

39. Let the copy of judgment and order as well as the records of trial court be transmitted to the trial court concerned forthwith for necessary information and compliance of this order.

Criminal Law- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-Section 3(1)(r)- Section 3(1)(s) - It is settled law that all insults or intimidation to a person will not be an offense under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe-Offence under the Act is not established merely on the fact that the

2. By means of the present appeal under Section 14-A (1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appellants have prayed for quashing the impugned summoning order dated 9.3.2021 passed by

the learned Special Judge SC/ST Act, Sitapur in Complaint Case No. 242 of 2019 (Smt. Prema alias Ramguni Vs. Rakesh Singh and others) under Section 452, 323, 504 and 506 IPC and Section 3(1)(r) and 3(1)(s) of the SC/ST Act and the proceedings of the said complaint case.

3. In short, the facts of the case are that Prema @ Ramguni wife of Patiram, resident of village Ram Nagar, Police Station- Ramkot, District Sitapur preferred an application under Section 156(3) CrPC before the learned Special Judge (SC/ST Act) Sitapur alleging therein on 16.08.2019 at about 9 PM the appellants entered into the house of the complainant and started abusing the complainant and her husband and also assaulted her husband. On hearing the noise, the sons and daughters came and rescued. The appellants also abused their sons and used caste aspersions. The appellants also assaulted her sons and daughter Baby, who was pregnant. When all the family persons started raising alarm, the appellants left the spot. The aforesaid incident was brought to the notice of the police of Police Station-Ramkot but on account of influence of the appellants, the police did not help them. Thereafter, an application about the aforesaid incident was given to the Superintendent of Police, Sitapur through registered post on 26.08.2019 and also met the Superintendent of Police but no action was taken. Under compelling circumstances, the applicants filed the complaint in the court.

4. On the aforesaid complaint, the learned Sessions Judge passed an order dated 25.9.2021 registering the same as a complaint case. After recording of statement under Section 200 CrPC, statement of Patiram and Bebi, the learned court below passed the impugned order

dated 9.3.2021 summoning the appellants under the aforementioned sections.

5. Learned counsel for the appellants has submitted that the complaint has been moved with malicious intention as when the appellants came to know that the respondents are destroying their trees by pouring harmful chemical, the appellants have reported the matter to the police. As a counterblast, the present complaint has been filed. It is said that the husband of the respondent no.2 Patiram and his son are working in the Sitapur Judgeship and has lot of influence. It has been stated that when his FIR was not lodged on account of influence of respondents upon the local police, the appellant no.1 has moved an application under Section 156 (3) CrPC on 6.11.2019 but the same is still pending on account of pressure tactics of the respondent no.1 and his son.

6. Learned counsel for the appellants has further argued that the ingredients of Section 3(1)(r) and 3(1)(s) of the Act are not attracted in the circumstances of the case as the alleged incident has taken place inside the house and not at a place within public view. Further, in view of the decision rendered in **Fiona Shrikhande Versus State of Maharashtra and another (2013) 14 SCC 44**, even offence under other sections are not made out against the appellants.

7. Lastly, it has been argued that the present criminal proceedings have been initiated with an ulterior motive to harass the appellants which is causing serious prejudice as well as loss of reputation in the locality where the appellants are residing. It is said that the present criminal proceedings are nothing but an absolute abuse of the process of law.

8. Refuting the assertions of the appellants, learned counsel for the respondent no. 2 and learned AGA have submitted that there is no illegality or infirmity in the impugned order.

9. The learned Court below has proceeded to pass the summoning order after following due procedure and recording the statement of the complainant and other witnesses. Therefore, the present is liable to be dismissed.

10. It is settled law that all insults or intimidation to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The offence under section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. Another key ingredient of the provision is insult or intimidation in any place within public view. In the case of **Hitesh Verma versus State of Uttarakhand another (2020)10 SCC 710**, which has been relied upon by the learned Counsel for the petitioner, the Hon'ble Supreme Court had an occasion to examine the applicability of Section 3 of the SC/ST Act. The Hon'ble Supreme Court observed that the basic ingredients of the offence under section 3(1)(r) of the Act can be classified as (1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view. In this case, the Hon'ble Supreme Court held as under:-

"13. The offence under section 3(1)(r) of the Act would indicate the ingredient of intentional insult and

intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste."

11. In another judgment reported as **Khuman Singh V. State of Madhya Pradesh (2020) 18 SCC 763**, the Hon'ble Supreme Court held that in a case for applicability of section 3 (2)(V) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. The Court observed that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is

an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

12. In the case of **Swaran Singh Versus State (2008) 8 SCC 435**, the Hon'ble Supreme Court define the expression "place within public view" and "public place". The relevant paragraph reads as under:-

"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."

13. The instant case is to be examined the light of the aforesaid proposition laid down by the Hon'ble Supreme Court in the aforesaid cases. It is the clear cut stand of the complainant-Prema @ Ramguni in the complaint under Section 156(3) Cr.PC that the appellants had entered into the house at 9 PM using expletive language and assaulted her husband and sons. It is not the case of the complainant that at the time of incident other peoples of the locality were present. The incident had occurred inside a house which was not within the public view and no member of public was present at that time.

14. Therefore, from the material on record offence under the Act is not established merely on the fact that the complainant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victims belong to such a caste. Moreover, it comes out from the record that there was a dispute between the parties with regard to trees standing over a piece of land which is situated near the house of the respondent no.2. The appellants have also filed a complaint against the private respondents in respect of the dispute took place earlier. It is relevant to add that the complaint neither discloses the caste of the complainant or her family members nor the allegations are that they were made in public view. Also, the offending words are not purported to be made for the reason that the informant is a person belonging to Scheduled Caste. The other sections of IPC are also not attracted, thus no case is made out against the appellants in the aforesaid case.

15. In view of the above discussion, I am of the considered opinion that the

charges levelled against the appellants under sections 452,323,504 and 506 IPC and section 3(1)(r) and 3(1)(s) of the Act are not made out against the appellants.

16. Accordingly, the appeal is **allowed** and the proceedings of complaint Case No. 242 of 2019 Smt. Prema alias Ramguni Vs. Rakesh Singh and others) so far as it relates to the appellants, under sections 452,323,504 and 506 IPC and section 3(1)(r) and 3(1)(s) of the Act, pending in the court of Special Judge, SC/ST Act, Sitapur and the impugned summoning order dated 09.03.2021 passed by the Special Judge, SC/ST Act, Sitapur are hereby quashed.

(2023) 1 ILRA 832

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 23.12.2022

BEFORE

THE HON'BLE VIVEK CHAUDHARY, J.

Second Appeal No. 2396 of 1981

Shrimati Ram Ratti & Ors. ...Appellants
Versus
Gorakh Prasad Dubey ...Respondent

Counsel for the Appellants:

Sri V.B. Khare, Sri Ashok Kumar Shukla, Sri Satendra Kumar Singh, Sri Suresh Chandra Varma

Counsel for the Respondent:

Sri D.N. Misra, Sri Adya Prasad Tewari, Sri C.B. Dhar Dubey, Sri P.P. Chaudhary

Civil Law - Civil Procedure Code, 1908 - Section 100, - Specific Relief Act, 1963 - Sections 16(c), 20 & 20(2): - Plaintiff's Second Appeal – challenging the Judgment & decree passed by court below in Civil Appeals - Suit for Specific performance of a contract for

sale - being aggrieved the findings of trial court, both parties filed separate Appeals before first appellate court - first appellate court set aside the trial court judgment and decree in favour of plaintiff-respondent - substantial question of law - law on unfair advantage in specific performance of contract is well settled - and traced its origin from the principles of equity - and - on second issue of 'the notice' - there is no such notice on record whether plaintiff respondent expressed his willingness to perform his part of the promise - plaintiff-respondent failed to aver and prove his notice to the defendant-appellant to perform his part of contract - the law in this regard is very well settled that there must be clear and unambiguous proof of notice as required under the law - thus, both the grounds appeal succeeds and is allowed - judgment of appellate court is set aside - defendants shall return the amount received - directions issued accordingly. (Para – 8, 12, 13)

Second Appeal Allowed. (E-11)

List of Cases cited:

1. A.C. Arulappan Vs Ahalya Naik, reported as (2001) 6 SCC 600,
2. Ramesh ChandVs Asruddin, reported as (2016) 1 SCC 653,
3. Manjunath Anandappa Urf Shivappa Hansi Appellant VsTammanasa & ors., AIR 2003 SC 1391
4. Umabai & anr-Appellants Vs Nilkanth Dhondiba Chavan (Dead) by Lrs.& anr. Respondents as reported in 2005 3 AWC 2948,
5. C.S. Venkatesh Vs A.S.C. Murthy (D) By Lrs. & ors. as reported in 2020 3 SCC 280,
6. Sughar Singh Vs Hari Singh (Dead) Through LRS. & ors.. as reported in 2021 AIR(SC) 5581,

(Delivered by Hon'ble Vivek Chaudhary, J.)

1. Heard counsels for the parties and perused the record with their assistance.