

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(SB : SHEEL NAGU, J.)

CRR.588/2017

Monu @ Saurabh Kumar Chaturvedi
Vs.
State of M.P. & Anr.

For petitioner

Shri M.P.S. Raghuvanshi with Shri R.K. Shrivastava counsel for the petitioner.

For Respondents

Shri R.S. Yadav, Public Prosecutor for the respondent / State.
Shri. S.K. Sharma, counsel for the respondent No.2.

WHETHER REPORTABLE : Yes No

Law Laid Down:

The offence under the unamended provision of Sec. 3(1)(x) of the 1989 Act – The victim is Project Officer – The insult and intimidation was directed against the Project Officer arising out of victim's resistance in allowing joining of sister-in-law of the accused- Insult and intimidation was directed against the Project Officer and not against the SC / ST status / capacity of the Project Officer- Thus offence u/s 3(1)(x) not made out even on prima facie basis.

Significant Paragraph Numbers: 9 to 11

O R D E R

(25 .04 . 2018)

1. The revisional powers of this court u/s 397 r/w Sec. 400 IPC are invoked to assail the framing of charge against the petitioner by order dated 27.04.2017 passed in S.S.T. No. 19/2016 rendered

by Special Judge, S.C/ S.T. (Prevention of Atrocities) Act, Shivpuri in respect of offences punishable u/s 294, 504, 353, 506 Part-II IPC and Sec. 3(1)(x) of S.C. & S.T. (Prevention of Atrocities) Act, 1989 (for brevity '1989 Act')

2. The challenge herein is restricted to the farming of charge u/s 3(1)(x) of 1989 Act.

3. Pertinently, this Court by interim order dated 13.11.2017 stayed the proceedings of the Special S.T. No. 19/2016 pending before Special Judge, S.C/ S.T. (Prevention of Atrocities) Act, which continues to be subsisting till date.

4. Learned counsel for the rival parties are heard on the question of admission and as well as final disposal.

5. Learned counsel for the petitioner pointing towards the allegation in FIR and supportive material including the original complaint of the complainant and Sec. 161 Cr.P.C. statements of the prosecution witnesses, submits that the offence punishable u/s 3(1)(x) of the 1989 Act is not made out as the humiliation alleged to be extended by petitioner by way of insults / intimidation was not directed against the victim in her capacity as a member of SC & ST community but were towards the official capacity of the victim, who at the relevant point of time held the post of Project Officer, Integrated Child Development Project (ICDP), Block Badarwas, District Shivpuri .

5.1 It is submitted that petitioner got enraged by refusal of the victim to allow the joining of one Smt. Vandana Chaturvedi (sister-in-law of the petitioner) on the post of Anganwadi Worker. To give vent to his pent up feelings, it is submitted that petitioner uttered abusive words to the victim. It is submitted that with this factual background, it is clear that the insult and intimidation was extended towards the project officer and not towards the victim in her capacity as a member of SC & ST community and thus the basic ingredients of the offence punishable u/s 3(1)(x) of 1989 Act are not made out.

6. Learned counsel for the State and the victim seeking

dismissal of this revision contend that intimidation and insult is clearly evident from the abusive words uttered. It is also submitted that apart from abusive words, the expression "Adiwasin" was used by the petitioner to insult the victim and therefore, it is submitted that *prima facie* the offence punishable u/s 3(1)(x) of 1989 Act is made out which can sustain the impugned charge.

7. A close scrutiny of the allegations in the FIR and the original complaint of the victim dated 17.09.2014 reveals that on 15.09.2014 when victim was discharging her duties as Project Officer, ICDP, Badarwas, at 11:30 am petitioner visited the office of victim and approached her insisting for joining of Smt. Vandana Chaturvedi (sister-in-law of the petitioner) as Aanganwadi Worker, Ward No. 13 +14+15 Badarwas to which the victim asked for production of certain requisite documents. This enraged the petitioner who uttered abusive words. It is alleged that the victim was also intimidated of dire consequence of life if joining of Smt. Vandana Chaturvedi is not allowed. Subsequently on 10.11.2014 the statement u/s 161 Cr.P.C. of the victim was recorded which also disclosed the same allegations of uttering abusive words for the victim and also calling her Aadiwasin.

8. Before embarking upon the judicial scrutiny of validity of the impugned charge relevant provision of 3(1)(x) of 1989 Act is reproduced below for ready reference and convenience :-

3. Punishments for offences of atrocities -(1) *whoever, not being a member of a Scheduled Caste or Scheduled Tribe-*

(i) xx xx xx

(ii) xx xx xx

.....

.....

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

.....

.....

9. The said offence is made out when accused not being member of SC & ST community intentionally insults and intimidates

with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within the public view. The ingredient and meaning of different expressions in Sec 3(1)(x) of 1989 Act have been repeatedly analysed by various decisions including that of the Apex Court. One of such decision, relevant extract of which is reproduced below for convenience and ready reference :-

Gorige Pentaiah Vs. State of Andra Pradesh and Ors. reported in **(2008) 12 SCC 531** :-

“6. In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

Pertinently mere insult or intimidation as alleged in the present case would have been punishable exclusively u/s 294 and 506 of IPC if victim was not an SC / ST.

9.1 Historically when atrocities towards the members of SC & ST community became rampant, a more stringent law was promulgated where said minor offences of insult and intimidation now attracted more stringent punishment if committed by a non-SC / ST against an SC / ST. For this purpose, parliament enacted SC & ST (Prevention of Atrocities) Act, 1989. Earlier the offence of insult and intimidation u/s. 294 and 506 IPC did not provide for any minimum punishment but the same act of insult and intimidation extended by non-SC/ ST against a member of SC / ST under the 1989 Act attracts minimum sentence of six months and maximum of 5 years imprisonment with fine.

10. Pertinently this subtle but marked difference between the

connotation which the expression insult and intimidation receives under IPC on one hand and the 1989 Act on the other, is solely to do with the object sought to be achieved by the 1989 Act. The object is to prevent atrocities against members of SC / ST Community and providing for mechanism for relief and rehabilitation. The member of SC / ST community is the victim under 1989 Act. The expression "victim" is separately defined in 1989 Act and Cr.P.C. The definition of victim u/s 2(1)(ee) of 1989 Act is SC / ST centric. Meaning thereby that "victim" under the 1989 Act is not only the person in flesh and blood but also the caste / tribe status enjoyed by this person under the Article 341 / 342 of Constitution of India. However, the definition of victim was introduced in 1989 Act for the first time w.e.f. 26.01.2016 which was after the offence herein took place. Thus the amended provisions of 1989 Act is of no assistance, but the same certainly elicits and brings to the fore the real intention of legislature which was earlier hidden behind the term "..... with intent to" found in unamended Sec. 3(1)(x) of 1989 Act.

10.1 The offence punishable u/s 3(1)(x) of 1989 Act which relates to insult and intimidation extended by non- SC/ ST against SC / ST arises only when allegation demonstrates intention to humiliate the member of SC & ST in a place within public view. Meaning thereby that if the insult / intimidation, by gesture or by words do not reflect that the same were made to humiliate the victim in his / her capacity as an SC / ST and only because that victim belongs to SC & ST community, the said offence u/s 3(1)(x) will not be made out.

11. It is true that this subtle difference between Sec. 3(1)(x) of 1989 Act and Sec. 294 and 506 relates to the element of intention as enumerated above but the said intention ought to be reflected from the allegation in the FIR / charge sheet to enable the court of competent jurisdiction to take cognizance of the offence. If the allegations and the surrounding circumstances in the prosecution story do not reflect this intention then the offence u/s 3(1)(x) of 1989 Act would not be made out even on prima facie basis. It may

not be out of place to mention here that the Act of 1989 has been made more stringent w.e.f. 26.01.2016 by introducing rampant changes inter alia in Sec. 3 of 1989 Act with the object of plugging the loopholes in the unamended act, including the obligation on the prosecution to prima facie establish that the intention was to humiliate the victim just because the victim was a member of SC & ST community and was not directed against any other capacity which the victim assumed at the time of the incident.

11.1 However, in the case at hand the offence took place on 15.09.2014 which is prior to the amendment in the Act of 1989 and therefore, adjudication herein would be governed by the unamended provisions of 1989 Act.

12. The factual allegation is that on the fateful day of 15.09.2014 petitioner for making request to allow joining of his sister-in-law Smt. Vandana Chaturvedi as Aanganwadi Worker, approached the competent authority i.e. Project Officer, who happened to be the victim. It appears that petitioner was anxious and disturbed by the fact of authorities not allowing his sister-in-law to join as Aanganwadi Worker and this anxiety became aggravated when the Project Officer sought certain documents to verify the credentials of the sister-in-law of the petitioner. The petitioner got enraged and in the heat of the moment uttered abusive words against the Project Officer. It is thus clear that insult and intimidation were extended against the Project Officer and not against a member of SC & ST community to which the victim happened to belong. The anger of the petitioner was directed towards the project officer and not against a member of SC & ST community.

13. True it is that the petitioner uttered the word "Aadiwasin" but that by itself does not reflect any intention of insult to the victim just because she belongs to SC & ST community. It appears that petitioner knew that the victim was member of SC & ST community and therefore, in the fit of rage when he was abusing the Project Officer, he uttered the expression 'Aadiwasin'. Even otherwise the expressions 'Aadiwasin' cannot be termed as an abusive word.

Aadiwasin means a female Aadiwasi or a female member of ST community beyond which no other meaning deserves to be ascribed to the expression "Aadiwasin".

14. This Court has no manner of doubt that the intention of the petitioner reflected from the allegations made and the surrounding circumstances, does not appear to make out an offence punishable u/s 3(1)(x) of 1989 Act even on prima facie basis. Thus, the charge framed against the petitioner so far as it relates to offence punishable u/s 3(1)(x) of the 1989 Act is untenable.

15. Consequently, the impugned order dated 27.04.2017 passed in Special S.T. No. 19/2016 to the extent it relates to the offence punishable u/s 3(1)(x) of the 1989 Act stands quashed. It is made clear that petitioner shall continue to face the trial in regard to offence punishable u/sS 353, 294, 504, 506 Part II IPC before the appropriate forum.

16. With the aforesaid observation, present revision petition stands allowed to the extent indicated above sans cost.

(Sheel Nagu)
Judge
25/04/2018