

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024

(Arising out of SLP (CrI.) No.1608/2020

RABINDRA KUMAR CHHATOI

APPELLANT(S)

VERSUS

THE STATE OF ODISHA & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

2. The appellant herein, is aggrieved by the order dated 13.11.2019 passed in Criminal Revision No.580 of 2019. The High Court in the said revision petition, which assailed the order dated 02.08.2019 passed by the Learned Additional Sessions Judge, Bhubaneswar in T.R. No.400 of 2016, has sustained the same and consequently, the Criminal Revision No.580 of 2019 has been dismissed. Hence, this appeal.

3. We have heard learned counsel for the appellant and learned counsel for the first respondent-State and learned counsel for the second respondent-complainant and perused the material on record and the provisions which are applicable to the present appeal.

4. Learned counsel for the appellant submitted that the second respondent herein, had instituted a Criminal Complaint against the appellant herein, under Sections 294 and 506 of the Indian Penal Code (IPC) read with Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 [hereinafter referred to as "SC & ST (POA) Act" for the sake of

convenience.

5. Before the Learned Additional Sessions Judge, Bhubaneswar in T.R. No.400 of 2016, the appellant herein, filed an application under Section 239, Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") to discharge him from the aforesaid offences by the impugned order dated 02.08.2019, but the said application was rejected. Being aggrieved, the appellant herein preferred Criminal Revision No.580 of 2019 before the High Court of Orissa at Cuttack. The same has also been dismissed.

6. Learned counsel for the appellant submitted that Section 3(i) (x) of the SC and ST (POA) Act as it is stood prior to its amendment dated 26.01.2016, is applicable to the instant case. The said provision states that whoever, not being a member of the Scheduled Caste or the Schedule Tribe intentionally insults or intimidates with intent to humiliate a member of the Scheduled Caste and Scheduled Tribe in any place within public view, shall be punishable with imprisonment for a term which shall not be less than six months and which may extend to five years with fine. In the instant case, assuming for the sake of argument that the words uttered by the appellant herein, against the second respondent-complainant are insulting or intimidating with an intent to humiliate the second respondent herein, the same was not in any place within public view. He submitted that the alleged offence occurred in the backyard of the appellant's house. The same is not a place within the public view. He submitted that the second

respondent-complainant had trespassed into the said backyard along with her employees for the purpose of plastering her house, and since she had trespassed into the appellant's property, without seeking any permission, the appellant may have uttered the said words. Since the said place i.e. the backyard of the appellant's house, is not within the public view, it cannot be said that the offence had been committed by the appellant herein within the meaning of the said provision. He further submitted that the second respondent had entered the backyard of the appellant's house along with her labourforce for the purpose of carrying out the plastering work. The same cannot be said to be within public view within the meaning of Clause (x) under sub-Section (1) of Section 3 of the SC and ST (POA) Act.

7. Learned counsel for the appellant also drew our attention to paragraph "60" of the judgment of this Court in *Hitesh Verma Vs. The State of Uttarakhand (2020 10 SCC 710)* to contend that there is also a dispute with the second respondent herein, inasmuch as a suit has been filed on 10.08.2015 in C.S.8059 of 2015 by the appellant's wife against the second respondent and her husband which is pending on the file of the Court of the Civil Judge, Senior Division, Bhubaneswar. Therefore, the offence as against the second respondent herein, could not have been said to have been made out at all and hence, the registration of the FIR and the subsequent chargesheet and the criminal proceedings are not in accordance with law.

8. Learned counsel for the appellant therefore, submitted that the impugned orders passed by the High Court as well as the Additional Sessions Judge, Bhubaneswar in T.R. No.400 of 2016 may be set aside and the application filed by the appellant herein, under Section 239 of the Cr.P.C. seeking discharge, may be allowed.

9. *Per contra*, learned counsel for the first respondent-State submitted that the impugned orders would not call for any interference. He submitted that the trial is at an advanced stage inasmuch as three witnesses out of six have already been examined and at this belated stage this Court may not interfere with the matter. If the direction is issued to the trial Court, the trial can be concluded early. Hence, there is no merit in this appeal.

10. Learned counsel for the second respondent-complainant also submitted that the High Court was justified in sustaining the order of the Trial Court dated 02.08.2019 by dismissing the application filed by the appellant herein under Section 239 of the Cr.P.C. and therefore, there is no merit in this appeal. He further submitted that the abuse of the appellant herein was solely having regard to the Caste to which the second respondent belongs and the allegations were squarely falling within the scope and ambit of clause (x) of sub-Section(i) of Section 3 of the SC & ST (POA) Act. Therefore, there is no merit in this appeal.

11. Learned counsel for the second respondent also submitted that the offence as alleged against the appellant herein, has been clearly made out by the second respondent inasmuch as the appellant

had intentionally insulted and intimidated the second respondent with a view to humiliate her having regard to the fact that she belongs to a scheduled caste and the utterances of the words by the appellant herein, are apparent inasmuch as they were insulting and intimidating to the second respondent herein. Therefore, the learned counsel for the second respondent also submitted that there is no merit in this appeal.

12. We have considered the arguments advanced at the bar in light of the material on record. The allegations against the appellant herein are that he uttered words against the second respondent herein which was an offence within the scope and ambit of Clause x of sub-Section(i) of Section 3 of the SC & ST (POA) Act. As it stood prior to its amendment dated 26.01.2016, we have extracted the aforesaid clause:-

"Clause 3(1)(x) states 'Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe 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'"

(underlining by us)

13. On a reading of the same, it is evident that the intention to insult or intimidate with an intent to humiliate a member of the Scheduled Castes and the Scheduled Tribe must be "in any place within public view." There is no doubt that the second respondent herein, is a member of the Scheduled Caste. The question is,

whether, the alleged utterances by the appellant herein, was in any place within public view. It is noted that when the second respondent sought to repair her house which is adjacent to the appellant's house along with her employees (Labourers) and went into the appellant's house without seeking his prior permission, it was objected to by the appellant herein. The place of occurrence of the alleged offence was at the backyard of the appellant's house. Backyard of a private house cannot be within the public view. The persons who accompanied the second respondent were also the employees or the labour force she had engaged for the purpose of carrying out repairs to her house which is adjacent to the appellant's house. They cannot also be termed as public in general.

14. In the circumstances, we do not think that the alleged utterance of the appellant herein was "in any place within public view". Therefore, the allegation against the appellant herein, was not made out as such.

15. The reference to the judgment of this Court in *Hitesh Verma* (supra) in Paragraph "16" is in the context of there being a civil dispute which is between the parties and this Court observed that where there is a dispute regarding possession of property before the Civil Court, any dispute arising on account of possession of the said property, would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to the scheduled caste or scheduled tribe. We do not think that in the instant case, it is necessary to apply

the aforesaid dictum to the present case, in view of the reasoning that we have given in the aforesaid paragraphs.

16. Moreover, learned counsel for the second respondent submitted that the suit has been filed by the wife of the appellant herein on 10.08.2015 whereas, the offence is said to have occurred on 21.03.2015 which was much earlier.

17. In the circumstances, we set aside the impugned order dated 13.11.2019 passed by the High Court of Orissa in Criminal Revision No.580 of 2019 and also order dated 02.08.2019 passed by the Additional Sessions Judge, Bhubaneswar in T.R. No. 400 of 2016 and consequently, this appeal is allowed and the appellant is discharged from the offences alleged to have been committed by him.

18. Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
DECEMBER 05, 2024

ITEM NO.6

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1608/2020

[Arising out of impugned judgment and order dated 13-11-2019 in CRLREV No. 580/2019 passed by the High Court of Orissa at Cuttack]

RABINDRA KUMAR CHHATOI

Petitioner(s)

VERSUS

THE STATE OF ODISHA & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.32407/2020-EXEMPTION FROM FILING O.T. and IA No. 32407/2020 - EXEMPTION FROM FILING O.T.)

Date : 05-12-2024 This matter was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Tejaswi Kumar Pradhan, AOR
Mr. Manoranjan Paikaray, Adv.

For Respondent(s) Mr. Som Raj Choudhury, AOR
Ms. Shrutee Aradhana, Adv.
Mr. Prashant Kumar, Adv.

Mr. Srisatya Mohanty, AOR
Mr. Abhijit Pattanaik, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(GEETA JOSHI)
SENIOR PERSONAL ASSISTANT

(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)