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## **CASE COMMENT: HITESH VERMA v. THE STATE OF UTTARAKHAND**

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**COURT:** Criminal Appeal No. 707 of 2020 before Hon'ble Supreme Court of India

**HON'BLE JUDGES/CORAM:** L. Nageswara Rao, Hemant Gupta and Ajay Rastogi

**PARTIES INVOLVED:** Hitesh Verma (Appellant) and The State of Uttarakhand & Anr.  
(Respondent)

**DATE OF DECISION:** November 5, 2020.

**TOPIC:** Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

### **I. PROCEDURAL HISTORY**

The trial Court convicted one Hitesh Verma (hereinafter referred to as the 'accused') for the offence of that an offence under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and his conviction as well as sentence was upheld by the High Court of Uttarakhand. Hence the matter arose before the present court via grant of Special appeal.

### **II. MATERIAL FACTS**

An FIR was registered against the appellants in the present case under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for using castes' remarks/abuses against the applicant (the respondent no. 2 herein).

It was alleged that the appellant and his family were from past 6 months are not allowing the respondent no. 2 to work on her fields. An excerpt from the FIR reads,

**"On 10.12.2019 at around 10 am, all these persons entered illegally in to four walls of her building and started hurling abuses on myself and my labourers and gave death threats and used castes' remarks/abuses and took away the construction material such as Cement, Iron, Rod, Bricks.**

The appellant, on the other hand, contended that the disputes relating to the property were pending before the Civil Court and that, the aforementioned FIR was filed on patently false grounds only to harass the appellant and to abuse of process of law.

### **III. ISSUE INVOLVED**

The matter before this court is limited over the question of what offence is made out as having been committed by the petitioner

### **IV. ARGUMENTS**

The learned counsel for the appellant argued that the disputes relating to the property are pending before the Civil Court and that, the present FIR has been filed on patently false grounds by respondent No. 2 only to harass the appellant and to abuse of process of law. It is argued that the allegations levelled in the FIR and the subsequent report submitted by the Police after investigations does not disclose any offence under the Act. Furthermore, it is argued that the report neither discloses the caste of the informant nor the allegations are that they were made in public view. Also, the offending words are not purported to be made for the reason that the informant is a person belonging to Scheduled Caste.

Secondly, the learned counsel for the State on the contrary, submitted that during investigations, certain persons have supported the version of the informant. It is argued on behalf of respondent No. 2 that in fact the appellant and his family are encroacher on the informant's land. Therefore, the appellant was rightly not granted any indulgence by the High Court.

Third, The Appellant relied upon *Gorige Pentaiah v. State of Andhra Pradesh & Ors.*<sup>1</sup> wherein the allegation was of abusing the complainant in the name of their caste and this Court quashed the complaint. The attention of the High Court was drawn to another judgment reported as *Ashabai Machindra Adhagale v. State of Maharashtra & Ors.*<sup>2</sup> wherein this Court refused to quash the FIR on the ground that the caste of the accused was not mentioned in the first information report.

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<sup>1</sup> (2008) 12 SCC 531

<sup>2</sup> (2009) 3 SCC 789

***“3. Punishments for offences atrocities.—3 [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—***  
*(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”*

## **V. JUDGEMENT**

Highlighting the object behind the enactment of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Court noticed that considering the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliation, harassment, deprivation of life and property, the Act was enacted to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community.

### **Insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe**

The offence under Section 3(1)(r) of the Act indicates 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."*

It held that the offence under Section 3(1)(r) of the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

Considering the facts of the case, the Court said that the assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Stating that every citizen has a right to avail their remedies in accordance with law, the Court said,

*"... 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."*

**Insult or intimidation in "any place within public view"**

The Court also took note of another key ingredient of Section 3(1)(r) of the Act i.e. insult or intimidation in "any place within public view". It referred to the judgment in **Swaran Singh v. State**, (2008) 8 SCC 435 where a distinction was drawn 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 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."*

Coming back to the facts of the case, the Court noticed that as per the FIR, the allegations of abusing the informant were within the four walls of her building and there was no member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, it was held.

*"... the basic ingredient that the words were uttered "in any place within public view" is not made out."*

**VI. HELD**

The Appeal of the accused is therefore accepted

**VII. EVALUATION**

The Court concluded that the appellant and others were not permitting respondent No.2 to cultivate the land for the last six months as there is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Since the matter is regarding possession of property pending 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 Scheduled Caste or Scheduled Tribe.

It also clarified that *the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by*

*way of a procedure established by law.*

It was, hence, held that the charges against the appellant under Section 3(1)(r) of the Act were not made out.

### **Author's Views**

After the independence of the country, the makers of 'The Constitution' tried to find out the solution for building a nation which would become "The Golden Bird" again, where there will be no discrimination which have been sustained for many years by us through various invaders on different basis. Especially in a society it would be very difficult to break the chains of such a system (*Varna System*) with which the Religion of our society is bound. But to achieve such a status around the globe and the real meaning of a democracy this must come to an end although not rapidly but gradually instead so as to establish a society where everyone can live with dignity which was fragmented and abused for long. Hence, the Constitution builders came with the inception of such a Constitution which would see each individual as equal and not differentiate with each other on any ground.