

**Cr.R. No.647/2015**

**08.07.2015**

Shri O.P. Solanki, learned Counsel for the petitioners.

Shri Mukesh Parwal, learned Panel Lawyer for the respondent/State.

**ORDER**

By this revision petition u/S.397 r/w 401 of Cr.P.C., the petitioners are aggrieved by the order passed by Special Session Judge, Dhar dated 22.05.2015 in Session Case No.23/15 framing charges for offence u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC and S.3(1)(X) of Prevention of Atrocities Act.

Briefly stated the facts of the case are that on the date of incident i.e.22.09.2014 complainant Rekhbai filed a report stating that she was an agriculturist and was farming on Government land in village Dharavara. On the date of incident Shyamubai, Ramubai, Sumitrabai and Anandibai were helping her to cut the grass when at around 12:00 pm noon Virendra, Jitendra and 8 to 10 other people arrived there and started hurling verbal abuses submitting that they are Harijan people and

asked them to leave the fields since it belonged to the accused persons and uncle of Virendera slapped the complainant and a free fight ensued. Thereafter the police report was filed at the Police Station and the offence was registered u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC and S.3(1)(X) of SC/ST Act and investigation was lunched.

On completion of investigation, the accused persons were arrested and the charge sheet were filed. The trial Court on considering the above framed the charges as already listed above against the petitioners on 22.05.2015.

The Court considered the arguments prior to framing charges and came to a conclusion that the offences were prima facie made out regarding framing of charges and hence this present petition.

Counsel for the petitioners has vehemently urged the fact that dispute pertains to an agriculture land and although the complainant parties claimed that it was insult hurled in public place the same was not proved. Even if the FIR and the prosecution allegations are considered, Counsel submitted that there was nobody at the place of occurrence and hence the registering the offence u/S.3(1) (X) of

SC/ST Act was uncalled for and the ingredients were not established and the accused persons ought to be discharged from the same.

Besides, Counsel submitted that it is obvious in the incident itself that that offences was not committed with intension to humiliate the complainant in public regarding their caste. In fact it was not within public view and ingredients of S.3(1) (X) of SC/ST Act were not fulfilled; despite which learned judge of the trial Court has framed charges u/S.3(1)(X) of SC/ST Act. Besides Counsel submitted that important elements to be considered are whether the caste name was called out and it was not meant as an abuse. Counsel submitted that the agricultural land belongs to the accused persons and the complainant was bent upon encroaching their land and hence dispute arose. According to the prosecution there were no other persons in the field and in this light also Counsel submitted that the impugned order be set aside and the accused have fled from the place of occurrence and have not been identified. He submitted that no case was made out for the said offences and the impugned order framing charges be set aside.

Counsel for the petitioner placed reliance in the matter of **Maharaj Singh and Others v. State of M.P. 2014(I) MPWN 97** the Court held thus:

7. On bare perusal of entire prosecution case, it is clear that quarrel took place because the dispute of pit. For framing the charge u/S.3(1)(X) Prevention of Atrocities Act, it is necessary to abuse the complainant with an intention to insult or humiliate and also this act was done within the public view.

8. In FIR, it was not mentioned that complainant was abused to insult or humiliate only because he belongs to schedule caste and secondly it was also not mentioned that at the time of incident persons were present there and they saw and heard the entire incident. Though, it was mentioned that after commission of offence, witnesses Nanda and Kashiram reached on the spot. So in the considered view of this Court the ingredients of this offence u/S.3(1)(X) of Prevention of Atrocities Act is not fulfilled even after taking into consideration the prosecution case in its totality.

Counsel also placed reliance in the matter of **Asmathunnisa v. State of A.P. AIR 2011 SC 1905** to state that offences of atrocities and expression “in any place within public view” occurring in S.3(1)(X) means that the public must view the person being insulted for which he must be present and no offence on allegations under said section gets attracted if person is not present.

Counsel further reliance in the matter of **Gorige Pentaiah vs. State of A.P. & Ors. AIR 2008 SC**

**(Supp) 634** to state that offence of atrocities and complainant alleging that accused abused him with name of his caste and no allegation in complaint that accused was not S.C. or S.T. and allegations of intentional humiliation in place within public view was also absent and the complaint lacks in basic ingredients of offence and continuance of proceedings would be abuse of process of law.

Counsel for the respondent/State on the other has fully supported the order of the lower Court and submitted that there was ample medical evidence to implicate the present petitioners since complainants parties has received injuries and it cannot be denied that petitioners had assaulted the complainant parties. Undoubtedly, nature of the dispute pertains to the agricultural land but in the process no verbal abuses have been hurled in the name of the caste. Counsel submitted that the trial Court had erred in coming to the conclusion that offence u/S.3(1)(X) of the SC/ST Act is made out.

Consequently Counsel urged that there is no infirmity in the impugned judgment of lower Court. He prayed for dismissal of the petition.

On considering the above submissions, I find

that medical evidence on record fully justified the framing of charges u/Ss. 294, 147, 325/149, 323/149, 506, 427 of IPC. However regarding Section 3(1)(10) of SC/ST Act considering the prosecution case, it is clear that quarrel took place due to farming of the agricultural land by the complainant party. Thus it is essential to consider whether framing of charges u/S.3(1)(X) of SC/ST Act was required at all and if the prosecution allegations are considered in detail, I find that ingredients for these offences is missing in record. There were no other persons available at the place of occurrence to state that the offences occurred in the full public view. Similarly on bare perusal of the prosecution case, it is clear that the dispute took place due to tilling of the agricultural land but for framing of charge under Section 3(1)(10) of the SC/ST Act, it is necessary that the abuses hurled to the complainant should be with an intention to insult or humiliate because the complainant belongs to a particular scheduled caste. Then in the present case both the ingredients are not fulfilled. The act was not done with the intention to humiliate the complainant ladies because they belong to Harijan caste and moreover there was

nobody else in the field and hence the ingredient of publication is also not fulfilled.

Thus it cannot be said that insult were hurled in full public view and appreciating the fact that power u/S.482 of Cr.P.C. have been invoked and they have to be exercised sparingly, carefully and with great caution, however, if there is any abuse of process leading to injustice and it has been brought to the notice of the Court, then the Court would be justified in preventing injustice due to absence of specific provisions in the Statute. And in the present case I find that framing of charge u/S.3(1)(X) of SC/ST Act is absolutely uncalled for primarily because the dispute had occurred regarding farming of land by the complainant parties. The mens rea to insult or humiliate and the act to be done within full public view is missing and the only intention of the accused seems to be removing the encroachment and possession of the complainant parties and hence framing of charges by the impugned order needs to be set aside only to the extent of the charges framed for offence u/S.3(1)(X) of SC/ST Act.

The application therefore, is partly allowed and it is directed that although the framing of charge

u/Ss.294, 147, 325/149, 323/149, 506, 427 of IPC is upheld, framing of charges under Section 3(1)(10) of SC/ST Act is hereby set aside.

With the aforesaid observations and directions, the revision petition is allowed to the extent herein above indicated.

CC as per rules.

**(Mrs. S.R. Waghmare)**  
**Judge**

Jyoti/s.