

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 28th OF AUGUST, 2023

CRIMINAL APPEAL No. 4600 of 2022

BETWEEN:-

1. **SWASTIK S/O ASHISH GUPTA, AGED ABOUT 19 YEARS, OCCUPATION: STUDENT 41, GANESH VIHAR, KHANDWA NAKA (MADHYA PRADESH)**
2. **SEEMA W/O ASHISH GUPTA, AGED ABOUT 43 YEARS, OCCUPATION: HOUSEWIFE R/S 41, GANESH VIHAR, KHANDWA NAKA, INDOR (MADHYA PRADESH)**

.....APPELLANT

(SHRI VIVEK SINGH, LEARNED COUNSEL FOR THE PETITIONER .

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION BHANWARKUWAN (MADHYA PRADESH)**
2. **AASHA TAGORE W/O HUKUMCHAND TAGORE, AGED ABOUT 46 YEARS, 10 GANESHBAG, KHANDWA NAKA, INDORE, BHANWARKUA (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI RAJESH JOSHI APPEARING ON BEHALF OF ADVOCATE GENERAL & NONE FOR RESPONDENT NO.2/COMPLAINANT THOUGH DULY SERVED)

This appeal coming on for hearing this day, the court passed the following:

JUDGEMENT

1. The appellants have filed the present criminal appeal under Section 14(A)(1) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act of 1989") being

aggrieved by the order dated 08.04.2022 passed in Special criminal case No.83/2021 by Special Judge, SC/ST (P.A) Act, Indore whereby the learned Special Judge has dismissed the contention of the appellants and framed the charges against the appellants under Sections 3(1)(r) (two counts) of the Act of 1989, 323 of IPC r/w 3(2)(v-a) of the Act and in alternate under Section 323 (two counts)/34 of IPC r/w 3(2)(v-a) of the Act of 1989 & 506(II) of IPC r/w 3(2)(v-a) of the Act of 1989. Hence, the present appeal before this Court.

2. Brief facts of the case are that on 20.06.2021, the complainant Asha lodged an FIR at police Station by stating that on 01.04.2021 she was at house at about 6:00PM alongwith her daughter. At that time, the appellants entered in her house and abused her by stating that the son of the complainant harassed the son of appellant, they abused them in filthy language and assaulted the complainant alongwith her daughter by kicks and fists and threatened them to kill. The incident was also seen by some neighbors. Hence, the police has registered the FIR against the appellants under Sections 452, 323, 294 and 506/34 of IPC against the appellants.

3. After following the due procedure of law and completion of the investigation, the police has filed the charge-sheet.

4. Thereafter, the learned trial Court, on appreciation of the evidence available on record, has framed the charges under Sections 3(1)(r) (two counts) of the Act of 1989, 323 of IPC r/w 3(2)(v-a) of the Act and in alternate under Section 323 (two counts)/34 of IPC r/w 3(2)(v-a) of the Act of 1989 & 506(II) of IPC r/w 3(2)(v-a) of the Act of 1989 vide the impugned order. In course of argument, counsel for the appellants has withdrawn the appeal for the charges under Sections 323 of IPC r/w 3(2)(v-a) of the Act and in alternate under

Section 323 (two counts)/34 of IPC r/w 3(2)(v-a) of the Act of 1989 & 506(II) of IPC r/w 3(2)(v-a) of the Act of 198, however, he confines his arguments only against the charges framed under Section 3(1)(r) (two counts) of the Act of 1989.

5. In this regard, learned counsel for the appellants submits that the order of the learned trial Court is contrary to law and facts on record. The complainant has lodged the FIR at the police station under the provisions of section 452, 323, 294 and 506/34 of IPC and not a single allegations against the appellants have been leveled by the complainant which can fetch the ingredients of provisions of the Act of 1989. It is also submitted that earlier, the NCR was lodged only against appellant no.1 only and later on, the other sections were added against both the appellants.

6. Learned counsel for the appellant, to bolster his submissions, further vehemently submitted that as per the provisions of under Sections 3(1)(r) of the Act of 1989 are concerned, the same shall not be attracted in the present case because the ingredients under Sections 3(1)(r) (two counts) of the Act of 1989 that; i) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and ii) in any place within public view, therefore, the same is not liable to be attracted in the present case as the alleged incident had happened in the house itself which is not governed under the "public view". Hence, the learned trial Court has committed grave error of law in framing the charges under Sections 3(1)(r) (two counts) of the Act of 1989 and prays for setting aside the impugned order qua the the provisions under Sections 3(1)(r) (two counts) of the Act of 1989.

7. In support of his contention, counsel for the appellant has placed reliance over the judgment of Hon'ble Apex Court passed in the Case of **Hitesh**

Verma vs. State of Uttarakhand and Another [2020 (10) SCC 710];

wherein the Hon'ble Apex Court has dealt with as under:

"12. 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".

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.

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors.⁵ The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen 5 (2008) 8 SCC 435 by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held 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 gaonsabha or an instrumentality of the State, and not by private persons or private bodies."

8. On the other hand, learned counsel for the respondent/State has opposed the prayer and supported the impugned order of framing of charges. However, during the course of arguments, counsel for the State has admitted that as per the contents of the FIR itself, the alleged incident had happened in the house of the complainant.

9. I have heard the counsel for the parties and perused the record.

10. From the bare perusal of the impugned order as well as the contentions of FIR, it is crystal clear that the incident had happened in the house of the complainant. To establish or to frame the charges under Sections 3(1)(r) (two counts) of the Act of 1989, it is necessary to prove the factum that the incident had happened with public view. Whereas, in the case in hand, there is nothing on record to show that the incident had happened in public view, but the learned trial Court has not given such finding while framing the charges against the appellant.

11. That apart, the Hon'ble Apex court in the case of **Hitesh Verma**

(supra) has held that for establishing the charges under Sections 3(1)(r) (two counts) of the Act of 1989, public view is necessary. But in the case at hand, the learned trial Court has failed to consider this aspect and framed the charges under Sections 3(1)(r) (two counts) of the Act of 1989 and committed grave error of law. Hence, the impugned order passed by the learned trial Court/Special judge is hereby set aside qua framing of charges under Sections 3(1)(r) (two counts) of the Act of 1989.

12. So far as the offenses under sections 323 of IPC r/w 3(2)(v-a) of the Act and in alternate under Section 323 (two counts)/34 of IPC r/w 3(2)(v-a) of the Act of 1989 & 506(II) of IPC r/w 3(2)(v-a) of the Act of 1989 are concerned, the learned counsel for the appellant has withdrawn this appeal, hence, the impugned order qua the aforesaid offences is hereby affirmed.

13. With the aforesaid discussion, the criminal appeal is partly allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

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