

the adverse remarks has been completely ignored by the Inspector General of Police. It is not only highly improper but it is totally unwarranted. Even if Inspector General of Police enjoys any power of review exercise of such a power in these circumstances is wholly arbitrary. The judicial verdict of Civil Court decree should have been respected and, therefore, the Director General of Police has rightly set aside the order of his sub-ordinate. For the aforesaid reasons the judgment in Ram Niwas' case (supra) would not be applicable. The learned Single Judge has wrongly applied the law to the facts of the present case. Accordingly, the order dated 27.1.2010 passed by the learned Single Judge is not sustainable and liable to be set aside.

(8) As a sequel to the above discussion the instant appeal is allowed and the order dated 27.1.2010 passed by the learned Single Judge is set aside. The order dated 30.10.2006 (P-6), passed by the Director General of Police, Haryana, is upheld. No costs.

V. *Suri*

Before Mehinder Singh Sullar, J.

DR. ONKAR CHANDER JAGPAL & ANOTHER,—Petitioners

versus

**UNION TERRITORY, CHANDIGARH
AND ANOTHER,—Respondents**

CrI. M.No.M-54307 of 2006

23rd January, 2012

Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S.3 - Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 - S. 3 - History of civil and criminal litigation between parties, with regard to ownership of house and right of parking - Complainant lodged an FIR against petitioner under S.3 of the SC&ST(P&A) Act, 1989 - Petition filed seeking quashing of complaint - Allegation in the FIR lack in material particulars - Complainant should have alleged (i) accused were not members of SC/ST (ii) they knew that complainant was a member of SC/ST (iii) accused intentionally insulted or intimidated with intent to humiliate her as a member of SC/ST (iv) insult/intimidation was in public view

in order to bring the action of accused within the mischief of S.3 of the Act - Since FIR lacked specific pleadings or allegations - FIR not maintainable.

Held, That a conjoint and meaningful reading of these provisions would reveal that in order to attract the penal provisions of Section 3(x) of the Act, it was incumbent upon the complainant to specifically mention in her complaint and the FIR should disclose that (i) the petitioners-accused were not the members of Scheduled Caste or Scheduled Tribe; (ii) they knew that she (complainant) was a member of Scheduled Caste or Scheduled Tribe; (iii) they intentionally insulted or intimidated with intent to humiliate her as a member of Scheduled Caste or Scheduled Tribe and (iv) in any place within public view. The words "intentionally insulted with intent to humiliate as a member of Scheduled Caste/Scheduled Tribe in any place within public view", have significant meaning. An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult, the person insulted must be present in public view. In other words, the words "within public view" means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence alleged under this Section is attracted.

(Para 14)

Further held, That what cannot possibly be disputed here is that in the instant case, it is nowhere mentioned in the complaint, which formed the basis of FIR (Annexure P1) that the petitioners-accused are not the members of Scheduled Caste or Scheduled Tribe, they knew that the complainant was a member of Scheduled Caste or Scheduled Tribe, they intentionally insulted or intimidated with intent to humiliate her (member of Scheduled Caste or Scheduled Tribe) and at a place within public view. Not only that, the complaint/FIR should disclose the caste of the offenders alone, it should disclose that the petitioners-accused were aware about the caste of the complainant as well.

(Para 15)

Bipan Ghai, Senior Advocate with Mandeep Kaushik, Advocate for the petitioners.

Guatam Kaile, Advocate for Rajiv Sharma, Advocate for respondent No.1.

Sukhbir Singh Mattewal, Advocate for P.S.Thiara, Advocate for respondent No.2.

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The matrix of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that petitioners Dr.Onkar Chander Jagpal and his wife Smt.Adarsh Jagpal claimed that they are residing in house, bearing No.1318, Sector 15-B, Chandigarh for the last about 35 years. Complainant Sohini Chaudhary respondent No.2 (for brevity “the complainant”), daughter of Ram Lubhaya Chaudhary, desired to purchase the said house from the very beginning. Since the petitioners have purchased 50% share of the house in question from Natinder Dhillon, so, the complainant and her other family members became inimical and started harassing them on false and frivolous grounds.

(2) Having purchased the half of the portion of the indicated house petitioner No.1 Dr.Onkar Chander Jagpal filed an application against Smt.Santosh Chaudhary wife of Ram Lubhaya (mother of the complainant), Smt.Sushil wife of H.S.Dhillon and Smt.Kamlesh wife of Sohan Lal under Section 12 of the East Punjab Urban Rent Restriction (Extension to Chandigarh), Act, 1974, which was accepted and the respondents were directed to carry out the necessary repairs, failing which petitioner No.1 was given the liberty to get the repairs carried out, by the Rent Controller, by virtue of order dated 4.12.1998 (Annexure P2). The prolonged civil & criminal litigation between the parties is also clear from the orders dated 15.6.1999 (Annexure P3), dated 19.2.2001 (Annexure P4), enquiry report (Annexure P5), copies of letters to Inspector General of Police (IG) dated 12.6.2006 (Annexures P6 & P8) and letter to XEN (Annexure P7).

(3) Meanwhile, the complainant made a complaint against the petitioners-accused (which formed the basis of FIR Annexure P1), with the following allegations:-

“Sir, I am residing with my family at house no.1320, Sector 15-B, Chandigarh for the last many years and in house No.1318, Sector 15-B where on the top floor, we and our house care taker stays and this portion of the house belongs to us. Onkar Chander Jagpal is residing there. Our houses are on the main road and because of that we park our cars

on the front side of both of the houses and Onkar Chander Jagpal parks his car at the backside of the house. The house was owned by our grandmother and we are having tenancy dispute pending in Hon'ble Punjab and Haryana High Court. During the pendency of the suit our grandmother expired. And for this reason Onkar Chander Jagpal always keep grudge in his mind and always looks for an opportunity to humiliate me and my family in public. On 29.6.2006 at about 6 PM, police personnels of Chandigarh Police came to the house where I stay alongwith my parents and my two elder sisters (Namita and Mala) in house No.1320 Sector 15-B, Chandigarh, they told me that he has got a complaint made by Onkar Chander Jagpal regarding parking of a vehicle. When I told police personnels that the house belongs to me and my three sisters and the vehicle also belongs to our family, the police personnel went away and when I came outside and reached House No.1318, Sector 15-B, in the verandah Onkar Chander Jagpal, got agitated and started abusing me and my family, his wife was also standing there, who immediately started using abusing and filthy language against me and my family members. When I asked them to behave properly as we belong to a respectable and responsible family, Onkar Chander Jagpal, shouted me "Chura – Chammar neich jati de kute log". If you ever park the vehicle again, I have got links with the goondas and also have connections with high police officials and can get a false case registered against me and further threatened that he can get me liquidated so that in future I may not be able to see any Chammar in the locality. On hearing loud voices, my cousin brother Vinod Chaudhary who was present in my house came there and tried to stop them from insulting me and my family in public, but Onkar Chander Jagpal was furious and adamant. In the meantime, many passersby gathered there and witnessed the entire episode. And when my brother was trying to pacify them, Onkar Chander Jagpal's wife immediately shouted, "Chuda -Chammar saab equtha ho

gaya hai”. I and my brother got very ashamed when Onkar Chander Jagpal and his wife uttered such words in full public view. Feeling ashamed as we belong to respectful family we kept quite and returned to our house, we were so ashamed that we were not able to come out of our house and we called my father. And since then, he has also not allowed us to use our portion of house. He and his wife have wrongfully dispossessed from our property and are interfering in our portion of property. I shall be grateful, if you take an appropriate action may be taken against the above stated persons and justice be given to us. Sd/- Sohini Chaudhary, R/o # 1320, Sector 15-B, Chandigarh Dated 30.6.2006.”

(4) In the background of these allegations, the present case was registered against the petitioners-accused, by means of FIR, bearing No.175 dated 13.7.2006 (Annexure P1) in Police Station Sector 11, Chandigarh, on accusation of having committed the offence punishable under Section 3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as “the Act”).

(5) The petitioners did not feel satisfied and preferred the instant petition for quashing the FIR (Annexure P1) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

(6) Concisely, the case set up by the petitioners, in brief in so far as relevant, was that the complainant-respondent No.2, daughter of Ram Lubhaya Chaudhary, is residing in House No.1320, Sector 15-B, Chandigarh. They desired to purchase the House, in which, the petitioners are residing. The petitioners have purchased the half of the share of the house, bearing No.1318, Sector 15-B, Chandigarh. There has been prolonged civil & criminal litigation between the parties, relatable to the said house. According to the petitioners-accused that Ram Lubhaya, father of the complainant is MLA, whereas her mother Smt.Santosh Chaudhary is Ex.MP. They blocked the parking area and petitioner No.1 reported the matter to the IG police, UT Chandigarh on 12.6.2006, vide complaint (Annexure P6). Instead of taking the legal action against the complainant party and under their influence and political pressure, the U.T. Police falsely registered the present case against the petitioners.

(7) Levelling a variety of allegations and narrating the sequence of events in detail contained in the petition, in all, the petitioners claimed that the complainant has illegally lodged a false, malicious and vexatious FIR in order to wreak vengeance against them. Even the bare reading of the FIR does not disclose the commission of any offence. On the strength of aforesaid grounds, the petitioners sought to quash the FIR (Annexure P1) and all other subsequent proceedings arising therefrom in the manner described hereinabove.

(8) The respondents refuted the prayer of the petitioners and filed the replies. UT Administration claimed that after registering the case on 13.7.2006, the statements of PWs Kamlesh wife of Sohan Lal and Constable Avtar Singh were recorded, wherein they stated that they have heard the verbal abuses. However, the complainant filed her separate reply, taking preliminary objection of maintainability of the petition. The fact that the petitioners have purchased the half portion of the disputed house and the factum of civil & criminal litigation between the parties is admitted. Instead of reproducing the entire contents of the reply and in order to avoid the repetition of facts, suffice it to say that respondent No.2 has reiterated the allegations contained in her complaint, which formed the basis of FIR (Annexure P1). It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the main petition and prayed for its dismissal.

(9) Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the present petition deserves to be accepted in this context.

(10) As is evident from the record, that the parties are litigating with each other in respect of the house in question since long, as mentioned hereinabove. The complainant party was stated to have blocked the parking area by parking their vehicles un-authorizedly in front of house of the petitioners. The matter was reported to the police. In the wake of complaint of petitioner No.1 (Annexure P6), police reached at the spot on 29.6.2006 at about 6 P.M. to make enquiry in regard to the parking of the vehicles in front of house of the petitioners. According to the complainant, having enquired into the matter, as soon as police went away, in the meantime,

petitioner No.1 Onkar Chander Jagpal became agitated in the verandah of the house and started using abusive and filthy language against her and her family members. When she asked them to behave properly, then they shouted “**Chura-Chammar Neich Jati De Kute Log**” and threatened them with dire consequences. When brother of complainant was trying to pacify them, then petitioner No.2 was stated to have shouted “**Chuda-Chammar Saab Equtha Ho Gaya Hai**”. In other words, except these bald allegations, no overt act or specific role is attributed to the petitioners by the complainant in the FIR. On the basis of aforesaid averments, the complainant lodged the FIR (Annexure P1) against the petitioners for the commission of offence punishable under section 3 of the Act in the manner depicted hereinbefore.

(11) Above being the position and material on record, now the short and significant question, though important, that arises for determination in this petition is, as to whether all the essential ingredients of the offence are complete and any offence punishable under section 3 of the Act is made out or not?

(12) Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative in this respect.

(13) As indicated earlier, the complainant has sought to invoke the provisions of Section 3(1)(x) of the Act against the petitioners, which postulates that “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 punished under this Section.

(14) A conjoint and meaningful reading of these provisions would reveal that in order to attract the penal provisions of Section 3(x) of the Act, it was incumbent upon the complainant to specifically mention in her complaint and the FIR should disclose that (i) the petitioners-accused were not the members of Scheduled Caste or Scheduled Tribe; (ii) they knew that she (complainant) was a member of Scheduled Caste or Scheduled Tribe; (iii) they intentionally insulted or intimidated with intent to humiliate her as a member of Scheduled Caste or Scheduled Tribe and (iv) in any

place within public view. The words **“intentionally insulted with intent to humiliate as a member of Scheduled Caste/Scheduled Tribe in any place within public view”**, have significant meaning. An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult, the person insulted must be present in public view. In other words, the words “within public view” means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence alleged under this Section is attracted.

(15) What cannot possibly be disputed here is that in the instant case, it is nowhere mentioned in the complaint, which formed the basis of FIR (Annexure P1) that the petitioners-accused are not the members of Scheduled Caste or Scheduled Tribe, they knew that the complainant was a member of Scheduled Caste or Scheduled Tribe, they intentionally insulted or intimidated with intent to humiliate her (member of Scheduled Caste or Scheduled Tribe) and at a place within public view. Not only that, the complaint/FIR should disclose the caste of the offenders alone, it should disclose that the petitioners-accused were aware about the caste of the complainant as well.

(16) It is not a matter of dispute that the Scheduled Caste & Scheduled Tribe Act is a special enactment/statute and its provisions have to be strictly construed in the same manner as mandated by the Act and not otherwise. The element of intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in public view, should clearly be borne out from the FIR. Merely, the alleged utterance by the petitioners in the verandah of the house (not within public view) appears to be the result of fit of anger and emotion and not with the intention to insult the complainant party as a member of Scheduled Caste or Scheduled Tribe. It is a matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act. That means, merely uttering such words in the absence of intention/mens-rea to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste & scheduled caste and if the imputations are grossly vague and perfunctory, would not, ipso facto, constitute acts of commission of offence, which are capable of cognizance under the Act.

Moreover, during the course of investigation, the police has recorded the statements of Kamlesh wife of Sohan Lal and Constable Avtar Singh. They did not support the allegations contained in the FIR, wherein they have stated that they have only heard the verbal abuses.

(17) Meaning thereby, all the essential/basic ingredients of the offence are deeply lacking in the complaint, which formed the basis of FIR (Annexure P1). In that eventuality, permitting such a complaint to continue and to compel the petitioners to face the prolonged trial, would amount to abuse of process of law. This matter is no more *res integra*.

(18) A similar question came to be decided by Hon'ble Apex Court in case **Gorige Pentaiah versus State of Andhra Pradesh and others (1)**, wherein having interpreted the provisions of Section 3 of the Act and scope of Section 482 Cr.PC, it was ruled (para 6) as under:-

“6. In the instant case, the allegation of Respondent 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 appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 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 appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 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.”

(1) 2008 (12) SCC 531

(19) Sequelly, the same view was again reiterated by Hon'ble Supreme Court in case **Asmathunnisa versus State of Andhra Pradesh represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and another (2)**.

(20) As strange as it may appear, but strictly speaking, the common tendency and frequency of the complainants of involving and roping the accused on vague & bald allegations under section 3 of the Act, have been tremendously increasing day-by-day in our society. Even the plain and simple occurrence under the Indian Penal Code is given the colour of offence under section 3 of the special Act by adding false and vague allegations as in the instant case. This tendency needs to be curbed. If not discouraged and in the wake of their over enthusiasm and anxiety to take revenge of civil dispute by involving the accused in such false criminal cases, in that eventuality, it will ultimately weaken those true cases of the prosecution as well even against the real culprits and the very object and purpose of the Act, would pale into insignificance in this relevant behalf.

(21) Likewise, there is another aspect of the matter, which can be viewed from a different angle. It is not a matter of dispute that petitioners have purchased the disputed house, which the complainant party desired to purchase. They are litigating since long. If the epitome of the facts and material of previous litigation between the parties is put together and is perused, then, to me, the conclusion is inescapable that the complainant has filed the instant false criminal complaint maliciously and vexatiously in order to wreak vengeance, which formed the basis of FIR (Annexure P1) against the petitioners, which is liable to be quashed, in view of the law laid down by the Hon'ble Apex Court in a celebrated judgment in case **State of Haryana and others versus Ch.Bhajan Lal and others (3)**, which was again reiterated in case **Som Mittal versus Government of Karnataka (4)**.

(22) It is now well-recognized principle of law that such matter of civil dispute cannot legally be allowed to become a subject matter of criminal proceedings. Otherwise, there will be no end of unwarranted litigation and

(2) 2011 (11) SCC 259

(3) AIR 1992 SC 604

(4) 2008 (2) R.C.R.(CrL.) 92

it will inculcate and perpetuate injustice to the cases of the petitioners in this relevant direction. In this manner, the complainant cannot possibly be permitted to execute a non-existent civil court decree by putting pressure of criminal prosecution on the petitioners.

(23) An identical point was decided in case **Indian Oil Corporation versus NEPC India Ltd. & Others (5)** and Hon'ble Supreme Court cautioned about a growing tendency of the people to convert purely civil disputes into criminal cases and noticed the prevalent impression that since the civil law remedies are time consuming and do not adequately protect the interests of the parties, so, the people have started to settle civil disputes and claims, which do not involve any criminal offence, by applying the pressure through criminal prosecution and such effort should be deprecated and discouraged.

(24) 24. Therefore, the contrary arguments of counsel for complainant respondent that the offence under section 3 of the Act is made out against the petitioners "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

(25) Adjudged from any angle, to my mind, the lodging of the FIR (Annexure P1) by the complainant and all other subsequent proceedings arising therefrom, against the petitioners-accused, is sheer and complete misuse/abuse of process of criminal law. Thus, the impugned FIR (Annexure P-1) and all other subsequent proceedings arising therefrom deserve to be set aside in the obtaining circumstances of the case.

(26) No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

(27) In the light of aforesaid reasons, the instant petition is accepted. Consequently, the impugned FIR (Annexure P1) and all other subsequent proceedings arising therefrom are hereby quashed. The petitioners are accordingly discharged from the indicated criminal case.

P.S. Bajwa