fide one and it was issued with a view to shield the offenders, namely the private respondents, who practiced untouchability.

24. So far as the prayer for mandamus is concerned, since the writ petitioner had suffered humiliation as the function was to be called off on the eleventh hour because of the failure on the part of the official respondents to discharge their duties and their positive act of preventing the writ petitioner from entering the village by passing an order in purported exercise of the power under Section 144 of the Criminal Procedure Code, which shall be in perpetuation of the humiliation caused to him in the name of caste by the respondents 8 to 19, this Court is of the considered view that the State shall be held responsible for such an act on the part of the officials to compensate the writ petitioner. This Court is of the view that directing payment of a sum of Rs. 50,000/- as compensation by the State Government shall be quite reasonable and the same will meet the ends of justice. Besides awarding such a compensation, there shall be a further direction to the third respondent, namely the Superintendent of Police to cause registration of a case for an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and get it investigated by an officer appointed by him in accordance with Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995. There shall also be a direction to the third respondent to proceed against the then Inspector of Police, Nambiyur Police Station for an offence under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the result, the writ petition is disposed of with the following directions:

(1) The impugned order of the fourth respondent dated 20.11.2007 passed in Na. Ka. 15462/07/B2 is hereby declared to be one passed without bona fide.

(2) The third respondent, Superintendent of Police, Erode is directed to (i) Cause registration of a case based on the complaint of the writ petitioner for an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and ii) Cause registration of case for an offence under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the then Inspector of Police, Nambiyur Police Station and cause both the cases to be investigated upon by a Police Officer to be appointed as per Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995.

(3) The District Collector representing the Government of Tamil Nadu shall pay a sum of Rs. 50,000/- as compensation to the writ petitioner. The compensation should be paid within three months.

(4) If any case is registered based on the complaint of the 8th respondent against the writ petitioner and others, the same shall also be investigated upon by the very same police officer to be appointed as Investigating Officer in the case to be registered on the complaint of the writ petitioner.

(5) The investigation of the cases should be completed as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order.

deal with such cases involving adroit financial manipulations. It is hoped that the Government would now set up a special cell, which has the expertise to unravel such frauds and trace the frauds. Such a cell must have all the powers necessary for investigating, including powers of search and seizure but also be authorised to prosecute the defaulters.

(2004) 3 Supreme Court Cases 429

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND S.H. KAPADIA, JJ.)

STATE OF KERALA AND ANOTHER . . Appellants;

Versus

CHANDRAMOHANAN . . Respondent.

Criminal Appeal No. 240 of 1997†, decided on January 28, 2004

A. **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(xi) — Charge under — Determination of a member of Scheduled Tribe — Change of status upon conversion — Accused-respondent seeking to quash charges under the SC/ST Act on the ground that the victim's parents had converted to Christianity — Held, a member of a tribe despite his change in religion may remain a member of the tribe if he continues to follow the tribal traits and customs — Further held, the question whether the person remained a member of a tribe after conversion and continued to follow the customs and traditions of the tribe must be determined at trial — High Court's order quashing the charge set aside and matter remanded to the trial court — Constitution (Scheduled Tribes) Order, 1950 — Constitution of India, Arts. 341 & 342**

B. **Constitution of India — Art. 13 — Government circulars — Not law within the meaning of Art. 13**

The accused-respondent was charged for molesting a young girl and since her father belonged to the Mala Aryan community, a Scheduled Tribe in Kerala, an additional charge under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was also brought against him. When the Chief Judicial Magistrate took cognizance of the misdemeanours, the respondent filed a petition under Section 482 CrPC to quash the charge under the SC/ST Act. The High Court held that since the parents of the victim had converted to Christianity over 200 years ago, they therefore ceased to be members of a Scheduled Tribe and quashed the charges framed under the SC/ST Act. In the Supreme Court, the matter came up before a Division Bench and was then referred to be heard by a three-Judge Bench.

The question before the Supreme Court was whether a person on conversion to another religion continues to remain a member of his tribe.

Allowing the appeal, the Supreme Court

Held :

The question as to whether a person is a member of the tribe or has been accepted as such, despite his conversion to another religion, is essentially a

† From the Judgment and Order dated 19-3-1996 of the Kerala High Court in Crl. MC No. 516 of 1994 : **1996 AIHC 5513**

question of fact. A member of a tribe despite his change in the religion may remain a member of the tribe if he continues to follow the tribal traits and customs. (Para 5)

Nityanand Sharma v. *State of Bihar*, (1996) 3 SCC 576; *Punit Rai* v. *Dinesh Chaudhary*, (2003) 8 SCC 204; *C.M. Arumugam* v. *S. Rajgopal*, (1976) 1 SCC 863; *Kailash Sonkar* v. *Maya Devi*, (1984) 2 SCC 91, *relied on*

Principal, Guntur Medical College v. *Y. Mohan Rao*, (1976) 3 SCC 411, *referred to*

Dr Gupta, Jai Prakash: *The Customary Laws of the Munda & the Oraon*; Bhowmik, K.L.: *Tribal India: A Profile in Indian Ethnology; Dictionary of Anthropology;* Roy, Sarat Chandra: *Oraon Religion & Customs*; Rivers, W.H.R.: *Encyclopaedia Britannica*, Vol. 22, 1961 Edn., p. 465, *relied on*

Even if the members of the tribe belong to different religions, the rites conducted during marriage may be different, but in other respects, namely, inheritance, succession etc. they may be following the same traits. (Para 11)

Das, S.T.: *Tribal Life of North-Eastern India*, *relied on*

The customary laws of a tribe not only govern his culture, but also succession, inheritance, marriage, worship of Gods etc. The characteristics of different tribes despite the fact that they have been living in the same area for a long time are different. They indisputably follow different Gods. They have different cultures. Their customs are also different. (Para 13)

Upon conversion, a person may be governed by a different law than the law governing the community to which he originally belonged but that would not mean that notwithstanding such conversion, he may not continue to be a member of the tribe. (Para 18)

G. Michael v. *S. Venkateswaran*, AIR 1952 Mad 474 : (1952) 1 MLJ 239; *Kothapalli Narasayya* v. *Jammana Jogi*, 30 ELR 199 (AP), *approved*

Although as a broad proposition of law it cannot be accepted that merely by change of religion a person ceases to be a member of the Scheduled Tribe, but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the facts of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and traditions of the community, which he earlier belonged to. No assistance can be drawn from circulars issued by the State of Kerala to show that members of the tribes are being treated in the same capacity despite conversion since such circulars are not "law" within the meaning of Article 13. (Para 20)

Punit Rai v. *Dinesh Chaudhary*, (2003) 8 SCC 204; *Union of India* v. *Naveen Jindal*, (2004) 2 SCC 510 : (2004) 1 Scale 677, *relied on*

In this case, it has been contended that the family of the victim had been converted about 200 years back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic. The question, therefore, which may have to be gone into is as to whether the family continued to be a member of a Scheduled Tribe or not. Such a question can be gone into only during trial. (Para 16)

The matter is remitted to the trial court for proceeding in accordance with law. (Para 20)

Chandramohanan v. *Sub Inspector of Police*, 1996 AIHC 5513 (Ker), *reversed*

C. Words and phrases — "Tribe" — Meaning of

Kartik Oraon v. *David Munzni*, AIR 1964 Pat 201, *referred to*

D. **Custom — Generally — Inclusion in a tribe — Does not necessarily happen by fact of marriage — Non-tribal marrying a tribal must be accepted by other members of the tribe and approved by Panchayat**

(Para 8)

N.E. Horo v. *Jahanara Jaipal Singh*, (1972) 1 SCC 771 : AIR 1972 SC 1840, *followed*

S-M/AT/Z/29616/CR

Advocates who appeared in this case :

Ramesh Babu M.R., Advocate, for the Appellants;

Rajiv Shakdher, Ms Prasanthi Prasad, K.T.S. Lekha and Manoj Prasad, Advocates, for the Respondent;

Mathai Paikeday, Senior Advocate (Siby Sebastian and M.T. George, Advocates, with him) for the Intervenor.

Chronological list of cases cited ***on page(s)***

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2. (2003) 8 SCC 204, *Punit Rai* v. *Dinesh Chaudhary* 433*d e*, 437*b*
3. (1996) 3 SCC 576, *Nityanand Sharma* v. *State of Bihar* 433*b c*
4. (1984) 2 SCC 91, *Kailash Sonkar* v. *Maya Devi* 434*a b*
5. (1976) 3 SCC 411, *Principal, Guntur Medical College* v. *Y. Mohan Rao* 433*g h*
6. (1976) 1 SCC 863, *C.M. Arumugam* v. *S. Rajgopal* 433*g h*, 435*b*, 435*f*
7. (1972) 1 SCC 771 : AIR 1972 SC 1840, *N.E. Horo* v. *Jahanara Jaipal Singh* 434*a b*
8. AIR 1964 Pat 201, *Kartik Oraon* v. *David Munzni* 435*b*, 435*b*
9. AIR 1952 Mad 474 : (1952) 1 MLJ 239, *G. Michael* v. *S. Venkateswaran* 435*g*, 436*a*, 436*e*
10. 30 ELR 199 (AP), *Kothapalli Narasayya* v. *Janumana Jogi* 436*f g*

ORDER

1. One Ramachandran, who was the President of the Pattambi Congress Mandlam, lodged a complaint against the respondent alleging that on 24-10-1992, the respondent at 3.30 p.m. took one eight-year-old girl named Elizabeth P. Kora to the classroom in Pattambi Government U.P. School, with an intent to dishonour and outrage her modesty. On 11-11-1992, the said complaint was treated as a first information report under Section 509 of the Indian Penal Code. Subsequently on 21-11-1992, the investigating officer came to know that the father of the victim belonged to the Mala Aryan community, which is considered to be a Scheduled Tribe in the State of Kerala and lodged another first information report, charging the respondent under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act"). On the basis of the said first information reports, the Chief Judicial Magistrate summoned the respondent taking cognizance against him under Section 3(1)(*xi*) of the Act as well as under Section 509 of the Indian Penal Code. Aggrieved, the respondent filed a petition under Section 482 of the Code of Criminal Procedure, for quashing the charges framed under Section 3(1)(*xi*) of the Act. The High Court was of the view that since the victim's parents have embraced Christianity, therefore, the victim ceased to be a member of the Scheduled Tribe. On this premise, the High Court quashed the charges framed against the respondent under Section 3(1)(*xi*) of the Act. It is against

the said judgment, the State of Kerala has preferred this appeal by way of special leave petition.

2. When the matter came up before a Bench of two learned Judges, they were of the view that this matter should be heard by a larger Bench. It is by this way, the matter has come up before us.

3. The question which has been raised at the Bar is not free from doubt. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. Article 342 reads as under:

> "342. *Scheduled Tribes.* (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.
>
> (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

4. The object of the said provision is to provide right for the purpose of grant of protection to the Scheduled Tribes having regard to the economic and educational backwardness wherefrom they suffer. For the aforementioned purpose only the President of India has been authorised to issue the notification to parts or groups within the tribes. It is not in dispute that the Constitution (Scheduled Tribes) Order, 1950 made in terms of the aforementioned provisions is exhaustive. The question which is required to be posed at the outset is what is a tribe?

> "Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans."
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> (See Dr Gupta, Jai Prakash: *The Customary Laws of the Munda & the Oraon.*)
>
> "Tribe in the *Dictionary of Anthropology* is defined as 'a social group, usually with a definite area, dialect, cultural homogeneity, and unifying social organization. It may include several subgroups, such as sibs or villages. A tribe ordinarily has a leader and may have a common

ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family, or blood ties'."

(See Bhowmik, K.L.: *Tribal India: A Profile in Indian Ethnology*.)

5. The question as to whether a person is a member of the tribe or has been accepted as such, despite his conversion to another religion, is essentially a question of fact. A member of a tribe despite his change in the religion may remain a member of the tribe if he continues to follow the tribal traits and customs.

6. In *Nityanand Sharma* v. *State of Bihar*[1] a three-Judge Bench of this Court while considering the question as to whether Lohars, who are blacksmiths in the State of Bihar and Lohars, who are members of the Scheduled Tribes are same or not, held: (SCC p. 582, para 14)

"Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The tribe or tribal communities, parts of or groups thereof have their peculiar traits."

7. As regards Scheduled Castes, this Court in the case of *Punit Rai* v. *Dinesh Chaudhary*[2] held as follows: (SCC p. 220, paras 30-32)

"*30.* In *Caste and the Law in India* by Justice S.B. Wad at p. 30 under the heading 'Sociological Implications', it is stated:

'Traditionally, a person belongs to a caste in which he is born. The caste of the parents determines his caste but in case of reconversion a person has the liberty to renounce his casteless status and voluntarily accept his original caste. His caste status at birth is not immutable. Change of religion does not necessarily mean loss of caste. If the original caste does not positively disapprove, the acceptance of the caste can be presumed. Such acceptance can also be presumed if he is elected by a majority to a reserved seat. Although it appears that some dent is made in the classical concept of caste, it may be noticed that the principle that caste is created by birth is not dethroned. There is also a judicial recognition of caste autonomy including the right to outcaste a person.'

31. If he is considered to be a member of the Scheduled Caste, he has to be accepted by the community. (See *C.M. Arumugam* v. *S. Rajgopal*[3] and *Principal, Guntur Medical College* v. *Y. Mohan Rao*[4].)

1 (1996) 3 SCC 576
2 (2003) 8 SCC 204
3 (1976) 1 SCC 863
4 (1976) 3 SCC 411

32. A Christian by birth when converted to Hinduism and married a member of the Scheduled Caste was held to be belonging to her husband's caste on the evidence that she had not only been accepted but also welcomed by the important members, including the President and Vice-President of the community. (See *Kailash Sonkar* v. *Maya Devi*[5].)"

8. In *N.E. Horo* v. *Jahanara Jaipal Singh*[6] a question arose as to whether a Ceylonese lady marrying a member of the Scheduled Tribe would become a member of that tribe by marriage or not. This Court held that only by reason of marriage a woman does not become a member of the tribe, but only in the event, she is accepted as such by the other members of the tribe and approved by the Panchayat, she may be considered to be a member thereof.

9. In the aforementioned judgment it has been noticed that the Mundas are endogamous and intermarriage with non-Mundas is normally prohibited. In such an event, a member of the tribe may also be excommunicated.

10. In Roy, Sarat Chandra: *Oraon Religion & Customs*, it is stated:

"Oraon religion, like similar other religions, is primarily concerned with ancestral and certain other disembodied souls, and nature spirits and deities. The rites employed to establish harmonious relations with them are mainly supplications and prayers, offerings and sacrifices, and the ceremonial sharing of sacrificial food besides certain special observances and taboos."

11. Even if the members of the tribe belong to different religions, the rites conducted during marriage may be different, but in other respects, namely, inheritance, succession etc. they may be following the same traits. (See Das, S.T.: *Tribal Life of North-Eastern India*.)

12. In this case the matter may be considered from another angle. According to the respondents, the victim's family were converted to Christianity two centuries back. The mother of the victim belongs to Roman Catholic. Under the customs of Roman Catholics, Catholic women can marry only a Catholic wherefor it is also necessary for the groom to convert himself as a Roman Catholic and such conversion has taken place and the father of the victim is now a member of the Roman Catholic. It has been alleged that the family of the victim has ceased to be members of the notified tribe.

13. The customary laws of a tribe not only govern his culture, but also succession, inheritance, marriage, worship of Gods etc. The characteristics of different tribes despite the fact that they have been living in the same area for a long time are different. They indisputably follow different Gods. They have different cultures. Their customs are also different.

14. The learned counsel appearing on behalf of the appellant would submit that by reason of conversion, a tribe does not cease to be a tribe. According to learned counsel whereas in relation to the Scheduled Castes notified under the Constitution [(Scheduled Castes) (Union Territories)]

5 (1984) 2 SCC 91

6 (1972) 1 SCC 771 : AIR 1972 SC 1840

Order, 1951 to show that no person who professes a religion different from the Hindu, the Sikh or the Buddhist would be deemed to be a member of a Scheduled Caste, no such provision is contained in the Constitution (Scheduled Tribes) Order, 1950. This submission in our opinion cannot be accepted.

15. Learned counsel in this behalf has drawn our attention to the case of *Kartik Oraon* v. *David Munzni*[7] and *C.M. Arumugam* v. *S. Rajgopal*[3]. In *Kartik Oraon*[7] referring to *Encyclopaedia Britannica*, Vol. 22, 1961 Edn., at p. 465, by W.H.R. Rivers "tribe" is defined as a "a social group of a simple kind, the members of which speak a common dialect, have a single government, and act together for such common purposes as 'warfare'". Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. It has been noticed that the term is seldom applied to societies that have achieved a strictly territorial organisation in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties.

16. Before a person can be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, he must belong to a tribe. A person for the purpose of obtaining the benefits of the Presidential Order must fulfil the condition of being a member of a tribe and continue to be a member of the tribe. If by reason of conversion to a different religion a long time back, he/his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the tribe and even had not been following the customary laws of succession, inheritance, marriage etc. he may not be accepted to be a member of a tribe. In this case, it has been contended that the family of the victim had been converted about 200 years back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic. The question, therefore, which may have to be gone into is as to whether the family continued to be a member of a Scheduled Tribe or not. Such a question can be gone into only during trial.

17. In *C.M. Arumugam*[3] this Court held as under: (SCC pp. 872-73, paras 10-11)

> "*10.* ... A caste is more a social combination than a religious group. But since, as pointed out by Rajamannar, C.J. in *G. Michael* v. *S. Venkateswaran*[8], ethics provides the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he

7 AIR 1964 Pat 201

8 AIR 1952 Mad 474 : (1952) 1 MLJ 239

belonged prior to his conversion. It is no doubt true, and there we agree with the Madras High Court in *G. Michael case*[8] that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert ceases to have any caste, because caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. But ultimately it must depend on the structure of the caste and its rules and regulations whether a person would cease to belong to the caste on his abjuring Hinduism. If the structure of the caste is such that its members must necessarily belong to Hindu religion, a member, who ceases to be a Hindu, would go out of the caste, because no non-Hindu can be in the caste according to its rules and regulations. Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu religion but also persons professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persons professing such other religion can be members of the caste. This might happen where caste is based on economic or occupational characteristics and not on religious identity or the cohesion of the caste as a social group is so strong that conversion into another religion does not operate to snap the bond between the convert and the social group. This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste. When an argument was advanced before the Madras High Court in *G. Michael case*[8] that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted, Rajamannar, C.J., who, it can safely be presumed, was familiar with the customs and practices prevalent in South India, accepted the position 'that instances can be found in which in spite of conversion the caste distinctions might continue', though he treated them as exceptions to the general rule.

11. The High Court of Andhra Pradesh also affirmed in *Kothapalli Narasayya* v. *Jammana Jogi*[9] that:

> 'notwithstanding conversion, the converts whether an individual or family or group of converts, may like to be governed by the law by which they were governed before they became converts ... and the community to which they originally belonged may also continue to accept them within their fold notwithstanding conversion,...'

18. The aforementioned decision is, thus, also an authority for the proposition that upon conversion, a person may be governed by a different law than the law governing the community to which he originally belonged

9 30 ELR 199 (AP)

but that would not mean that notwithstanding such conversion, he may not continue to be a member of the tribe.

19. Learned counsel for the appellant has drawn our attention to the circulars issued by the State of Kerala with a view to show that the members of the tribes are being treated in the same capacity despite conversion. We are afraid that such circulars being not law within the meaning of Article 13 of the Constitution of India, would be of no assistance. (See *Punit Rai* v. *Dinesh Chaudhary*[2] and *Union of India* v. *Naveen Jindal*[10].)

20. We, therefore, are of the opinion that although as a broad proposition of law it cannot be accepted that merely by change of religion a person ceases to be a member of the Scheduled Tribe, but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the facts of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and traditions of the community, which he earlier belonged to. Under such circumstances, we set aside the order under appeal and remit the same to the Sessions Court, Palakkad, to proceed in accordance with law.

21. The appeal, with the aforementioned observations is, accordingly, allowed. Since no one appears on behalf of the respondent, there shall be no order as to costs.

(2004) 3 Supreme Court Cases 437

(BEFORE R.C. LAHOTI AND DR AR. LAKSHMANAN, JJ.)

MOHAN LAL AGGARWAL .. Appellant;

Versus

ATINDER MOHAN KHOSLA .. Respondent.

Civil Appeals Nos. 1571-72 of 2004†, decided on March 12, 2004

Natural Justice — Bias — *Nemo debet esse judex in propria sua causa* — Justice should not only be done but must be manifestly seen to be done — Applicability of — Tenancy dispute — Revision petition filed before High Court by appellant tenant dismissed — Single Judge hearing petition having appeared in the High Court as counsel for landlord in earlier litigation, appellant tenant seeking review/recall of revisional order — Review petition dismissed by Judge concerned on ground that that fact had not been brought to his notice when he had been hearing the revision petition — Explanation given by Judge that the fact should have been brought to his notice found satisfactory by Supreme Court, as the Judge had appeared for the landlord in the earlier litigation eight years prior to hearing the revision

10 (2004) 2 SCC 510 : (2004) 1 Scale 677

† Arising out of SLPs (C) Nos. 4118-19 of 2004. From the Judgment and Order dated 2-12-2003 and 8-1-2004 of the Punjab and Haryana High Court in CR No. 5618 of 2003 and RP No. 6 of 2004 in CR No. 5618 of 2003

MANU/MH/0036/2010

Equivalent Citation: 2010(89)AIC897, 2010(112)BOMLR762, 2010(2)MhLj198

IN THE HIGH COURT OF BOMBAY

Criminal Application No. 2347 of 2009

Decided On: 22.01.2010

Appellants: **Rajendra Shrivastava**
Vs.
Respondent: **The State of Maharashtra**

Hon'ble Judges/Coram:
B.H. Marlapalle, Abhay Shreeniwas Oka and R.Y. Ganoo, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: A.M. Sarogi and Parvez Ubharay, Advs.

For Respondents/Defendant: S.D. Shinde, APP

JUDGMENT

Abhay Shreeniwas Oka, J.

1. The Learned Single Judge (Coram: D.B. Bhosale, J) by his order dated 30th June 2009 has referred the following question for determination by a larger bench:

> If a lady, belonging to the schedule caste/schedule tribe, marrying a person belonging to forward caste, is abused in the name of her caste by a member of public or by her husband or his relatives, whether an offence under the provisions of Atrocities Act can be registered and investigated against such person/s.

2. The applicant has filed the present application under Section 438 of the Code of Criminal Procedure, 1973. The applicant is the husband of the complainant. The complainant lodged a First Information Report No. 125 of 2008 on 8th April 2008. The allegation is of commission of offences under Sections and 498A, 406, 494, 34 of the Indian Penal Code read with the provisions of Section 3(1)(ii) and Section 3(1)(x) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the said Act"). An offence under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 (hereinafter referred to as "the said Act of 1955") was also alleged in the said first information report. The offence was registered against the applicant, his brother and his sister . By birth the complainant belongs to a scheduled caste. The caste of the applicant is "kayastha" which is admittedly neither a scheduled caste nor a scheduled tribe. An application for anticipatory bail was filed by the applicant's sister. The said application was decided by this Court by order dated 2nd March 2009. The submission before this Court was that after her marriage, the caste of the complainant had merged with the caste of the applicant and that on marriage of the Complainant, she ceased to belong to a scheduled caste and therefore, the bar created by Section 18 of the said Act of 1989 will not apply. This Court (Coram:Kanade, J) accepted the said contention and held that the application for grant of anticipatory bail was maintainable. This Court observed,

In my view, prima facie provisions of Atrocities Act and Protection of Civil Rights Act cannot be made applicable in the present case since the complainant's caste merged with the caste of her husband and therefore, in my view, a complaint could not have been filed that she was abused in the name of her caste after her marriage and that it amounted to an offence under the Atrocities Act or under the provisions of Civil Rights Act. Prima facie, therefore, provisions of Section 12 of the Atrocities Act would not be attracted and the present application for anticipatory bail would be maintainable.

3 . When the present application came up before another learned single Judge (Coram: D.B. Bhosale, J.), he was of the view that a person acquires caste by birth and not by marriage. In paragraphs 10 and 11 of the order dated 30th June 2009, the learned Judge observed thus:

10 It is true that on marriage the wife becomes an integral part of her husband's marital home entitle to equal status as a member of the family. Therefore, a lady, on marriage becomes a member of the family and thereby also becomes a member of the caste to which she moved. However, that does not mean that she looses her recognition as a person belonging to a backward community which she acquired by birth. More so, when it is evident from the conduct or the treatment given to her by her husband and/or his family members, or a member of the public for that matter. If the husband or his family members or public at large after marriage continue to treat her as a member of the caste which she acquired by birth and tease or abuse her in the name of her caste, in my opinion, the provisions of the Atrocities Act would stand attracted. In such eventuality, the husband or his family members or a member of the public cannot be allowed to raise a defense or take a stand that by virtue of the marriage she became a member of the caste to which she moved and, therefore, the provisions of the Atrocities Act are not attracted.

11. It is now well settled that a person acquires caste by birth and not by marriage. The recognition of a lady as a member of forward class in view of her marriage would be relevant as long as she is treated as a member of the caste to which she moved. But if she is treated as a member of backward community by a member of public or her husband or her relatives by their conduct or treatment to such lady and if they abuse her in the name of her caste which she acquired by birth, in my opinion, there is no legal impediment in registering an offence under the provisions of the Atrocities Act and/or the Civil Rights Act. This is for the reason that she was born in the backward class family and her original status as a member of that class would not get vanished or she would not loose that recognition in the society by virtue of her marriage to a person belonging to forward class. No doubt, her children would not be entitled to claim any benefit under Articles 15(4) or 16(4) or 330 or 332 of the Constitution. In view of the settled position of law, the question of merging the caste of wife with the caste of husband does not arise.

4. The learned Counsel appearing for the applicant relied upon a decision of the Apex Court in the case of Valsamma Paul (Mrs) v. Cochin University and Ors. MANU/SC/0275/1996 : (1996) 3 Supreme Court Cases 545. Inviting the attention of the Court to paragraph 31 of the said decision , he submitted that the Apex Court has

held that a lady, on marriage, becomes a member of the caste to which her husband belongs. He submitted that after her marriage the wife gets transplanted into the caste of her husband. He pointed out that the after her marriage with the applicant, the complainant cannot claim that she belongs to scheduled caste as she gets transplanted into the caste of her husband. He submitted that after her marriage, she cannot claim that she belongs to a backward caste as she gets all the advantages of the forward caste of her husband. He submitted that the correct view is that on a marriage of a woman who is born in a backward caste to a person who does not belong to backward caste, she ceases to belong to the caste of her birth. He submitted that as the complainant cannot claim that she belongs to scheduled caste, the offence alleged under the said Act was not attracted. He urged that the view taken by this Court while deciding the application filed by applicant's sister is the correct view.

5. The learned additional public prosecutor contended that the decision of the Apex Court in the case of Valsamma (supra) is not an authority for the proposition that on marriage of a woman belonging to backward caste with a man who is born as a member of forward caste, the wife ceases to be a member of backward caste. The learned Counsel appearing for the original complainant submitted that caste of an individual is determined by birth and not by choice. He has placed reliance on a decision of the division bench of this Court in the case of Chetna Rajendra Tank v. Committee for Scrutiny of Caste Certificates of Persons and Ors. MANU/MH/0886/2005 : 2005 [4] Maharashtra Law Journal 711. He submitted that if the submission of the learned Counsel appearing for the applicant is accepted it will defeat the very object of the said Act and the said Act of 1955.

6. We have given a careful consideration to the submissions. The question which arises for determination is as under:

> If a woman who by birth belongs to a scheduled caste or a scheduled tribe marries to a man belonging to a forward caste, whether on marriage she ceases to belong to the scheduled caste or the scheduled tribe?

7. It will be necessary to consider the statement of objects and reasons for the said act of 1989. The relevant part thereof reads thus:

> Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
>
> **2.** Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorize them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more

> often these people become victims of attacks by the vested interests.... A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

The object of the said act is to prevent commission of atrocities against the members of the scheduled castes and scheduled tribes. The legislature has noted that the action of persons belonging to scheduled castes or scheduled tribes of asserting their rights is not taken kindly by some persons belonging to forward castes.

It is necessary to understand the concept of a caste and the manner in which caste is acquired. The Apex Court has dealt with this aspect in the decision in the case of Indra Sawhney v. Union of India MANU/SC/0104/1993 : 1992 supp (3) SCC 217. Ir paragraph 779 of the said decision, the Apex Court has observed thus:

> 779. The above material makes it amply clear that a caste is nothing but a social class - a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. To repeat, it is a socially and occupational ly homogeneous class. Endogamy is its main characteristic. Its social status and standing depends upon the nature of the occupation followed by it. Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. A few members may have gone to cities or even abroad but when they return - they do, barring a few exceptions - they go into the same fold again. It doesn't matter if he has earned money. He may not follow that particular occupation. Still, the label remains. His identity is not changed. For the purposes of marriage, death and all other social functions, it is his social class - the caste - that is relevant. It is a matter of common knowledge that an overwhelming majority of doctors, engineers and other highly qualified people who go abroad for higher studies or employment, return to India and marry a girl from their own caste. Even those who are settled abroad come to India in search of brides and bridegrooms for their sons and daughters from among their own caste or community. As observed by Dr Ambedkar, a caste is an enclosed class and it was mainly these classes the Constituent Assembly had in mind - though not exclusively - while enacting Article 16(4).

8. A Constitution Bench of the Apex Court in the case of V.V. Giri v. D. Suri Dora (1960) 1 SCR 42 dealt with the issue as to whether a person who is a member of a scheduled tribe can cease to be a member of such tribe and can be said to have become a member of another caste. The Apex Court observed thus:

> That contention is that Respondent 1 had ceased to be a member of the scheduled tribe at the material time because he had become a kshatriya. In dealing with this contention it would be essential to bear in mind the broad and recognised features of the hierarchical social structure prevailing amongst the Hindus. It is not necessary for our present purpose to trace the origin and growth of the caste system amongst the Hindus. It would be enough to state that whatever may have been the origin of Hindu castes and tribes in ancient times, gradually status came to be based on birth alone. It is well known that a person who belongs by birth to a depressed caste or tribe

> would find it very difficult, if not impossible, to attain the status of a higher caste amongst the Hindus by virtue of his volition, education, culture and status. The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and Utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists.

Thus, membership of a caste is involuntary. Historically persons carrying on one particular occupation may belong to one particular social class forming a particular caste. A person born in a family belonging to a particular caste which is associated with a particular occupation may not continue the occupation. But still he remains and continues to be a member of a social class forming the said caste. The reason is that the label remains. For the purposes of marriage and all other social functions up to his or her death, the caste continues to be relevant. Notwithstanding all attempts of weeding out this phenomenon, the stark reality is that the theme still remains the same.

9. The learned Counsel appearing for the applicant has relied upon the decision of the Apex Court in the case of Valsamma (supra). In the case before the Apex Court, a post of a lecturer in Law Department of the University of Cochin was reserved for Latin Catholics (backward class fishermen). The appellant before the Apex Court was a Syrian Catholic (a Forward Caste). She had married a Latin Catholic. She applied for the reserved post and was accordingly appointed. Her appointment was challenged by filing a writ petition. The appointment was set aside. Ultimately the matter was referred to a full bench for deciding the question whether the appellant acquired caste of her husband. The full bench of Kerala High Court held that the appellant being a Syrian Catholic by birth, by marriage with the husband who was a Latin Catholic, she cannot claim the status as a backward class. In paragraph 10 of the said decision the apex court referred to the question before it. The relevant part of paragraph 10 reads thus:

> 10. The question, therefore is: Whether a candidate, by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institution under Article 15(4)?

Again in paragraph 33 ,the Apex Court again referred to question before it:

> However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be?

In paragraph 34 of the decision ,the Apex Court proceeded to hold as under:

> Acquisition of the status of Scheduled Caste etc. by voluntary mobility into

these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

10. A strong reliance has been placed by the learned Counsel for the applicant on observations made in paragraph 31 of the said decision in the case of Valsamma (supra) which reads thus:

> 31. It is well-settled law from Bhoobum Moyee Debia v. Ram Kishore Acharj Chowdhry that judiciary recognised a century and a half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is 'Sapinda' of her husband as held in Lulloobhoy Bappoobhoy Cassidass Moolchund v. Cassibai. It would, therefore, be clear that be it either under the Canon law or the Hindu law, on marriage the wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

It is well settled that a decision is an authority for what it actually decides. What is the essence of a decision is the ratio . Every observation made in the decision cannot be said to be a ratio. What logically follows from a decision is not the ratio. In the case of State of A.P. v. M. Radha Krishna Murthy MANU/SC/0369/2009 : (2009) 5 SCC 117, the Apex Court has reiterated the well settled principles governing precedents. The Apex Court proceeded to observe thus:

> **15.** ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p.761), Lord Mac Dermot observed:
>
> > The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J, as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....
>
> **16.** In Home Office v. Dorset Yacht Co. Ltd. Lord Reid said (AC at p. 1027 A-B) 'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) observed: (AC at p. 1069 H) '... One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament....'And, in British Railways Board v.

Herrington-Lord Morris said: (AC p.902D)

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

18. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

11. The observations made in paragraph 31 of the decision in the case of Valsamma (supra) above cannot be read as a ratio laying down that on marriage, a wife is automatically transplanted into the caste of husband. The law on this aspect has been laid down by a larger bench of the Apex Court in the case of v. V. Giri (supra). The Constitution bench held that the caste is acquired by birth and the caste does not undergo a change by marriage or adoption. The ratio of the decision in the case of a Valsamma Paul (supra) is that acquisition of the status of a scheduled caste or a scheduled tribe by voluntary mobility into these categories would play fraud on the constitution. The Apex Court held that a candidate born in forward caste who is transplanted in a family of backward caste by adoption or by marriage does not become eligible to benefits of reservation under the constitution. The observations made in paragraph 31 in the case of Valsamma (supra) are not to the effect that a woman born in a forward caste , on her marriage with a person belonging to a scheduled caste or a scheduled tribe , is automatically transplanted in the caste of her husband by virtue of her marriage. In fact, the ratio of the said decision is set out in paragraph 34 of the judgment which has been quoted above.

12. When a woman born in a scheduled caste or a scheduled tribe marries to a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of scheduled caste or a scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste. The label attached to a person born into a scheduled caste or a scheduled tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.

13. If the interpretation sought to be put by the learned Counsel appearing for the applicant is accepted, it will defeat the very object of enacting the said Act. It will defeat the innovative steps taken by the framers of our constitution for protecting the persons belonging to scheduled castes and scheduled tribes who have suffered for generations.

14. Thus, the question formulated by the learned Single Judge will have to be answered in the affirmative. The question formulated by us in paragraph one will have to be answered in the negative. A woman who is born into a scheduled caste or a scheduled tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of husband by virtue of her marriage and, therefore, she cannot be said to belong to her husband's caste.

15. We direct the Registry to place this application before the appropriate court for deciding the same in accordance with law.

9. Stand of the claimant before MACT and the High Court appears to be that the present appellant is being maintained by her son, but she has no one to depend upon.

10. Though there appears to be some substance in the plea of the insurer regarding the rate of interest, in the absence of any appeal by it, there is no scope for interfering with the rate. Had there been any appeal, there would be certainly scope for interference.

11. The only issue in the present appeal is the amount to which the present appellant i.e. the mother of the deceased would be entitled. Considering the peculiar facts of the case, the age of the widow and that of the present appellant, we think it would be appropriate to grant a sum of Rs 1,25,000 (Rupees one lakh and twenty-five thousand only) to the appellant and the balance to the claimant wife i.e. the widow of the deceased.

12. The appeal is allowed to the aforesaid extent without any order as to costs.

(2009) 3 Supreme Court Cases 789

(BEFORE DR. ARIJIT PASAYAT, DR. M.K. SHARMA AND H.L. DATTU, JJ.)

ASHABAI MACHHINDRA ADHAGALE . . Appellant;

Versus

STATE OF MAHARASHTRA AND OTHERS . . Respondents.

Criminal Appeal No. 287 of 2009[+], decided on February 12, 2009

A. Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(xi) — Ruling out applicability of, by proving that accused belongs to either SC or ST — Appropriate stage of raising/proving the issue — Held, said issue can be raised during investigation or at the time of framing of charge or at the time of trial

B. Criminal Procedure Code, 1973 — Ss. 482, 154 and 156(2) — Quashing of FIR — Case law discussed — Caste of accused not mentioned in FIR for offence under S. 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Effect — Not mentioning caste of accused in FIR for offence under S. 3(1)(xi) of the 1989 Act, held, not a ground for quashing FIR — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(1)(xi) — SCs, STs, OBCs and Minorities — Crimes against

C. Criminal Procedure Code, 1973 — S. 154 — Valid FIR — Nature and contents

The appellant filed an FIR under Section 154 CrPC alleging commission of offence punishable under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A petition under Section 482 CrPC for quashing the FIR was filed by the respondent-accused. The basic stand was that in the FIR the caste of the accused was not mentioned and

[+] Arising out of SLP (Crl.) No. 838 of 2007. From the Final Judgment and Order dated 26-6-2006 of the High Court of Judicature at Bombay, Bench at Aurangabad in Crl. Application No. 1534 of 2006

therefore the proceedings could not be continued and deserved to be quashed. The High Court by the impugned order placing reliance on earlier decisions of the High Court allowed the petition of the respondent.

Allowing the appeal, the Supreme Court

Held :

During investigation or at the time of framing of charge or at the time of trial it is open to the respondent-accused to show that he either belongs to SC or ST so that applicability of S. 3(1)(*xi*) of the Act is ruled out. It needs no reiteration that the FIR is not expected to be an encyclopædia. After ascertaining the facts during the course of investigation it is open to the IO to record that the accused either belongs to or does not belong to SC or ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC or ST. (Paras 14,10 and 12)

CBI v. *Tapan Kumar Singh*, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305; *Masumsha Hasanasha Musalman* v. *State of Maharashtra*, (2000) 3 SCC 557 : 2000 SCC (Cri) 722: *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771 : (2006) 2 SCC (Cri) 1, *relied on*

Manohar v. *State of Maharashtra*, (2005) 4 Mah LJ 588; *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, *referred to*

The scope for interference on the basis of an application under Section 482 CrPC is well known. (Paras 8, 9 and 13)

State of Orissa v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272: *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310, *relied on*

State of Haryana v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426: *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305; *Masumsha Hasanasha Musalman* v. *State of Maharashtra*, (2000) 3 SCC 557 : 2000 SCC (Cri) 722: *Dinesh* v. *State of Rajasthan*, (2006) 3 SCC 771 : (2006) 2 SCC (Cri) 1; *R.P. Kapur* v. *State of Punjab*, AIR 1960 SC 866, *cited*

SS-D/A/40264/CR

Advocates who appeared in this case :

Makrand D. Adkar, S.D. Singh, Vijay Kumar, Ms Bhati Tyagi and Vishwajit Singh, Advocates, for the Appellant;

Ravindra Keshavrao Adsure, M.Y. Deshmukh and Rameshwar Prasad Goyal, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310, *Minu Kumari* v. *State of Bihar* 796*b*
2. (2006) 3 SCC 771 : (2006) 2 SCC (Cri) 1, *Dinesh* v. *State of Rajasthan* 793*c-d*
3. (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272, *State of Orissa* v. *Saroj Kumar Sahoo* 796*b*
4. (2005) 4 Mah LJ 588, *Manohar* v. *State of Maharashtra* 791*f-g*
5. (2003) 6 SCC 175 : 2003 SCC (Cri) 1305, *CBI* v. *Tapan Kumar Singh* 792*a*
6. (2000) 3 SCC 557 : 2000 SCC (Cri) 722, *Masumsha Hasanasha Musalman* v. *State of Maharashtra* 793*b*, 793*c-d*
7. 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, *State of Haryana* v. *Bhajan Lal* 791*g-h*, 795*a*
8. AIR 1960 SC 866, *R.P. Kapur* v. *State of Punjab* 794*c*

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.— Leave granted.

2. An interesting question of law arises in this appeal. Background facts in a nutshell are as follows:

The appellant filed a first information report (in short "the FIR") under Section 154 of the Code of Criminal Procedure, 1973 (in short "the Code") at Newasa Police Station, District Ahmednagar, alleging commission of offence punishable under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act"). A petition under Section 482 of the Code was filed by Respondent 3 (hereinafter referred to as "the accused"). The basic stand was that in the FIR the caste of the accused was not mentioned and therefore the proceedings cannot be continued and deserved to be quashed. The High Court placing reliance on earlier decisions of the High Court allowed the petition.

3. In support of the appeal, learned counsel for the appellant submitted that the view taken by the Bombay High Court is contrary to one taken by the Orissa High Court. It is submitted that the offence primarily relates to purported perpetration of crime on the victim because of his or her caste. It is for the accused to show that he does not belong to higher caste and that is a matter of evidence. It is not that in the instant case there was no reference to the caste of an accused as it is clearly mentioned in the FIR that the offence is relatable to Section 3(1)(*xi*) of the Act. Therefore, there is a reference though indirectly to the caste of the accused. Even otherwise it is submitted that the non-mention of the caste of the accused cannot be a ground to quash the proceedings. At the framing of charge or in case the charge-sheet is filed and/or during trial the accused can establish that he does not belong to higher caste. It is submitted that FIR is not an encyclopaedia of all events and basic ingredients of offence are clearly made out.

4. Learned counsel for Respondent 3, on the other hand, submitted that Section 3(1) itself provides that the offence should have been committed by a person who is not a member of the Scheduled Caste or Scheduled Tribe, and unless that specific mention is made no offence is disclosed. Learned counsel for the respondent referred to various judgments of the Bombay High Court in this regard supporting his stand e.g. *Manohar* v. *State of Maharashtra*[1].

5. It is also submitted that the complainant i.e. the appellant is harassing people by filing frivolous petitions taking shelter of the fact that she belongs to Scheduled Caste. Therefore, placing strong reliance on the observations of this Court in *State of Haryana* v. *Bhajan Lal*[2], it is submitted that the proceedings deserved to be quashed which according to him the High Court rightly did.

1 (2005) 1 Mah LJ 588

2 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

6. In *CBI* v. *Tapan Kumar Singh*[3] this Court elaborately dealt with the need of an FIR. It was inter alia observed as follows: (SCC pp. 183-84, paras 20 and 22)

"*20.* It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

* * *

22. The High Court has also quashed the GD entry and the investigation on the ground that the information did not disclose all the

3 (2003) 6 SCC 175 : 2003 SCC (Cri) 1305

ingredients of the offence, as if the informant is obliged to reproduce the language of the section, which defines 'criminal misconduct' in the Prevention of Corruption Act. In our view the law does not require the mentioning of all the ingredients of the offence in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of evidence collected by the investigating agency."

7. Similarly, in *Masumsha Hasanasha Musalman* v. *State of Maharashtra*[4], this Court noted at SCC p. 561, para 9 that with reference to Section 3(2)(v) of the Act that

to attract the provisions of the said section the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 (in short "IPC") is committed against him on the basis that such a person belongs to a Scheduled Caste or a Schedule Tribe. In the absence of such ingredients no offence under Section 3(2)(v) of the Act arises.

The view in *Masumsha case*[4] was reported in *Dinesh* v. *State of Rajasthan*[5].

8. The scope for interference on the basis of an application under Section 482 of the Code is well known.

9. "8. ... [Section 482] does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of [the Code]. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under [the Code], (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*' (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically

4. (2000) 3 SCC 557 : 2000 SCC (Cri) 722
5. (2006) 3 SCC 771 : (2006) 2 SCC (Cri) 1

laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur* v. *State of Punjab*[6] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(*i*) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 [of the Code], the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 [of the Code] and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise

6 AIR 1960 SC 866

to secure the ends of justice were set out in some detail by this Court in *State of Haryana* v. *Bhajan Lal*[2]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102)

> "(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (*2*) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (*4*) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (*5*) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (*6*) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
>
> (*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. As noted above, the powers possessed by the High Court under Section 482 [of the Code] are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the

evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage."

(See *State of Orissa* v. *Saroj Kumar Sahoo*[7], SCC pp. 547-49, paras 8-11 and *Minu Kumari* v. *State of Bihar*[8].)

10. It needs no reiteration that the FIR is not expected to be an encyclopaedia. As rightly contended by learned counsel for the appellant whether the accused belongs to Scheduled Caste or Scheduled Tribe can be gone into when the matter is being investigated. It is to be noted that under Section 23(1) of the Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short "the Rules") have been framed.

11. Rule 7 deals with the investigating officer. Under Rule 7 investigation has to be done by an officer not below the rank of the Deputy Superintendent of Police.

12. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe.

13. So far as the scope for investigation is concerned it is relevant to note that sub-section (2) of Section 156 of the Code provides that

> "156. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not *empowered under this section to investigate*."
>
> (underlined* for emphasis)

14. Above being the position, the view taken by the Bombay High Court does not appear to be the correct view while that of the Orissa High Court is the correct view. Accordingly, we allow this appeal. Needless to say during investigation or at the time of framing of charge or at the time of trial it is open to Respondent 3 to show that he either belongs to Scheduled Caste or Scheduled Tribe so that applicability of Section 3(1)(*xi*) of the Act is ruled out.

7 (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272

8 (2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310 : AIR 2006 SC 1937

* **Ed.**: Herein italicised.

25. Therefore, the appropriate government in relation to the Company is in my opinion, the State Government and not the Central Government as submitted by the Company. The Industrial Tribunal has considered all aspects of the matter and has rightly concluded that the Central Government is not the appropriate government in relation to the Company.

26. Petition is dismissed. Rule discharged. No order as to costs.

27. Writ to be sent to the Industrial Tribunal immediately for further consideration of the Reference on merits.

Petition dismissed.

COMPLAINT UNDER SECTION 3 OF ATROCITIES ACT : MENTIONING OF CASTE OF ACCUSED NOT NECESSARY

[Full Bench]

(S. B. Mhase, D. B. Bhosale and A. S. Oka, JJ.)

PUSHPA VIJAY BONDE *Petitioner.*

vs.

STATE OF MAHARASHTRA *Respondent.*

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), S. 3 and Criminal Procedure Code (2 of 1974), SS. 154 and 482 — *Complaint under section 3 of Atrocities Act — Mentioning of caste in the complaint — It is not a requirement under section 3 of the Atrocities Act that the complainant should disclose the caste of the accused in the complaint — If there is no mention of the caste of the accused in the FIR, that cannot be a ground for either not registering the offence under section 3 of the Atrocities Act or for quashing such complaint.*

Merely because the caste of the accused is not mentioned in the FIR stating whether he belongs to scheduled caste or scheduled tribe, it cannot be a ground for quashing the complaint. After ascertaining the facts during the course of investigation it is always open to the investigating officer to record that the accused either belongs to or does not belong to scheduled caste or scheduled tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs to or does not belong to scheduled caste or scheduled tribe. Cri. Appeal No. 287 of 2009 dt. 12-2-2009, Rel. Law laid down in W. P. No. 49 of 2001 dt. 20-4-2001 and 2005(4) Mh.L.J. 588 = 2006(1) BCR (Cri) 778 is not a good law to that extent. (Paras 8 and 9)

For petitioner : *M. V. Gangal* (in W. P. No. 2593 of 2008)
V. T. Tulpule, Senior Advocate along with Harshad Bhadbhade (in W. P. No. 2160 of 2005)

For State : *Smt. P. H. Kantharia A.P.P.*

Cri. W. P. Nos. 2593 of 2008 along with 2160 of 2005 decided on 6-3-2009. (Bombay)

List of cases referred :

1. *Anant Vasantlal Sambre vs. State of Maharashtra, Writ Petition No. 49 of 2001 decided on 20-4-2001* (Paras 1, 4, 9)
2. *Manohar Martandrao Kulkarni vs. State of Maharashtra and ors., 2005(4) Mh.L.J. 588 = 2006(1) Bom.C.R. (Cri.) 778* (Paras 1, 4, 9)
3. *Ashabai Machindra Adhagale vs. State of Maharashtra and ors. bearing Criminal Appeal No. 287 of 2009 decided on 12-2-2009* (Paras 6, 8, 10)
4. *Superintendent of Police, CBI and ors. vs. Tapan Kumar Singh, 2003 (6) SCC 175* (Para 6)
5. *Masumsha Hasanasha Musalman vs. State of Maharashtra, 2000 (3) SCC 557* (Para 6)
6. *R. P. Kapur vs. State of Punjab, AIR 1960 SC 866* (Para 6)

JUDGMENT

D. B. BHOSALE, J. :— The order of reference dated 21st January, 2009 which has occasioned the constitution of this Full Bench, has been passed by the Division bench holding that the view taken by the another Division Bench in *Anant Vasantlal Sambre vs. State of Maharashtra in Writ Petition No. 49 of 2001 decided on 20th April, 2001* and in the judgment of the learned Single Judge in the case of *Manohar Martandrao Kulkarni vs. State of Maharashtra and ors.*, reported in *2005(4) Mh.L.J. 588 = 2006(1) Bom.C.R. (Cri.) 778* needs reconsideration. In these judgments the learned Judges have observed that it is a requirement under section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act") that the complainant should disclose the caste of the accused in the complaint itself and if there is no such disclosure the complaint cannot be registered and if it is registered, it is liable to be quashed.

2. In the present writ petition it is contended by the petitioner-accused that nowhere in the complaint, the complainant has disclosed the caste of the petitioner-accused and it is a requirement under section 3 of the Atrocities Act that the offence should be committed by a person who does not belong to a scheduled caste and scheduled tribe. It is further contended that since there is no such assertion made in the complaint or the report it is liable to be quashed.

3. It would be advantageous to reproduce the order of reference dated 21-1-2009 passed by the Division Bench for better appreciation of the question referred to the Full Bench :

> "1. One of the grounds agitated in this writ petition challenging the FIR registered under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is that the FIR does not disclose the caste of the accused. The petitioner relied on the Division Bench Judgment of this Court in the case of *Anant Vasantlal Sambre vs. State of Maharashtra in Writ Petition No. 49 of 2001 decided on 20th April, 2001*, and the judgment of the learned Single Judge in the case of *Manohar Martandrao Kulkarni vs. State of Maharashtra and ors.* reported in *2005(4) Mh.L.J. 588 = 2006(1) Bom.C.R. (Cri.) 778. According to these judgments, learned Counsel for the petitioner submits that it is a requirement under section 3 of the Scheduled Castes and*

Scheduled Tribes (Prevention of Atrocities) Act, 1989 that the complainant should disclose the caste of the accused in the complaint itself. The similar case came before a Division Bench of this Court to which one of us and Justice A. P. Deshpande were members. The Bench had passed an order on 3rd April, 2008 referring the matter to the Full Bench as one of the Judges (Justice Bilal Nazki) had not agreed with the opinion expressed in the abovementioned cases. Later on, the order was recalled by another order dated 23rd September, 2008 realising that one of the members of the Bench (Justice A. P. Deshpande) was a party to an earlier judgment and also realising that two Judges differing perhaps should not have referred the matter to a Full Bench but should have followed the judgment of the Division Bench.

2. *Today, Similar controversy is raised before us and this Bench feel that the law laid down in the above mentioned judgments needs reconsideration.* Therefore, let this matter be placed before a Full Bench." (emphasis supplied)

4. In *Anant Vasantlal Sambre's* case, which was extensively referred and relied upon by the learned Single Judge in *Manohar Martandrao Kulkarni's* case, the Division Bench held that if the first information report does not contain an averment that the accused does not belong to a scheduled caste or scheduled tribe the offence under section 3 of the Atrocities Act cannot be registered. The relevant observations in paragraph 6 of the judgment in *Anant Sambre's* case read thus :

"6. The report, which is filed by the petitioner at the Police Station, mentions that the petitioner belongs to Hindu Khatik caste, which is a Scheduled Caste. However, in the report, it is nowhere mentioned that the person against whom the complaint is made, viz., Shri Kailash Gorantyal, does not belong to Scheduled Caste or Scheduled Tribe. The opening words of section 3 of the said Act are like this :

"Whoever, not being a member of Scheduled Caste or Scheduled Tribe....."

So, *it is a precondition that person committing the alleged offence must not be belonging to Scheduled Caste or Scheduled Tribe.* In the report filed at the Police Station, there ought to have been some averment indicating that Shri Kailash Gorantyal does not belong to Scheduled Caste or Scheduled Tribe. *In the absence of such averment, or any other material before the Police Station Officer for coming to the conclusion that the accused named in the said report does not belong to Scheduled Caste or Scheduled Tribe, the offence under section 3 of the said Act cannot be registered.* So, even if in this matter, there is the reference that the petitioner belongs to Scheduled Caste or Scheduled Tribe, the report itself is not complete and, in such circumstances, if the police officer has not taken any further steps, he cannot be blamed. At the most the police station officer could have directed the informant to give some material before him to show that the accused does not belong to Scheduled Caste or Scheduled Tribe. If that had been before the Police Station Officer, then there could have been ground for the police station officer to

register the offence as being cognizable under section 3(x) of the said Act. *As the basic requirement is not fulfilled in this complaint lodged before the Police Station, the police cannot be blamed for not registering the crime.* So, in such circumstances, the relief sought for by the petitioner cannot be given. (emphasis supplied)

5. Thus, the questions that fall for our consideration are whether it is a requirement under section 3 of the Atrocities Act that the complainant should disclose the caste of the accused in the complaint itself?, and if there is no such mention, whether it could be a ground for quashing the complaint ?.

6. After the order of reference was passed by the Division Bench on 21-1-2009 the very same question arose for the consideration of the Supreme Court in *Ashabai Machindra Adhagale vs. State of Maharashtra and ors. bearing Criminal Appeal No. 287 of 2009 decided on 12-2-2009.* The basic stand in the case before the Supreme Court was that in the FIR the caste of accused was not mentioned and therefore the proceedings cannot be continued and deserved to be quashed. The appellant before the Supreme Court had filed the FIR under section 154 of the Code of Criminal Procedure, 1973 (for short "the Code") alleging commission of offence punishable under section 3(1)(xi) of the Atrocities Act. The petition under section 482 of the Code before the High Court was filed by the accused contending that his caste was not mentioned in the FIR and therefore the proceedings deserved to be quashed. The High Court had allowed the petition.

The Supreme Court after considering its judgment in *Superintendent of Police, CBI and ors. vs. Tapan Kumar Singh, 2003 (6) SCC 175* which elaborately dealt with the need of an FIR and the judgment in *Masumsha Hasanasha Musalman vs. State of Maharashtra, 2000 (3) SCC 557* so also the provisions of section 482 of the Code and the judgment in *R. P. Kapur vs. State of Punjab, AIR 1960 SC 866* in paragraphs 14 and 16 held thus:

> "14. It needs no reiteration that the FIR is not expected to be an encyclopaedia. As rightly contended by learned counsel for the appellant whether the accused belongs to scheduled caste or scheduled tribe can be gone into when the matter is being investigated. ....
>
> ....
>
> 16. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belongs to scheduled caste or scheduled tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to scheduled caste or scheduled tribe."

7. In the concluding paragraph the Supreme Court observed that "Needless to say during investigation or at the time of framing of charge or at the time of trial it is open to the accused to show that he either belongs to scheduled caste or scheduled tribe so that applicability of section 3(1)(xi) of the Act is ruled out".

8. From bare perusal of the judgment of the Supreme Court in *Ashabai Adhagale's* case it is clear that the question referred to the Full Bench is no

longer res-integra and stands squarely answered. Thus, we hold that merely because the caste of the accused is not mentioned in the FIR stating whether he belongs to scheduled caste or scheduled tribe, it cannot be a ground for quashing the complaint. After ascertaining the facts during the course of investigation it is always open to the investigating officer to record that the accused either belongs to or does not belongs to scheduled caste or scheduled tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs to or does not belong to scheduled caste or scheduled tribe as observed in *Ashabai Machindra Adhagale's* case.

9. In the result we hold that it is not a requirement under section 3 of the Atrocities Act that the complainant should disclose the caste of the accused in the complaint. In other words if there is no mention of the caste of the accused in the FIR, that cannot be a ground for either not registering the offence under section 3 of the Atrocities Act or for quashing such complaint. Thus, the law laid down in *Anant Vasantlal Sambre* and *Manohar Martandrao Kulkarni's* cases is no more a good law to that extent.

10. Office is directed to place this writ petition before the regular Court to decide the same in the light of this judgment and/or in the light of the judgment of the Supreme Court in *Ashabai Machindra Adhagale's* case.

Order accordingly.

JURISDICTION OF SCHOOL TRIBUNAL TO DECIDE APPEAL

(A. H. Joshi, J.)

DEEPALI GUNDU SURWASE *Petitioner.*

vs.

KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA, AURANGABAD and others *Respondents.*

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, R. 39 and Civil Procedure Code, O. 7, R. 11 — *Rejection of appeal memo on the ground that it did not contain 2 more copies of the memo of appeal — Challenge — Respondent No. 1 who was contesting had appeared in the matter and filed reply to the stay application — Application which had led to the impugned order did not reveal that the respondent No. 1 was not served with the memo of appeal and accompanying documents thereby precluding the R-1 from filing reply in the matter — Eventualities provided in Order 7, Rule 11 did not occur — Language employed in sub-rule (3) of Order 4 or 7, Rule 11 did not disclose the consequence of failure to comply sub-rule (1) — School Tribunal erred in passing the impugned order — School Tribunal directed to decide the appeal on merits.* (Paras 12 to 17)

For petitioner : *B. L. Sagar Killarikar and Ajay Shinde*
For respondent No. 1 : *S. S. Deo and S. G. Rudrawar*
For respondent No. 2 : *V. D. Gunale*
For respondent No. 4 : *V. B. Patil*

W. P. No. 7217 of 2007 decided on 12-2-2008. (Aurangabad)

MANU/KE/0320/1994

Equivalent Citation: 1996(1)ALT(Cri)162, 1995(4)Crimes399(Ker.), 1985(1)KLJ82, 1995(2)RCR(Criminal)19

IN THE HIGH COURT OF KERALA

Crl. M.C. 1556/92

Decided On: 23.12.1994

Appellants: **Hareendran**
Vs.
Respondent: **Sarada and Ors.**

Hon'ble Judges/Coram:
M.M. Pareed Pillay, Actg. C.J., T.V. Ramakrishnan and P. Shanmugam, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K. Ramachandran and K.T. Sankaran, Advs.

For Respondents/Defendant: P. Vijayabhanu, Adv. for 1st Respondent and K.C. Peter, Addl. Director General of Prosecutions for 2nd Respondent

ORDER

M.M. Pareed Pillay, J.

1. The Crl. M.C. is to quash a complaint filed by the first Respondent before the Judicial Magistrate of the First Class, Ottapalam for offence under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). Magistrate took cognizance of the offence. Contention of the Petitioner is that the Magistrate ought to have seen that he has no jurisdiction to initiate committal proceedings and hence initiation of the same cannot be sustained.

2. In view of the contention that the Magistrate did not have jurisdiction to take cognizance of the offence under the Act, Thomas, J. held that principles laid down by a Division Bench of this Court in Re 1992 (2) K.L.T. 748 require reconsideration. The matter was posted before a Division Bench of this Court and that Court referred the case to be heard by a Full Bench of this Court.

3. The question that arises for consideration is whether committal proceedings is necessary or not in a case under the Act. In Re 1992 (2) K.L.T. 748 a Division Bench of this Court held that the Sessions Judge as Special Court constituted under the Act can take cognizance of the offences even in a case where offences under the Penal Code are also included without Committal proceedings. The learned Counsel for the Petitioner as well as the learned Additional Director General of Prosecutions contended that the Act does not envisage committal proceedings and as the Act has been enacted for speedy and expeditious trial and disposal of such cases, committal proceedings was never contemplated by the Legislature. It is also contended by them that if committal proceedings is insisted upon, it would cause further delay in the trial and every object of the statute would be defeated. It is their further contention that the committal proceedings would be disadvantageous to the complainant as well as the accused. According to them, as the Act is a self-contained one and as it confers original jurisdiction on the special court and as it does not even hint faintly that committal proceedings is necessary by implication, the matter which was never

intended under statute cannot be incorporated in it.

4. Section 2(g) of the Code of Criminal Procedure defines "inquiry". "Inquiry" means every enquiry, other than a trial, conducted under the Code by a Magistrate or Court. Merely on the basis of the definition of inquiry under the Code of Criminal Procedure, it would not be possible to hold that the inquiry under the Act has to commence in the Court of the Magistrate. Section 201 of the Code of Criminal Procedure provides for the procedure by Magistrate not competent to take cognizance of the case. If a complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; if the complaint is not in writing, direct the complainant to the proper Court. Contention of the Petitioner is that as the complaint was filed before the Magistrate he on being apprised of the fact that he is not competent to take cognizance of the offence should have returned it for presentation to the Court with endorsement to that effect as provided under Section 201 Code of Criminal Procedure and he could not have proceeded with the inquiry with a view to committing it to the Sessions Court later. In view of Section 20 of the Act, there is considerable force in the above contention.

5. Section 20 has been enacted in the Statute to override all other laws. It reads:

> Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

As this section gives the Act over-riding effect and as the Act has been enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to provide for Special Court for the trial of such offences, it is rather difficult for us to hold that the committal proceedings is indispensable as a prelude to the case being tried before the Special Court. Merely on account of the definition of inquiry under Section 2(g) of the Code of Criminal Procedure, it is not possible to come to a conclusion straightaway that in the cases coming under the Act also inquiry has to be done by a Magistrate and only on committal of the case to the Special Court that court gets jurisdiction to try the offences. Section 3 of the Act prescribes punishments for offences of atrocities under the Act. Section 4 provides for punishment for neglect of duties to be performed under the Act. Section 14 provides for the constitution of Special Court. In that section itself it is made clear that for speedy trial the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under the Act. It is not possible to hold that there is no constitution of a Special Court under the Act only for the reason that Section 14 only directs specification for each district a Sessions Court to be a Special Court by notification. Specification by notification as a Special Court to try the offences under the Act can only be considered as constitution of Court of Sessions as a Special Court. As the Act is silent regarding the procedures to be followed by the Special Court, the ordinary incidents of procedure are to be followed for all purposes including taking cognizance of offence. Sections 4(2) and 26(b) of the Code of Criminal Procedure read along with Section 14 of the Act would make the above position clear.

6. So long as there is no ambiguity with regard to the above position and when Special Court takes cognizance of the offence under the Act and proceeds with the

trial, Section 193 Code of Criminal Procedure cannot have any application. Section 193 provides that except as otherwise expressly provided by the Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. As the Sessions Court is specified as Special Court, it can take cognizance of the offences and as there is nothing indicative in the Act to hold that the Special Court gets jurisdiction to try the case only on committal by the Magistrate, it is not possible to hold that that Court can take cognizance of an offence for trial only on proper committal by the Magistrate. As Section 14 of the Act specifically provides for speedy trial and as the Act itself has been enacted to prevent commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes by providing Special Courts for trial of such offences and as the Act nowhere hints committal proceedings, Section 193 of the Code of Criminal Procedure cannot have any application. Section 14 enables the Special Court to exercise original jurisdiction. Hence its power to take cognizance has to be controlled by Section 190 of the Code of Criminal Procedure. In a case where Special Court receives final report disclosing offence under the Act, it can certainly take cognizance of the same without committal.

7 . In Re 1992 (2) K.L.T. 748 Division Bench of this Court on an elaborate consideration of the entire matter held that committal proceedings are not warranted in a case coming under the Act and triable by the Special Court. We are in agreement with the said view.

8. As the Magistrate has no jurisdiction to take cognizance of the case, the complaint ought to have been returned for presentation before proper Court. As such, the entire proceedings in C.P. 14 of 1992 of the Court of the Judicial Magistrate of the First Class, Ottapalam are quashed. We would accordingly direct the Magistrate to return the complaint for presentation before the proper Court.

Crl. M.C. is allowed as stated above.

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MANU/KA/2555/2020

Equivalent Citation: ILR 2020 KARNATAKA 3887

IN THE HIGH COURT OF KARNATAKA (KALABURAGI BENCH)

Criminal Petition Nos. 200315 and 200318/2020

Decided On: 21.07.2020

Appellants: **Marenna and Ors.**
Vs.
Respondent: **The State and Ors.**

Hon'ble Judges/Coram:
Hanchate Sanjeev Kumar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Nandkishore Boob and Rajesh Doddamani, Advocates

For Respondents/Defendant: Mallikarjun Sahukar, HCGP

ORDER

Hanchate Sanjeev Kumar, J.

1. Crl.P. No. 200315/2020 is filed by the petitioner / accused No. 2 under Section 439 of Cr.P.C. and Crl.P. No. 200318/2020 is filed by the petitioner / accused No. 1 under Section 439 of Cr.P.C., seeking to enlarge them on bail.

2. Since both the petitions arising out of same Crime i.e., in Crime No. 72/2020 of Shahapur P.S., they are taken up together, heard and disposed of by this common order.

3. In nutshell, prosecution's case as per FIS is as under;

> It is stated by the first informant, Smt. Tarabai, who is the mother of the injured (minor son) of 14 years old that she is having two female and two male children, among them, the injured was studying in 8th Standard when the alleged incident (now going to be stated) was occurred. It is alleged that on 28.02.2020, the first informant and his elder son namely, Santosh had been to Ukkanal Thanda and at 4.30 p.m., her husband had called her through phone stating that the petitioners and other accused have assaulted their son and therefore they were going to admit him to the hospital and further told the first informant to come to Shahapur, accordingly at 5.00 p.m., the first informant and her son went to Govt. Hospital, Shahapur, wherein they saw the injured-Anand, who had sustained grievous injuries on the head and was not in a position to talk, upon enquiry with her husband, who told that their son-Anand after coming from school had taken Ox for grazing and returned to the house at 4.00 p.m. At that time, the petitioners herein came to their house, abused him in filthy language saying that why the Ox was left to graze in his (accused No. 1's) field and taken the injured to their field, wherein the petitioners have shown the place of grazing and immediately petitioner / accused No. 1-Sahebreddy picked up an Axe and

assaulted on the head of the minor injured and the petitioner/accused No. 2-Mareppa had kicked the injured and other accused have instigated both accused Nos. 1 and 2 to finish him and also abused with reference to the caste, knowing fully well the caste of the injured and the first informant. Thus, in this way the petitioners and other accused have attempted to commit the murder of the injured by assaulting on the head with Axe. Therefore, with these allegations, a case in Crime No. 72/2020, came to be registered against the petitioners and other accused for the offences punishable under Sections 143, 147, 148, 323, 307, 504 and 506 read with Section 149 of IPC and Sections 3(1)(r), 3(1)(s) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act', for brevity).

4. The learned counsel for the petitioner in Crl.P. No. 200318/2020 had impleaded-Smt. Tarabai, the first informant as respondent No. 2 as she is also victim as her son had sustained injuries.

5. The learned counsel for the petitioner in Crl.P. No. 200315/2020 had not made the first informant as a party instead submitted that it would suffice if an information is given to the victim or his dependents or the first informant about the proceedings pending before the Court as per Sub-section (3) of Section 15-A of the SC/ST Act. This aspect of the matter is elaborately discussed in the light of the applicable provisions of law hereunder.

6. The learned counsel for the petitioner in Crl.P. No. 200315/2020 had submitted that the petitioner-Mareppa had not picked up any weapon to assault the minor injured and as against him the overact alleged is only that he has kicked the injured and abused him in filthy language. Therefore, submitted that there is no element of sharing of common intention between the petitioners and other accused and therefore prayed to release the petitioner on bail. Further submitted that this incident was occurred suddenly in a spur of moment and this petitioner had not used any weapon and further the petitioner is in custody since 23.04.2020 and he is an old age person of 58 years. Further, submitted that there is a delay in lodging the first information statement before the Police which goes to the core of the prosecution case that the petitioners and other accused have been falsely implicated into the case and as such narrated the dates of incident. Even though it is alleged that on 28.02.2020 the incident was occurred, but the FIS came to be lodged on 06.03.2020 and accordingly FIR came to be registered on 06.03.2020. Therefore, there is delay in registration of FIR and which creates suspiciousness in the prosecution case. Hence, prayed to release the petitioner on bail and the petitioner would abide by any conditions to be imposed by this court while granting bail.

7. Further, learned counsel for the petitioner-Sahebreddy in Crl.P. No. 200318/2020 submitted on the line of the counsel for the petitioner in Crl.P. No. 200315/2020 besides further submitting that there is a delay in lodging FIS and therefore the petitioner and other accused have been falsely implicated into the case even though there is no incident has been occurred. Further argued that the injured had sustained injuries on the head on some other occasion, but by taking disadvantage of this fact of sustaining injury, the mother of the injured has lodged a false complaint before the Police. Further submitted that the petitioner did not have any intention to assault or kill the injured, but when there is verbal altercation took place and suddenly such an incident was happened in a heated moment and in a sudden spur of moment, therefore offence under Section 307 of IPC is not attracted and at the most the

offence under Section 324 of IPC may be attracted. Hence, prayed to release the petitioner on bail and the petitioner would abide by any conditions to be imposed by this court while granting bail.

8 . On the other hand, the learned High Court Government Pleader vehemently contended that the petitioners in both the petitions have assaulted the minor injured of 14 years old by sharing common intention between them and assaulted with Axe on the head of the minor boy and in this way attempted to kill the minor injured, who is son of the first informant herein. Further, submitted that the petitioners are highly influential persons and if they are released on bail, then there would be chances of threatening the first informant / injured and their family members and in such an event, a fair trial would not be possible. Therefore, considering the gravity of the offence alleged, learned HCGP requested to dismiss the petitions.

9. By considering the overall facts and circumstance as depicted by the prosecution case, it is the case of the prosecution that the petitioner in Crl.P. No. 200318/2020 has assaulted on the head of the minor boy with Axe for which the petitioner-Mareppa and other accused have abetted to kill the injured person. Upon considering the FIS and other materials at this stage, which are made available before this court that there is a prima facie element of sharing common intention between them in furtherance of commission of offence alleged. At this stage, it cannot be accepted the submission made by the learned counsel that there was no pre-meditation and sharing of common intention between the petitioners and the other accused and in a sudden spur of moment the incident has occurred. Whether the petitioner and other accused have shared common intention or not in furtherance of commission of offence alleged, it may be elicited during the full-fledged trial but not at this stage. But it is a fact as per the prosecution papers reveals the injured after coming to the house had taken Ox to the field for grazing then returned to the house from School and tied the Ox, then these petitioners have come to the house of the injured and abused him in filthy language and asked why he made the Ox to graze in their field and taken the injured person to their field therein the petitioner-Sahebreddy took up an Axe and assaulted on the head and for which the petitioner-Mareappa and other accused have instigated the petitioner-Sahebreddy. Upon considering all these prima facie materials, it shows a deadly weapon like, Axe was used to assault on the head of the minor boy. In the present case, the injured is 14 years old boy and the petitioners and other accused did not bother about his tender age and assaulted on his head, which is a vital part of the body. If the petitioners had been successful in their attempt by using deadly weapon viz., Axe assaulted on the head, then there would be chances of death of the minor boy. Therefore, prima facie it attracts the offence under Section 307 of IPC, for which maximum punishment to be imposed is upto imprisonment for life. Further, the prosecution papers prima facie reveals that the first informant and injured are belonging to Scheduled Caste and knowing fully well the caste of the first informant and injured had abused in filthy language by mentioning the name of their caste as it can be seen in the FIS and therefore when offence under Section 307 of IPC is foisted for which the maximum punishment is for life imprisonment and the offence under 3(2)(v) of the SC/ST Act attracts for which the punishment imposed is for life. Therefore, upon perusing the materials available at this stage prima facie it revealed that the petitioners and other accused have committed the offence alleged and have abused the injured and the brother of the injured with reference to their caste and also criminally intimidated them. The offences foisted are attracted prima facie as against the petitioners herein. Therefore, considering the gravity of offence alleged as it reveals from the prosecution papers and if the petitioners were successful in their attempt, then the death of the injured

person would have been caused. Thus, considering the gravity of the offence alleged and also the severity of the punishment to be imposed, this court is of the opinion not to release the petitioners on bail for the reason that if they are released on bail then there would be of chances of threatening the injured, his parents and also tampering the evidences and also chances of absconding and fleeing away from justice.

10. Further upon considering the delay in lodging FIS and registration of crime, it is seen from the records that even though the alleged incident said to have been occurred on 28.02.2020, FIS was lodged on 06.03.2020, the delay in this regard may not always go to the root of the prosecution case so as to say that the prosecution case falls on the ground. There may be various factors in belated lodging of FIS, but this aspect of the delay can be considered during full-fledged trial but not at this stage. While considering the bail petition, without going to the merits on the case, but considering prima facie case, gravity of the offence alleged, chances of threatening the witnesses and tampering the evidences and whether release of the petitioners on bail meddles with the investigation process, these are all aspects to be considered while considering the bail petition. Therefore, just because there is a delay that cannot be made a ground to allow the petitions since it is a pure question to be considered on facts during the full-fledged trial, but not at this stage.

11. Therefore, under these circumstances, this court is of the opinion that the petitioners are not entitled for enlarging them on bail. Thus, the petitions filed by the petitioners are liable to be rejected. Accordingly, they are rejected.

12. As discussed in the preceding paragraphs, the learned counsel for the petitioner-Mareppa in Crl.P. No. 200315/2020 is having some reserve in impleading the first informant as respondent herein and submitted that they are not entitled to participate in the proceedings, therefore in this regard the legal provisions as enumerated under the Act require to be discussed herein as the rights of the Members of the Scheduled Caste and Scheduled Tribes are involved.

13. Sub-section (3) of Section 15-A of the SC/ST Act is extracted as under;

> "A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

14. The parliament by way of Amendment to the Act had inserted Chapter IV-A by the Act 1 of 2016 w.e.f. 26.01.2016 and through which rights are conferred on the victim and the witnesses. Section 15-A of the SC/ST Act enumerates the right of the victim and witnesses. Sub-section (3) of Section 15-A of the SC/ST Act confers right on the victim or his dependents that they have right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under the SC/ST Act, with the object and reason let them know about their case in the court proceedings when a proceedings is initiated or pending including the bail proceedings. Correspondingly, a duty is conferred on the Special Public Prosecutor or the State Government to inform the same to the victim or his/ her dependent.

15. Section 2(ec) of the SC/ST Act defines 'victim', as under;

> " "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;"

16. Therefore, the definition "victim" as enumerated in the Act is wide enough, which include any individuals who falls within the definition of the SC/ST Act who has suffered or experienced physically, mentally, psychologically, emotionally or monitory harm or suffered harm to his or her property. If a person sustains injuries arising out of crime then, he himself, his parents, family members are also to be considered as victim as per the above definition. It is not only stipulated a physical harm is to be caused but if there is a harm mentally, psychologically, emotionally or monetarily or if there is any harm in respect of the property then such person is also coming within the definition of the victim.

17. In the present case, the first informant is the mother of the injured person. Therefore, definitely the first informant is victim in the present case. It is not only the mother alone is becoming the victim but father and other blood relative are also coming within the definition of victim to consider the present case. The first informant is the mother of the minor boy, the minor boy who had sustained injuries due to the assault stated to have been committed by the petitioners and other accused. Therefore, certain rights are conferred to the victim and witnesses under the SC/ST Act.

18. Sub-section (5) of Section 15-A of the SC/ST Act guarantees a right to a victim or dependents to participate in any proceedings thus right of 'Audi Alterm Partem' is conferred. For ready reference, Sub-section (5) of Section 15-A of the SC/ST Act is extracted as under;

> "A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing."

19. Therefore, where a right of Audi Alterm Partem is conferred on the victim or his dependents, then the court has to give an opportunity/right of audience to the victim or his/her dependent to hear them as to enable them to participate in the proceedings including bail proceedings also. Therefore, a victim or dependent has a right to be heard by the Court enabling the victim or dependents to participate in any proceedings in respect of not only bail proceedings but also in the proceedings of discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing of a case. The court is able to hear the victim or dependent in respect of a proceedings as enumerated in Sub-section (5) of Section 15-A of the SC/ST Act only when the victim or dependent are made as parties in the proceedings, otherwise it cannot be possible for the court to hear the victim/dependents and to receive any written submission as stated in the said provision. The victim or dependent may participate either personally or through an Advocate or through Public Prosecutor or Special Public Prosecutor or appear himself / herself. As per Section 15 of the SC/ST Act, the Special Public Prosecutor or exclusive Special Public Prosecutor are assigned the duties to represent the State in genre but in specie on behalf of the victim or

dependent/complainant/first informant to prosecute the case. But the parliament in its wisdom by inserting Chapter IV-A and Section 15-A of the SC/ST Act confers right of victims and witnesses and more expressly provided the victim or dependent to participate in any proceedings. Therefore, Sub-section (3) of Section 15-A of the SC/ST Act only enumerates giving such information to the victim or dependents through Special Public Prosecutor or State Government about any proceedings pending in the court. But Sub-section (5) of Section 15-A of the SC/ST Act confers a right on the victim or dependents to make them to participate in a proceedings and to hear their submissions and also to file written submissions in this regard in the proceedings pending before the court. Therefore, unless the victim or dependent as enumerated in Section 2(ec) of the SC/ST Act is made a party in the proceedings in the case pending before any court, it is not possible for the court to hear whatever submission to be put forth by the victim or dependents in the proceedings before the court. Therefore, under these circumstances, making the victim or dependent as party in the proceedings pending before any court is necessary and mandatory.

20. There are various rights conferred on the victim or dependent and correspondingly there are various duties conferred on the State Government, Special Courts and on the Public Prosecutor / Special Public Prosecutors and also on Station House Officers of the Police Stations.

21. Sub-Section 12 of Section 15-A of the SC/ST Act confers right on the atrocity victim or dependents to take assistance from the Non-Government Organizations, Social Workers or Advocates. Therefore, a right is conferred on the victim arising out of atrocity or their dependents to take legal assistance from an Advocate apart from any assistance to be taken by the Non-Government Organizations and Social Workers. Therefore, it is the duty of the State to provide legal assistance to the atrocity victims or their dependents by engaging services of an advocate in any proceedings initiated under the Act.

22. At this stage, it is pertinent to look into the relevant provisions of the Legal Services Authorities Act, 1987 ('LSA Act', for brevity). Clause (c) of Section 2 ofthe LSA Act defines "legal service" which reads as under;

> "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter"

23. Section 12 of the LSA Act defines as follows;

> "12. Criteria for giving legal services.- Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-
>
> (a) a member of a Scheduled Caste or Scheduled Tribe;
>
> (b) xxxxxxxxxx
>
> (c) xxxxxxxxxx
>
> (d) xxxxxxxxxx
>
> (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(emphasis supplied by me)

(f) xxxxxxxxxxx

(g) xxxxxxxxxx

(h) xxxxxxxxxx.

24. Section 13 of the LSA Act defines as follows;

"13. Entitlement to legal services.-(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

(2) xxxxxxxxx"

25. Therefore, the member of Scheduled Caste and Scheduled Tribes is entitled for free legal services. Legal services means it is not only a legal counseling but also providing assistance of an Advocate to the Member of the Scheduled Caste and Scheduled Tribes in any proceedings pending before the court. Therefore, upon considering all these legal provisions, a member of the Scheduled Caste and Scheduled Tribes are entitled free legal services and when it is appreciated with the legal provision as enumerated in Section 15-A of the SC/ST Act and as per Section 12 of the LSA Act, as discussed above, a victim or dependent as stated in Clause (ec) of the SC/ST Act are also entitled to free legal services to participate in any proceedings pending before the Court as stipulated in Chapter IV-A of the SC/ST Act. Therefore, it is the duty cast on the Karnataka State Legal Services Authority and High Court Legal Services Committee to provide legal services to the victim or their dependents through District Legal Services Authority (DLSA) in each District before the Special Court and before the High Court respectively.

26. There is no distinction in providing legal services at the trial stage and at the appellate stage. This pronouncement is declared by the Hon'ble Supreme Court in the case of Rajoo alias Ramakant Vs. State of Madhya Pradesh [MANU/SC/0641/2012 : (2012) 8 SCC 553]. Therefore, in any proceedings pending before the court a member of Scheduled Castes and Scheduled Tribes are entitled legal services. In the cases/proceedings arising out of SC/ST Act, the victim or dependents are entitled for legal services as per Section 12 of the LSA Act and also as per Section 15-A of the SC/ST Act.

27. Therefore, under these circumstances, the following guidelines are issued;

i) A right is conferred on the victim or his/her dependents to participate in the proceedings initiated under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as enumerated in Section 15-A, as discussed above. Therefore, the first informant/complainant/victim or dependents shall be made as a party in the proceedings and issue necessary notice to the victim or dependents / first informant/ complainant/ victim or dependents and to hear them in any proceedings as envisaged under Sub-section (5) of Section 15-A of the SC/ST Act.

ii) The Special Courts trying with the offence/s under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall direct the

District Legal Services Authority to provide an advocate on behalf of the victim or his/her dependents/ first informant/complainant from the Panel Advocates of District Legal Services Authority.

The Registrar General is hereby requested to circulate this order to all the concerned Special Courts trying/dealing the offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to the Member Secretary, Karnataka State Legal Services Authority (KSLSA), who in turn shall inform all the District Legal Services Authority and Secretary, High Court Legal Services Committee (HCLSC) to provide legal services to the victim or dependents in any proceedings pending before the Special Court or High Court, as the case may be, as stated above.

(2020) 4 Supreme Court Cases 761

(BEFORE ARUN MISHRA, M.R. SHAH AND B.R. GAVAI, JJ.)

2019
Oct. 1

3-Judge Bench

UNION OF INDIA .. Petitioner;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Review Petitions (Crl.) No. 228 of 2018 in Criminal Appeal No. 416 of 2018[*] with No. 275 of 2018 in Criminal Appeal No. 416 of 2018, decided on October 1, 2019

A. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 18 — Bar under S. 18 on grant of anticipatory bail under S. 438 CrPC in respect of offences under the 1989 Act — Directions 79.3 to 79.5 issued in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454, diluting bar under S. 18, to the effect that arrest for offences under the 1989 Act could only be with prior approval of appointing authority of public servant and of SSP in other cases, with reasons recorded and which reasons were open to examination by Magistrate concerned; and that preliminary enquiry may be conducted by DSP concerned to find out whether the allegations make out a case under the 1989 Act and the same are not frivolous or motivated before registration of FIR under the 1989 Act, recalled (Paras 50 to 71)

— Strict implementation of the 1989 Act is required — Non-registration of cases and various other machinations are resorted to by the police to discourage Dalits from registering cases under the 1989 Act — If information discloses a cognizable offence, registration of FIR is mandatory and no recourse to S. 438 CrPC is permissible — Preliminary inquiry before registration of FIR in respect of cases under the 1989 Act can only be done strictly as per the law laid down in *Lalita Kumari*, (2014) 2 SCC 1, in cases where it is required to be ascertained whether a cognizable offence has been committed or not (Paras 17 to 20)

— However, the consistent view of the Supreme Court has been that if prima facie case has not been made out attracting the provisions of the 1989 Act, in that case, the bar created under S. 18 of the 1989 Act on the grant of anticipatory bail is not attracted — To decide whether an accused is entitled to bail under S. 438 CrPC in case no prima facie case is made out or under S. 439 CrPC is the function of the court (Paras 57 and 63)

— Furthermore, held, in case a person who is proceeded against under the 1989 Act apprehends false implication and harassment, he can approach High Court for quashing FIR under S. 482 CrPC, in accordance with law (Paras 52 and 60)

— Constitution of India — Arts. 17, 21 and 137 — Criminal Procedure Code, 1973, Ss. 482, 197, 41 and 2(c)

[*] From the Judgment and Order in *Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 (Supreme Court of India, Crl. Appeal No. 416 of 2018, dt. 20-3-2018)

B. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 18 — Judicial interference on presumption that a particular class/caste would lie and lodge false FIRs — Unwarranted — Impugned directions diluting bar under S. 18 against anticipatory bail in cases of offences under the 1989 Act, therefore, recalled — There can be no presumption that SCs/STs as a class will misuse 1989 Act and would lodge false report

It cannot be presumed that caste of a person is cause of lodging a false FIR It would be against basic human dignity to presume all SCs/STs as liar or crook and treat all their complaints with doubt If presumed so it would mean adding insult to injury On the other hand due to backwardness, SCs/STs cannot muster courage to lodge even an FIR, much less, a false report There may be certain instances of misuse of 1989 Act, where court can interfere, but it cannot be a ground to change the law and it cannot be ground for court to take upon itself the task of legislature Constitution of India, Arts. 17, 21 and 137 (Paras 50 to 58)

C. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 18 — Bar to anticipatory bail under S. 18 of the 1989 Act is valid and not violative of Art. 21 of the Constitution — Procedure prescribed in S. 18 is a procedure established by law under Art. 21 of the Constitution — Protective discrimination has been envisaged under Art. 15 of the Constitution — Art. 17 of the Constitution prohibits untouchability — Right to life under Art. 21 of the Constitution includes right to live with dignity — Human dignity implies that all persons are treated as equal in all respects and are not treated as untouchables, downtrodden and object for exploitation — A good reputation is an element of personal security — Provisions of the 1989 Act are concomitants covering various elements of Art. 21 of the Constitution

There is justification for enactment of S. 18 SCs/STs have been oppressed for centuries and they are still discriminated in various parts of country Fruits of development have not reached them and they still remain unequal and vulnerable section of society They do bonded and forced labour

In certain areas women are not treated with dignity and honour and are abused in various forms Sometimes sewer workers die due to poisonous gases in chambers When our country has still failed to provide sewer workers with oxygen cylinders in spite of development, they should not be left to die like this Tortious liability concerned with officials/official machinery should not be avoided There is justification for apprehension that if benefit of anticipatory bail is made available to persons accused of offences under 1989 Act, there is every possibility of misusing their liberty while on anticipatory bail to terrorise SC/ST victims and prevent proper investigation As caste discrimination is deep rooted, there should be consistent effort to eradicate it There has been only partial success in this regard Constitution of India, Arts. 21, 14, 15 and 17 (Paras 20 to 22 and 40 to 58)

Allowing the review petition and directing recall of Directions 79.3, 79.4 and 79.5 issued in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454, the Supreme Court

Held :

In re: Preliminary inquiry prior to registration of FIR in respect of offences under the 1989 Act

It is apparent from the decision of the five-Judge Bench in *Lalita Kumari*, (2014) 2 SCC 1, that FIR has to be registered forthwith in case it relates to the commission of the cognizable offence. There is no discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry before registration of the FIR. Preliminary inquiry can only be held in a case where it has to be ascertained whether a cognizable offence has been committed or not. If the information discloses the commission of a cognizable offence, it is mandatory to register the FIR under Section 154 CrPC, and no preliminary inquiry is permissible in such a situation. (Paras 17 to 20)

Lalita Kumari v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524, *followed*

In re: Existence of prima facie case for attracting bar under Section 18 of the 1989 Act

The consistent view of the Supreme Court has been that if prima facie case has not been made out attracting the provisions of the 1989 Act, in that case, the bar created under Section 18 of the 1989 Act on the grant of anticipatory bail is not attracted. To decide whether an accused is entitled to bail under Section 438 CrPC in case no prima facie case is made out or under Section 439 CrPC is the function of the Court. (Paras 57 and 63)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *followed*

In re: Approval of the appointing authority for arrest of public servant for offences under the 1989 Act

Concerning public servants, the provisions contained in Section 197 CrPC provide protection by prohibiting cognizance of the offence without the sanction of the appointing authority and the provision cannot be applied at the stage of the arrest. That would run against the spirit of Section 197 CrPC. Section 41 CrPC authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(*c*) CrPC is one for which police officer may arrest without warrant. (Para 59)

In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 CrPC. (Paras 52 and 60)

State of Orissa v. *Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415, *relied on*

While issuing guidelines in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454, approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the 1989 Act. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the courts. (Para 61)

The direction is discriminatory and would cause several legal complications. On what basis the appointing authority would grant permission to arrest a public servant? When the investigation is not complete, how can it determine whether public servant is to be arrested or not? Whether it would be appropriate for appointing authority to look into case diary in a case where its sanction for prosecution may not be required in an offence which has not happened in the discharge of official duty. Approaching appointing authority for approval of arrest of a public servant in every case under the 1989 Act is likely to consume sufficient time. The appointing authority is not supposed to know the ground realities of the offence that has been committed, and arrest sometimes becomes necessary forthwith to ensure further progress of the investigation itself. Often the investigation cannot be completed without the arrest. There may not be any material before the appointing authority for deciding the question of approval. To decide whether a public servant should be arrested or not is not a function of the appointing authority, it is wholly extra-statutory. In case the appointing authority holds that a public servant is not to be arrested and declines approval, what would happen, as there is no provision for grant of anticipatory bail. It would tantamount to taking away functions of court. To decide whether an accused is entitled to bail under Section 438 CrPC in case no prima facie case is made out or under Section 439 CrPC is the function of the Court. The direction of the appointing authority not to arrest may create conflict with the provisions of the 1989 Act and is without statutory basis. (Para 62)

By the guidelines issued in *Subhash Kashinath Mahajan case*, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no prima facie case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, may be a public servant, it is not the provision of the general law of CrPC that permission of the appointing authority is necessary. No such statutory protection provided to a public servant in the matter of arrest under IPC and CrPC as such it would be discriminatory to impose such rider in the cases under the 1989 Act. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required. (Para 63)

The appointing authority cannot sit over an FIR in case of cognizable, non-bailable offence and investigation made by the police officer; this function cannot be conferred upon the appointing authority as it is not envisaged either in CrPC or the 1989 Act. Thus, this rider cannot be imposed in respect of the cases under the 1989 Act, may be that provisions of the Act are sometimes misused, exercise of power of approval of arrest by the appointing authority is wholly impermissible, impractical besides it encroaches upon the field reserved for the legislature and is repugnant to the provisions of general law as no such rider is envisaged under the general law. (Para 64)

Assuming it is permissible to obtain the permission of the appointing authority to arrest the accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach

the police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of the 1989 Act. In case the direction is permitted to prevail, days are not far away when writ petition may have to be filed to direct the appointing authority to consider whether the accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of the appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. The 1989 Act delay would be adding to the further plight of the downtrodden class. (Para 65)

In re: Approval of arrest by SSP in the case of offences under the 1989 Act by a non-public servant

For similar reasons direction for requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of the accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the 1989 Act. (Para 66)

In re: Requiring the Magistrate to scrutinise the reasons for permitting further detention

As per the guidelines issued by the Court, a public servant can be arrested after approval by the appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case approval has not been granted, this exercise has not been undertaken. When the offence is registered under the 1989 Act, the law should take its course no additional fetters are called for on arrest whether in case of a public servant or non-public servant. Even otherwise, the direction regarding approval of arrest by appointing authority/SSP and the direction to record reasons are not affirmed and the direction regarding scrutiny by the Magistrate consequently stands nullified. (Para 67)

In re: Requiring DSP concerned to conduct a preliminary inquiry as to whether the allegations make out case under the 1989 Act, before registering FIR for the same

The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made. There is no such provision in the CrPC for preliminary

inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report has to be filed in the court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989. (Para 68)

The creation of a casteless society is the ultimate aim. It is hoped that a day would come, as expected by the Framers of the Constitution, when any such legislation like the 1989 Act would not be required, and there would be no need to provide for any reservation to SCs/STs/OBCs, and only one class of humans exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per the constitutional goal. (Para 69)

There is no doubt that Directions 79.3 to 79.5 issued in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454 encroach upon the field reserved for the legislature and are against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by the Court for exercise of powers under Article 142 of the Constitution. Resultantly, Directions 79.3 and 79.4 issued in *Subhash Kashinath Mahajan case* deserve to be and are hereby recalled and consequently it is held that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above. (Para 70)

Lalita Kumari v. *State of U.P.*, (2014) 2 SCC 1 : (2013) 1 SCC (Cri) 524; *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 809; *Subramanian Swamy* v. *Raju*, (2014) 8 SCC 390 : (2014) 3 SCC (Cri) 482; *Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580; *Asif Hameed* v. *State of J&K*, 1989 Supp (2) SCC 364 : 1 SCEC 358; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225; *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1; *Bhim Singh* v. *Union of India*, (2010) 5 SCC 538; *State of T.N.* v. *State of Kerala*, (2014) 12 SCC 696; *Stock* v. *Frank Jones (Tipton) Ltd.*, (1978) 1 WLR 231 (HL); *Kharak Singh* v. *State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329; *Olga Tellis* v. *BMC*, (1985) 3 SCC 545, *relied on*

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439; *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; *S.C. Chandra* v. *State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943; *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen*, (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270; *Aravali Golf Club* v. *Chander Hass*, (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289; *Kuchchh Jal Sankat Nivaran Samiti* v. *State of Gujarat*, (2013) 12 SCC 226; *Hinch Lal Tiwari* v. *Kamala Devi*, (2001) 6 SCC 496; *Francis Coralie Mullin* v. *State (UT of Delhi)*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212; *PUCL* v. *Union of India*, (2005) 2 SCC 436; *Umesh Kumar* v. *State of A.P.*, (2013) 10 SCC 591 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237; *Kishore Samrite* v. *State of U.P.*, (2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655; *Subramanian*

Swamy v. *Union of India*, (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1; *Kailas* v. *State of Maharashtra*, (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401, *affirmed*

Supreme Court Bar Assn. v. *Union of India*, (1998) 4 SCC 409; *Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996; *E.S.P. Rajaram* v. *Union of India*, (2001) 2 SCC 186 : 2001 SCC (L&S) 352; *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372; *Bonkya* v. *State of Maharashtra*, (1995) 6 SCC 447 : 1995 SCC (Cri) 1113; *M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213; *State of Punjab* v. *Rajesh Syal*, (2002) 8 SCC 158 : 2002 SCC (Cri) 1867; *Textile Labour Assn.* v. *Official Liquidator*, (2004) 9 SCC 741; *Laxmidas Morarji* v. *Behrose Darab Madan*, (2009) 10 SCC 425 : (2009) 4 SCC (Civ) 236; *Manish Goel* v. *Rohini Goel*, (2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162; *A.B. Bhaskara Rao* v. *CBI*, (2011) 10 SCC 259 : (2012) 1 SCC (Cri) 265 : (2012) 1 SCC (L&S) 285; *State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 151 : (2014) 3 SCC (L&S) 134, *considered*

Vishaka v. *State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *National Campaign on Dalit Human Rights* v. *Union of India*, (2017) 2 SCC 432 : (2017) 1 SCC (Cri) 734, *referred to*

Salmond on Jurisprudence, 12th Edn.: Sweet & Maxwell, *referred to*

Pankaj D. Suthar v. *State of Gujarat*, (1992) 1 Guj LR 405; *N.T. Desai* v. *State of Gujarat*, 1996 SCC OnLine Guj 428 : (1997) 2 Guj LR 942; *Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662; *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389; *Lakshmi Kant Pandey* v. *Union of India*, (1984) 2 SCC 244; *Common Cause* v. *Union of India*, (1996) 1 SCC 753; *M.C. Mehta (Child Labour matter)* v. *State of T.N.*, (1996) 6 SCC 756 : 1997 SCC (L&S) 49; *Dayaram* v. *Sudhir Batham*, (2012) 1 SCC 333, para 18 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109; *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 873; *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305; *Murthy Match Works* v. *CCE*, (1974) 4 SCC 428 : 1974 SCC (Tax) 278; *United States* v. *Butler*, 1936 SCC OnLine US SC 12 : 80 L Ed 477 : 297 US 1 (1936); *Trop* v. *Dulles*, 1958 SCC OnLine US SC 62 : 2 L Ed 2d 630 : 356 US 86 (1958); *Ramji Muthuramalingam* v. *Supt. of Police*, 2004 SCC OnLine Mad 798 : AIR 2005 Mad 1; *Kunjukutty Sahib* v. *State of Kerala*, (1972) 2 SCC 364; *A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 452; *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1, *cited*

Subhash Kashinath Mahajan v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124, *substantially recalled*

D. Constitutional Law — Grant and Separation of powers — Judiciary vis-à-vis Legislature — Court should not transgress into legislative domain of policy making — It is not for court to pronounce policy — It cannot lay down what is wise or politic — Self-restraint is the essence of judicial oath

No doubt courts make law, but they do in application of cases before them and only insofar as is necessary for their solution — Judicial law-making is incidental to solving legal disputes whereas legislative law-making is central function of legislature — Substantive provisions of statute cannot be disregarded even by exercising jurisdiction under Art. 142 of the Constitution

Separation of powers and federal character of Constitution are basic features of Constitution (Paras 23 to 33)

SS-D/63204/CR

Advocates who appeared in this case :

Applicant-in-person;

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The Judgment of the Court was delivered by

ARUN MISHRA, J. The Union of India has filed the instant petition for review of the judgment and order dated 20-3-2018 passed by this Court in *Subhash Kashinath Mahajan* v. *State of Maharashtra*[1]. This Court while dealing with the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the 1989 Act") has issued guidelines in para 79 of the judgment, which are extracted hereunder: (SCC p. 513)

> "*79.* Our conclusions are as follows:
>
> *79.1.* Proceedings in the present case are clear abuse of process of court and are quashed.
>
> *79.2.* There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar*[2] and *N.T. Desai*[3] and clarify the judgments of this Court in *Balothia*[4] and *Manju Devi*[5].
>
> *79.3.* In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.
>
> *79.4.* To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
>
> *79.5.* Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.

1 (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124
2 *Pankaj D. Suthar* v. *State of Gujarat*, (1992) 1 Guj LR 405
3 *N.T. Desai* v. *State of Gujarat*, 1996 SCC OnLine Guj 428 : (1997) 2 Guj LR 942
4 *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439
5 *Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 139 : (2017) 4 SCC (Cri) 662

79.6. The above directions are prospective."

2. This Court, while passing the judgment under review, has observed in para 32 thus: (*Subhash Kashinath case*[1], SCC pp. 482-83)

> "*32.* This Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights[6]. There are innumerable decisions of this Court where this approach has been adopted and directions issued with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature. Such directions can certainly be issued and continued till an appropriate legislation is enacted[7]. Role of this Court travels beyond merely dispute settling and directions can certainly be issued which are not directly in conflict with a valid statute[8]. Power to declare law carries with it, within the limits of duty, to make law when none exists[9]."

3. Question has been raised by the Union of India that when the Court does not accept the legislative and specific provisions of law passed by the legislature and only the legislature has the power to amend those provisions if the Court finds provisions are not acceptable to it, it has to strike them down being violative of fundamental rights or in case of deficiency to point out to the legislature to correct the same.

4. The Union of India has submitted that the judgment and order dated 20-3-2018[1] entails wide ramification and it deserves to be reviewed by this Court. It is also submitted that this Court has failed to take note of the aspects which would have a significant bearing on the present case.

5. It is submitted that the 1989 Act had been enacted to remove the disparity of the Scheduled Castes and Scheduled Tribes who remain vulnerable and are denied their civil rights. The Statement of Objects and Reasons of the 1989 Act, for which it had been enacted is as under:

> "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations, and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social, and economic reasons.

1 *Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124
6 *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161, para 13 : 1984 SCC (L&S) 389
7 *Vishaka* v. *State of Rajasthan*, (1997) 6 SCC 241, para 16 : 1997 SCC (Cri) 932; *Lakshmi Kant Pandey* v. *Union of India*, (1984) 2 SCC 244; *Common Cause* v. *Union of India*, (1996) 1 SCC 753; *M.C. Mehta (Child Labour matter)* v. *State of T.N.*, (1996) 6 SCC 756 : 1997 SCC (L&S) 49
8 *Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409, para 48
9 *Divaram* v. *Sudhir Batham*, (2012) 1 SCC 333, para 18 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109

> 2. ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of the commission of certain atrocities like making the Scheduled Castes persons eat inedible substances, like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

6. The Preamble to the 1989 Act states as under:

> "An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

7. Section 18 of the 1989 Act has been enacted to take care of an inherent deterrence and to instil a sense of protection amongst the members of the Scheduled Castes and Scheduled Tribes. It is submitted that any dilution of the same would shake the very objective of the mechanism to prevent the offences of atrocities. The directions issued would cause a miscarriage of justice even in deserving cases. With a view to object apprehended misuse of the law, no such direction can be issued. In case there is no prima facie case made out under the 1989 Act, anticipatory bail can be granted. The same was granted in the case in question also.

8. It is submitted that because of the continuing atrocities against the members of the Scheduled Castes and Scheduled Tribes, a commission of offences against them indicated an increase, even the existing provisions were not considered sufficient to achieve the objective to deliver equal justice to the members of the Scheduled Castes and the Scheduled Tribes. Hence, the 1989 Act had been amended in April 2015, enforced with effect from 26-1-2016.

9. It is further submitted that the amendments broadly related to addition of several new offences/atrocities like tonsuring of head/moustache, or similar acts which are derogatory to the dignity of the members of the Scheduled Castes and Scheduled Tribes, garlanding with footwear, denying access to irrigation facilities or forest rights, dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging, dedicating

a Scheduled Caste or a Scheduled Tribe woman as devadasi, abusing in caste name, perpetrating witchcraft atrocities, imposing social or economic boycott, preventing Scheduled Caste and Scheduled Tribe candidates from filing nomination to contest elections, insulting a Scheduled Caste/Scheduled Tribe woman by removing her garments, forcing a member of the Scheduled Caste/Scheduled Tribe to leave house, village or residence, defiling objects sacred to members of Scheduled Castes and Scheduled Tribes, touching or using acts or gestures of a sexual nature against members of Scheduled Castes and Scheduled Tribes and addition of certain IPC offences like hurt, grievous hurt, intimidation, kidnapping, etc., attracting less than ten years of imprisonment committed against members of Scheduled Castes and Scheduled Tribes as offences punishable under the 1989 Act, besides rephrasing and expansion of some of the earlier offences.

10. It is submitted that the provisions have also been made for the establishment of exclusive Special Courts and specification of Exclusive Special Public Prosecutors to exclusively try the offences under the 1989 Act to enable expeditious disposal of cases, Special Courts and Exclusive Special Courts to take direct cognizance of offences and completion of trial as far as possible within two months from the date of filing of the charge-sheet and addition of chapter on the "Rights of Victims and Witnesses".

11. It is also submitted on behalf of the Union of India that as per the Amendment Rules, 2016 the provisions have also been made with regard to relief amount of 47 offences of atrocities to victims, rationalisation of the phasing of payment of relief amount, enhancement of relief amount between Rs 85,000 to Rs 8,25,000 depending upon the nature of the offence, payment of admissible relief within seven days, on completion of investigation and filing of charge-sheet within sixty days to enable timely commencement of prosecution and periodic review of the scheme for the rights and entitlements of victims and witnesses in accessing justice by the State, District and Sub-Division Level Vigilance and Monitoring Committees in their respective meetings.

12. It is submitted that this Court has failed to appreciate that low rate of conviction and high rate of acquittal under the 1989 Act, related cases is attributable to several factors like delay in lodging the FIR, witnesses, and complainants becoming hostile, absence of proper scrutiny of the cases by the prosecution before filing the charge-sheet in the court, lack of proper presentation of the case by the prosecution and appreciation of evidence by the court. There is long pendency of the trial, which makes the witness to lose their interest and lack of corroborative evidence. There are procedural delays in investigation and filing of the charge-sheet.

13. It is submitted that Rule 7(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 provides that investigating officer to complete the investigation within 30 days. Without immediate registration of FIR and arrest and by providing anticipatory bail to the accused, Rule 7 is bound to be frustrated.

14. It is further submitted that the directions issued are legislative. It would devoid the object of the Act to remove the caste-based subjugation and discrimination. Such directions are impermissible to be issued under Article 142 of the Constitution of India.

15. It is also submitted that the offences of atrocities against the members of Scheduled Castes and Scheduled Tribes have been disturbingly continuing and as per the data of National Crime Records Bureau (NCRB), Ministry of Home Affairs, 47,338 number of cases were registered in the country under the 1989 Act in conjunction with the Penal Code during the year 2016. Further, only 24.5% of the said cases ended in conviction and 89.3% were pending in the courts at the end of the year 2016. In the circumstances, it is not proper to dilute the provisions and make it easier for the accused to get away from arrest by directing a preliminary enquiry, approval for an arrest.

16. Per contra, it is submitted that directions are proper because of misuse of the legislative provisions of the Atrocities Act, and no case for interference is made out in the review jurisdiction.

17. Before dealing with submission, we refer to the decisions. In *National Campaign on Dalit Human Rights* v. *Union of India*[10], this Court has considered the report of Justice K. Punnaiah Commission and the 6th Report of the National Commission for Scheduled Castes/Scheduled Tribes. The NHRC Report also highlighted the non-registration of cases and various other machinations resorted to by the police to discourage Dalits from registering cases under the 1989 Act. In the said case this Court had directed the strict implementation of the provisions of the 1989 Act. The relevant portion of the decision mentioned above is extracted hereunder: (SCC p. 445, para 18)

> "*18.* We have carefully examined the material on record, and we are of the opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and the State Governments should be directed to strictly enforce the provisions of the Act and we do so. The National Commissions

[10] (2017) 2 SCC 432 : (2017) 1 SCC (Cri) 734

are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes."

18. Reliance has been placed on *Lalita Kumari* v. *State of U.P.*[11], wherein a Constitution Bench of this Court has observed as under: (SCC pp. 29-30 & 53-54, paras 35, 36 & 99)

"*35.* However, on the other hand, there are a number of cases which exhibit that there are instances where the power of the police to register an FIR and initiate an investigation thereto are misused where a cognizable offence is not made out from the contents of the complaint. A significant case in this context is *Preeti Gupta* v. *State of Jharkhand*[12] wherein this Court has expressed its anxiety over misuse of Section 498-A of the Penal Code, 1860 (in short "IPC") with respect to which a large number of frivolous reports were lodged. This Court expressed its desire that the legislature must take into consideration the informed public opinion and the pragmatic realities to make necessary changes in law.

36. The abovesaid judgment resulted in the 243rd Report of the Law Commission of India submitted on 30-8-2012. The Law Commission, in its report, concluded that though the offence under Section 498-A could be made compoundable, however, the extent of misuse was not established by empirical data, and, thus, could not be a ground to denude the provision of its efficacy. The Law Commission also observed that the law on the question whether the registration of FIR could be postponed for a reasonable time is in a state of uncertainty and can be crystallised only upon this Court putting at rest the present controversy.

* * *

99. In *Tapan Kumar Singh*[13], it was held as under: (SCC pp. 183-84, para 20)

"*20.* ... If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage, it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. ... The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation." "

11 (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
12 (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473
13 *CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305

19. It is apparent from the decision in *Lalita Kumari*[11] that FIR has to be registered forthwith in case it relates to the commission of the cognizable offence. There is no discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry before registration of the FIR. Preliminary inquiry can only be held in a case where it has to be ascertained whether a cognizable offence has been committed or not. If the information discloses the commission of a cognizable offence, it is mandatory to register the FIR under Section 154 CrPC, and no preliminary inquiry is permissible in such a situation. This Court in *Lalita Kumari*[11] observed as under: (SCC p. 36, para 54)

> "*54.* Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction."

Concerning the question of arrest, in *Lalita Kumari*[11] this Court has considered the safeguard in respect of arrest of an accused person. This Court affirmed the principle that arrest cannot be made routinely on the mere allegation of commission of an offence. The question arises as to justification to create a special dispensation applicable only to complaints under the Atrocities Act because of safeguards applicable generally.

20. In *State of Haryana* v. *Bhajan Lal*[14], which has been relied upon in *Lalita Kumari*[11], this Court has observed as under: (*Bhajan Lal case*[14], SCC pp. 354-55, paras 31-33)

> "*31.* At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit

11. *Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
14. 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "*information*" without qualifying the same as in Section 41(1)(*a*) or (*g*) of the Code wherein the expressions, "*reasonable complaint*" and "*credible information*" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(*a*) and (*g*) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (25 of 1861) passed by the Legislative Council of India read that "*every complaint or information*" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(*c*) of the present Code of 1973 (2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information." (emphasis in original)

The Court observed that the conduct of an investigation into an offence after the registration of FIR is a procedure established by law and conforms with Article 21 of the Constitution. This Court has also considered possible misuse of the provisions of the law, in *Lalita Kumari*[11].

21. On behalf of the Union of India, the decision in *State of M.P.* v. *Ram Kishna Balothia*[1] has been relied on, in which this Court has upheld the validity of Section 18 of the 1989 Act and observed in background relating to the practice of untouchability and the social attitude which lead to the commission of such offences against the Scheduled Castes/Scheduled Tribes, there is justification of apprehension that if benefit of anticipatory bail is made available to persons who are alleged to have committed such offences, there is every possibility of their misusing that liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. This Court in *Ram Kishna Balothia*[1] has observed: (SCC pp. 224-27, paras 6 & 9-10)

> "6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with the abolition of "untouchability" and forbids its practice in any form. It also provides that enforcement of any disability arising out of "untouchability" shall be an offence punishable under the law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of "untouchability". It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons, it is stated:
>
> > 'Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations, and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes

11. *Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
1. (1995) 3 SCC 221 : 1995 SCC (Cri) 439

are committed against them for various historical, social and economic reasons.

> **2.** ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes, and Scheduled Tribes is resented, and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.'

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

* * *

9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of "untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification of an apprehension that if the benefit of the anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-

respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code."

22. In *Kartar Singh* v. *State of Punjab*[15], this Court has observed that denial of the right of anticipatory bail under Section 438 would not amount to a violation of Article 21 of the Constitution of India. Thus, the provision of Section 18 cannot be said to be violative of Article 21. Article 17 of the Constitution abolishes untouchability.

23. In *Subramanian Swamy* v. *Raju*[16], it is observed that where statutory provisions are clear and unambiguous, it cannot be read down and has observed that the statistics are to be considered by a legislature. The Court must take care not to express any opinions on sufficiency or adequacy of such figures and should confine their scrutiny to legality not a necessity of law. This Court observed: (SCC pp. 423-24, para 67)

"*67.* Before parting, we would like to observe that elaborate statistics have been laid before us to show the extent of serious crimes committed by juveniles and the increase in the rate of such crimes, of late. We refuse to be tempted to enter into the said arena, which is primarily for the legislature to consider. Courts must take care not to express opinions on the sufficiency or adequacy of such figures and should confine its scrutiny to the legality and not the necessity of the law to be made or continued. We would be justified to recall the observations of Justice Krishna Iyer in *Murthy Match Works*[17], as the present issues seem to be adequately taken care of by the same: (SCC p. 437, paras 13-15)

> '*13.* Right at the threshold, we must warn ourselves of the limitations of judicial power in this jurisdiction. Mr Justice Stone of the Supreme Court of the United States has delineated these limitations in *United States* v. *Butler*[18] thus: (SCC OnLine US SC para 71 : L Ed p. 495)
>
> > "*(1)* The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the Government is subject to judicial restraint, the only check upon our exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic Government.'
>
> *14.* In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review. In the present case, unconstitutionality

15 (1994) 3 SCC 569 : 1994 SCC (Cri) 899
16 (2014) 8 SCC 390 : (2014) 3 SCC (Cri) 482
17 *Murthy Match Works* v. *CCE*, (1974) 4 SCC 428 : 1974 SCC (Tax) 278
18 1936 SCC OnLine US SC 12 : 80 L Ed 477 : 297 US 1 (1936)

is alleged as springing from lugging together two dissimilar categories of match manufacturers into one compartment for like treatment.

15. Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. *The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured has been repeatedly stated by the courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional.* To put it differently, the means must have nexus with the ends. *Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate.* In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment, and ordinarily does not become a judicial question. *A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation.*" (emphasis supplied)

It was observed in *Subramanian Swamy*[16] that where statutory provisions are clear and unambiguous, it cannot be read down. It would not be possible to carry out directions of this Court as number of DSP level officers is not sufficient to make compliance with the directions.

24. Concerning the exercise of powers under Article 142 of the Constitution of India, the learned Attorney General has submitted that such power could not have been exercised against the spirit of statutory provisions and to nullify them and field reserved for the legislature as there was no vacuum. He has referred to the following decisions:

24.1. In *Supreme Court Bar Assn.* v. *Union of India*[8], this Court has observed as under: (SCC pp. 431-32, paras 47-48)

"*47.* ... It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot

16 *Subramanian Swamy* v. *Raju*, (2014) 8 SCC 390 : (2014) 3 SCC (Cri) 482
8 (1998) 4 SCC 409, para 48

be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. ...

48. ... Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject."

24.2. In *Prem Chand Garg* v. *Excise Commr.*[19], the Court observed that it has no power to circumscribe fundamental rights guaranteed under Article 32 of the Constitution of India.

24.3. In *E.S.P. Rajaram* v. *Union of India*[20], the Court observed that the Supreme Court under Article 142 of the Constitution could not altogether disregard the substantive provisions of a statute and pass orders concerning an issue, which can be settled only through a mechanism prescribed in another statute.

24.4. In *A.R. Antulay* v. *R.S. Nayak*[21], it has been observed that though the language of Article 142 is comprehensive and plenary, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute.

24.5. In *Bonkya* v. *State of Maharashtra*[22], the Court has held that the court exercises jurisdiction under Article 142 of the Constitution intending to do justice between the parties, but not in disregard of the relevant statutory provisions.

24.6. In *M.C. Mehta* v. *Kamal Nath*[23], this Court has observed that (in SCC p. 223, para 20) Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly.

24.7. In *State of Punjab* v. *Rajesh Syal*[24], the Court held that even in exercising power under Article 142(1), it is more than doubtful that an order can be passed contrary to law.

24.8. In *Textile Labour Assn.* v. *Official Liquidator*[25], observation has been made that power under Article 142 is only a residuary power, supplementary and complementary to the powers expressly conferred on this Court by statutes, exercisable to do complete justice between the parties wherever it is just and

19. AIR 1963 SC 996
20. (2001) 2 SCC 186 : 2001 SCC (L&S) 352
21. (1988) 2 SCC 602 : 1988 SCC (Cri) 372
22. (1995) 6 SCC 447 : 1995 SCC (Cri) 1113
23. (2000) 6 SCC 213
24. (2002) 8 SCC 158 : 2002 SCC (Cri) 1867
25. (2004) 9 SCC 741

equitable to do so. It is intended to prevent any obstruction to the stream of justice.

24.9. In *Laxmidas Morarji* v. *Behrose Darab Madan*[26], it was observed that the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions.

24.10. In *Manish Goel* v. *Rohini Goel*[27], it was observed that the courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. The power under Article 142 is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

24.11. In *A.B. Bhaskara Rao* v. *CBI*[28], it was held that the power under Article 142 is not restricted by statutory provisions. It cannot be exercised based on sympathy and in conflict with the statute.

24.12. In *State of Punjab* v. *Rafiq Masih*[29], this Court held that Article 142 is supplementary and it cannot supplant the substantive provisions. It is a power which gives preference to equity over the law. The relevant portion is extracted hereunder: (SCC pp. 890-91, para 12)

> *"12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. ... This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."* (emphasis supplied)

25. It is submitted that there was no legislative vacuum calling for the exercise of power under Article 142 of the Constitution of India and hence the reliance on *Vishaka* v. *State of Rajasthan*[30] is misplaced. On the contrary, the matter was covered by the statute, namely, Section 18 of the said Atrocities Act read with Section 41 CrPC.

26. (2009) 10 SCC 425 : (2009) 4 SCC (Civ) 236
27. (2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162
28. (2011) 10 SCC 259 : (2012) 1 SCC (Cri) 265 : (2012) 1 SCC (L&S) 285
29. (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 154 : (2014) 3 SCC (L&S) 134
30. (1997) 6 SCC 241 : 1997 SCC (Cri) 932

26. We now propose to examine the law concerning the field reserved for the legislature and extant of judicial interference in the field reserved for the legislature. The difference between the common law and statute law has been brought out in the following passage in the book, *Salmond on Jurisprudence*, 12th Edn.; Sweet & Maxwell:

> "In the strict sense, however, legislation is the laying down of legal rules by a sovereign or subordinate legislator. Here we must distinguish law-making by legislators from law-making by the courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator."

27. In various decisions, this Court has dealt with the scope of judicial review and issuance of guidelines. The directions mentioned above touch the realm of policy. In *Bachan Singh* v. *State of Punjab*[31], the Court has laid down and recognised the judicial review thus: (SCC p. 711, para 67)

> "*67.* Behind the view that there is a presumption of constitutionality of a statute and the onus to rebut the same lies on those who challenge the legislation, is the rationale of judicial restraint, a recognition of the limits of judicial review, a respect for the boundaries of legislative and judicial functions, and the judicial responsibility to guard the trespass from one side or the other. *The primary function of the courts is to interpret and apply the laws according to the will of those who made them and not to transgress into the legislative domain of policy-making.* 'The job of a Judge is judging and not law-making.' In Lord Devlin's words: 'Judges are the keepers of the law, and the keepers of these boundaries cannot, also, be among outriders.' " (emphasis supplied)

It has been observed that the court should not transgress into the legislative domain of policy-making.

28. In *Asif Hameed* v. *State of J&K*[32], this Court has observed that it is not for the Court to pronounce policy. It cannot lay down what is wise or politic. Self-restraint is the essence of the judicial oath. The Court observed: (SCC pp. 373-74, paras 17-18)

> "*17.* Before adverting to the controversy directly involved in these appeals, we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution-makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under

31. (1980) 2 SCC 684 : 1980 SCC (Cri) 580
32. 1989 Supp (2) SCC 364 : 1 SCEC 358

the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers, including that of finance. Judiciary has no power over sword or the purse; nonetheless, it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the US Supreme Court dissenting in the controversial expatriation case of *Trop* v. *Dulles*[33] observed as under: (SCC OnLine US SC paras 57-58)

> '*57.* ... All power is, in Madison's phrase, "of an encroaching nature." ... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint....
>
> *58.* Rigorous observance of the difference between limits of power and wise exercise of power — between questions of authority and questions of prudence — requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. *It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the court's giving effect to its own notions of what is wise or politic.* That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the Judges to sit in judgment on the wisdom of what Congress and the executive branch do.' (emphasis supplied)

The Court held that it could not affect its notions of what is wise or politic. It is for the legislature to consider data and decide such aspects. The law laid down in *Asif Hameed* v. *State of J&K*[32] has been reiterated by this Court in *S.C. Chandra* v. *State of Jharkhand*[34].

33 1958 SCC OnLine US SC 62 : 2 L Ed 2d 630 : 356 US 86 (1958)
32 1989 Supp (2) SCC 364 : 1 SCEC 358
34 (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943

29. In *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen*[35] the Court observed thus: (SCC pp. 427-28, para 40)

> "*40.* The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam* v. *Supt. of Police*[36] and we fully agree with the views expressed therein."

30. In *Aravali Golf Club* v. *Chander Hass*[37] this Court held as under: (SCC pp. 688-89, paras 18-19)

> "*18.* Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen*[35] and *S.C. Chandra* v. *State of Jharkhand*[34] (see concurring judgment of M. Katju, J.).
>
> *19.* Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction."

31. In *Kuchchh Jal Sankat Nivaran Samiti* v. *State of Gujarat*[38], it has been observed that court should not encroach upon the legislative domain. It cannot term a particular policy as fairer than the other. The Court observed: (SCC p. 232, para 12)

> "*12.* We have given our most anxious consideration to the rival submissions, and we find substance in the submission of Mr Divan. We are conscious of the fact that there is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. *What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise or wisdom to analyse the same.* It entails intricate economic choices and though this Court tends to believe that it is expert of experts, but this principle has inherent limitation. *True it is that the Court is entitled to analyse the legal validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other.* We are of

35 (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270
36 2004 SCC OnLine Mad 798 : AIR 2005 Mad 1
37 (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289
34 (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943
38 (2013) 12 SCC 226

the opinion that the matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the constitutional laws or is arbitrary or irrational." (emphasis supplied)

32. In *Subhash Kashinath Mahajan* v. *State of Maharashtra*[1] this Court held that no directions could be issued which are directly in conflict with the statute.

33. In *Kesavananda Bharati* v. *State of Kerala*[39] this Court has observed as under: (SCC p. 366, para 292)

"292. The learned Attorney General said that every provision of the Constitution is essential; otherwise, it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

(1) *Supremacy of the Constitution*;

(2) *Republican and Democratic form of Government*;

(3) *Secular character of the Constitution*;

(4) *Separation of powers between the legislature, the executive and the judiciary*;

(5) *Federal character of the Constitution*." (emphasis supplied)

34. In *I.R. Coelho* v. *State of T.N.*[40] the following observations have been made: (SCC pp. 58-59, paras 129-130)

"*129.* Further, the Court in *Kesavananda case*[39] not only held that Article 31-B is not controlled by Article 31-A but also specifically upheld the Twenty-ninth Constitution Amendment whereby certain Kerala Land Reform Acts were included in the Ninth Schedule after those Acts had been struck down by the Supreme Court in *Kunjukutty Sahib* v. *State of Kerala*[41]. The only logical basis for upholding the Twenty-ninth Amendment is that the Court was of the opinion that the mechanism of Article 31-B, by itself, is valid, though each time Parliament in exercise of its constituent power added a law in the Ninth Schedule, such exercise would have to be tested on the touchstone of the basic structure test. [See Shelat & Grover, JJ., paras 607 & 608(7); Hegde & Mukherjea, JJ., paras 738-43, 744(8); Ray, J., paras 1055-60, 1064; Jaganmohan Reddy, J., para 1212(4); Palekar, J., para 1333(3); Khanna, J., paras 1522, 1536, 1537(xi); Mathew, J.,

1 (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124
39 (1973) 4 SCC 225
40 (2007) 2 SCC 1
41 (1972) 2 SCC 364

para 1782; Beg, J., para 1857(6); Dwivedi, J., paras 1994, 1995(4) and Chandrachud, J., paras 2136-41 and 2142(10).]

130. As pointed out, it is a fallacy to regard that Article 31-B read with the Ninth Schedule excludes judicial review in the matter of violation of fundamental rights. The effect of Article 31-B is to remove a fetter on the power of Parliament to pass a law in violation of fundamental rights. On account of Article 31-B, cause of action for violation of fundamental right is not available because the fetter placed by Part III on legislative power is removed and is non-existent. Non-availability of cause of action based on breach of fundamental right cannot be regarded as exclusion or ouster of judicial review. As a result of the operation of Article 31-B read with the Ninth Schedule, occasion for exercise of judicial review does not arise. But there is no question of exclusion or ouster of judicial review. The two concepts are different."

35. In *Bhim Singh* v. *Union of India*[42], it was held as under: (SCC pp. 572 & 575, paras 77-78 & 85-87)

"*77.* Another contention raised by the petitioners is that the Scheme violates the principle of separation of powers under the Constitution. The concept of separation of powers, even though not found in any particular constitutional provision, is inherent in the polity the Constitution has adopted. The aim of separation of powers is to achieve the maximum extent of accountability of each branch of the Government.

78. While understanding this concept, two aspects must be borne in mind. One, that separation of powers is an essential feature of the Constitution. Two that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the same conclusion when we assess the position within the constitutional text. The Constitution does not prohibit overlap of functions, but in fact, provides for some overlap as a parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wresting away of the regime of constitutional accountability.

* * *

85. Again, in the Constitution Bench judgment in *A.K. Roy* v. *Union of India*[43], Chandrachud, C.J. speaking for the majority held at p. 295, para 23 that: 'our Constitution does not follow the American pattern of a strict separation of powers.'

86. This Court has previously held that the taking away of the judicial function through legislation would be violative of separation of powers. As Chandrachud, J. noted in *Indira Nehru Gandhi* v. *Raj Narain*[44]: (SCC p. 261, para 689)

42 (2010) 5 SCC 538
43 (1982) 1 SCC 271 : 1982 SCC (Cri) 152
44 1975 Supp SCC 1

> '689. ... the exercise by the legislature of what is purely and indubitably a judicial function is impossible to sustain in the context even of our cooperative federalism which contains no rigid distribution of powers but which provides a system of salutary checks and balances.'

This is because such legislation upsets the balance between the various organs of the State thus harming the system of accountability in the Constitution.

87. Thus, the test for the violation of separation of powers must be precisely this. A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability. It is through this test that we must analyse the present Scheme."

36. In *State of T.N.* v. *State of Kerala*[45], it was observed as under: (SCC pp. 770-72, para 126)

> "*126.* On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between the legislature, executive and judiciary may, in brief, be summarised thus:
>
> *126.1.* Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power, though not expressly engrafted in the Constitution, its sweep, operation, and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs —legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers.
>
> *126.2.* Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.
>
> *126.3.* Separation of powers between three organs the legislature, executive and judiciary is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of

45 (2014) 12 SCC 696

breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution.

126.4. The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State Legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

126.5. The doctrine of separation of powers applies to the final judgments of the courts. The legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

126.6. If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

126.7. The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment on a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are:

> (*i*) Does the legislative prescription or legislative direction interfere with the judicial functions?
>
> (*ii*) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided?
>
> (*iii*) What are the terms of law, the issues with which it deals and the nature of the judgment that has attained finality?

If the answer to Questions (*i*) and (*ii*) is in the affirmative and the consideration of aspects noted in Question (*iii*) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional.

37. The House of Lords in *Stock* v. *Frank Jones (Tipton) Ltd.*[46] with respect to interpretation of the legislative provisions has observed thus: (WLR pp. 236-37)

46 (1978) 1 WLR 231 (HL)

"It is idle to debate whether, in so acting, the court is making law. As has been cogently observed, it depends on what you mean by "make" and "law" in this context. What is incontestible is that the court is a mediating influence between the executive and the legislature, on the one hand, and the citizen on the other. Nevertheless, it is essential to the proper judicial function in the Constitution to bear in mind:

(1) modern legislation is a difficult and complicated process, in which, even before a bill is introduced in a House of Parliament, successive drafts are considered and their possible repercussions on all envisageable situations are weighed by people bringing to bear a very wide range of experience: the Judge cannot match such experience or envisage all such repercussions, either by training or by specific forensic aid;

(2) the bill is liable to be modified in a Parliament dominated by a House of Commons whose members are answerable to the citizens who will be affected by the legislation: an English Judge is not so answerable;

(3) in a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said, rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged;

(4) a stark contradistinction between the letter and the spirit of the law may be very well in the sphere of ethics, but in the forensic process St. John is a safer guide than St. Paul, the logos being the informing spirit; and it should be left to peoples' courts in totalitarian regimes to stretch the law to meet the forensic situation in response to a gut reaction;

(5) Parliament may well be prepared to tolerate some anomaly in the interest of an overriding objective;

(6) what strikes the lawyer as an injustice may well have seemed to the legislature as no more than the correction of a now unjustifiable privilege or a particular misfortune necessarily or acceptably involved in the vindication of some supervening general social benefit;

(7) the parliamentary draftsman knows what objective the legislative promoter wishes to attain, and he will normally and desirably try to achieve that objective by using language of the appropriate register in its natural, ordinary and primary sense to reject such an approach on the grounds that it gives rise to an anomaly is liable to encourage complication and anfractuosity in drafting;

(8) Parliament is nowadays in continuous session so that an unlooked for and unsupportable injustice or anomaly can be readily rectified by legislation: this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand.

> All this is not to advocate judicial supineness: it is merely respectfully to commend a self-knowledge of judicial limitations, both personal and constitutional."

38. A lecture delivered by Mr Justice M.N. Venkatachaliah, former Chief Justice of India, at the Constitution Day on 26-2-2016 in this Court, has been relied upon in the context of judicial determination of policy. The following observations have been relied upon:

> "The proposition that 'when there is no law the executive must step-in and when the executive also does not act the judiciary should do so' is an attractive invitation: but it is more attractive than constitutionally sound. Executive power is of course coextensive with legislative power. A field unoccupied by law is open to the executive. But there is no warrant that by virtue of those provisions the courts can come in and legislate. The argument that the larger power of the court to decide and pronounce upon the validity of law includes the power to frame schemes and issue directions in the nature of legislation may equally be open to question.
>
> This is typically the converse case of Bills of attainder; Legislative determination of disputes/rights has been held to be illegal and impressible. Ameerunnisa, Ram Prasad Narayan Sahi and Indira Gandhi are some of the telling cases. By the same logic and converse reasoning, judicial legislation which is judicial determination of policy and law is difficult to be justified jurisprudentially. It is one of the basic constitutional principles that just as courts are not constitutionally competent to legislate under the guise of interpretation so also neither Parliament nor State Legislatures can perform an essentially judicial function. None of the three constitutionally assigned spheres or orbits of authority can encroach upon the other. This is the logical meaning of the supremacy of the Constitution.
>
> Lord Devlin's comment comes to mind: 'The British have no more wish to be governed by the Judges than they wish to be judged by their admirations.'
>
> This is not to deny the need and the desirability of such measures. The question is one of legitimacy and propriety, Robert Bork's profound statement comes to mind:
>
> > '... the desire to do justice whose nature seems obvious is compelling, while the concept of constitutional process is abstract, rather arid, and the abstinence it counsels unsatisfying. To give in to temptation, this one time, solves an urgent human problem, and a faint crack develops in the American foundation. A Judge has begun to rule where a legislator should.' (THE TEMPTING OF AMERICA)
>
> Any support or justification for judicial legislation will have to be premised on sound legal reasoning. It cannot be justified for the reason that it produces welcome and desirable results. If that is done, law will cease to be what Justice Holmes named it, 'the calling of thinkers and becomes the province of emotions and sensitivities'. It then becomes a

process of personal choice followed by rationalisation. The major and minor premises do not lead to a result; but the result produces major and minor premises. This is a reversal of the process — virtually making concept of constitutional adjudication stand on its head. It is to law what Robert Frost called 'free verse', 'Tennis with the net down'. Then naturally there are no rules, only passions. Legal reasoning rooted in a concern for legitimate process rather than desired results restricts Judges to their proper role in a constitutional democracy. That marks off the line between judicial power and legislative power. Legislation, contrary to some popular notions, is a very elaborate democratic process. It takes much to distil the raw amorphous public opinion into scalable legislative values through the multi-tiered filter of parliamentary processes & procedures....

39. In the light of the discussion mentioned above of legal principles, we advert to directions issued in para 79. Directions 79.3 and 79.4 and consequential Direction 79.5 are sought to be reviewed/recalled. Directions contain the following aspects:

39.1. That arrest of a public servant can only be after approval of the appointing authority.

39.2. The arrest of a non-public servant after approval by the Senior Superintendent of Police (SSP).

39.3. The arrest may be in an appropriate case if considered necessary for reasons to be recorded.

39.4. Reasons for arrest must be scrutinised by the Magistrate for permitting further detention.

39.5. Preliminary enquiry to be conducted by the DSP level officers to find out whether the allegations make out a case and that the allegations are not frivolous or motivated.

39.6. Any violation of the Directions mentioned above will be actionable by way of disciplinary action as well as contempt.

40. Before we dilate upon the aforesaid directions, it is necessary to take note of certain aspects. It cannot be disputed that as the members of the Scheduled Castes and Scheduled Tribes have suffered for long; the protective discrimination has been envisaged under Article 15 of the Constitution of India and the provisions of the 1989 Act to make them equals.

41. All the offences under the Atrocities Act are cognizable. The impugned directions put the riders on the right to arrest. An accused cannot be arrested in atrocities cases without the concurrence of the higher authorities or appointing authority as the case may be. As per the existing provisions, the appointing authority has no power to grant or withhold sanction to arrest concerning a public servant.

42. The National Commission for Scheduled Castes Annual Report 2015-16, has recommended for prompt registration of FIRs thus:

> "The Commission has noted with concern that instances of procedural lapses are frequent while dealing with atrocity cases by both police and civil

administration. There are delays in the judicial process of the cases. The Commission, therefore, identified lacunae commonly noticed during police investigation, as also preventive/curable actions the civil administration can take. NCSC recommends the correct and timely application of SC/ST (PoA) Amendment Act, 2015 and the Amendment Rules of 2016 as well as the following for improvement:

8.6.1. ***Registration of FIRs***. The Commission has observed that the *police often resort to preliminary investigation upon receiving a complaint in writing before lodging the actual FIRs. As a result, the SC victims have to resort to seeking directions from courts for registration of FIRs under Section 156(3) CrPC.* Hon'ble Supreme Court has also on more than one occasion emphasised about registration of FIR first. This Commission again re-emphasises that the State/UT Governments should enforce prompt registration of FIRs." (emphasis supplied)

43. The learned Attorney General pointed out that the statistics considered by the Court in the judgment under review indicate that 9 to 10% cases under the Act were found to be false. The percentage of false cases concerning other general crimes such as forgery is comparable, namely, 11.51% and for kidnapping and abduction, it is 8.85% as per NCRB data for the year 2016. The same can be taken care of by the courts under Section 482, and in case no prima facie case is made out, the court can always consider grant of anticipatory bail and power of quashing in appropriate cases. For the low conviction rate, he submitted that same is the reflection of the failure of the criminal justice system and not an abuse of law. The witnesses seldom come to support downtrodden class, biased mindset continues, and they are pressurised in several manners, and the complainant also hardly musters the courage.

44. As to prevailing conditions in various areas of the country, we are compelled to observe that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.

45. Though, Article 17 of the Constitution prohibits untouchability, whether untouchability has vanished? We have to find the answer to all these pertinent questions in the present prevailing social scenario in different parts of the country. The clear answer is that untouchability though intended to be abolished, has not vanished in the last 70 years. We are still experimenting with "tryst with destiny". The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods

of scavenging to *Harijans* due to lack of resources and proper planning and apathy. Whether he can shake hand with a person of higher class on equal footing? Whether we have been able to reach that level of psyche and human dignity and able to remove discrimination based upon caste? Whether false guise of cleanliness can rescue the situation, how such condition prevails and have not vanished, are we not responsible? The answer can only be found by soul searching. However, one thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide downtrodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living. More so, for tribals who are at some places still kept in isolation as we have not been able to provide them even basic amenities, education and frugal comforts of life in spite of spending a considerable amount for the protection, how long this would continue. Whether they have to remain in the status quo and to entertain civilised society? Whether under the guise of protection of the culture, they are deprived of fruits of development, and they face a violation of traditional rights?

46. In *Kharak Singh* v. *State of U.P.*[47], this Court has observed that the right to life is not merely an animal's existence. Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all the persons are treated as equal human in all respects and not treated as an untouchable, downtrodden and object for exploitation. It also implies that they are not meant to be born for serving the elite class based upon the caste. The caste discrimination had been deep-rooted, so the consistent effort is on to remove it, but still, we have to achieve the real goal. No doubt we have succeeded partially due to individual and collective efforts.

47. The enjoyment of quality life by the people is the essence of guaranteed right under Article 21 of the Constitution, as observed in *Hinch Lal Tiwari* v. *Kamala Devi*[48]. Right to live with human dignity is included in the right to life as observed in *Francis Coralie Mullin* v. *State (UT of Delhi)*[49], *Olga Tellis* v. *BMC*[50] Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits are instances of human rights violations as observed by this Court in *PUCL* v. *Union of India*[51]: (SCC p. 452, para 34)

> "*34.* The question can also be examined from another angle. *The knowledge or experience of a police officer of human rights violation represents only one facet of human rights violation and its protection, namely, arising out of crime. Human rights violations are of various forms* which besides police brutality are — gender injustice, pollution, environmental degradation, malnutrition, *social ostracism of Dalits, etc.* A police officer can claim to have experience of only one facet. That is not the requirement of the section." (emphasis supplied)

47. AIR 1963 SC 1295 : (1963) 2 Cri LJ 329
48. (2001) 6 SCC 496
49. (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746
50. (1985) 3 SCC 545 : AIR 1986 SC 180
51. (2005) 2 SCC 436

48. There is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the 1989 Act. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in *Umesh Kumar* v. *State of A.P.*[52], *Kishore Samrite* v. *State of U.P.*[53] and *Subramanian Swamy* v. *Union of India*[54]. The provisions of the 1989 Act are, in essence, concomitants covering various facets of Article 21 of the Constitution of India.

49. They do labour, bonded or forced, in agricultural fields, which is not abrogated in spite of efforts. In certain areas, women are not treated with dignity and honour and are sexually abused in various forms. We see sewer workers dying in due to poisonous gases in chambers. They are like death traps. We have not been able to provide the masks and oxygen cylinders for entering in sewer chambers, we cannot leave them to die like this and avoid tortious liability concerned with officials/machinery, and they are still discriminated within the society in the matter of enjoying their civil rights and cannot live with human dignity.

50. The Constitution of India provides equality before the law under the provisions contained in Article 14. Article 15(4) of the Constitution carves out an exception for making any special provision for the advancement of any socially and educationally backward classes of citizens or SCs and STs. Further protection is conferred under Article 15(5) concerning their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Historically disadvantageous groups must be given special protection and help so that they can be uplifted from their poverty and low social status as observed in *Kailas* v. *State of Maharashtra*[55]. The legislature has to attempt such incumbents be protected under Article 15(4), to deal with them with more rigorous provisions as compared to provisions of general law available to the others would create inequality which is not permissible/envisaged constitutionally. It would be an action to negate mandatory constitutional provisions not supported by the constitutional scheme; rather, it would be against the mandated constitutional protection. It is not open to the legislature to put members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position vis-à-vis others and in particular to so-called upper castes/general category. Thus, they cannot be discriminated against more so when we have a peep into the background perspective. What legislature cannot do legitimately, cannot be done by the interpretative process by the courts.

52 (2013) 10 SCC 591 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237
53 (2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655
54 (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1
55 (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401

51. The particular law i.e. the 1989 Act, has been enacted and has also been amended in 2016 to make its provisions more effective. Special prosecutors are to be provided for speedy trial of cases. The incentives are also provided for rehabilitation of victims, protection of witnesses and matters connected therewith.

52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.

53. The data of the National Crime Records Bureau, Ministry of Home Affairs, has been pointed out on behalf of the Union of India which indicates that more than 47,000 cases were registered in the year 2016 under the 1989 Act. The number is alarming, and it cannot be said that it is due to the outcome of the misuse of the provisions of the Act.

54. As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings. To treat SCs and STs as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly.

55. It is an unfortunate state of affairs that the caste system still prevails in the country and people remain in slums, more particularly, under skyscrapers, and they serve the inhabitants of such buildings.

56. To treat such incumbents with a rider that a report lodged by an SCs/STs category person, would be registered only after a preliminary investigation by DSP, whereas under CrPC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by upper caste has to be registered immediately and arrest can be made forthwith, whereas, in case of an offence under the 1989 Act, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat supportive action as per the mandate of the Constitution is required to make them equals. It does not prima facie appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under CrPC and contrary to the law laid down by this Court in *Lalita Kumari*[11].

57. The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the 1989 Act; whereas adequate safeguards have been provided by a purposive interpretation by this Court in *State of M.P.* v. *Ram Kishna Balothia*[4]. The consistent view of this Court that if prima facie case has not been made out attracting the provisions of the SC/ST Act of 1989 in that case, the bar created under Section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh*[15], a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

58. That apart Directions 79.3 and 79.4 issued may delay the investigation of cases. As per the amendment made in the Rules in the year 2016, a charge-sheet has to be filed to enable timely commencement of the prosecution. The directions issued are likely to delay the timely scheme framed under the Act/Rules.

In re: Sanction of the appointing authority

59. Concerning public servants, the provisions contained in Section 197 CrPC provide protection by prohibiting cognizance of the offence without the sanction of the appointing authority and the provision cannot be applied at the stage of the arrest. That would run against the spirit of Section 197 CrPC. Section 41 CrPC authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(*c*) CrPC is one for which police officer may arrest without warrant.

11. *Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
4. (1995) 3 SCC 221 : 1995 SCC (Cri) 439
15. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899

60. In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 as observed in *State of Orissa* v. *Debendra Nath Padhi*[56].

61. While issuing guidelines mentioned above approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the 1989 Act. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the courts.

62. The direction is discriminatory and would cause several legal complications. On what basis the appointing authority would grant permission to arrest a public servant? When the investigation is not complete, how can it determine whether public servant is to be arrested or not? Whether it would be appropriate for appointing authority to look into case diary in a case where its sanction for prosecution may not be required in an offence which has not happened in the discharge of official duty. Approaching appointing authority for approval of arrest of a public servant in every case under the 1989 Act is likely to consume sufficient time. The appointing authority is not supposed to know the ground realities of the offence that has been committed, and arrest sometimes becomes necessary forthwith to ensure further progress of the investigation itself. Often the investigation cannot be completed without the arrest. There may not be any material before the appointing authority for deciding the question of approval. To decide whether a public servant should be arrested or not is not a function of the appointing authority, it is wholly extra-statutory. In case the appointing authority holds that a public servant is not to be arrested and declines approval, what would happen, as there is no provision for grant of anticipatory bail. It would tantamount to taking away functions of court. To decide whether an accused is entitled to bail under Section 438 in case no prima facie case is made out or under Section 439 is the function of the Court. The direction of the appointing authority not to arrest may create conflict with the provisions of the 1989 Act and is without statutory basis.

63. By the guidelines issued, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no prima facie case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, may be a public servant, it is not the provision of the general law of CrPC that permission of the appointing authority is necessary. No such statutory protection is provided to a public servant in the matter of arrest under IPC and CrPC as such it would be discriminatory to impose such rider in the cases under the 1989 Act. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required.

56 (2005) 1 SCC 568 : 2005 SCC (Cri) 415

64. The appointing authority cannot sit over an FIR in case of cognizable, non-bailable offence and investigation made by the police officer; this function cannot be conferred upon the appointing authority as it is not envisaged either in CrPC or the 1989 Act. Thus, this rider cannot be imposed in respect of the cases under the 1989 Act, may be that provisions of the Act are sometimes misused, exercise of power of approval of arrest by the appointing authority is wholly impermissible, impractical besides it encroaches upon the field reserved for the legislature and is repugnant to the provisions of general law as no such rider is envisaged under the general law.

65. Assuming it is permissible to obtain the permission of the appointing authority to arrest the accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach the police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of the 1989 Act. In case the direction is permitted to prevail, days are not far away when writ petition may have to be filed to direct the appointing authority to consider whether the accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of the appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. The 1989 Act delay would be adding to the further plight of the downtrodden class.

In re: Approval of arrest by the SSP in the case of a non-public servant

66. Inter alia for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of the accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the 1989 Act.

In re: Requiring the Magistrate to scrutinise the reasons for permitting further detention

67. As per the guidelines issued by this Court, the public servant can be arrested after approval by the appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case of approval has

not been granted, this exercise has not been undertaken. When the offence is registered under the 1989 Act, the law should take its course no additional fetters are called for on arrest whether in case of a public servant or non-public servant. Even otherwise, as we have not approved the approval of arrest by appointing authority/SSP, the direction to record reasons and scrutiny by the Magistrate consequently stands nullified.

68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered and no preliminary inquiry has to be made as held in *Lalita Kumari*[11] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989.

69. The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the Framers of the Constitution, when we do not require any such legislation like the 1989 Act, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of humans exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per the constitutional goal.

70. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above.

71. All the pending applications regarding intervention, etc. stand disposed of.

11 *Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524

(2020) 4 Supreme Court Cases 727

(BEFORE ARUN MISHRA, VINEET SARAN AND S. RAVINDRA BHAT, JJ.)

2020
Feb. 10

3-Judge Bench

PRATHVI RAJ CHAUHAN .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 1015 of 2018† with
No. 1016 of 2018, decided on February 10, 2020

A. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Ss. 18 and 18-A — Bar under S. 18 on grant of anticipatory bail under S. 438 CrPC in respect of offences under the 1989 Act — Position of law obtaining after: (1) insertion of S. 18-A in 1989 Act, and (2) recall of Directions 79.3 to 79.5 in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454, clarified — Vires of Ss. 18 and 18-A, affirmed

— Firstly, grant of anticipatory bail under S. 438 CrPC is barred in respect of offences under the 1989 Act — However, where prima facie case not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of power — Ss. 18 and 18-A of the 1989 Act have no application where prima facie case is not made out — However, for evaluating prima facie case, reappreciation of evidence is not required

— Secondly, S. 18-A has to be read in accordance with the law laid down in *Lalita Kumari*, (2014) 2 SCC 1 — Thus, preliminary enquiry before registration of FIR in respect of offences under the 1989 Act can only be in circumstances enumerated in *Lalita Kumari*, (2014) 2 SCC 1

— Thirdly, under exceptional circumstances and strictly in accordance with parameters laid down therefor, quashment of proceedings under the 1989 Act can be sought under S. 482 CrPC for preventing misuse of law

Directions 79.3 to 79.5 in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454, to the effect that arrest for offences under the 1989 Act could only be with prior approval of appointing authority of public servant and of SSP in other cases, with reasons recorded and which reasons were open to examination by Magistrate concerned, and that preliminary enquiry may be conducted by DSP concerned to find out whether the allegations make out a case under the 1989 Act and the same are not frivolous or motivated before registration of FIR under the 1989 Act, obviously do not hold the field as the same have been recalled — Criminal Procedure Code, 1973 — S. 438 — Constitution of India, Arts. 21, 14, 15, 16, 17, 21 and 32

B. Criminal Procedure Code, 1973 — S. 438 — Origin and scope of, stated — Held, right to anticipatory bail can be taken away be statute — Constitution of India, Art. 21

† Under Article 32 of the Constitution of India

C. SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3 — Prosecution for offence under S. 3 — Protective measures available to accused — Held, the right to a fair trial with all attendant safeguards, continue to be available to those accused of committing offences under the 1989 Act — They remain unchanged by amendments made to the 1989 Act

The Supreme Court in *Subhash Kashinath Mahajan*, (2018) 6 SCC 454 had issued the following directions:

> "*79.1.* Proceedings in the present case are clear abuse of process of court and are quashed.
>
> *79.2.* There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar*, 1991 SCC OnLine Guj 303 and *N.T. Desai*, 1996 SCC OnLine Guj 428 and clarify the judgments of the Supreme Court in *Ram Kishna Balothia*, (1995) 3 SCC 221 and *Manju Devi*, (2017) 13 SCC 439.
>
> *79.3.* In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.
>
> *79.4.* To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
>
> *79.5.* Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.
>
> *79.6.* The above directions are prospective."

Thereafter, the Parliament passed amendment to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 whereby Section 18-A was inserted to by way of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018. A petition was also filed for review of *Subhash Kashinath Mahajan case*, and in *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761, Directions 79.3 to 79.5 were recalled.

The present writ petition was filed questioning the constitutional validity of Section 18-A inserted by way of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018.

Held :

Per Arun Mishra and Vineet Saran, JJ. (Ravindra Bhat, J. concurring)

The offences enumerated under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the 1989 Act) fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of "untouchability" and forbids its practice in any form. It also provides that

enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the 1989 Act arise out of the practice of "untouchability". It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 of the 1989 Act. The exclusion of Section 438 CrPC in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection, the Statement of Objects and Reasons accompanying the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Bill, 1989 may be referred to, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. (Para 6)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *relied on*

When members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14 of the Constitution, as these offences form a distinct class by themselves and cannot be compared with other offences. (Para 6)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *relied on*

Article 21 of the Constitution enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. It is difficult to accept the contention that Section 438 CrPC is an integral part of Article 21 of the Constitution. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code (CrPC, 1898). The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution, and its non-application to a certain special category of offences cannot be considered as violative of Article 21. (Para 6)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *relied on*

Looking to the historical background relating to the practice of "untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 of the 1989 Act has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21 of the Constitution. (Para 6)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *relied on*

The offences which are enumerated under Section 3 of the 1989 Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code (Para 6)

State of M.P. v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *relied on*

Jai Singh v. *Union of India*, 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177, *held, approved*

The scope of Section 18 of the SC/ST Act, 1989 read with Section 438 CrPC is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 CrPC, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence. (Paras 7 and 8)

Vilas Pandurang Pawar v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062, *relied on*

Shakuntla Devi v. *Baljinder Singh*, (2014) 15 SCC 521 : (2015) 4 SCC (Cri) 682, *referred to*

Baljinder Singh v. *Shakuntla Devi*, Crl. Misc No. M-17586 of 2011, order dated 31-1-2012 (P&H), *cited*

Concerning the provisions contained in Section 18-A of the 1989 Act, suffice it to observe that with respect to preliminary inquiry for registration of FIR, the general Directions 79.3 and 79.4 issued in *Subhash Kashinath case* have already been recalled. A preliminary inquiry is permissible only in the circumstances as per the law laid down by the five-Judge Bench in *Lalita Kumari*, (2014) 2 SCC 1, which shall hold good as explained by the Supreme Court in *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761, and the amended provisions of Section 18-A have to be interpreted accordingly. (Para 9)

Section 18-A(*i*) of the 1989 Act was inserted owing to the decision of the Supreme Court in *Subhash Kashinath*, which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of other accused persons. The Supreme Court has also recalled that direction in *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761. Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of the directions issued in *Subhash Kashinath case* which no more prevails. The provisions were already in S. 18 of the Act with respect to anticipatory bail. (Para 10)

Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(*i*) shall not apply. (Para 11)

The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed in *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761. The legal position is clear, and no argument to the contrary has been raised. (Para 12)

Union of India v. *State of Maharashtra*, (2020) 4 SCC 761; *Lalita Kumari* v. *State of U.P.* (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524. *followed*

Subhash Kashinath Mahajan v. *State of Maharashtra*. (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124. *held, substantially recalled*

Per Ravindra Bhat, J. (concurring)

The clear intention of Parliament in inserting Section 18-A into the 1989 Act was to undo the effect of the Supreme Court's declaration in *Subhash Kashinath Mahajan case*. The provisions of the amendment expressly override the directions in *Subhash Kashinath Mahajan case*, that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The parliamentary intent was to allay the concern that this would delay registration of first information report (FIR) and would impede strict enforcement of the provision of the Act. (Para 29)

Subhash Kashinath Mahajan v. *State of Maharashtra*. (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124. *referred to*

The judgment of Arun Mishra, J. has recounted much of the discussion and reiterated the reasoning which led to the recall and review of the decision in *Subhash Kashinath Mahajan case*: they are respectfully adopted. Any interference with the provisions of the Act, particularly with respect to the amendments precluding preliminary enquiry, or provisions which remove the bar against arrest of public servants accused of offences punishable under the Act, would not be a positive step. The various reports, recommendations and official data, including those released by the National Crime Records Bureau, paint a dismal picture. The figures reflected were that for 2014, instances of crimes recorded were 40,401; for 2015, the crime instances recorded were 38,670 and for 2016, the registered crime incidents were 40,801. According to one analysis of the said 2016 report, 4,22,799 crimes against Scheduled Caste communities' members and 81,332 crimes against Scheduled Tribe communities' members were reported between 2006 and 2016. (Para 30)

Subhash Kashinath Mahajan v. *State of Maharashtra*. (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124. *referred to*

These facts ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations are made, those are not necessarily reflective of the prevailing and widespread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of "atrocity", also lists pernicious practices (under Section 3 of the 1989 Act) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such Scheduled Caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate

safeguards. The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment. (Para 31)

As far as the provision of Section 18-A of the 1989 Act and anticipatory bail is concerned, the judgment of Arun Mishra, J., has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail. (Para 32)

While considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 CrPC, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. Such stringent terms, otherwise contrary to the philosophy of bail, are absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament. (Para 33)

Pankaj D. Suthar v. *State of Gujarat*, 1991 SCC OnLine Guj 303; *N.T. Desai* v. *State of Gujarat*, 1996 SCC OnLine Guj 428; *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439; *Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662; *Kharak Singh* v. *State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329; *Hinch Lal Tiwari* v. *Kamala Devi*, (2001) 6 SCC 496; *Francis Coralie Mullin* v. *State (UT of Delhi)*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212; *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545; *PUCL* v. *Union of India*, (2005) 2 SCC 436; *Umesh Kumar* v. *State of A.P.*, (2013) 10 SCC 591 : (2014) 3 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237; *Kishore Samrite* v. *State of U.P.*, (2013) 2 SCC 398 : (2013) 2 SCC (Cri) 155; *Subramanian Swamy* v. *Union of India*, (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1; *Kailas* v. *State of Maharashtra*, (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401; *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899; *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415, *cited*

D. **Constitution of India — Preamble, Pt. III and Arts. 14, 15, 17 & 24 — Fraternity or Bandhutva — Essence of fraternity and its introduction in Indian Constitution — Crucial place occupied by idea of fraternity — Interdependence between liberty, equality and fraternity — Constitutional mandate of State thriving to promote fraternity — Role of Arts. 15, 17 and 24 in promotion of fraternity and removal of untouchability — Principles extensively discussed and summarised**

One of the objectives of the Preamble of our Constitution is "fraternity assuring the dignity of the individual and the unity and integrity of the nation"

The Constitution itself, in no uncertain terms, demands that the State shall strive, incessantly and consistently, to promote fraternity amongst all citizens such that dignity of every citizen is protected, nourished and promoted

Words and Phrases — "Fraternity", "bandhutva" (Paras 15 to 24)

Held :

The Constitution of India is described variously as a charter of governance of the republic, as a delineation of the powers of the State in its various manifestations vis-à-vis inalienable liberties and a document delimiting the rights and responsibilities of the Union and its constituent States. It is more: it is also a pact between people, about the relationships that they guarantee to each other

(apart from the guarantee of liberties vis-à-vis the State) in what was a society riven along caste and sectarian divisions. That is why the preambular assurance that the republic would be one which guarantees to its people liberties, dignity, equality of *status and opportunity* and *fraternity*. (Para 15)

It is this idea of India, — a promise of oneness of and for, *all people*, regardless of caste, gender, place of birth, religion and other divisions that Part III of the Constitution articulates in four salient provisions: Article 15, Article 17, Article 23 and Article 24. The idea of fraternity occupying as crucial a place in the scheme of our nation's consciousness and polity, is one of the lesser explored areas in the constitutional discourse of the Supreme Court. The fraternity assured by the Preamble is not merely a declaration of a ritual handshake or cordiality between communities that are diverse and have occupied different spaces: it is far more. This idea finds articulation in Article 15. That provision, perhaps even more than Article 14, fleshes out the concept of equality by prohibiting discrimination and discriminatory practices peculiar to Indian society. At the centre of this idea, is that all people, regardless of caste backgrounds, should have access to certain amenities, services and goods so necessary for every individual. Article 15 is an important guarantee against discrimination. What is immediately noticeable is that whereas Article 15(1) enjoins the *State* (with all its various manifestations, per Article 12) not to discriminate on the proscribed grounds [religion, race, caste, sex (i.e. gender), place of birth *or any of them*], *Article 15(2) is a wider injunction*; it prohibits discrimination or subjection to any disability of anyone on the grounds of religion, caste, race, sex or place of birth in regard to access to shops, places of public entertainment, or public restaurants [Article 15(2)(*a*)]. (Para 16)

The making of this provision—and others is impelled by the trinity of the preambular vision that the Constitution Makers gave to this country. Paeans have been sung about the importance of liberty as a constitutional value, its manifest articulation in the (original) seven "limbs"— i.e. freedoms under Article 19 of the Constitution; the other rights to religion, those of religious denominations, etc. Likewise, the centrality of equality as an important constitutional provision has been emphasised, and its many dimensions have been commented upon. However, the articulation of fraternity as a constitutional value, has lamentably been largely undeveloped. All the three — Liberty, Equality and Fraternity, are intimately linked. The right to equality, *sans* liberty or fraternity, would be chimerical — as the concept presently known would be reduced to equality among equals, in every manner a mere husk of the grand vision of the Constitution. Likewise, liberty without equality or fraternity, can well result in the perpetuation of existing inequalities and worse, result in licence to indulge in society's basest practices. It is fraternity, poignantly embedded through the provisions of Part III of the Constitution, which assures true equality, where the State treats all alike, assures the benefits of growth and prosperity to all, with equal liberties to all, and what is more, which guarantees that every citizen treats every other citizen alike. (Para 17)

When the Framers of the Constitution began their daunting task, they had before them a formidable duty and a stupendous opportunity: of forging a nation, out of several splintered sovereign States and city States, with the blueprint of an idea of India. What they envisioned was a common charter of governance and equally a charter for the people. The placement of the concept of fraternity, in this

context was neither an accident, nor an idealised emulation of the western notion of fraternity, which finds vision in the French and American Constitutions and charters of independence. It was a unique and poignant reminder of a society riven with acute inequalities: more specifically, the practice of caste discrimination in its virulent form, where the essential humanity of a large mass of people was denied by society— i.e. untouchability. (Paras 18 to 20)

The Preamble to the Constitution did not originally contain the expression "fraternity"; it was inserted later by the Drafting Committee under the chairmanship of Dr Ambedkar. While submitting the draft Constitution, he stated, on 21-2-1948 that the Drafting Committee had added a clause about fraternity in the Preamble even though it was not part of the Objectives Resolution because it felt that "*the need for fraternal concord and goodwill in India was never greater than now, and that this particular aim of the new Constitution should be emphasised by special mention in the Preamble*". (Para 21)

B. Shiva Rao: *Framing of India's Constitution*, Vol. III, p. 510 (1968), *cited*

The Makers of the Constitution were fully conscious of the unfortunate position of the Scheduled Castes and the Scheduled Tribes. To them equality, liberty and fraternity are but a dream; an ideal guaranteed by the law, but far too distant to reach; far too illusory to touch. These backward people and others in like positions of helplessness are the favoured children of the Constitution. It is for them that ameliorative and remedial measures are adopted to achieve the end of equality. To permit those who are not intended to be so specially protected to compete for reservation is to dilute the protection and defeat the very constitutional aim. (Para 22)

Indra Sawhney v. *Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, *relied on*

One of the objectives of the Preamble of our Constitution is "fraternity assuring the dignity of the individual and the unity and integrity of the nation". It will be relevant to cite the explanation given by Dr Ambedkar for the word "fraternity" explaining that "fraternity means a sense of common brotherhood of all Indians". In a country like ours with so many disruptive forces of regionalism, communalism and linguism, it is necessary to emphasise and reemphasise that the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of other basis. In this view, any measure at bringing about equality should be welcome. (Para 23)

Raghunathrao Ganpatrao v. *Union of India*, 1994 Supp (1) SCC 191, *referred to*

The Constitution itself, in no uncertain terms, demands that the State shall strive, incessantly and consistently, to promote fraternity amongst all citizens such that dignity of every citizen is protected, nourished and promoted. (Para 24)

Nandini Sundar v. *State of Chhattisgarh*, (2011) 7 SCC 547 : (2011) 2 SCC (L&S) 762, *referred to*

It was to achieve this ideal of fraternity, that the three provisions—Articles 15, 17 and 24 were engrafted. Though Article 17 proscribes the practice of untouchability and pernicious practices associated with it, the Constitution expected Parliament and the legislatures to enact effective measures to root it out, *as well as all other direct and indirect, (but virulent nevertheless) forms of caste*

discrimination. Therefore, fraternity is as important a facet of the promise of our freedoms as personal liberty and equality is. (Para 25)

E. **SCs, STs, OBCs and Minorities — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Generally — Reasons for enactment of the 1989 Act — Legal framework of the Act and Rules made thereunder — Elaborated — Failure of authorities to comply with provisions of the Act and to enforce the same — Deprecated, and directions issued to Central and State Governments to strictly enforce all provisions of the 1989 Act (Paras 25 to 27 and 34)**

Held :

There has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and the State Governments for the effective implementation of the Act to be placed before Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. The Central Government and the State Governments are directed to strictly enforce the provisions of the Act. (Paras 25 to 27)

National Campaign on Dalit Human Rights v. *Union of India*, (2017) 2 SCC 432 : (2017) 1 SCC (Cri) 734, *referred to*

It is important to reiterate and emphasise that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalisation of Scheduled Caste and Scheduled Tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or *bandhutva* referred to in the Preamble, and statutes like the Act, have been framed. These underline the social — rather collective resolve — of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the "otherness" of each one's identity. (Para 34)

National Campaign on Dalit Human Rights v. *Union of India*, (2017) 2 SCC 432 : (2017) 1 SCC (Cri) 734, *referred to*

G-D/63765/CR

Chronological list of cases cited ***on page(s)***

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16. (2001) 6 SCC 496, *Hinch Lal Tiwari* v. *Kamala Devi* 741*c*
17. 1996 SCC OnLine Guj 428, *N.T. Desai* v. *State of Gujarat* 737*f*
18. (1995) 3 SCC 221 : 1995 SCC (Cri) 439, *State of M.P.* v. *Ram Kishna Balothia* 737*f-g*, 744*h-c*, 748*a b*
19. (1994) 3 SCC 569 : 1994 SCC (Cri) 899, *Kanar Singh* v. *State of Punjab* 744*c-d*
20. 1991 Supp (1) SCC 191, *Raghunathrao Ganpatrao* v. *Union of India* 755*d-e*
21. 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177, *Jai Singh* v. *Union of India* 750*d e*
22. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, *Indra Sawhney* v. *Union of India* 755*b*
23. 1991 SCC OnLine Guj 303, *Pankaj D. Suthar* v. *State of Gujarat* 737*f*
24. (1985) 3 SCC 545, *Olga Tellis* v. *Bombay Municipal Corpn.* 741*c*
25. (1981) 1 SCC 608 : 1981 SCC (Cri) 212, *Francis Coralie Mullin* v. *State (UT of Delhi)* 741*c*
26. AIR 1963 SC 1295 : (1963) 2 Cri LJ 329, *Kharak Singh* v. *State of U.P.* 741*a*

The Judgments* of the Court were delivered by

ARUN MISHRA, J. (*for himself and Vineet Saran, J.; Ravindra Bhat, J. concurring*)— The petitioners have questioned the provisions inserted by way of carving out Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the 1989 Act). Section 18 as well as Section 18-A, are reproduced hereunder:

> "**18.** ***Section 438 of the Code not to apply to persons committing an offence under the Act.***—Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.
>
> **18-A.** ***No enquiry or approval required.***—(1) For the purposes of this Act
>
> (*a*) preliminary enquiry shall not be required for registration of a first information report against any person; or
>
> (*b*) the investigating officer shall not require approval for the arrest, if necessary, of any person,
>
> against whom an accusation of having committed an offence under this Act has been made, and no procedure other than that provided under this Act or the Code shall apply.
>
> (2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."**

2. It is submitted that Section 18-A has been enacted to nullify the judgment of this Court in *Subhash Kashinath Mahajan* v. *State of Maharashtra*[1], in which the following directions were issued: (SCC p. 513, para 79)

> "*79.* Our conclusions are as follows:
>
> *79.1.* Proceedings in the present case are clear abuse of process of court and are quashed.
>
> *79.2.* There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar*[2] and *N.T. Desai*[3] and clarify the judgments of this Court in *Balothia*[4] and *Manju Devi*[5];
>
> *79.3.* In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the

* **Ed.**: The Judgment of the Court was delivered by Arun Mishra, J. for himself and Vineet Saran, J. Ravindra Bhat, J. delivered a concurring opinion.

** **Ed.**: Para 1 corrected vide Official Corrigendum No. E3/Ed.B.J./2/2020 dated 25-2-2020.

1. (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 121
2. *Pankaj D. Suthar* v. *State of Gujarat*, 1991 SCC OnLine Guj 303
3. *N.T. Desai* v. *State of Gujarat*, 1996 SCC OnLine Guj 428
4. *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439
5. *Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662

SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective."

3. It has been submitted that this Court has noted in *Subhash Kashinath*[1] that the provisions of the 1989 Act are being misused as such the amendment is arbitrary, unjust, irrational and violative of Article 21 of the Constitution of India. There could not have been any curtailment of the right to obtain anticipatory bail under Section 438 CrPC. Prior scrutiny and proper investigation are necessary. Most of the safeguards have been provided under the 1989 Act to prevent undue harassment. This Court has struck down the provision of Section 66-A of the Information Technology Act on the ground of violation of fundamental rights; on the same anvil, the provisions of Section 18-A of the 1989 Act deserve to be struck down.

4. It is not disputed at the Bar that the provisions in Section 18-A in the 1989 Act had been enacted because of the judgment passed by this Court in *Subhash Kashinath case*[1], mainly because of Directions 79.3 to 79.5 contained in para 79. The Union of India had filed review petitions, and the same have been allowed[6], and Directions 79.3 to 79.5 have been recalled. Thus, in view of the judgment passed in the review petitions, the matter is rendered of academic importance as we had restored the position as prevailed by various judgments that were in vogue before the matter of *Subhash Kashinath*[1] was decided. We are not burdening the decision as facts and reasons have been assigned in detail while deciding review petitions on 1-10-2019[6] and only certain clarifications are required in view of the provisions carved out in Section 18-A. There can be protective discrimination, not reverse one.

5. We have dealt with various questions in the review petitions while deciding the same as under: (*Union of India case*[6], SCC pp. 793-801, paras 39-70)

"*39.* In the light of the discussion mentioned above of legal principles, we advert to directions issued in para 79. Directions 79.3 and 79.4 and consequential Direction 79.5 are sought to be reviewed/recalled. Directions contain the following aspects:

39.1. That arrest of a public servant can only be after approval of the appointing authority;

1. *Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124
6. *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761

39.2. The arrest of a non-public servant after approval by the Senior Superintendent of Police (SSP);

39.3. The arrest may be in an appropriate case if considered necessary for reasons to be recorded;

39.4. Reasons for arrest must be scrutinised by the Magistrate for permitting further detention;

39.5. Preliminary enquiry to be conducted by the Dy. S.P. level officers to find out whether the allegations make out a case and that the allegations are not frivolous or motivated;

39.6. Any violation of the Directions mentioned above will be actionable by way of disciplinary action as well as contempt.

40. Before we dilate upon the aforesaid directions, it is necessary to take note of certain aspects. It cannot be disputed that as the members of the Scheduled Castes and Scheduled Tribes have suffered for long; the protective discrimination has been envisaged under Article 15 of the Constitution of India and the provisions of the 1989 Act to make them equals.

41. All the offences under the Atrocities Act are cognizable. The impugned directions put the riders on the right to arrest. An accused cannot be arrested in atrocities cases without the concurrence of the higher Authorities or appointing authority as the case may be. As per the existing provisions, the appointing authority has no power to grant or withhold sanction to arrest concerning a public servant.

42. The National Commission for Scheduled Castes Annual Report 2015-16, has recommended for prompt registration of FIRs thus:

> 'The Commission has noted with concern that instances of procedural lapses are frequent while dealing atrocity cases by both police and civil administration. There are delays in the judicial process of the cases. The Commission, therefore, identified lacunae commonly noticed during police investigation, as also preventive/curable actions the civil administration can take. NCSC recommends the correct and timely application of SC/ST (PoA) Amendment Act, 2015 and Amendment Rules of 2016 as well as the following for improvement:
>
> "**8.6.1.** ***Registration of FIRs.*** The Commission has observed that the *police often resort to preliminary investigation upon receiving a complaint in writing before lodging the actual FIRs. As a result, the SC victims have to resort to seeking directions from courts for registration of FIRs under Section 156(3) CrPC.* Hon'ble Supreme Court has also on more than one occasion emphasised about registration of FIR first. This Commission again re-emphasises that the State/UT Governments should enforce prompt registration of FIRs.'

43. The learned Attorney General pointed out that the statistics considered by the Court in the judgment under review indicate that 9 to 10 per cent cases under the Act were found to be false. The percentage of

false cases concerning other general crimes such as forgery is comparable, namely, 11.51 per cent and for kidnapping and abduction, it is 8.85 per cent as per NCRB data for the year 2016. The same can be taken care of by the courts under Section 482, and in case no prima facie case is made out, the court can always consider grant of anticipatory bail and power of quashing in appropriate cases. For the low conviction rate, he submitted that same is the reflection of the failure of the criminal justice system and not an abuse of law. The witnesses seldom come to support down-trodden class, biased mindset continues, and they are pressurised in several manners, and the complainant also hardly muster the courage.

44. As to prevailing conditions in various areas of the country, we are compelled to observe that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for the centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.

45. Though, Article 17 of the Constitution prohibits untouchability, whether untouchability has vanished? We have to find the answer to all these pertinent questions in the present prevailing social scenario in different parts of the country. The clear answer is that untouchability though intended to be abolished, has not vanished in the last 70 years. We are still experimenting with "tryst with destiny". The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to *Harijans* due to lack of resources and proper planning and apathy. Whether he can shake hand with a person of higher class on equal footing? Whether we have been able to reach that level of psyche and human dignity and able to remove discrimination based upon caste? Whether false guise of cleanliness can rescue the situation, how such condition prevails and have not vanished, are we not responsible? The answer can only be found by soul searching. However, one thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide downtrodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living. More so, for Tribals who are at some places still kept in isolation as we have not been able to provide them even basic amenities, education and frugal comforts of life in spite of spending a considerable amount for the protection, how long this would continue. Whether they have to remain in the status quo and to entertain civilized society? Whether under the guise of protection of the

culture, they are deprived of fruits of development, and they face a violation of traditional rights?

46. In *Kharak Singh* v. *State of U.P.*[7], this Court has observed that the right to life is not merely an animal's existence. Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all the persons are treated as equal human in all respects and not treated as an untouchable, downtrodden, and object for exploitation. It also implies that they are not meant to be born for serving the elite class based upon the caste. The caste discrimination had been deep-rooted, so the consistent effort is on to remove it, but still, we have to achieve the real goal. No doubt we have succeeded partially due to individual and collective efforts.

47. The enjoyment of quality life by the people is the essence of guaranteed right under Article 21 of the Constitution, as observed in *Hinch Lal Tiwari* v. *Kamala Devi*[8]. Right to live with human dignity is included in the right to life as observed in *Francis Coralie Mullin* v. *State (UT of Delhi)*[9], *Olga Tellis* v. *Bombay Municipal Corpn.*[10] Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits are instances of human rights violations as observed by this Court in *PUCL* v. *Union of India*[11]: (SCC p. 452, para 34)

> '*34.* The question can also be examined from another angle. *The knowledge or experience of a police officer of human rights violation, represents only one facet of human rights violation and its protection, namely, arising out of crime. Human rights violations are of various forms* which besides police brutality are — gender injustice, pollution, environmental degradation, malnutrition, *social ostracism of Dalits, etc.* A police officer can claim to have experience of only one facet. That is not the requirement of the section.'

48. There is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the 1989 Act. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in *Umesh Kumar* v. *State of A.P.*[12], *Kishore Samrite* v. *State of U.P.*[13] and *Subramanian Swamy* v. *Union of India*[14]. The provisions of the

7 AIR 1963 SC 1295 : (1963) 2 Cri LJ 329
8 (2004) 6 SCC 196
9 (1981) 1 SCC 608 : 1981 SCC (Cri) 212
10 (1985) 3 SCC 545
11 (2005) 2 SCC 436
12 (2013) 10 SCC 591 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237
13 (2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655
14 (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1

1989 Act are, in essence, concomitants covering various facets of Article 21 of the Constitution of India.

49. They do labour, bonded or forced, in agricultural fields, which is not abrogated in spite of efforts. In certain areas, women are not treated with dignity and honour and are sexually abused in various forms. We see sewer workers dying in due to poisonous gases in chambers. They are like death traps. We have not been able to provide the masks and oxygen cylinders for entering in sewer chambers, we cannot leave them to die like this and avoid tortious liability concerned with officials/machinery, and they are still discriminated within the society in the matter of enjoying their civil rights and cannot live with human dignity.

50. The Constitution of India provides equality before the law under the provisions contained in Article 14. Article 15(4) of the Constitution carves out an exception for making any special provision for the advancement of any socially and educationally backward classes of citizens or SCs. and STs. Further protection is conferred under Article 15(5) concerning their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Historically disadvantageous groups must be given special protection and help so that they can be uplifted from their poverty and low social status as observed in *Kailas* v. *State of Maharashtra*[15]. The legislature has to attempt such incumbents be protected under Article 15(4), to deal with them with more rigorous provisions as compared to provisions of general law available to the others would create inequality which is not permissible/envisaged constitutionally. It would be an action to negate mandatory constitutional provisions not supported by the constitutional scheme; rather, it would be against the mandated constitutional protection. It is not open to the legislature to put members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position vis-à-vis others and in particular to so-called upper castes/general category. Thus, they cannot be discriminated against more so when we have a peep into the background perspective. What legislature cannot do legitimately, cannot be done by the interpretative process by the courts.

51. The particular law i.e. the 1989 Act, has been enacted and has also been amended in 2016 to make its provisions more effective. Special prosecutors are to be provided for speedy trial of cases. The incentives are also provided for rehabilitation of victims, protection of witnesses and matters connected therewith.

52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste

[15] (2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401

factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under Section 482 CrPC.

53. The data of National Crime Records Bureau, Ministry of Home Affairs, has been pointed out on behalf of Union of India which indicates that more than 47,000 cases were registered in the year 2016 under the 1989 Act. The number is alarming, and it cannot be said that it is due to the outcome of the misuse of the provisions of the Act.

54. As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings. To treat SCs and STs as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly.

55. It is an unfortunate state of affairs that the caste system still prevails in the country and people remain in slums, more particularly, under skyscrapers, and they serve the inhabitants of such buildings.

56. To treat such incumbents with a rider that a report lodged by an SCs/STs category, would be registered only after a preliminary investigation by Dy. S.P., whereas under CrPC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by upper-caste has to be registered immediately and arrest can be made forthwith,

whereas, in case of an offence under the 1989 Act, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat supportive action as per the mandate of Constitution is required to make them equals. It does not prima facie appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under CrPC and contrary to the law laid down by this Court in *Lalita Kumari*[16].

57. The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the 1989 Act, whereas adequate safeguards have been provided by a purposive interpretation by this Court in *State of M.P.* v. *Ram Kishna Balothia*[4]. The consistent view of this Court that if prima facie case has not been made out attracting the provisions of the SC/ST 1989 Act, in that case, the bar created under Section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh*[17], a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

58. That apart Directions 79.3 and 79.4 issued may delay the investigation of cases. As per the amendment made in the Rules in the year 2016, a charge-sheet has to be filed to enable timely commencement of the prosecution. The directions issued are likely to delay the timely scheme framed under the Act/Rules.

In re: Sanction of the appointing authority

59. Concerning public servants, the provisions contained in Section 197 CrPC provide protection by prohibiting cognizance of the offence without the sanction of the appointing authority and the provision cannot be applied at the stage of the arrest. That would run against the spirit of Section 197 CrPC. Section 41 CrPC authorises every police officer to carry out an arrest in case of a cognizable offence and the very definition of a cognizable offence in terms of Section 2(*c*) CrPC is one for which police officer may arrest without warrant.

60. In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 as observed in *State of Orissa* v. *Debendra Nath Padhi*[18].

16 *Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
4 (1995) 3 SCC 221 : 1995 SCC (Cri) 439
17 *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899
18 (2005) 1 SCC 568 : 2005 SCC (Cri) 415

61. While issuing guidelines mentioned above approval of appointing authority has been made imperative for the arrest of a public servant under the provisions of the Act in case, he is an accused of having committed an offence under the 1989 Act. Permission of the appointing authority to arrest a public servant is not at all statutorily envisaged; it is encroaching on a field which is reserved for the legislature. The direction amounts to a mandate having legislative colour which is a field not earmarked for the Courts.

62. The direction is discriminatory and would cause several legal complications. On what basis the appointing authority would grant permission to arrest a public servant? When the investigation is not complete, how it can determine whether public servant is to be arrested or not? Whether it would be appropriate for appointing authority to look into case diary in a case where its sanction for prosecution may not be required in an offence which has not happened in the discharge of official duty. Approaching appointing authority for approval of arrest of a public servant in every case under the 1989 Act is likely to consume sufficient time. The appointing authority is not supposed to know the ground realities of the offence that has been committed, and arrest sometimes becomes necessary forthwith to ensure further progress of the investigation itself. Often the investigation cannot be completed without the arrest. There may not be any material before the appointing authority for deciding the question of approval. To decide whether a public servant should be arrested or not is not a function of appointing authority, it is wholly extra-statutory. In case appointing authority holds that a public servant is not to be arrested and declines approval, what would happen, as there is no provision for grant of anticipatory bail. It would tantamount to take away functions of court. To decide whether an accused is entitled to bail under Section 438 in case no prima facie case is made out or under Section 439 is the function of the Court. The direction of appointing authority not to arrest may create conflict with the provisions of 1989 Act and is without statutory basis.

63. By the guidelines issued, the anomalous situation may crop up in several cases. In case the appointing authority forms a view that as there is no prima facie case the incumbent is not to be arrested, several complications may arise. For the arrest of an offender, maybe a public servant, it is not the provision of the general law of CrPC that permission of the appointing authority is necessary. No such statutory protection provided to a public servant in the matter of arrest under IPC and CrPC as such it would be discriminatory to impose such rider in the cases under the 1989 Act. Only in the case of discharge of official duties, some offence appears to have been committed, in that case, sanction to prosecute may be required and not otherwise. In case the act is outside the purview of the official discharge of duty, no such sanction is required.

64. The appointing authority cannot sit over an FIR in case of cognizable, non-bailable offence and investigation made by the police officer; this function cannot be conferred upon the appointing authority as it is not envisaged either in CrPC or the 1989 Act. Thus, this rider cannot be imposed in respect of the cases under the 1989 Act, may be that provisions of the Act are sometimes misused, exercise of power of approval of arrest by appointing authority is wholly impermissible, impractical besides, it encroaches upon the field reserved for the legislature and is repugnant to the provisions of general law as no such rider is envisaged under the general law.

65. Assuming it is permissible to obtain the permission of appointing authority to arrest accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach the police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of the 1989 Act. In case the direction is permitted to prevail, days are not far away when writ petition may have to be filed to direct the appointing authority to consider whether accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. The 1989 Act delay would be adding to the further plight of the downtrodden class.

In re: Approval of arrest by the SSP in the case of a non-public servant

66. Inter alia for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of the accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the 1989 Act.

In re: Requiring the Magistrate to scrutinise the reasons for permitting further detention

67. As per guidelines issued by this Court, the public servant can be arrested after approval by appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case of approval has not been granted, this exercise has not been undertaken. When the offence is registered under the 1989 Act, the law should take its course no additional fetter sare called for on arrest whether in case of a public servant or non-public servant. Even otherwise, as we have not approved the approval of arrest by appointing authority/SSP, the direction to record reasons and scrutiny by the Magistrate consequently stands nullified.

68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in *Lalita Kumari*[16] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of DSP The number of DSP as per stand of Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989.

69. The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the framers of the Constitution, when we do not require any such legislation like the 1989 Act, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per constitutional goal.

70. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court

16 *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524

for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petition is allowed to the extent mentioned above."

6. In *State of M.P.* v. *Ram Kishna Balothia*[4], this Court has upheld the validity of Section 18 of the 1989 Act. This Court has observed: (SCC pp. 224-27, paras 6-7 & 9-10)

"6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of "untouchability" and forbids its practice in any form. It also provides that enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of "untouchability". It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18, which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection, we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated:

> 'Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations, and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
>
> **2.** ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and

[4] (1995) 3 SCC 221 : 1995 SCC (Cri) 439

the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

7. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

> 'We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.'

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

* * *

9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of "untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

11. A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in *Jai Singh* v. *Union of India*[19], and we respectfully agree with its findings."

7. This Court in *Vilas Pandurang Pawar* v. *State of Maharashtra*[20], has observed thus: (SCC p. 799, para 10)

"*10.* The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

19. 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177
20. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062

8. This Court in *Shakuntla Devi* v. *Baljinder Singh*[21], has observed thus: (SCC p. 522, para 4)

> "*4.* The High Court has not given any finding in the impugned order[22] that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in *Vilas Pandurang Pawar case*[20]. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order[22] of the High Court granting bail to the respondent."

9. Concerning the provisions contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general Directions 79.3 and 79.4 issued in *Subhash Kashinath case*[1]. A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in *Lalita Kumari* v. *State of U.P.*[16], shall hold good as explained in the order passed by this Court in the review petitions on 1-10-2019[6] and the amended provisions of Section 18-A have to be interpreted accordingly.

10*. Section 18-A(*i*) was inserted owing to the decision of this Court in *Subhash Kashinath*[1], which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019[6]. Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in *Subhash Kashinath*[1] which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail.

11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(*i*) shall not apply. We have clarified this aspect while deciding the review petitions.

12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

21 (2014) 15 SCC 521 : (2015) 4 SCC (Cri) 682
22 *Baljinder Singh* v. *Shakuntla Devi*, Crl. Misc No. M-17586 of 2011, order dated 31-1-2012 (P&H)
20 *Vilas Pandurang Pawar* v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062
1 *Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124
16 (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524
6 *Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761
* **Ed.:** Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2020 dated 25-2-2020.

13. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions.

S. RAVINDRA BHAT, J. (*concurring*)— I am in agreement with the judgment proposed by Arun Mishra, J. as well as its conclusions that the challenge to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018 must fail, with the qualifications proposed in the judgment with respect to the inherent power of the court in granting anticipatory bail in cases where prima facie an offence is not made out. I would however, supplement the judgment with my opinion.

15. The Constitution of India is described variously as a charter of governance of the republic, as a delineation of the powers of the State in its various manifestations vis-à-vis inalienable liberties and a document delimiting the rights and responsibilities of the Union and its constituent States. It is more: it is also a pact between people, about the relationships that they guarantee to each other (apart from the guarantee of liberties vis-a-vis the State) in what was a society riven along caste and sectarian divisions. That is why the preambular assurance that the republic would be one which guarantees to its people liberties, dignity, equality of *status and opportunity* and *fraternity*.

16. It is this idea of India, a promise of oneness of and for, *all people*, regardless of caste, gender, place of birth, religion and other divisions that Part III articulates in four salient provisions: Article 15, Article 17, Article 23 and Article 24. The idea of fraternity occupying as crucial a place in the scheme of our nation's consciousness and polity, is one of the lesser explored areas in the constitutional discourse of this Court. The fraternity assured by the Preamble is not merely a declaration of a ritual handshake or cordiality between communities that are diverse and have occupied different spaces: it is far more. This idea finds articulation in Article 15[23]. That provision, perhaps even more than Article 14, fleshes out the concept of equality by prohibiting

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23 The relevant parts of Article 15 are extracted below:

"**15.** ***Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.*** (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(*a*) access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children."

discrimination and discriminatory practices peculiar to Indian society. At the centre of this idea, is that all people, regardless of caste backgrounds, should have access to certain amenities, services and goods so necessary for every individual. Article 15 is an important guarantee against discrimination. What is immediately noticeable is that whereas Article 15(1) enjoins the *State* (with all its various manifestations, per Article 12) not to discriminate on the proscribed grounds [religion, race, caste, sex (i.e. gender), place of birth *or any of them*], *Article 15(2) is a wider injunction*: it prohibits discrimination or subjection to any disability of anyone on the grounds of religion, caste, race, sex or place of birth in regard to access to shops, places of public entertainment, or public restaurants [Article 15(2)(*a*)]. Article 15(2)(*b*) proscribes the subjection of anyone to any disability on the proscribed grounds (i.e. discrimination on grounds of religion, caste, race, sex or place of birth) with regard to

> *"the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."*

17. The making of this provision and others, in my view, is impelled by the trinity of the preambular vision that the Constitution Makers gave to this country. Paeans have been sung about the importance of liberty as a constitutional value: its manifest articulation in the (original) seven "lamps" i.e. freedoms under Article 19 of the Constitution; the other rights to religion, those of religious denominations, etc. Likewise, the centrality of equality as an important constitutional provision has been emphasised, and its many dimensions have been commented upon. However, the articulation of fraternity as a constitutional value, has lamentably been largely undeveloped. In my opinion, all the three—Liberty, Equality and Fraternity, are intimately linked. The right to equality, *sans* liberty or fraternity, would be chimerical—as the concept presently known would be reduced to equality among equals, in every manner—a mere husk of the grand vision of the Constitution. Likewise, liberty without equality or fraternity, can well result in the perpetuation of existing inequalities and worse, result in licence to indulge in society's basest practices. It is fraternity, poignantly embedded through the provisions of Part III, which assures true equality, where the State treats all alike, assures the benefits of growth and prosperity to all, with equal liberties to all, and what is more, which guarantees that every citizen treats every other citizen alike.

18. When the Framers of the Constitution began their daunting task, they had before them a formidable duty and a stupendous opportunity: of forging a nation, out of several splintered sovereign States and city States, with the blueprint of an idea of India. What they envisioned was a common charter of governance and equally a charter for the people. The placement of the concept of fraternity, in this context was neither an accident, nor an idealised emulation of the western notion of fraternity, which finds vision in the French and American Constitutions and charters of independence. It was a unique and poignant reminder of a society riven with acute inequalities: more specifically,

the practice of caste discrimination in its virulent form, where the essential humanity of a large mass of people was denied by society—i.e. untouchability.

19. The resolve to rid society of these millennial practices, consigning a large segment of humanity to the eternal bondage of the most menial avocations creating inflexible social barriers, was criticised by many sages and saints. Kabir, the great saint poet, for instance, in his composition, remarked:

> "*If thou thinkest the Maker distinguished castes:*
> *Birth is according to these penalties for deeds.*
> *Born a Sudra, you die a Sudra;*
> *It is only in this world of illusion that you assume the sacred thread.*
> *If birth from a Brahmin makes you a Brahmin,*
> *Why did you not come by another way?*
> *If birth from a Turk makes you a Turk,*
> *Why were you not circumcised in the womb?*
> ...
> *Saith Kabir, renounce family, caste, religion, and nation, And live as one.*"

20. There were several others who spoke, protested, or spoke against the pernicious grip of social inequity due to caste oppression of the weakest and vulnerable segments of society. Guru Nanak, for instance, stated[24]:

> "Caste and dynastic pride are condemnable notions; the one Master shelters all existence.
>
> Anyone arrogating superiority to himself hath be disillusioned. Saith Nanak: superiority shall be determined by God."

The *Guru Granth Saheb* also states that:

> "All creatures are noble, none low,
> One sole Maker has all vessels fashioned;
> In all three worlds is manifest the same light ..."

21. The Preamble to the Constitution did not originally contain the expression "fraternity"; it was inserted later by the Drafting Committee under the chairmanship of Dr Ambedkar. While submitting the draft Constitution, he stated, on 21-2-1948, that the Drafting Committee had added a clause about fraternity in the Preamble even though it was not part of the Objectives Resolution because it felt that "*the need for fraternal concord and goodwill in India was never greater than now, and that this particular aim of the new Constitution should be emphasised by special mention in the Preamble*"[25]. Pandit Thakur Das Bhargava expressed a "*sense of gratitude to Dr Ambedkar for having added the word "fraternity" to the Preamble*". *Acharya Kripalani*

[24] *Guru Granth Saheb*, p. 83
[25] B. Shiva Rao, *Framing of India's Constitution*, Vol. III, p. 510 (1968).

also emphasised on this understanding, in his speech on 17-10-1949: (CAD Vol. 10, p. 454)

"Again, I come to the great doctrine of fraternity, which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, there is one life pulsating through us all, or as the *Bible* says, "We are one of another." There can be no fraternity without this."

22. This Court too, has recognised and stressed upon the need to recognise fraternity as one of the beacons which light up the entire Constitution. Thommen, J. in *Indra Sawhney* v. *Union of India*[26] said this: (SCC p. 436, para 256)

"*256.* The makers of the Constitution were fully conscious of the unfortunate position of the Scheduled Castes and the Scheduled Tribes. To them equality, liberty and fraternity are but a dream: an ideal guaranteed by the law, but far too distant to reach; far too illusory to touch. These backward people and others in like positions of helplessness are the favoured children of the Constitution. It is for them that ameliorative and remedial measures are adopted to achieve the end of equality. To permit those who are not intended to be so specially protected to compete for reservation is to dilute the protection and defeat the very constitutional aim."

23. In *Raghunathrao Ganpatrao* v. *Union of India*[27] this Court held: (SCC p. 223, para 109)

"*109.* ... In our considered opinion this argument is misconceived and has no relevance to the facts of the present case. One of the objectives of the Preamble of our Constitution is "fraternity assuring the dignity of the individual and the unity and integrity of the nation". It will be relevant to cite the explanation given by Dr Ambedkar for the word "fraternity" explaining that "fraternity means a sense of common brotherhood of all Indians". In a country like ours with so many disruptive forces of regionalism, communalism and linguism, it is necessary to emphasise and reemphasise that the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of other basis. In this view, any measure at bringing about equality should be welcome."

24. In a similar vein, the Court in *Nandini Sundar* v. *State of Chhatisgarh*[28] again commented on this aspect and said that: (SCC p. 559, para 16)

"*16.* ...(T)he Constitution itself, in no uncertain terms, demands that the State shall strive, incessantly and consistently, to promote fraternity

26 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : 1992 Supp (2) SCR 454
27 1994 Supp (1) SCC 191 : (1993) 1 SCR 480
28 (2011) 7 SCC 547 : (2011) 2 SCC (L&S) 762

amongst all citizens such that dignity of every citizen is protected, nourished and promoted".

25. It was to achieve this ideal of fraternity, that the three provisions, Articles 15, 17 and 24 were engrafted. Though Article 17 proscribes the practice of untouchability and pernicious practices associated with it, the Constitution expected Parliament and the legislatures to enact effective measures to root it out, *as well as all other direct and indirect, (but virulent nevertheless) forms of caste discrimination*. Therefore, in my opinion, fraternity is as important a facet of the promise of our freedoms as personal liberty and equality is. The first attempt by Parliament to achieve that end was the enactment of the Untouchability (Offences) Act, 1955. The Act contained a significant provision that where any of the forbidden practices "is committed in relation to a member of a Scheduled Caste" the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "Untouchability". This implied that the burden of proof lies on the accused and not on the prosecution. The Protection of Civil Rights Act, 1955, followed. This too made provision for prescribing *"punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefrom"*. The enforcement of social practices associated with untouchability and disabilities was outlawed and made the subject-matter of penalties. After nearly 35 years' experience, it was felt that the 1955 Act (which was amended in 1976) did not provide sufficient deterrence to social practices, which continued unabated and in a widespread manner, treating members of the Scheduled Caste and Tribe communities in the most discriminatory manner, in most instances, stigmatising them in public places, virtually denying them the essential humanity which all members of society are entitled to.

26. It was to address this gulf between the rights which the Constitution guaranteed to all people, particularly those who continued to remain victims of ostracism and discrimination, that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "the Act") was enacted. Rules under the Act were framed in 1995 to prevent the commission of atrocities against members of Scheduled Castes and Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons appended to the Bill, when moved in Parliament, observed that despite various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes, they remained vulnerable. They are denied a number of civil rights and are subjected to various offences, indignities, humiliation and harassment. They have been, in several brutal instances, deprived of their life and property. Serious atrocities were committed against them for various historical, social and economic reasons. The Act, for the first time, puts down the contours of "atrocity" so as to cover the multiple ways through which members of Scheduled Castes and Scheduled Tribes have been for centuries humiliated, brutally oppressed,

degraded, denied their economic and social rights and relegated to perform the most menial jobs.

27. The Report on the Prevention of Atrocities against Scheduled Castes[29] vividly described that despite enacting stringent penal measures, atrocities against Scheduled Caste and Scheduled Tribe communities continued; even law-enforcement mechanisms had shown a lackadaisical approach in the investigation and prosecution of such offences. The Report observed that in rural areas, various forms of discrimination and practices stigmatising members of these communities continued. Parliament too enacted an amendment to the Act in 2015, strengthening its provisions in the light of the instances of socially reprehensive practices that members of Scheduled Caste and Scheduled Tribe communities were subjected to. In this background, this Court observed in the decision in *National Campaign on Dalit Human Rights* v. *Union of India*[30] that: (SCC p. 445, paras 17-18)

> "*17.* ... The ever increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the petitioners sought a mandamus from this Court for effective implementation of the Act and the Rules.
>
> *18.* We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and the State Governments should be directed to strictly enforce the provisions of the Act and we do so."

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29 Published by the National Human Rights Commission at <https://nhrc.nic.in/publications/other publicationss> last accessed 15 12 2009 at 08:27 hrs.

30 (2017) 2 SCC 432 : (2017) 1 SCC (Cri) 734

28. In *Subhash Kashinath Mahajan* v. *State of Maharashtra*[1], a two-Judge Bench of this Court held that the exclusion of anticipatory bail provisions of the Code of Criminal Procedure (by Section 18 of the Act) did not constitute an absolute bar for the grant of bail, where it was discernable to the court that the allegations about atrocities or violation of the provisions of the Act were false. It was also held, more crucially, that public servants could be arrested only after approval by the appointing authority (of such public servant) and in other cases, after approval by the Senior Superintendent of Police. It was also directed that cases under the Act could be registered only after a preliminary enquiry into the complaint. These directions were seen to be contrary to the spirit of the Act and received considerable comment in the public domain; the Union of India too moved this Court for their review. In the review proceedings, a three-Judge Bench of this Court in *Union of India* v. *State of Maharashtra*[6] recalled and overruled those directions.

29. In the meanwhile, Parliament enacted the Amendment of 2018[31] (by Act 27 of 2018), which is the subject-matter of challenge in these proceedings. The clear intention of Parliament was to undo the effect of this Court's declaration in *Subhash Kashinath Mahajan*[1]. The provisions of the amendment expressly override the directions in *Subhash Kashinath Mahajan*[1], that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The parliamentary intent was to allay the concern that this would delay registration of first information report (FIR) and would impede strict enforcement of the provision of the Act.

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1 (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124

6 (2020) 4 SCC 761

31 The operative part of the amendment, a brief one, reads as follows:

"**2.** ***Insertion of new Section 18-A.*** After Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the following section shall be inserted, namely—

'**18-A.** ***No enquiry or approval required.*** (1) For the purposes of this Act—

(*a*) preliminary enquiry shall not be required for registration of a first information report against any person; or

(*b*) the investigating officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.' "

30. The judgment of Mishra, J. has recounted much of the discussion and reiterated the reasoning which led to the recall and review of the decision in *Subhash Kashinath Mahajan*[1]; I respectfully adopt them. I would only add that any interference with the provisions of the Act, particularly with respect to the amendments precluding preliminary enquiry, or provisions which remove the bar against arrest of public servants accused of offences punishable under the Act, would not be a positive step. The various reports, recommendations and official data, including those released by the National Crime Records Bureau[32], paint a dismal picture. The figures reflected were that for 2014, instances of crimes recorded were 40,401; for 2015, the crime instances recorded were 38,670 and for 2016, the registered crime incidents were 40,801. According to one analysis of the said 2016 report[33], 4,22,799 crimes against Scheduled Caste communities' members and 81,332 crimes against Scheduled Tribe communities' members were reported between 2006 and 2016.

31. These facts, in my opinion ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations are made, those are not necessarily reflective of the prevailing and widespread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of "atrocity", also lists pernicious practices (under Section 3) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such Scheduled Caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards. The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.

32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further

1 *Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124

32 <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Table%207A.1.pdf> containing statistics relating to crime against members of Scheduled Caste and Scheduled Tribe populations.

33 Indiaspend.<https://www.indiaspend.com/over a decade crime rate against dalits rose by-7-16-7-16/>

also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.

34. It is important to reiterate and emphasise that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalisation of Scheduled Caste and Scheduled Tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or *bandhutva* (बंधुत्व) referred to in the Preamble, and statutes like the Act, have been framed. These underline the social rather collective resolve of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the "otherness" of each one's identity.

35. I am of the opinion that in the light of and subject to the above observations, the petitions have to be and are, accordingly disposed of.

(2017) 13 Supreme Court Cases 439

(BEFORE R.K. AGRAWAL AND ASHOK BHUSHAN, JJ.)

MANJU DEVI .. Appellant;

Versus

ONKARJIT SINGH AHLUWALIA ALIAS OMKARJEET SINGH AND OTHERS .. Respondents.

Criminal Appeal No. 570 of 2017*, decided on March 24, 2017

A. SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Ss. 18, 3(1)(xi) and 2 — Bar of invoking S. 438 CrPC under S. 18, SC/ST Act — Grant of anticipatory bail by High Court to accused facing charges under Ss. 323, 354 & 452 IPC and S. 3(1)(xi), SC/ST Act, hence, set aside — Scope of SC/ST Act and Statement of Objects and Reasons appended to, discussed — S. 3(1)(xi), SC/ST Act and S. 354 IPC — Relative scope of, explained

Appellant, who belongs to Scheduled Caste and was working as a maid at relevant time, filed complaint under Ss. 323, 354 & 452 IPC and S. 3(1)(xi), SC/ST Act, stating that on fateful day, at around 3.00 p.m., respondent-accused entered into her quarters and caught hold of her in order to outrage her modesty When appellant somehow managed to come out of their clutches, respondents abused her and her family members on their caste by calling them "Harijans and Dhobis" and threatened with dire consequences for revealing said incident outside Above complaint resulted into registration of FIR under Ss. 323, 354 & 452 IPC and S. 3(1)(xi), SC/ST Act — Accordingly, cognizance of offence was taken by CJM, which was eventually affirmed by High Court — Respondents further preferred anticipatory bail before High Court, which was granted

Held, it is undoubtedly true that S. 438 CrPC, which is available to an accused in respect of offences under IPC, is not available in respect of offences under SC/ST Act Offences enumerated under SC/ST Act fall into a separate and special class — Art. 17 of Constitution expressly deals with abolition of "untouchability" and forbids its practice in any form and also provides that enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law The offences, therefore, which are enumerated under S. 3(1), SC/ST Act, arise out of practice of "untouchability"

It is in such context that certain special provisions have been made in SC/ST Act, including impugned provision under S. 18 — Exclusion of S. 438 CrPC in connection with offences under SC/ST Act has to be viewed in context of prevailing social conditions which give rise to such offences, and apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in prosecution of such offenders, if

* Arising out of SLP (Crl.) No. 1929 of 2015. Arising from the Judgment and Order in *Onkarjit Singh Ahluwalia* v. *State of Bihar*, 2014 SCC OnLine Pat 8263 (Patna High Court, Crl. Misc. No. 25561 of 2014, dt. 3-12-2014)

offenders are allowed to avail of anticipatory bail — Use of word "Harijan", "Dhobi", etc. is often used by people belonging to so-called upper castes as a word of insult, abuse and derision — Calling a person by these names is nowadays an abusive language and is offensive It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone

— With regard to plea that complaint is false and malicious and to wreak vengeance, held, it cannot be looked into at the stage of taking cognizance and issue of process and mala fides or bona fides of a case can only be taken into consideration at the time of trial

A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight — In the instant case, after careful consideration of materials on record, courts below have found that a prima facie case for taking cognizance against respondents is made out — S. 3(1)(xi), SC/ST Act, which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of offence — The only difference between S. 3(1)(xi), SC/ST Act and S. 354 IPC is essentially the caste or tribe to which victim belongs — If she belongs to a Scheduled Caste or Scheduled Tribe, S. 3(1)(xi) applies The other difference is that in S. 3(1)(xi), dishonour of such victim is also made an offence (Paras 12 to 24)

— In light of specific averments in complaint made by complainant, held, S. 18, SC/ST Act, creates a bar for invoking S. 438 CrPC and High Court committed grave error in granting anticipatory bail to respondents — Accordingly, such order passed by High Court is set aside Respondents are granted four weeks' time from present day to surrender before appropriate court and seek for regular bail Criminal Procedure Code, 1973 S. 438 Crimes Against Women and Children — Molestation — Penal Code, 1860 — Ss. 323, 354 and 452 Constitution of India, Art. 17

B. **Criminal Trial — Witnesses — Injured witness — Victim of molestation and indignation — Position of — Held, victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight — SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(i)(xi) — Penal Code, 1860 — Ss. 323, 354 and 452 — Crimes Against Women and Children — Molestation (Para 22)**

Vilas Pandurang Pawar v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062: *Bachu Das* v. *State of Bihar*, (2014) 3 SCC 471 : (2014) 2 SCC (Cri) 212, *relied on*

Jai Singh v. *Union of India*, 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177, *approved*

Onkarjit Singh Ahlunaua v. *State of Bihar*, 2014 SCC OnLine Pat 8263, *reversed*

Onkarjeet Singh v. *State of Bihar*, 2014 SCC OnLine Pat 8262; *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989, *referred to*

Appeal allowed Y-D/58481/SR

Advocates who appeared in this case :

A. Sharan and Ms Anjana Prakash, Senior Advocates (Sanjeev Kumar, H.K. Naik, Rajnish, Ajay Amrit Raj, P.S. Nerwal, Himanshu Shekhar, Abhinave Mukerji, Siddharth Garg, Ms Bihu Sharma, Ms Purnima Krishna, Sanchit, Ms Swati, Ms Aanchal Dutt and Suman Jyoti Khaitan, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2014) 3 SCC 471 : (2014) 2 SCC (Cri) 212. *Bachu Das* v. *State of Bihar* 447*b*
2. 2014 SCC OnLine Pat 8263. *Onkarjit Singh Ahlunaua* v. *State of Bihar* **(reversed)** 441*c d*. 442*a b*. 442*b c*. 448*b*
3. 2014 SCC OnLine Pat 8262. *Onkarjeet Singh* v. *State of Bihar* 442*a-b*. 443*c-d*
4. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062. *Vilas Pandurang Pawar* v. *State of Maharashtra* 446*e*
5. (2004) 7 SCC 558 : 2004 SCC (Cri) 1989. *Nirmal Jeet Kaur* v. *State of M.P.* 447*c d*
6. 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177. *Jai Singh* v. *Union of India* 447*b-c*

The Judgment of the Court was delivered by

R.K. AGRAWAL, J.— Leave granted. This appeal is directed against the judgment and order dated 3-12-2014 passed by the learned Single Judge of the High Court of Judicature at Patna in *Onkarjit Singh Ahlunaua* v. *State of Bihar*[1] whereby the High Court granted anticipatory bail to the respondents herein accused of commission of offence under Sections 323, 354 and 452 of the Penal Code, 1860 (in short "IPC") and Section 3(1)(*xi*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the SC/ST Act").

Brief facts

2. On 4-5-2009, one Manju Devi, the appellant herein, the complainant, filed a complaint being Complaint Case No. 1079C/09 in the Court of Chief Judicial Magistrate, Begusarai under Sections 323, 354 and 452 IPC and Section 3(1)(*xi*) of the SC/ST Act stating that on the fateful day i.e. on 18-4-2009, at around 3.00 p.m., the respondents entered into her quarter and caught hold of her in order to outrage her modesty. When the appellant herein somehow managed to come out of their clutches, the respondents abused her and her family members on their caste by calling them "Harijans and Dhobis" and threatened with dire consequences for revealing the said incident outside. The above complaint resulted into registration of first information report (FIR) being No. 65/09 under Sections 323, 354 and 452 IPC and Section 3(1)(*xi*) of the SC/ST Act in PS Sadar, Begusarai.

3. After investigation, the police filed a closure report in the same. However, the Chief Judicial Magistrate, Begusarai, being dissatisfied with the report, vide order dated 20-3-2013, took cognizance of the offence and process was issued against the respondents for commission of offence under the aforesaid sections of IPC as well as the SC/ST Act. Aggrieved by the order dated 20-3-2013, the

1 2014 SCC OnLine Pat 8263

respondents preferred a criminal revision being No. 310 of 2013 before the Additional Sessions Judge, Begusarai. The learned Additional Sessions Judge, Begusarai, vide order dated 14-12-2013, affirmed the order dated 20-3-2013 passed by the Chief Judicial Magistrate, Begusarai.

4. The respondents preferred Criminal Miscellaneous No. 12468 of 2014 before the High Court against the order dated 14-12-2013. The learned Single Judge of the High Court, vide order dated 25-3-2014[2], confirmed the order dated 14-12-2013. The respondents further preferred a criminal miscellaneous being No. 25561 of 2014 for anticipatory bail. The learned Single Judge of the High Court, vide the order dated 3-12-2014[1], granted anticipatory bail to the respondents to the satisfaction of the Judicial Magistrate, 1st Class, Begusarai.

5. Being aggrieved by the order dated 3-12-2014[1], the appellant herein has preferred this appeal by way of special leave before this Court.

6. Heard Mr Sanjeev Kumar, learned counsel for the appellant herein and Mr A. Sharan, learned Senior Counsel for the respondents.

Point for consideration

7. The only point for consideration before this Court is whether the High Court was justified in granting anticipatory bail to the respondents in the present facts and circumstances of the case.

Rival contentions

8. The learned counsel for the appellant, by drawing our attention to the relevant materials, namely, the complaint, the statement of the complainant as well as the relevant provisions of the SC/ST Act submitted that the High Court was not justified in granting anticipatory bail to the respondents, particularly, in the light of the factual conclusion arrived at by the learned Additional Sessions Judge, Begusarai in the order dated 14-12-2013. It was further contended from the side of the appellant that in view of the clear findings on the point, the High Court was not right in granting anticipatory bail to the respondents.

9. The learned Senior Counsel appearing for the respondents submitted that the allegations against them are false as the appellant was working as maid at the relevant time and was used to settle the scores between Respondent 1 and his brother owing to a long-drawn dispute pending between them. The learned Senior Counsel further submitted that from the day, namely, 3-12-2014, when the High Court granted anticipatory bail to them, no untoward incident had occurred and the respondents had cooperated with the investigating officer. It was further argued that in the above circumstances, the High Court was right in granting anticipatory bail to the respondents and no interference sought for by this Court at this stage.

2 *Onkarjeet Singh* v. *State of Bihar*, 2014 SCC OnLine Pat 8262
1 *Onkarjit Singh Ahluwalia* v. *State of Bihar*, 2014 SCC OnLine Pat 8263

Discussion

10. A perusal of the complaint shows that the complainant belongs to the Scheduled Caste and was working as a maid at the relevant time. The respondents, in order to outrage the modesty of the complainant, entered into her house and caught hold of her. When the complainant resisted to their acts, the respondents forcefully pushed her on the floor and started abusing her with filthy words that "you 'Harijan', 'dhoban', you survive on our leftover and you show attitude to us. You 'Harijan' people attitude have gone very high and today you will be left destroyed." It was further mentioned in the complaint that the respondents threatened her for life before leaving the place in case of disclosing about the incident to anyone.

11. Accordingly, cognizance was taken by the Chief Judicial Magistrate, vide order dated 20-3-2013, for the offence under various sections of IPC and the SC/ST Act. The Additional District and Sessions Judge, Begusarai, after finding out that there was sufficient material before the Chief Judicial Magistrate at the time of passing the order dated 20-3-2013, affirmed the same which was affirmed by the High Court, vide order dated 25-3-2014[2].

12. In this backdrop, it would be apt to quote Section 18 of the SC/ST Act which reads as under:

> "**18.** ***Section 438 of the Code not to apply to persons committing an offence under the Act.***—Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

13. The SC/ST Act was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for Special Courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences. "Atrocity" has been defined under Section 2 of the said Act to mean an offence punishable under Section 3. Section 3(1) provides as follows:

> "**3.** ***Punishments for offences of atrocities.***—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe—
>
> (*i*) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substances;
>
> (*ii*) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;
>
> (*iii*) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

2 *Onkarjeet Singh* v. *State of Bihar*, 2014 SCC OnLine Pat 8262

(*iv*) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(*v*) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(*vi*) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(*vii*) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(*viii*) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(*ix*) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

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

(*xi*) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(*xii*) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(*xiii*) 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;

(*xiv*) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(*xv*) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

14. It is undoubtedly true that Section 438 of the Code, which is available to an accused in respect of offences under IPC, is not available in respect of offences under the SC/ST Act. The offences enumerated under the SC/ ST Act fall into a separate and special class. Article 17 of the Constitution

expressly deals with abolition of "untouchability" and forbids its practice in any form and also provides that enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the SC/ST Act arise out of the practice of "untouchability". It is in this context that certain special provisions have been made in the SC/ST Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code in connection with offences under the SC/ST Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.

15. In this connection, it is pertinent to refer to the Statement of Objects and Reasons appended to the SC/ST Act which is as under:

> "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.
>
> **2.** Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes, has therefore, become necessary.
>
> **3.** The term "atrocity" has not been defined so far. It is considered necessary that not only the term "atrocity" should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and

where atrocities are committed, to provide adequate relief and assistance to rehabilitate them."

16. In the above context, it is now easy to understand the factual matrix of the case. The use of the word "Harijan", "Dhobi", etc. is often used by people belonging to the so-called upper castes as a word of insult, abuse and derision. Calling a person by these names is nowadays an abusive language and is offensive. It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone. We, as a citizen of this country, should always keep one thing in our mind and heart that no people or community should be today insulted or looked down upon, and nobody's feelings should be hurt.

17. Though the Constitution of India abolishes "untouchability" but in view of the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the SC/ST Act. The offences which are enumerated under Section 3 of the SC/ST Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

18. In view of the above, it would be relevant to quote a decision of this Court in *Vilas Pandurang Pawar* v. *State of Maharashtra*[3] wherein this Court has held as under: (SCC p. 799, paras 9-10)

> "9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.
>
> *10.* The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not

3 (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062

expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the special Act cannot be easily brushed aside by elaborate discussion on the evidence."

The principles laid down in the aforementioned case has been followed by this Court in *Bachu Das* v. *State of Bihar*[4].

19. A similar view of Section 18 of the SC/ST Act has been taken by the Full Bench of the Rajasthan High Court in *Jai Singh* v. *Union of India*[5] wherein it was held that the SC/ST Act with which we are concerned aims at to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The two Acts may be different in their amplitude, but indignity tolerated up to the year 1988 by the Scheduled Castes and Scheduled Tribes had been felt not to be tolerable any more, consequently, the present Act was enacted and we respectfully agree with its findings.

20. The decision relied upon by the learned Senior Counsel for the respondents in *Nirmal Jeet Kaur* v. *State of M.P.*[6] does not help the respondents for the simple reason that in the aforesaid case it has been held that Sections 438 and 439 operate in different fields and for making an application in terms of Section 439 of the Code a person has to be in custody whereas Section 438 of the Code deals with direction for grant of bail to person apprehending arrest and contemplates merely an order directing the release of accused on bail in the event of his arrest.

21. It is clear that the learned Magistrate carefully perused the complaint as well as the statement of the complainant and arrived at a conclusion that a prima facie case is made against the respondents which was upheld in revision before the Sessions Court and even in the High Court. With regard to the plea that the complaint filed by the complainant is false and malicious and to wreak vengeance by the brother of Respondent 1 herein, we are of the view that it cannot be looked into at the stage of taking cognizance and issue of process and the mala fides or bona fides of a case can only be taken into consideration at the time of trial.

22. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case, after careful consideration of the materials on record, the trial court and the High Court have found that a prima facie case for taking cognizance against the respondents is made out. Section 3(1)(*vi*) of the SC/ ST Act which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage

4 (2014) 3 SCC 471 : (2014) 2 SCC (Cri) 212
5 1993 SCC OnLine Raj 7 : AIR 1993 Raj 177
6 (2004) 7 SCC 558 : 2004 SCC (Cri) 1989

her modesty is an aggravated form of the offence. The only difference between Section 3(1)(*xi*), SC/ST Act and Section 354 IPC is essentially the caste or the tribe to which the victim belongs. If she belongs to a Scheduled Caste or Scheduled Tribe, Section 3(1)(*xi*) applies. The other difference is that in Section 3(1)(*xi*) dishonour of such victim is also made an offence.

23. In view of the above discussion and in the light of the specific averments in the complaint made by the complainant, we are of the considered opinion that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code and the High Court has committed grave error in granting anticipatory bail to the respondents. Accordingly, the order dated 3-12-2014[1], passed by the High Court, is set aside.

24. The appeal is allowed. The respondents are granted four weeks' time from today to surrender before the appropriate court and seek for regular bail. However, it is made clear that the present conclusion is confined only to the disposal of this petition and the trial court is free to decide the case on merits.

1 *Onkarjit Singh Ahluwalia* v. *State of Bihar*, 2014 SCC OnLine Pat 8263

(2014) 15 Supreme Court Cases 521

(BEFORE A.K. PATNAIK AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.)

SHAKUNTLA DEVI . . Appellant;

Versus

BALJINDER SINGH . . Respondent.

Criminal Appeal No. 595 of 2013*, decided on April 15, 2013

Criminal Procedure Code, 1973 — S. 438 — Anticipatory bail — S. 438 and special statutes — S. 3(1)(x) and S. 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Non-entitlement to anticipatory bail — Following *Vilas Pandurang Pawar*, (2012) 8 SCC 795, held, High Court has not given any finding in impugned order that an offence under aforesaid Act is not made out against respondent and has granted anticipatory bail, which is contrary to provisions of law — Hence, without going into merits of allegations, impugned order of High Court granting bail to respondent set aside — Penal Code, 1860 — Ss. 323, 354, 388 and 506 — Statute Law — Generalia specialibus non derogant/Special statute and general statute (Paras 3 and 4)

Vilas Pandurang Pawar v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062, *followed*

Baljinder Singh v. *Shakuntla Devi*, Criminal Misc. No. M-17586 of 2011, decided on 31-1-2012 (P&H), *reversed*

Appeal allowed SB-M/51636/SR

Chronological list of cases cited ***on page(s)***

1. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062: *Vilas Pandurang Pawar* v. *State of Maharashtra* 521*g h*, 522*b*
2. Criminal Misc. No. M-17586 of 2011, decided on 31-1-2012 (P&H), *Baljinder Singh* v. *Shakuntla Devi* (**reversed**) 521*f*, 522*a-b*

ORDER

1. Leave granted. We have heard the learned counsel for the parties.

2. By the impugned judgment dated 31-1-2012 passed in *Baljinder Singh* v. *Shakuntla Devi*[1], the High Court has granted anticipatory bail under Section 438 of the Criminal Procedure Code, 1973 to the respondent in Complaint Case No. 38/1 dated 30-7-2010, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 323, 354, 388 and 506 of the Penal Code, 1860 registered with PS Model Town, Panipat (Haryana).

3. We find that Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides that nothing in Section 438 of the Criminal Procedure Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. This Court has also held in *Vilas Pandurang Pawar* v. *State of Maharashtra*[2] that Section 18 of the Act creates a specific bar to the grant of anticipatory

* Arising out of SLP (Crl.) No. 8490 of 2012

1. Criminal Misc. No. M-17586 of 2011, decided on 31-1-2012 (P&H)

2. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062 : (2012) 8 Scale 577

bail to a person against whom any offence is registered under the provisions of the aforesaid Act and, therefore no court shall entertain an application for anticipatory bail unless it, prima facie, finds that an offence under the Act is not made out.

4. The High Court has not given any finding in the impugned order[1] that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in *Vilas Pandurang Pawar case*[2]. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order[1] of the High Court granting bail to the respondent.

5. The criminal appeal is allowed accordingly.

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1 *Baljinder Singh* v. *Shakuntla Devi*, Criminal Misc. No. M 17586 of 2011, decided on 31-1-2012 (P&H)

2 *Vilas Pandurang Pawar* v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062 : (2012) 8 Scale 577

(2014) 3 Supreme Court Cases 471

(BEFORE P. SATHASIVAM, C.J. AND RANJAN GOGOI, J.)

BACHU DAS .. Appellant;

Versus

STATE OF BIHAR AND OTHERS .. Respondents.

Criminal Appeal No. 314 of 2014†, decided on February 3, 2014

Criminal Procedure Code, 1973 — S. 438 — Anticipatory bail — Maintainability of application — Power of High Court to grant anticipatory bail in a case relating to SC/ST Act — Bar against granting anticipatory bail — High Court granted anticipatory bail to Respondents 2 to 8 — Complainant filed appeal against High Court order in view of bar under S. 18 of SC/ST Act — Accused submitted that from the day when High Court granted anticipatory bail, no untoward incident had occurred and they were cooperating with investigating officer — Magistrate carefully perused complaint petition, as well as statement of complainant and four witnesses examined during enquiry and arrived at a prima facie conclusion against accused persons that the offence under Ss. 147, 148, 149, 323, 448 IPC and S. 3 of SC/ST Act, is made out — Held, in view of the bar under S. 18 of SC/ST Act, High Court committed an error in granting anticipatory bail — Anticipatory bail, cancelled — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 18 and 3 (Paras 6 and 7)

Vilas Pandurang Pawar v. *State of Maharashtra*, (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062, *followed*

Bachu Das v. *State of Bihar*, Criminal Misc. No. 16213 of 2010, order dated 5-5-2010 (Pat), *reversed*

Appeal allowed J D/52859/CR

Advocates who appeared in this case:

Anuj Prakash and Samir Ali Khan, Advocates, for the Appellant;

Gopal Singh, Manish Kumar, Ravi Shankar Kumar, B.K. Choudhary and Nitin Kr. Thakur, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062, *Vilas Pandurang Pawar* v. *State of Maharashtra* 472*h*
2. Criminal Misc. No. 16213 of 2010, order dated 5-5-2010 (Pat), *Bachu Das* v. *State of Bihar* **(reversed)** 471*g-h*

ORDER

1. Heard all the parties concerned. Leave granted. The complainant, aggrieved by the impugned order of the High Court dated 5-5-2010[1], granting anticipatory bail to Respondents 2 to 8 (Accused 1 to 7), has filed the above appeal.

† Arising out of SLP (Crl.) No. 8558 of 2010. From the Judgment and Order dated 5-5-2010 of the High Court of Judicature of Patna in Crl. Misc. No. 16213 of 2010

[1] *Bachu Das* v. *State of Bihar*, Criminal Misc. No. 16213 of 2010, order dated 5-5-2010 (Pat)

2. The learned counsel for the appellant by drawing our attention to the relevant materials, namely, the complaint, the statement of the complainant and four witnesses, as well as the relevant provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC/ST Act"), submitted that the High Court is not justified in granting anticipatory bail, particularly, in the light of the factual conclusion arrived at by the Sessions Judge, Saran at Chapra, Bihar on 28-11-2008.

3. The learned counsel appearing for the State supported the claim of the appellant.

4. The learned counsel appearing for the respondent-accused submitted that from the day, namely, 26-2-2010, when the High Court granted anticipatory bail to these persons, no untoward incident had occurred and they cooperated with the investigating officer. He also brought to our notice the earlier order of the High Court dated 26-2-2010, wherein it is mentioned that there is serious land dispute between the parties and use of filthy language by caste name, is unacceptable. Relying on this order, the counsel for the accused submitted that no interference is called for in the order passed by the High Court.

5. As rightly pointed out by the learned counsel appearing for the appellant complainant, in the order dated 28-11-2008, the learned Sessions Judge, Saran at Chapra, after taking note of all the materials, has concluded as under:

> "Having considered the submissions urged at the Bar, going through the impugned order and LCR and finding that the learned Magistrate after perusal of the complaint petition, statement of the complainant and of the four witnesses examined during enquiry has come to the conclusion that against the accused persons offence under Sections 147/148/149/323/448 IPC and under Section 3 of the SC/ST Act is made out which appears quite legal, proper and correct one. At this stage the Magistrate is required only to see as to whether on the basis of the materials available on the record prima facie case is made out or not? I have also perused the materials placed on the record and the Court is of the opinion that against the accused persons prima facie case as found by the learned Magistrate is made out and the accused persons have rightly been summoned. In the result finding no merit in this criminal revision the same is hereby dismissed."

6. It is clear that the learned Magistrate carefully perused the complaint petition, as well as the statement of the complainant and four witnesses examined during enquiry and arrived at a prima facie conclusion against the accused persons that the offence under Sections 147, 148, 149, 323, 448 IPC and Section 3 of the SC/ST Act, is made out. In such circumstance and in view of the bar under Section 18 of the SC/ST Act, the learned counsel relying on the decision of this Court in *Vilas Pandurang Pawar* v. *State of Maharashtra*[2], submitted that the High Court is not justified in granting

2. (2012) 8 SCC 795 : (2012) 3 SCC (Cri) 1062

anticipatory bail. In similar circumstance, this Court has considered the offence under Section 3(1), as well as the bar provided under Section 18 of the SC/ST Act and concluded as under: (SCC p. 799, paras 9-10)

> "9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.
>
> *10.* The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

7. In the light of the factual details, as found in the order of the learned Sessions Judge, Saran at Chapra, dated 28-11-2008, and in the light of the statutory provision as interpreted by this Court in the abovecited decision, we are satisfied that the High Court has committed an error in granting anticipatory bail. Accordingly, the said order is set aside. Respondents 2 to 8-accused are granted four weeks' time from today to surrender before the appropriate court and seek for regular bail.

8. It is made clear that we have not gone into the merits of their claim and it is open to the respondent-accused to put forth their stand, including their claim that during the interregnum period, namely, 26-2-2010, the date on which the High Court has granted the anticipatory bail and till today, no untoward incident had occurred at their instance.

9. With the above observation, the appeal is allowed.

learned counsel for the appellant is of no assistance on this aspect while the decision relied upon by the High Court fully supported the case of the prosecution.

19. Having regard to our above conclusion, we do not find any merit in this appeal, the appeal fails and the same is dismissed.

(2012) 8 Supreme Court Cases 795

(BEFORE P. SATHASIVAM AND RANJAN GOGOI, JJ.)

VILAS PANDURANG PAWAR AND ANOTHER .. Petitioners;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

SLP (Crl.) No. 6432 of 2012[†], decided on September 10, 2012

A. **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 18 r/w S. 438 CrPC, 1973 — Scope of S. 18 of SC/ST Act, 1989** **(Paras 7 to 13)**

B. **Criminal Procedure Code, 1973 — S. 438 — Anticipatory Bail — S. 438 and Special Statutes — S. 3(1)(x), Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Non-entitlement to anticipatory bail — Appellants abusing complainant on caste grounds for allowing accumulated rainwater to flow into their adjacent agricultural land — Abuse rendered by appellants in bus terminus as well as upon assaulting complainant on their return home — Held, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling caste name, accused persons are not entitled to anticipatory bail — However, a duty is cast on court to verify averments made in complaint and to find out whether offence under S. 3(1) of SC/ST Act has been prima facie made out — In present case averments in complaint meeting the above requirement, held, petitioners are not entitled to anticipatory bail — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Ss. 18 and 3(1)(x) — Statute Law — Generalia specialibus non derogant/Special Statute and General Statute** **(Paras 7 to 13)**

Held :

Section 18 of the SC/ST Act creates a bar for invoking Section 438 CrPC. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. (Paras 9 and 10)

C. **Criminal Procedure Code, 1973 — S. 438 — Anticipatory bail — Grant of — Proper exercise of discretionary jurisdiction/disposal of bail application — Held, while considering application for bail, scope for appreciation of evidence and other material on record is limited — Court is**

[†] From the Judgment and Order dated 19.7.2012 of the High Court of Bombay, Bench at Aurangabad in Crl. Application No. 3012 of 2012

not expected to indulge in critical analysis of evidence on record — A provision enacted in Special Act to protect persons belonging to Scheduled Castes and Scheduled Tribes and bar imposed therein on granting bail under S. 438 CrPC, cannot be easily brushed aside by elaborate discussion of evidence — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 18 and 3(1)(x) (Para 10)

R.K. Sangwan v. *State*, (2009) 112 DRJ 473; *M.A. Rashid* v. *Gopal Chandra*, Cri. MC No. 3866 of 2008 (Crl. MC 3866/2008), decided on 23-3-2012 (Del); *Ramesh Prasad Bhanja* v. *State of Orissa*, 1996 Cri LJ 2743 (Ori), *distinguished*

Vilas Pandurang Pawar v. *State of Maharashtra*, Criminal Application No. 3012 of 2012, decided on 19-7-2012 (Bom), *affirmed*

SLP dismissed SB-D/50615/CR

Advocates who appeared in this case :
Dilip Annasaheb Taur and Anil Kumar, Advocates, for the Petitioners.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

P. SATHASIVAM, J.— The short question to be decided in this petition is whether an accused charged with various offences under the Penal Code, 1860 (in short "IPC") along with the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the SC/ST Act") is entitled for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (in short "the Code").

2. In the complaint filed by Savita Madhav Akhade, Respondent 3 herein, it has been alleged that she has been residing with her family members at Khandeshwari, Taluq Karjat, Ahmednagar, Maharashtra and earning their livelihood from agricultural work. It is further alleged that the complainant is having an agricultural land adjacent to the agricultural land of one Balu Bhanudas Pawar and Arun Bhanudas Pawar. On 15-6-2012, the complainant allowed the rainwater, which was accumulated, to flow into the field of Balu Bhanudas Pawar. When the complainant and her husband were standing on S.T. stand for going to Karjat, at that time, Balu Bhanudas Pawar came there and abused them on caste on account of the rainwater flowing from the agricultural land of the complainant to his land. The complainant has also alleged that after their return to home, the petitioner along with other co-accused persons gathered at their house and they again abused them on their caste and assaulted the complainant and her family members by using sticks, stones, lighters, etc. Thereafter, on the same day, an FIR was registered being No. 139 of 2012 at Karjat PS, Ahmednagar, Maharashtra.

3. The petitioners along with other co-accused filed an application for anticipatory bail under Section 438 of the Code being Criminal Miscellaneous Application No. 712 of 2012 before the Court of Sessions Judge, Ahmednagar. By an order dated 4-7-2012, the Additional Sessions Judge rejected their application for anticipatory bail.

4. Aggrieved by the order of the Sessions Judge, the petitioners filed Criminal Application No. 3012 of 2012 before the High Court of Bombay, Bench at Aurangabad. By the impugned judgment and order dated 19-7-2012[1], the High Court, while rejecting the anticipatory bail application of the present petitioners, allowed the anticipatory bail to 13 accused out of 15. Being aggrieved, the petitioners approached this Court by filing special leave petition under Article 136 of the Constitution of India.

5. Heard Mr Dilip Annasaheb Taur, learned counsel for the petitioners.

6. Taking note of the fact that the complaint not only refers to various offences under IPC but also under Section 3(1)(*x*) of the SC/ST Act, we posed a question to the counsel by drawing his attention to Section 18 of the SC/ST Act as to how the petitioners are entitled to anticipatory bail.

7. It is useful to reproduce Section 18 of the SC/ST Act which reads as under:

> "**18.** ***Section 438 of the Code not to apply to persons committing an offence under the Act.***—Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

A reading of the above provision makes it clear that Section 438 of the Code is not applicable to persons committing an offence under the SC/ST Act. In the complaint, the complainant has specifically averred that she and her family members were insulted by the petitioners by mentioning her caste and also assaulted them by saying "*beat the Mahar so that they should not live in the village*".

8. In order to understand the grievance of the complainant and the claim of the petitioners, it is useful to extract the complaint dated 15-6-2012:

"COMPLAINT

I, Sau. Savita Madhav Akhade, age 45 years, occu. household, r/o Takali Khandeshwari, Taluq Karjat, (caste — Hindu Mahar).

I am giving in writing the complaint in the police station that, I am residing on the above place with husband Madhav, my sons Ramesh, Umesh jointly. My husband is in service in Beed District. Near my house, Dadasaheb Paraji Akhade, Sadashiv Paraji Akhade and Deelip Paraji Akhade are residing with their families and doing the agricultural work. There is my agricultural land in Khandeshwari area. Near my agricultural land, there is agricultural land of Balu Bhanudas Pawar and Arun Bhanudas Pawar and they are cultivating their lands. On 15-6-2012, we allowed the rainwater to flow on the lower side and that flow is running from previously.

Today on dated 15-6-2012 at about 7.00 o'clock, my husband stood on Takali Khandeshwari S.T. stand for going to Karjat, at that time, Balu Bhanudas Pawar came there and said to my husband that, '*Mahardya*', I

[1] *Vilas Pandurang Pawar v. State of Maharashtra*, Criminal Application No. 3012 of 2012, decided on 19-7-2012 (Bom)

will not be allowing your water to come in my field and started beating him. After that, the people, who gathered along with Shivaji Anna Thombe has rescued the quarrel. After that, my husband came at home.

After we came at home, while I was fetching the water from water tank, the TATA ACC belongs to Vilas Pawar in that all the people, namely, Balu Bhanudas Pawar, Vilas Pandurang Pawar, Ravi Dada Pawar, Arun Bhanudas Pawar, Shrirang Pawar, Deepak Bhagade, Parmeshwar Indrajit Phadtare, Sudhir Chhagan Phadtare, Satish Namdeo Kirdat, Raghunath Tukaram Savant, Vitthal Raghunath Savant, Sandeep Raghunath Savant, Aba Kaka Phadtare, Dattatray Namdeo Pawar, nephew of Balu Pawar, all r/o Takali Khandeshwari (Pawar Vasti) came there and said that, *beat the Mahar so that they should not live in the village*, they are behaving arrogantly, saying that, they started beating with the weapons in hand like sticks, stones, fighters. In that quarrel, I myself, Dada Paraji Akhade, Sadashiv Paraji Akhade, Kundlik Gaikwad, Ramesh Akhade, Umesh Akhade, Rahul Akhade, Asru Akhade, Deelip Akhade are beaten at the hands of these people, so also, Nanda Deelip Akhade, Chhabubai Dadasaheb Akhade including myself were snatched on corner and beaten by these people. Thereafter, Vilas Pandurang Pawar told to Raghunath Tukaram Savant to help them. Thereafter, we phoned to police and the quarrel stopped after the police came on the spot.

Therefore, on 15-6-2012, near about 7.00 to 7.30 a.m. the persons, namely, Balu Bhanudas Pawar, Vilas Pandurang Pawar, Ravi Dada Pawar, Arun Bhanudas Pawar, Shrirang Pawar, Deepak Bhagade, Parmeshwar Indrajit Phadtare, Sudhir Chhagan Phadtare, Satish Namdeo Kirdat, Raghunath Tukaram Savant, Vitthal Raghunath Savant, Sandeep Raghunath Savant, Aba Kaka Phadtare, Dattatray Namdeo Pawar, nephew of Balu Pawar, name is not known, all r/o Takali Khandeshwari have gathered unlawful assembly and assaulted the complainant and her relatives by means of sticks, stones, fighters and also abused on caste by saying, '*beat the Mahar so that they should not live in the village*', on the ground that, the rainwater is allowed to flow in the field of Balu Bhanudas Pawar. I and others have sustained injuries. We want to go in hospital.

My complaint is read over to me and it is true as stated by me.

Before Hence, written

sd/- Date: 15-6-2012

Police Station Officer,
Karjat Police Station.

Sent to: Hon'ble JMFC,
Karjat.

sd/-
Police Station Officer,
Karjat Police Station."

A perusal of the complaint shows that the petitioners and other accused persons abused the complainant and her husband by calling their caste (Mahar) and assaulted them for their action of letting rainwater into their field.

9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

11. The learned counsel appearing for the petitioners, relying on the decisions of the Delhi High Court in *R.K. Sangwan* v. *State*[2] and *M.A. Rashid* v. *Gopal Chandra*[3] decided on 23-3-2012 and decision of the Orissa High Court in *Ramesh Prasad Bhanja* v. *State of Orissa*[4] submitted that in spite of the specific bar under Section 438 of the Code, the courts have granted anticipatory bail to the accused who were charged under Section 3(1) of the SC/ST Act.

12. In view of the specific statutory bar provided under Section 18 of the SC/ST Act, the above decisions relied on by the petitioners cannot be taken as a precedent and as discussed above, it depends upon the nature of the averments made in the complaint.

13. In view of the above discussion and in the light of the specific averments in the complaint made by the complainant Respondent 3 herein, we are of the view that Section 18 of the SC/ST Act is applicable to the case on hand and in view of the same, the petitioners are not entitled to anticipatory bail under Section 438 of the Code. Accordingly, the special leave petition is dismissed. However, it is made clear that the present conclusion is confined only to the disposal of this petition and the trial court is free to decide the case on merits.

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2 (2009) 112 DRJ 473

3 Crl. MC No. 3866 of 2008 (Crl. MC 3866/2008), decided on 23-3-2012 (Del)

4 1996 Cri LJ 2743 (Ori)

(1995) 3 Supreme Court Cases 221

(BEFORE B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.)

STATE OF M.P. AND ANOTHER .. Appellants;

Versus

RAM KISHNA BALOTHIA AND ANOTHER .. Respondents.

Civil Appeal No. 1343 of 1995 with Nos. 1344-1400 of 1995†,
decided on February 6, 1995

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 18 — Constitutionality — Non-applicability of provision for anticipatory bail under S. 438 CrPC in respect of offences under S. 3 of the Act — Held, not violative of Arts. 14 and 21 having regard to the historical background and the social conditions — Offences enumerated under S. 3 pertain to a separate and special class and denial of anticipatory bail in the circumstances not unreasonable — S. 438 CrPC does not form an integral part of Art. 21 and anticipatory bail provided for the first time under the new Code is concerned with the Sessions Court and High Court and cannot be claimed as a matter of right — CrPC, 1973, S. 438 — Constitution of India, Arts. 14 & 21 and 17

Held :

Section 18 of the said Act, denying the application of provisions for anticipatory bail to those accused under that Act, cannot be considered as violative of Articles 14 and 21 of the Constitution. (Para 12)

The offences which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the Act, including the impugned provision under Section 18. Article 17 forbids practice of untouchability and also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences. (Para 6)

The submission that while Section 438 is available for graver offences under the IPC, it is not available for even "minor offences" under the Act is not justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the IPC. (Para 10)

† From the Judgment and Order dated 25-3-1994 of the Madhya Pradesh High in Misc. P. No. 1748 of 1993

Jai Singh v. *Union of India*, AIR 1993 Raj 177, *approved*

Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. Looking to the cautious recommendation of the Law Commission on the basis of which Section 438 was incorporated in the Code, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21. (Para 7)

Kartar Singh v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899 : JT (1994) 2 SC 423, *relied on*

Looking to the historical background relating to the practice of 'untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the Act. It cannot be considered in any manner violative of Article 21. (Para 9)

R-M/14139/CR

Advocates who appeared in this case :

U.N. Bachawat, Senior Advocate (Ms Kitty Kumaramangalam, Y.P. Mahajan, P. Parameswaran, A.K. Srivastava, Ms Sushma Suri, Sakesh Kumar, S.K. Agnihotri, Goutam Bose, Amitabh Verma, Ashok Mathur, K.M. Shukla, P.K. Manohar, Kartar Singh, M.S. Dahiya, S.K. Chaturvedi, C.S. Ashri, S.S. Sharma, A.K. Sanghi, B.P. Singh and B.S. Banthia, Advocates, with him) for the appearing parties.

The Judgment of the Court was delivered by

SUJATA V. MANOHAR, J.— Special leave granted.

2. These appeals by special leave have been filed by the State of Madhya Pradesh and another against the judgment and order dated 25-3-1994 of the High Court of Madhya Pradesh which is the common judgment governing all these appeals. In the petitions which were filed by the respondents here, before the High Court of Madhya Pradesh under Article 226 of the Constitution, the respondents had challenged the constitutional validity of certain provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The High Court, while negativing this challenge in respect of some of the sections of the said Act has, however, held that Section 18 of the said Act is unconstitutional since it violates Articles 14 and 21 of the Constitution of India. The present appeals have been filed by the State of Madhya Pradesh to challenge the finding of the Madhya Pradesh High Court in respect of Section 18 of the said Act.

3. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is as follows:

> "*Section 438 of the Code not to apply to persons committing an offence under the Act.*— Nothing in Section 438 of the Code shall apply

in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

4. Section 438 of the Code of Criminal Procedure provides for grant of bail to persons apprehending arrest. It provides, inter alia, that when any person has reason to apprehend that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or to a Court of Session for a direction that in the event of such arrest, he shall be released on bail. We have to consider whether the denial of this right to apply for anticipatory bail in respect of offences committed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be considered as violative of Articles 14 and 21 of the Constitution.

5. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the said Act") was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences. 'Atrocity' has been defined under Section 2 of the said Act to mean an offence punishable under Section 3(1). Section 3(1) provides as follows:

"3. *Punishments for offences of atrocities.*—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(*i*) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(*ii*) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(*iii*) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(*iv*) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(*v*) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(*vi*) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(*vii*) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(*viii*) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(*ix*) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

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

(*xi*) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(*xii*) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(*xiii*) 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;

(*xiv*) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(*xv*) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

Section 438 of the Code of Criminal Procedure does not apply to any case involving arrest of any person accused of having committed any of the above offences.

6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its

practice in any form. It also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated:

> "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons
>
> 2. ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if

anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

7. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

> "We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised."

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

8. Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 came for consideration before this Court in the case of *Kartar Singh* v. *State of Punjab*[1]. Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 also provides that nothing in Section 438 of the Code of Criminal Procedure shall apply in relation to any case involving arrest of any person of an accusation of having committed an offence punishable under this Act or any rule made thereunder. The language of Section 20(7) is almost identical with the language of Section 18 of the said Act which we are considering. It was argued before this Court in *Kartar Singh case*[1] that the right of an accused to avail of anticipatory bail is an integral part of Article 21 of the Constitution and its removal from the Terrorists and Disruptive Activities (Prevention) Act, 1987 would be violative of Article 21. This Court referred to the history of introduction of Section 438 in the Code of Criminal Procedure (para 355) and said that there was no such provision in the old Criminal Procedure Code and it was introduced for the first time in the present Code of 1973. This Court also pointed out that Section 438 is omitted in the State of U.P. by Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976, with effect

1 (1994) 3 SCC 569 · 1994 SCC (Cri) 899 : JT (1994) 2 SC 423

from 28-11-1975. In the State of West Bengal, a proviso has been inserted to Section 438(1) with effect from 24-11-1988 to the effect that no final order shall be made on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 7 years, without giving the State not less than seven days' notice to present its case. A similar provision is also introduced by the State of Orissa. Where a person accused of a non-bailable offence is likely to abscond or otherwise misuse his liberty while on bail, he will have no justification to claim the benefit of anticipatory bail. In the case of terrorists and disruptionists, there was every likelihood of their absconding and misusing their liberty if released on anticipatory bail and, therefore, there was nothing wrong in not extending the benefit of Section 438 to them. This Court concluded: (SCC p. 700, para 329)

> "Further at the risk of repetition, we may add that Section 438 is a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21."

Its answer was in the negative. Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 was upheld.

9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of 'untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

11. A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in the case of *Jai Singh* v. *Union of India*[2] and we respectfully agree with its findings.

2 AIR 1993 Raj 177

12. In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution.

13. The appeals are accordingly allowed. In the circumstances, there will be no order as to costs.

(1995) 3 Supreme Court Cases 228

(BEFORE DR A.S. ANAND AND K.S. PARIPOORNAN, JJ.)

PREM KUMAR AND ANOTHER .. Appellants;

Versus

STATE OF BIHAR .. Respondent.

Criminal Appeal No. 434 of 1991[†], decided on March 2, 1995

A. **Criminal Trial — Circumstantial evidence — Motive — Importance and value of — When direct evidence available motive loses its significance — But when motive established, it provides foundational material to connect the chain of circumstances**

When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. If the motive is proved or established, *it affords a key or pointer* to scan the evidence in the case *in that perspective* and as a satisfactory circumstance of corroboration. It is a very relevant and important aspect — (*a*) to highlight the intention of the accused, and (*b*) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case. (Para 5)

State of U.P v. *Moti Ram*, (1990) 4 SCC 389 : 1990 SCC (Cri) 585, *referred to*

B. **Evidence Act, 1872 — S. 45 — Expert evidence — Ballistic expert — Failure to send cartridges recovered from the body of the deceased to the ballistic expert — Held, not fatal when rifles alleged to have been used by the accused not recovered**

Mohinder Singh v. *State*, 1950 SCR 821 : AIR 1953 SC 415, *distinguished* and *limited*

S-M/M/14207/CR

Advocates who appeared in this case :

Rajender Singh, Senior Advocate (M.P. Jha, Advocate, with him) for the Appellants;

H.L. Agrawal, Senior Advocate (B.B. Singh, Advocate, with him) for the Respondent.

The Judgment of the Court was delivered by

PARIPOORNAN, J.— The appellants in this appeal, Prem Kumar Singh @ Prem Singh s/o Mundrika Singh and Ramesh Singh s/o Chandrika Singh, are Accused 1 and 2 in Sessions Trial No. 219 of 1983, Additional Sessions Judge, Palamau. They have filed this appeal against the affirmance of their conviction under Section 302 of the Indian Penal Code, by the Patna High Court, Ranchi Bench, Ranchi, by judgment dated 8-9-1989. The above two

† From the Judgment and Order dated 8 9 1989 of the Patna High Court in Cri. A. No. 90 of 1987(R)

(2017) 2 Supreme Court Cases 432

(BEFORE DR T.S. THAKUR, C.J. AND DR D.Y. CHANDRACHUD AND L. NAGESWARA RAO, JJ.)

Writ Petition (C) No. 140 of 2006*

NATIONAL CAMPAIGN ON DALIT HUMAN RIGHTS AND OTHERS . . Appellants;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

With

(BEFORE DR T.S. THAKUR, C.J. AND DR D.Y. CHANDRACHUD AND L. NAGESWARA RAO, JJ.)

Civil Appeal No. 12256 of 2016†

NATIONAL DALIT MOVEMENT FOR JUSTICE . Appellant;

Versus

STATE OF MADHYA PRADESH AND OTHERS . . Respondents.

Writ Petition (C) No. 140 of 2006 with Civil Appeal No. 12256 of 2016, decided on December 15, 2016

A. **SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Grievance as to (a) ineffective implementation of Act and indifferent attitude of authorities in implementation of Act; and (b) failure to strictly comply with Rr. 3, 8, 9, 10, 15(1), 16 and 17 of 1995 Rules — Directions issued to Central Government, State Governments, National Commissions for Scheduled Castes and Scheduled Tribes for effective implementation of Act and Rules**

— National Legal Services Authority requested to formulate schemes to spread awareness and provide free legal aid to members of SC/ST communities — However, as Act and Rules themselves created authorities for effective implementation of provisions, petitioners granted liberty to approach authorities concerned at first instance and then High Court for redressal of their grievances, if any — Constitution of India — Arts. 14, 15, 16, 17, 21, 32, 39-A, 338 and 338-A — Legal Services Authorities Act, 1987 — S. 12 — Human and Civil Rights — International Convention on the Elimination of All Forms of Racial Discrimination, 1966 — Art. 1 — Untouchability (Offences) Act, 1955 (22 of 1955) — Ss. 3 to 7 — Human and Civil Rights — Protection of Civil Rights Act, 1955 — Ss. 3 to 7-A — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, Rr. 3, 8, 9, 10 and 15 to 17

* Under Article 32 of the Constitution of India

† Arising out of SLP (C) No. 37164 of 2016 (CC No. 19532 of 2011). From the Judgment and Order dated 24-2-2011 of the Madhya Pradesh High Court at Jabalpur in WP No. 3318 of 2010 (PIL)

The petitioners who are voluntary organisations are continuing the struggle for emancipation of members of Scheduled Castes and Scheduled Tribes. The petitioners have filed the present writ petition aggrieved by the non-implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Therefore, they sought directions from the Supreme Court in effective implementation of the Act.

Disposing of the petition, the Supreme Court

Held :

After careful examination of the material on record, the Supreme Court was of opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act. At the same time, the Central Government has an important role to play in ensuring the compliance of the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and the State Governments for the effective implementation of the Act to be placed before Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and the Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. The Central Government and State Governments should be directed to strictly enforce the provisions of the Act and they were accordingly directed to do so. The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of the Scheduled Castes and Scheduled Tribes. (Para 18)

The petitioners are at liberty to approach the authorities concerned and thereafter the High Courts for redressal of their grievances, if any. In view of the aforesaid, the writ petition is disposed of. (Para 20)

Safai Karamchari Andolan v. *Union of India*, (2014) 11 SCC 224 : (2014) 3 SCC (L&S) 814, *applied*

B. **SCs, STs, OBCs and Minorities — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Scope of, discussed — Held, it enlarges scope of criminal liability of several acts or omissions not covered under IPC or Protection of Civil Rights Act, 1955 — It also provides protection to these communities against social disabilities, properties, malicious prosecution, political rights and economic exploitation — Minimum punishment of public servant neglecting to perform his duties under this**

Act has also been increased — Provisions for grant of minimum relief and compensation have been made to victims of atrocities and their heirs — Further, (i) externment of potential offenders from Scheduled Areas and Tribal Areas; (ii) attachment of properties of accused under Act; (iii) prohibition of grant of anticipatory bail; (iv) making Probation of Offenders Act, 1958 inapplicable; (v) cancellation of arms licences of potential offenders; and (vi) grant of arms licence to members belonging to SC/ST community as means of self-defence also find place in scope of Act

Held :

The Act enlarges the scope of criminal liability by including several acts or omissions of atrocities which were not covered by the Penal Code or the Protection of Civil Rights Act, 1955. The Act also provides protection to the Scheduled Castes and Scheduled Tribes for various atrocities affecting social disabilities, properties, malicious prosecution, political rights and economic exploitation. The Act also provides for enhanced punishment for commission of offences against the Scheduled Castes and Scheduled Tribes. The minimum punishment for neglect of duties committed by a public servant was also increased. Provisions were made for granting minimum relief and compensation to victims of atrocities and their legal heirs. The other salient features of the Act include externment of potential offenders from Scheduled Areas and Tribal Areas as well as attachment of the properties of the accused. The Act prohibits the grant of anticipatory bail to the accused and the Probation of Offenders Act, 1958 was also made inapplicable to the Act. Certain preventive measures provided in the Act include cancellation of arms licences of potential offenders and even grant of arms licences to Scheduled Castes and Scheduled Tribes as a means of self-defence. (Para 14)

G-D/57982/CR

Advocates who appeared in this case :

Suryanarayana Singh, S.K. Pabbi, S.S. Shamshery, Additional Advocates General and Colin Gonsalves, Senior Advocate (Ms Pallavi Sharma, Ms Jyoti Mendiratta, Ms Rekha Pandey, Vijay Prakash, Dhruv Sheoran, Karam Sethi, Ansh Singh Luthra, B.K. Prasad, Ajay Kr. Singh, S.K. Gupta, Raj Bahadur Yadav, D.S. Mahra, Ms Sushma Suri, S. Udaya Kr. Sagar, Baskula Athik, Anil K. Jha, Ms Priyanka Tyagi, Gopal Singh, Manish Kumar, Ms Shreyas Jain, Ms Disha Singh, Shivendu Gaur, Ms Pragati Neekhra, V.N. Raghupathy, Prakash Jadhav, Hansliankar Sharan, Dr Monika Gusain, K.K. Shukla, Rituraj Biswas, Jatinder Kr. Bhatia, Ashutosh Kr. Sharma, Ravi P. Mehrotra, K.V. Jagdishvaran, Ms G. Indira, Shivdeep Roy, Sayooj Mohan Das, Sapam Biswajit Meitei, Naresh Kr. Gaur, Ms Linthoingambi Thongam, Surendra Kr. Gupta, Ajay Singh-I, Amit Sharma, Prateek Yadav, Ankit Raj, Milind Kumar, M. Yogesh Kanna, Ms Nithya, Nishant Katneshwarkar, Arpit Rai, K. Enatoli Sema, Ms Edward Belho, Amit Kr. Singh, P. Luiking Michael, Ranjan Mukherjee, K.V. Kharhyngdoh, V.G. Pragasam, Prabu Ramasubramanian, Mishra Saurabh, Ankit G. Lal, Ms Hemantika Wahi, Ms Puja Singh, Ms Aagam Kaur, Ms Aruna Mathur, Yusuf Khan, Avnish Arputham, Ms Anuradha Arputham, Abhijit Sengupta, Anil Shrivastav, Avijit Bhattacharjee, B.S. Banthia, Gunnam Venkateswara Rao, Kh. Nobin Singh, Manish Kr. Saran, Ms Anil Katiyar, Sanjay R. Hegde, Sibo Sankar Mishra, T.V. George, M.P. Jha, Vishwajit Singh, M/s Corporate Law Group and P.V. Yogeswaran, Advocates) for the appearing parties

Chronological list of cases cited ***on page(s)***

1. (2014) 11 SCC 224 : (2014) 3 SCC (L&S) 814, *Safai Karamchari Andolan* v. *Union of India* 445g

The Judgment of the Court was delivered by

L. NAGESWARA RAO, J.

"I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a lifelong struggle against the oppressions and indignities that have been heaped upon these classes of people." Mahatma Gandhi

1. The petitioners who are voluntary organisations are continuing the struggle for emancipation of members of Scheduled Castes and Scheduled Tribes. The petitioners have filed this writ petition aggrieved by the non-implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and the Rules made thereunder, seeking the following reliefs:

A. "Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to set up special officers, nodal officers and protection cell as required under the Act forthwith.

B. Pass an order directing the nodal officer to investigate every case where a complaint is made to him regarding negligence of a police officer, where the FIRs are illegally not registered or registered improperly, where charge-sheets are filed late, where the investigation is done by an officer lower in rank than a Dy. SP, and to take action against the officer concerned for acting contrary to the provisions of the Act in accordance with law.

C. Pass an order directing the respondents to file status reports on filing charge-sheets in SC/ST (PoA) Act of 1989 cases and duration that have taken place in last five years.

D. Pass an order directing the respondents to set up separate Special Courts for each district within six months.

E. Pass an order directing the respondent to file status reports on registration of FIRs against the erring officials under Section 4 of the Act.

F. Pass an order directing the respondents to identify and notify atrocity-prone areas and to take appropriate action in accordance with law immediately.

G. Pass an order directing the respondents to file status reports on the cases they registered against SC/STs after the SC/ST lodged complaint and status of the cases.

H. Pass an order directing the judicial officers to carefully monitor all cases in their jurisdiction to ensure that the cases are given top priority and speedy justice is done for the victims of caste atrocities and to make a report every six months to the High Court.

I. Pass an order directing the District Magistrate to review the performance of Special Public Prosecutors every month and report to their respective High Court.

J. Pass an order directing the respondent to file status reports of the Public Prosecutors' performance regarding SC/ST cases within a period of six months.

K. Pass an order directing the District Magistrates to appoint Senior Advocate for prosecution if the victim so desires.

L. Pass an order directing the respondent to appoint, wherever possible, Public Prosecutors from the SC/ST caste and if possible SC/ST women advocates and impart periodic training.

M. Pass an order directing all judicial officers to play a proactive role during the trial to ensure that the prosecution conducts itself competently and nothing is done to result in any disservice to the victims.

N. Pass an order directing the respondents and particularly the Director of Prosecutions to review all cases of acquittal by the Special Courts over the last five years which have not been carried in appeal, and to take immediate steps in accordance with law.

O. Pass an order directing all judicial officers to pay particular attention to cases where the accused have not been arrested.

P. Pass an order directing all judicial officers to ensure that no pressure whatsoever is brought to bear on the victims or their witnesses to force them to withdraw from prosecution.

Q. Pass an order directing the respondents to instruct the Special Public Prosecutors to file for cancellation of bail where the same is contrary to the purpose and objective of the (Prevention of Atrocities) Act.

R. Pass an order directing the Chief Secretary/Administrators of the respondent States/UTs to enquire into the performance of the Superintendents of Police and the Collectors of every district where atrocities are frequently reported and, wherever justified, punish such officers for not acting promptly and in accordance with the law.

S. Pass an order directing the respondents to frame a rehabilitation package forthwith in accordance with the Act and the Rules.

T. Pass an order directing the respondents to set up Dalit Legal Aid Centres operated by Dalit lawyers and funded by the State Legal Aid Services Authority.

U. Pass an order directing the State Governments to implement the SC and ST (PoA) Act of 1989 fully (West Bengal).

V. Pass an order directing the police officers to apply their minds to all the provisions of Sections 3(1)(*i*) to 3(1)(*xv*) while registering FIRs.

W. Pass an order directing the respondent that on a complaint being made by the victim of a social/economic boycott, the bail of the accused be cancelled and strict action including criminal prosecution taken

against the officials by the District Magistrates and the Presiding Officers (compensation to be paid by the State).

X. Pass an order directing the respondents to file status reports on compensation and allowances paid and remaining to be paid under the provisions of the Act for the last five years and to make payments of compensation wherever due, forthwith.

Y. Pass an order directing the respondents to revise and increase the applicable compensation rates on realistic and current market prices terms.

Z. Pass an order directing the respondents to appoint leading members of reputed organisations active in there are of Dalit rights on the Monitoring and Vigilance Committees throughout the State to which at least 50% should consist of women members throughout the State.

AA. Pass an order directing the respondents to implement the provision relating to imposition of collective fines wherever applicable under this Act.

BB. Pass an order directing the respondents for the implementation of the NHRC Report, 2002.

Pass such other order(s) or direction(s) or writ(s) as deemed fit and proper;"

2. Mr Colin Gonsalves, learned Senior Counsel appearing for the petitioners submitted that he is, at present, praying for four directions from this Court which are as follows:

"*A*. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to set up special officers, nodal officers and protection cell as required under the Act forthwith.

F. Pass an order directing the respondents to identify and notify atrocity prone areas and to take appropriate action in accordance with law immediately.

S. Pass an order directing the respondents to frame a rehabilitation package forthwith in accordance with the Act and the Rules.

X. Pass an order directing the respondents to file status reports on compensation and allowances paid and remaining to be paid under the provisions of the Act for the last five years and to make payments of compensation wherever due, forthwith."

3. The Preamble to the Constitution of India provides for social, economic and political justice and equality of status and opportunity to all its citizens. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Untouchability is abolished and its practice in any form is forbidden by Article 17 of the Constitution. The enforcement of any disability arising out of untouchability as per Article 17 shall be an offence punishable under the law.

4. Article 46 reads as under:

"**46.** ***Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.***—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

5. Articles 338 and 338-A of the Constitution provide for constitution of National Commissions for Scheduled Castes and Scheduled Tribes respectively. The relevant portions of Articles 338 and 338-A are as under:

"**338.** ***National Commission for Scheduled Castes.***—(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

* * *

(5) It shall be the duty of the Commission—

(*a*) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(*b*) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(*c*) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(*d*) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(*e*) to make in such report recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(*f*) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations. ...

338-A. ***National Commission for Scheduled Tribes.***—(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

* * *

(5) It shall be the duty of the Commission—

(*a*) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(*b*) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(*c*) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(*d*) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(*e*) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(*f*) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

* * *

(*8*) The Commission shall, while investigating any matter referred to in sub-clause (*a*) or inquiring into any complaint referred to in sub-clause (*b*) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely

(*a*) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(*b*) requiring the discovery and production of any document;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses and documents;

(*f*) any other matter which the President may, by rule, determine."

6. A brief historical background of the National Commission for Scheduled Castes and Scheduled Tribes as stated in the Annual Report submitted to Parliament by the National Commission for Scheduled Castes in the year 2014-15 is as follows:

"For effective implementation of various safeguards provided in the Constitution for the welfare of Scheduled Castes and Scheduled Tribes (SCs and STs) and in various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for Scheduled Castes and Scheduled Tribes was assigned the duty to

investigate all matters relating to the safeguards for SCs and STs, provided in various statutes, and to report to the President of India on the working of these safeguards. In order to facilitate effective functioning of the office of the Commissioner for Scheduled Castes and Scheduled Tribes, 17 regional offices of the Commissioner were also set up in different parts of the country. On persistent demand of the Members of Parliament that the Office of the Commissioner for Scheduled Castes and Scheduled Tribes alone was not enough to monitor the implementation of constitutional safeguards, a proposal was mooted for amendment of Article 338 of the Constitution (Forty-sixth Amendment) for replacing the arrangement of one-Member system with a Multi-Member system. The Government thereafter through a Resolution in 1987 decided to set up a Multi-Member Commission, which was named as the National Commission for Scheduled Castes and Scheduled Tribes. Consequent upon the Constitution (Eighty-ninth Amendment) Act, 2003 coming into force on 19-2-2004, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes has been replaced by (*1*) National Commission for Scheduled Castes, and (*2*) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes was notified on 20-2-2004 by the Ministry of Social Justice and Empowerment."[1]

7. The duties of the National Commission are provided in the Rules of Procedure of the National Commission for Scheduled Castes. Chapter III of the said Rules deals with investigation and inquiry by the Commission. The relevant provisions are as follows:

"**7.0** ***Investigation and inquiry by the Commission***

7.1. The Commission shall function by holding "sittings" and "meetings" at any place within the country and also through its officers at the Headquarters and in the State Offices. The Members of the Commission including the Chairperson and the Vice-Chairperson shall function in accordance with the procedure prescribed under these Rules.

* * *

7.2. (*a*) ***Investigation and inquiry by the Commission directly***

7.2. (*a*)(*i*) The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the country.

* * *

7.5. ***Inquiry into cases of atrocities***

7.5.1. Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details

1 Annual Report 2014-15, National Commission for Scheduled Castes.

of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may recommend to file an FIR against the accused with the law-enforcing agency concerned of the State/district. In such cases, the State Government/district administration/police personnel may be called within three days through the summons."

8. Chapter VIII of the Rules provides for the monitoring functions of the Commission which are as under:

"**15.0** ***Monitoring functions of the Commission***

15.1. ***The Commission to determine subjects for monitoring.***—The Commission may determine from time to time the subjects or matters and areas that it would monitor relating to safeguards and other socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Government.

* * *

16.0 ***Follow-up action***

16.1. In order to ensure that monitoring is done effectively, the Commission, after getting the information as prescribed in the above rules and after reaching conclusions, may as early as possible send out communications to the authority concerned describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps. Decisions on sending out such a communication may be taken at a level not lower than that of Joint Secretary/Secretary at Headquarters. Directors in charge of State Offices may take decisions on routine matter whereas they will seek approval of the Secretary and the Member concerned on complex and important matters affecting the interest of Scheduled Castes as a group.

16.2. The Commission may ask for the comments of the authority concerned on the action taken in pursuance of the communications sent under Rule 76.

16.3. The Commission may include in its Annual Report or any Special Report, findings and conclusions arrived at through the process of monitoring of the subjects relating to the safeguards and socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Union/State Government."

9. Article 39-A of the Constitution provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Legal Services Authorities Act, 1987 (hereinafter referred to as "the LSA Act") was enacted to constitute special authorities for providing free and competent legal services to weaker sections of the society. Section 4(*m*) of the LSA Act provides for special efforts to be made for enlisting the support of voluntary social welfare institutions, particularly

among Scheduled Castes and Scheduled Tribes. Section 12 of the LSA Act provides for free legal aid to the Scheduled Castes and Scheduled Tribes.

10. One of the purposes of the United Nations is to promote and encourage respect for and observation of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (ICERD) is as under:

"**Article 1**

(1) In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

(2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens.

(3) Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.

(4) Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."[2]

11[*]**.** Certain recommendations on Article 1 of the ICERD were adopted on 1-11-2002 which provide as under:

"*Confirming* the consistent view of the Committee that the term "descent" in Article 1, paragraph 1, the Convention does not solely refer to "race" and has a meaning and application which complement the other prohibited grounds of discrimination;

Strongly reaffirming that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights,"[3]

2. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21-12-1965, entry into force 4-1-1969, in accordance with Article 19.

Ed.: Para 11 corrected vide Official Corrigendum No. F.3/Ed.B.J./79/2016 dated 27-3-2017.

3. CERD General Recommendation XXIX on Article 1, para 1, of the Convention (Descent), A/57/18 (2002) 111.

These recommendations also strongly condemn descent based discrimination such as discrimination based on caste. It is significant that there was also a recommendation that the legislations and other measures already in force should be strictly implemented.

12. To give effect to Article 17 in its true letter and spirit, Parliament enacted the Untouchability (Offences) Act, 1955. Sections 3 to 7 of the said Act prescribed punishments for enforcing religious, social and any other kind of disabilities on the ground of untouchability. There were several complaints from various quarters of the society about the lacunae and loopholes in the said Act. Several amendments were made to the said Act which was rechristened as the "Protection of Civil Rights Act, 1955". In spite of a major overhaul, it was noticed that the Protection of Civil Rights Act, 1955 and the Penal Code, 1860 were inadequate to check the atrocities committed on Scheduled Castes and Scheduled Tribes. The fact that the Scheduled Castes and Scheduled Tribes remained a vulnerable group in spite of the introduction of several measures to improve their socio-economic condition was a matter of deep concern to Parliament.

13. Parliament acknowledged that the Scheduled Castes and Scheduled Tribes were subject to various offences, indignities, humiliations and harassments perpetually. Numerous incidents of brutalities and atrocities depriving the Scheduled Castes and Scheduled Tribes of their life and property were a cause of concern for Parliament. Considering the fact that there was an increase in the disturbing trend of commission of atrocities against the Scheduled Castes and Scheduled Tribes, Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Preamble to the Act reads as under:

> "An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

14. The Act enlarges the scope of criminal liability by including several acts or omissions of atrocities which were not covered by the Penal Code or the Protection of Civil Rights Act, 1955. The Act also provides protection to the Scheduled Castes and Scheduled Tribes for various atrocities affecting social disabilities, properties, malicious prosecution, political rights and economic exploitation. The Act also provides for enhanced punishment for commission of offences against the Scheduled Castes and Scheduled Tribes. The minimum punishment for neglect of duties committed by a public servant was also increased. Provisions were made for granting minimum relief and compensation to victims of atrocities and their legal heirs. The other salient features of the Act include externment of potential offenders from Scheduled Areas and Tribal Areas as well as attachment of the properties of the accused.

The Act prohibits the grant of anticipatory bail to the accused and the Probation of Offenders Act, 1958 was also made inapplicable to the Act. Certain preventive measures provided in the Act include cancellation of arms licences of potential offenders and even grant of arms licences to Scheduled Castes and Scheduled Tribes as a means of self-defence.

15. We have examined the NHRC Report on Atrocities against Scheduled Castes[4], the report of Justice K. Punnaiah Commission[5], Sixth Report of the National Commission for Scheduled Castes[6] and a paper titled "The Status of Implementation and need for amendments in the Prevention of Atrocities Act, India" published by Petitioner 1. It is contended by the petitioners that the implementation of the Act has been totally ineffective and that Dalits are still suffering from atrocities in view of the non-compliance with various provisions of the Act. The NHRC in its Report observed that "*even in respect of heinous crimes the police machinery in many States has been deliberately avoiding the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*". The Report further highlighted the non-registration of cases and various other machinations resorted to by the police to discourage Dalits from registering cases under the Act. The petitioners also highlighted the persisting problem of non-registration of cases under appropriate provisions of the Act, delays in filing of charge-sheet, accused not being arrested, release of high-risk offenders on bail and filing of false and counter-cases against Dalit victims. The petitioners also complained of non-payment of compensation to the victims or their legal heirs. The petitioners also relied upon the findings of the Sixth Report of the National Commission to show that the Scheduled Castes and Scheduled Tribes have no access to legal aid. Various committees contemplated by the Act at various levels are dysfunctional.

16[*]**.** The petitioners submitted that Rules 3, 8, 9, 10, 15(1), 16 and 17 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as "the Rules") have to be strictly complied with by the authorities concerned. Rule 3 provides for identification of atrocity prone areas and for preventive measures to be taken. Rule 8 refers to setting up of Special Cells to conduct survey of the identified areas, informing nodal officers and Special Officers on the law and order situation of identified areas, making enquiries about the investigation and spot inspections, wilful negligence of various authorities and reviewing the position of cases registered. Rules 9 and 10 deal with the appointment of nodal officers and Special Officers. A contingency plan for implementation of provisions of the Act is dealt with in Rule 15(1). Vigilance and Monitoring Committees to review the

4 NHRC, Atrocities against Scheduled Castes, 25-11-2002.

5 The Government of Andhra Pradesh had appointed Dr Justice K. Punnaiah, Retired Judge of Andhra Pradesh High Court as Single Member Commission of Enquiry to inquire into the practice of untouchability and atrocities against Scheduled Castes and Scheduled Tribes and to suggest measures for eradication of untouchability and prevention of atrocities.

6 National SC/ST Commission Report 2000-01.

[*] Ed.: Para 16 corrected vide Official Corrigendum No. E3/Ed.B.J./79/2016 dated 27-3-2017.

implementation of the provisions of the Act at the State and district level have to be set up under Rules 16 and 17. According to Section 14 of the Act, designated Special Courts and Exclusive Special Courts have to be established for speedy trial of offences under the Act.

17. The Act was made in 1989 because Parliament found that the provisions of the Protection of Civil Rights Act, 1955 were inadequate and did not curb the evil practice of atrocities against Dalits. The grievance of the petitioners has been that though the Act is comprehensive enough to deal with the social evil, its implementation has been painfully ineffective. The ever increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the petitioners sought a mandamus from this Court for effective implementation of the Act and the Rules.

18. We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and the Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and the State Governments should be directed to strictly enforce the provisions of the Act and we do so. The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of the Scheduled Castes and Scheduled Tribes.

19. A similar situation arose before this Court in *Safai Karamchari Andolan v. Union of India*[7]. The petitioners therein filed a writ petition seeking enforcement of the provisions of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. This Court held as under: (SCC pp. 237-38, para 24)

7. (2014) 11 SCC 224 : (2014) 3 SCC (L&S) 814

"*24.* In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. Inasmuch as the 2013 Act occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction."

20. The petitioners are at liberty to approach the authorities concerned and thereafter the High Courts for redressal of their grievances, if any. In view of the aforesaid, the writ petition is disposed of. No costs.

Civil Appeal No. 12256 of 2016 [arising out of SLP (C) No. 37164 of 2016]

21. Delay condoned. Leave granted. In terms of the order pronounced in *National Campaign on Dalit Human Rights* v. *Union of India*[8], this appeal also stands disposed of. No costs.

8 Supra in paras 1 to 20, above.