

MANU/SC/7954/2008

Equivalent/Neutral Citation: 2008(3)ACR2674(SC), 2008(69)AIC25, 2008(2)ALD(Cri)882, 2008 (62) ACC 912, 2008(4)BLJ1, IV(2008)CCR274(SC), CLT(2008)Supp.Crl.1220, 2008CriLJ4369, 2008(3)ECrN 908, 2008GLH(3)446, 2008 INSC 941, [2008(4)JCR37(SC)], JT2008(9)SC60, 2009(2)MhLj22, 2008(4)MPHT329, 2009MPLJ503(SC), 2008(4)PLJR178, 2008(4)RCR(Criminal)74, 2008(11)SCALE346, (2008)8SCC435, [2008]12SCR132, 2008(3)UC1866

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1287 of 2008 (Arising out of SLP (Crl.) No. 987 of 2007)

Decided On: 18.08.2008

Swaran Singh and Ors. **Vs.** State through Standing Counsel and Ors.

Hon'ble Judges/Coram:

Altamas Kabir and Markandey Katju, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Gaurav Bhatia, Abhishek Chaudhary and Samir Ali, Adv

For Respondents/Defendant: Ashok Bhan, Asha Gopalan Nair, D.S. Mahra and Vinay Kumar Garg, Adv.

Case Note:

Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989-Section 3(1)(X)-Calling a person "chamar"-Constitute offence?-Held-Even calling a person "chamar" ordinarily amounts to intentionally insulting that person with intent to humiliate him and if it is at a place within public view it attracts Section 3(1)(X) of Act 1989. [Para- 24, 26, 28, 33 and 34]

अनुसूचित जाति एवं जनजाति (अत्याचार निवारण) अधिनियम, 1989—धारा 3(1)(X)—व्यक्ति को “चमार” कहना—क्या अपराध बनता है?—अवधारित—यद्यपि व्यक्ति को “चमार” कहना साधारण रूप में उसे जानबूझ कर बेइज्जत करना है और यदि ऐसा किसी सार्वजनिक स्थल पर किया गया है तो धारा 3(1)(X) अधिनियम 1989 लागू होती है। [पद—4, 26, 28, 33 व 34]

Ratio Decidendi:

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

Case Category:

CRIMINAL MATTERS - MATTERS RELATING TO SC AND ST (PREVENTION ATROCITIES) ACT, 1989; UNTOUCHABILITY (OFFENCES) AMENDMENT OF MI PROVISION ACT, 1976

JUDGMENT

Markandey Katju, J.

1. Leave granted.
2. This appeal has been filed against the impugned judgment & order dated 22.01.2007 passed by the High Court of Delhi in Criminal Revision Petition Nos. 285-287 of 2006.
3. Heard learned Counsel for the parties and perused the record.
4. Appellant No. 1 Swaran Singh is the husband of appellant No. 2, Smt. Simran Kaur and father of appellant No. 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
P.S. Chittaranjan Park
New Delhi.

Sub: Complaint against Smt. Simran Kaur and her daughter resident of M-39, 1st floor, G.K.-II, New Delhi

Sir,

I, Vinod Nagar S/o Sh. Ram Singh Nagar R/o A-113, Dakshin Puri, New Delhi and work with Sh. 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 near by 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 emotion and when I tried to tell this to her husband Sh. Sarwan Singh he also said that you are actually a chuda-chamar and hence they are not saying anything wrong. When I told happening to my employer Sh. 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 Sh. 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 Sh. 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 above-mentioned persons. I shall be thankful to you.

Thanks

Vinod Nagar
s/o Sh. 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 Schedules 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. 285-287 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 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. MANU/SC/3152/2006** AIR2006SC2780 (vide para 12); **State of Orissa v. Saroj Kumar Sahoo MANU/SC/2264/2005** : (2005)13SCC540 (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.

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 appellant Nos. 2 & 3 Swaran Singh 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 No. 1 Swaran Singh, he also said that Vinod Nagar actually is a *Chuda-Chamar* and that appellant Nos 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:

(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.

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 & 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 characterized 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 surname 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 kind 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 U.S.A., 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 brachia (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 & 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 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 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 the 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 have only 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 the 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 gaonsabha 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 down trodden. 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 humiliated member of the 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 No. 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 No. 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 No. 1, Swaran Singh joined his wife and daughter in insulting Vinod Nagar, and he also used the word '*Chamar*' in a derogatory sense.

34. However, a perusal of the F.I.R. shows that Swaran Singh didn't use these offensive words in the public view. There is nothing in the F.I.R. 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 No. 1.

35. The High Court in the impugned judgment has observed (in paragraph 16) that the question whether the appellants indeed uttered the offending words with 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 No. 1 is allowed, and the proceedings against him are quashed. There will be no order as to costs.

© Manupatra Information Solutions Pvt. Ltd.