

Neutral Citation No. - 2023:AHC-LKO:83754

Reserved on 08.11.2023

Delivered on 19.12.2023

A.F.R.

Court No. - 15

Case :- CRIMINAL APPEAL No. - 739 of 2022

Appellant :- Bhaiya Lal Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others

Counsel for Appellant :- Rakesh Kumar Chaudhary, Nishi Chaudhary

Counsel for Respondent :- G.A., Vaibhav Kalia

Hon'ble Shamim Ahmed, J.

1. Heard Sri Rakesh Kumar Chaudhary, learned counsel for the appellant assisted by Sri Aditya Pandey, Advocate, Sri Vaibhav Kalia, learned counsel for the respondent no.3 and Ms. Charu Singh, learned A.G.A. for the State-respondent Nos.1 and 2.

2. The instant Criminal Appeal under Section 14-A(1) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act, 1989") has been filed by the appellant, namely, Bhaiya Lal Singh with a prayer to set aside the proceedings of the Special Sessions Trial No.107 of 2022 (State Vs. Manager B.L. Singh and Others) arising out of Case Crime No.439 of 2021, Police Station-Kotwali, District-Raebareli, under Section 143 and 506 I.P.C. as well as under Section 3(1)(Dha) of S.C./S.T. Act, 1989, pending in the Court of learned Special Judge, S.C./S.T. Act, Raebareli. Further prayer is to set aside the impugned cognizance as well as summoning order dated 07.02.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli in the aforesaid case, whereby cognizance was taken against the appellant.

3. Learned counsel for the appellant submitted that the facts of the case is that the appellant is an educationist by profession and runs a school, named as, BSS Public School at Anmol Vihar in Raebareli and he also the manager of the said institution, which is affiliated to C.B.S.E. Board. On 30.07.2021,

result of Class XIIth by C.B.S.E. Board was declared for the academic year 2020-2021, wherein total 140 students appeared from the school of the appellant and out of which, 129 students passed, 23 students had to write compartment examination and 11 students failed. Out of the 11 failed students, one student, namely, Ritesh Sonkar is the son of respondent no.3.

4. Learned counsel for the appellant further submitted that aggrieved by the fact that son of the respondent no.3 failed, the respondent no.3 entered into the school premises and started misbehaving and abusing the teachers. The information of this incident was immediately communicated to the Inspector, Kotwali Nagar, Raebareli vide letter dated 31.07.2021, which is being quoted hereunder:-

“प्रेषक

प्रबन्धक

बी.एस.एस. पब्लिक स्कूल

अमोल विहार, रायबरेली

सेवा में,

इंस्पेक्टर कोतवाली सदर

रायबरेली

महोदय

निवेदन है कि विद्यालय में 2020-21 की सीनियर सेकेन्डरी परीक्षाओं का परिणाम दिनांक 30/07/2021 को घोषित किया गया था जिसमें सी.बी.एस.ई. इलाहाबाद द्वारा प्रदत्त अंको के अनुसार उत्तीर्ण अथवा अनुत्तीर्ण छात्र/छात्राओं की अंक तालिका विद्यालय को उपलब्ध कराई गयी थी। सी.बी.एस.ई. में यह भी प्रावधान किया गया है कि जो छात्र वर्तमान अंको से संतुष्ट न हो वह अपनी सहमति देकर परीक्षा में बैठकर नवीन अंकतालिका प्राप्त कर सकता है। विद्यालय के छात्र रितेश सोनकर पुत्र श्री संतोष कुमार सोनकर निवासी 277/15 प्रभू टाउन, निकट भार्गव कोठी, रायबरेली- 229001 अनुत्तीर्ण थे। 31/07/2021 को 12:30 बजे श्री संतोष कुमार सोनकर अपने पुत्र रितेश कुमार सोनकर के साथ विद्यालय कार्यालय आए और कार्यालय में विद्यालय प्रबन्धक, प्रधानाचार्य तथा स्टाफ के लिए गाली गलौच तथा अभद्र भाषा का प्रयोग किया तथा विद्यालय स्टाफ को विद्यालय के बाहर जान से मारने की धमकी दी। जिसके कारण विद्यालय द्वारा 112 डायल करके स्थानीय पुलिस को भी बुलाया गया इसके अतिरिक्त श्री संतोष कुमार सोनकर ने अपने पाल्य रितेश सोनकर को भी अवांछनीय शब्द बोलने के लिए उकसाया।

आपकी सेवा में यह आवेदन इस आशय से दिया जा रहा है कि संबन्धित अभिभावक श्री संतोष कुमार सोनकर निवासी 277/15 प्रभू टाउन, निकट भार्गव कोठी, रायबरेली- 229001 के विरुद्ध प्रथम सूचना रिपोर्ट (F.I.R.) दर्ज करते हुए विद्यालय की सुरक्षा हेतु आवश्यक कार्यवाही करने की कृपा करें, जिससे भविष्य में कोई ऐसी घटना न हो सके।

ह0 अपठनीय

बी.एस.एस. पब्लिक स्कूल
अमोल विहार, रायबरेली
9415090179”

5. Learned counsel for the appellant further submitted that the respondent No.3 did not stop there and continued to protest against the institution creating panic in the institution, thereafter, when near friends tried to pacify the matter on 03.08.2021, all the efforts went in vain and respondent No.3 threatened the appellant and said that he will implicate the appellant in a false case.

6. Learned counsel for the appellant further submitted that on 04.08.2021, the respondent no.3 lodged the present F.I.R. bearing Case Crime No.0439 of 2021, under Sections 143 and 506 I.P.C. as well as under Section 3(1)(Dha) of S.C./S.T. Act at Police Station Kotwali Nagar, District Raebareli, alleging therein that around 70 students have failed in the Class XIIth Board Examination conducted by C.B.S.E. and since the complainant was making efforts to provide justice to the failed students, therefore, the appellant alongwith other associates came to his house and offered the complainant a sum of Rs.5,00,000/- to end the protest and when the complainant refused to accept the same, the appellant alongwith his associates threatened to his life. The aforesaid F.I.R. is being quoted hereunder:-

“नकल तहरीर ——— सेवा में श्रीमान थाना प्रभारी निरीक्षक महोदय थाना कोतवाली नगर जिला रायबरेली। विषय— बी0एस0एस0 पब्लिक स्कूल अमोल विहार रायबरेली के प्रबन्धक बी0एल0 सिंह एवं 10-15 अन्य व्यक्तियों द्वारा प्रार्थी के आवास पर दिनांक 03.08.2021 को रात्रि करीब 09.39 बजे पहुंचकर प्रार्थी से बातचीत के दौरान जान से मार देने की धमकी दिये जाने के सम्बन्ध में। महोदय निवेदन है कि प्रार्थी सन्तोष कुमार सोनकर पुत्र स्व0 श्री रामबली के निवास 277/15, प्रभु टाउन रायबरेली का निवासी है एवं वर्तमान समय में प्रार्थी बी0एस0एस0 स्कूल प्रशासन द्वारा कक्षा-12 के सी0बी0एस0सी0 बोर्ड के 70 बच्चों को फेल किये जाने के बाद उन्हें न्याय दिलाने के ले पूरी तरह से तत्पर है और बच्चों के अभिभावक के रूप में स्कूल प्रशासन से बच्चों को न्याय दिलाने के बात लगातार करता है। जिसके कारण स्कूल प्रशासन प्रार्थी से काफी और चिढ़ा हुआ है। इन्हीं सब बात को ध्यान में रखते हुए दिनांक 03.08.2021 को प्रबन्धक बी0एल0 सिंह प्रधानाचार्य बुधराज प्रजापति उपप्रधानाचार्य विकास सिंह, शिवम पटेल, चन्दल सिंह, राजीव रंजन अवनीश सिंह, साहिल सहित अन्य कई अज्ञात व्यक्ति रात्रि करीब 09.39 बजे अचानक प्रार्थी के आवास पर आये और कहा कि हमें आपसे कुछ बातचीत करना है लेकिन कुछ देर बाद जब उसका उद्देश्य बातचीत से पूरा नहीं हुआ तो वह प्रार्थी को प्रलोभन देने के उद्देश्य से 5,00,000/- ऑफर करने की बात कही तो प्रार्थी ने जवाब देते हुए कहा कि मैं बच्चों के भविष्य के साथ खिलवाड़ नहीं कर सकता हूँ और आप इन पैसे

को वापिस ले जाइये तो वह लोग आग बबूला हो उठे और कहा कि तुमको देख लूंगा और जान से मरवा दूंगा, सारी हेकड़ी निकल जायेगी। प्रार्थी ने इससे पूर्व दिनांक 01.08.2021 को एक प्रार्थना पत्र थाना कोतवाली में दिया है तथा स्पीड पोस्ट एवं स्वयं मिलकर श्रीमान पुलिस अधीक्षक महोदय से न्याय की गुहार लगाई है। अतः श्रीमान जी आपसे निवेदन है कि उक्त मामले की अपने स्तर से जांच करवाकर स्कूल प्रबन्धक व उनके सभी साथी जो साथ में थे उन सभी के खिलाफ प्रार्थी को घूस देने व जान से मारने की धमकी देने के खिलाफ एफ0आई0आर0 दर्ज करते हुए एवं बच्चों के भविष्य को देखते हुए उचित कानूनी कार्यवाही करने की कृपा करे। दिनांक C4/अगस्त/21 प्रार्थी ह0 अग्रेजी अपठनीय (सन्तोष कुमार सोनकर) मो0 न0— 7800858200 उपरोक्त, रामगोपाल 8454677895, rakesh yadav9170875787, गायत्री देवी 9044833233, नोट—एफआईआर लेखक हे0 का0 मो0 हनीफ व सीसीटीएनएस कर्मी मो0 का0 सीमा वर्मा। “

7. In support of aforesaid contentions, learned counsel for the appellant submitted that with intention to trap and deceive the appellant, the complainant tried to establish that he invited and welcomed the appellant at his house and subsequently plotted a false and fabricated story. The alleged incident is not only false and fabricated but also based on factually incorrect facts, whereby it was alleged in the F.I.R. that the appellant had failed more than 70 students in Class XIIth Board Examination conducted by C.B.S.E., however, the fact is that only 11 students were failed and 23 students were required to write compartment examination. List of the students who failed or write compartment examination declared by the C.B.S.E. is being quoted hereunder:-

S. No.	Students Name	Status in 30/07/2021	Comp. Exam	Status in 16/02/2022
1.	Ayushman Singh	Comp.	Appear in Comp. Exam	Pass
2.	Vaibhav Vikram Singh	Comp.	Appear in Comp. Exam	Pass
3.	Dheeru Yadav	Comp.	Appear in Comp. Exam	Failed (comp.)
4.	Kavita Verma	Comp.	Appear in Comp. Exam	Pass
5.	Ashish Singh	Comp.	Appear in Comp. Exam	Pass
6.	Niteesh Kumar	Comp.	Appear in Comp. Exam	Pass
7.	Himanshu Yadav	Comp.	Appear in Comp. Exam	Pass
8.	Ambuj Patel	Comp.	Appear in Comp. Exam	Pass
9.	Adarsh Kannaujia	Comp.	Appear in Comp. Exam	Pass

10.	Adarsh Yadav	Comp.	Appear in Comp. Exam	Pass
11.	Priyanshi Tiwari	Comp.	Appear in Comp. Exam	Failed
12.	Goldee Maurya	Comp.	Appear in Comp. Exam	Pass
13.	Khusi Yadav	Comp.	Appear in Comp. Exam	Pass
14.	Muskan Soni	Comp.	Not appear in comp. Exam	Pass (In dispute settlement)
15.	Kalyani Mishra	Comp.	Appear in Comp. Exam	Pass
16.	Adarsh Shukla	Comp.	Appear in Comp. Exam	Pass
17.	Abhinav Singh	Comp.	Appear in Comp. Exam	Pass
18.	Dipika Patel	Comp.	Appear in Comp. Exam	Pass
19.	Deepanjali Singh	Comp.	Appear in Comp. Exam	Pass
20.	Saroj Muskan Rakesh	Comp.	Appear in Comp. Exam	Failed
21.	Sarthak Singh	Comp.	Appear in Comp. Exam	Pass
22.	Vinay Singh	Comp.	Appear in Comp. Exam	Pass
23.	Abhishek Yadav	Comp.	Appear in Comp. Exam	Pass
24.	Arjun Verma	Ess.rep.	Not appear in Comp. exam	Fail
25.	Ankit Pal	Ess.rep.	Not appear in comp. exam	Fail
26.	Ritesh K. Sonkar	Ess.rep.	Not appear in comp. Exam	In result of 30.07.2021 Chemistry-28 Maths-32 After dispute settlement Maths-38 Chemistry 28 (Comp.)
27.	Kirti Vardhan Singh	Ess.rep.	Appear in Comp. Exam	Fail
28.	Yuvraj Singh	Ess.rep.	Appear in Comp. Exam	Pass
29.	Raj Singh Yadav	Ess.rep.	Appear in Comp. Exam	Failed
30.	Akshay Kumar	Ess.rep.	Appear in Comp. Exam	Failed
31.	Deepak Kumar	Ess.rep.	Appear in Comp. Exam	Failed
32.	Aadya Tiwari	Ess.rep.	Not appear in comp. exam	Fail
33.	Anshika	Ess.rep.	Appear in Comp. Exam	Pass
34.	Deepa Singh	Ess.rep.	Not appear in comp. exam	Passed (in dispute settlement)

Result Date-30.07.2021
Total Students-140
Total Comp-23
Total Essential Repeat-11
Total Pass-106
Send Dispute Settlement Type-2 Request-40
Pass in Dispute Settlement-21
Result Date 16.02.2022
Passed-129
Essential Repeat-09
Comp.-02

It is further submitted that no such offer of Rs.5,00,000/- was ever made by the appellant to the respondent No.3 and there is no such occasion to offer such an amount to the respondent No.3 but the respondent No.3 only to give gravity to the alleged offence has made false allegation in the F.I.R. that the appellant offered such an amount to the respondent No.3 to pacify the matter, even though, there was no independent witness to support the alleged allegation. The respondent No.3 also did not mention any independent witness, who was present at the time of alleged incident, thus, the story as narrated appears to be unbelievable and only made with an intention to falsely implicate the appellant alongwith other accused persons to defame the image of the institution.

8. Learned counsel for the appellant further submitted that on the same day i.e. 04.08.2021, the appellant by means of an e-mail dated 04.08.2021, requested the CBSE to re-assess and increase the marks of the students, who were failed or had to write compartment examination, considering the future of the aforesaid students. The appellant by means of the aforesaid e-mail dated 04.08.2021 submitted the list of failed students which includes the name of the son of the respondent no.3, as such, the appellant gave sincere efforts to improve the result of the failed students keeping in mind the future of the students. The contents of the aforesaid e-mail is being quoted hereunder:-

“सेवा में,

श्रीमान क्षेत्रीय अधिकारी
35B, CIVIL STATION
MG ROAD, CIVIL LINES
PRAYAGRAJ, U.P.211001

महोदय,

सविनय अवगत कराना है कि हमारे विद्यालय का सीनियर सेकेन्डरी परीक्षा 2021 का परिणाम दिनांक 30/07/2021 को घोषित हुआ था। जिसमें REFERENCE YEAR POLICY की वजह से हमारे 11 छात्र/छात्राएं अनुत्तीर्ण हैं तथा 23 छात्र/छात्राओं का COMPARTMENT आ गया है। जिससे छात्र/छात्राएं, अभिभावक तथा विद्यालय अत्यंत व्यथित है।

महोदय से अनुरोध है कि उक्त छात्र/छात्राओं के भविष्य को देखते हुए उनके अंकों में बढ़ोत्तरी की जाये तथा उनको उत्तीर्ण श्रेणी में लाया जाय। उक्त छात्र/छात्राओं का विवरण निम्न प्रकार है:—

Failed Students:-		
Name	Fathers' Name	Roll No.
Arjun Verma	Rajesh Verma	23716035
Ankit Pal	Ram Naresh Pal	23716036
Ritesh Kumar Sonkar	Santosh Kumar Sonkar	23716037
Anshika	Ram Prakash	23716055
Deepa Singh	Raju Singh	23716056
Kirti Vardhan Singh	Sandeep Pt. Singh	23716071
Yuvraj Singh	Rituraj Singh	23716082
Raj Singh Yadav	Mahesh	23716089
Akshay Kumar	Sunil Agrahri	23716097
Deepak Kumar	Sundar Lal Yadav	23716008
Aadya Tiwari	Kulshresth Narayan Tiwari	23716111
Compartment Students		
Ayushman Singh	Ajit Pratap Singh	23715973
Vaibhav Vikram Maurya	Rajesh Kumar Maurya	23715975
Abhishek Yadav	Ram Lal Yadav	23715978
Dheeru Yadav	Ram Bahadur Yadav	23715979
Kavita Verma	Suresh Verma	23715980
Ashish Singh	Satrohan Singh	23715987
Niteesh Kumar	Satyam Yadav	23716015
Himanshu Yadav	Suresh Yadav	23716019
Ambuj Patel	Shivakant	23716033
Adarsh Kanojiya	Shiv Kanojiya	23716047
Adarsh Yadav	Gyan Dev Yadav	23716048
Goldee Maurya	Surendra Kumar	23716050
Khushi Yadav	Ganga Prasad Yadav	23716052
Muskan Soni	Makhan Lal	23716054
Kalyani Mishra	Sanjay Mishra	23716057
Adarsh Shukla	Rupesh Kumar Shukla	23716058

Abhinav Singh	Satendra Singh	23716060
Dipika Patel	Ashok Kumar	23716065
Dipanjali Singh	Brijesh Kumar Singh	23716068
Saroj Muskan Rakesh	Rakesh GurudeenSaroj	23716074
Sarthak Singh	Deshraj Singh	23716075
Vinay Singh	Sankarbux Singh	23716079
Priyanshi Tiwari	Gyanchandra Tiwari	23716105

9. Learned counsel for the appellant further submitted that since the respondent no.3 continued to carry protest, which was causing disturbance in the smooth functioning and educational activities of the school, therefore, the school wrote a letter dated 06.08.2021 to the concerned Police Station. The said letter is being quoted hereunder:-

“सेवा में,

श्रीमान कोतवाली प्रभारी

सदर कोतवाली, रायबरेली,

महोदय

सविनय निवेदन है कि आज दिनांक 6 अगस्त 2021 को इंटर की परीक्षा 2021 में असफल छात्र-छात्राएं तथा कंपार्टमेंट के छात्र-छात्राओं हेतु इंप्रूवमेंट परीक्षा तथा सी.बी.एस.ई. द्वारा गठित की गई सेटलमेंट कमेटी के संबंध में अवगत कराने हेतु अभिभावकों एवं छात्र/छात्राओं को बुलाया गया था। किन्तु प्रातः 9:30 बजे लगभग 150 अराजक तत्वों द्वारा नारेबाजी कर रहे थे विद्यालय का मुख्य गेट तोड़ते हुए अंदर प्रवेश किए तथा विद्यालय के शीशे व खिड़कियां तोड़ दिया गया और गाली गलौज व मुर्दाबाद के नारे लगाए गए। उनके द्वारा विद्यालय की महिला अध्यापिकाओं के साथ अभद्रता का व्यवहार करते हुए और उनके साथ धक्का-मुक्की की गई है जिसकी सीसीटीवी की फुटेज है समय आने पर प्रस्तुत किया जा सकता है।

विद्यालय का समस्त स्टाफ एवं प्रबंधक आज की इस घटना से अत्यंत भयभीत हैं तथा इन परिस्थितियों में कार्य नहीं कर सकते हैं।

9 अगस्त 2021 से बोर्ड के इंप्रूवमेंट हेतु परीक्षाओं के फॉर्म भरे जाने हैं जिसके लिए यदि विद्यालय का कोई स्टाफ उपस्थित रहता है तो अराजक तत्वों द्वारा उसे ना तो कार्य करने दिया जायेगा और ना ही उसकी जान की सुरक्षा रहेगी। महोदय से अनुरोध है कि अज्ञात तत्वों के विरुद्ध प्राथमिकी दर्ज करते हुए सुरक्षा प्रदान करने हेतु कृपा करें।

ह0 अपठनीय

6/8/21

प्रबंधक

बी.एस.एस. पब्लिक स्कूल

अमोल विहार, रायबरेली।”

10. Learned counsel for the appellant further submitted that on 08.08.2021, the appellant issued a notice for the students who could not pass the XIIth

Board Examination, informing the aforesaid students to submit a complaint / explanation to the Principal in case they are not satisfied with results. The contents of the aforesaid notice is being quoted hereunder:-

“केन्द्रीय माध्यमिक शिक्षा बोर्ड के सर्कुलर नं-

CBSE/CE/Dispute.resolution/2021 /2021 दिनांक 08.08.2021 CBSE की वेबसाइट पर उपलब्ध) द्वारा सूचना जारी कर परीक्षाफल के विवाद को सुलझाने हेतु दिशा निर्देश जारी किए हैं।

Dispute regarding computation of result के अनुसार जो विद्यार्थी कक्षा 12 (2020-21) परीक्षाफल से संतुष्ट नहीं है, वह विद्यालय के प्रधानाचार्य को अपनी शिकायत प्रस्तुत करने की अंतिम तिथि 11.08.2021 तक प्रस्तुत कर सकते हैं।

प्रबंधक

*बी.एस.एस. पब्लिक स्कूल
अमोल विहार, रायबरेली।*

प्रबंधक

*बी.एस.एस. पब्लिक स्कूल
अमोल विहार, रायबरेली।”*

11. Learned counsel for the appellant further submitted that the appellant as well as Principal of the School vide letter dated 21.08.2021 forwarded all the complaints / explanation received by the failed students to the Regional Officer, CBSE Prayagraj with request to decide the aforesaid applications. The contents of the aforesaid letter is being quoted hereunder:-

“प्रेषक प्रबंधक

*बी.एस.एस. पब्लिक स्कूल
रायबरेली*

सेवा में

Regional Officer,

35 B, Civil Station,

MG Road, Civil Lines,

Prayagraj, Uttar Pradesh 211001

विषय – विद्यालय को विवादित type-2 के अंतर्गत प्राप्त प्रार्थना पत्रों को प्रेषण

महोदया,

निवेदन है कि हमारे मेल दिनांक 12/08/2021 को संदर्भ लें जिसके अंतर्गत विद्यालय में विवादित type-2 के अंतर्गत प्राप्त प्रार्थना पत्रों को इंगित किया गया था। दिनांक 19/08/2021 के अंतर्गत प्रार्थना पत्रों के निस्तारण हेतु अनुरोध किया गया था।

विद्यालय को विवादित type-2 के अंतर्गत प्राप्त कुल कक्षा 12 के 40 (चालीस) प्रार्थना पत्रों को मूल रूप से प्रेषित किए जा रहे हैं।

इसके साथ ही कक्षा 10 के छात्र/छात्राओं द्वारा विवादित type-2 के अंतर्गत प्राप्त 43 (तैतालिस) प्रार्थना पत्र भी निस्तारण हेतु आपकी सेवा में प्रेषित किए जा रहे हैं। कृपया आप इन्हें निस्तारित करवाने की कृपा करें।

संलग्नक—

1. मेल कापी दिनांक 12/08/2021
2. पत्र दिनांक 19/08/2021
3. कक्षा 12 के 40 प्रार्थना पत्र
4. कक्षा 10 के 43 प्रार्थना पत्र

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प्रबंधक

बी.एस.एस. पब्लिक स्कूल
रायबरेली।

ह0 अपठनीय
प्रबंधक

बी.एस.एस. पब्लिक स्कूल
रायबरेली।

12. Learned counsel for the appellant further submitted that when the appellant came to know about the present F.I.R. lodged against him alongwith other staff members, he immediately wrote a letter dated 27.08.2021 to the Superintendent of Police, Raebareli explaining the entire incident as well as denying the allegation of offering money to respondent No.3 and other contents of the F.I.R.

13. Learned counsel for the appellant further submitted that the respondent no.3 preferred a Writ Petition before this Hon'ble Court bearing Writ Petition No.22209 (M/S) of 2021 (Ritesh Kumar Sonkar Vs. Union of India and Ors.), wherein son of the respondent no.3 was arrayed as petitioner, seeking a writ of Mandamus directing the respondents to decide the representation dated 11.08.2021 of the petitioner and to correct the assessment of marks of the Petitioner. The Hon'ble Court was pleased to dispose of the aforesaid Writ Petition vide judgment and order dated 01.10.2021, directing the Principal,

B.S.S. Public School, Raebareli to decide the representation of the petitioner and submit all the documents to CBSE for further action within a stipulated period of two weeks. The aforesaid order of this Hon'ble High Court is being quoted hereunder:-

"1. Heard learned counsel for petitioner, Sri Shashank Bhaseen, learned counsel for respondent no. 2 to 4, Ms. Pushpila Bist, learned counsel for Union of India and learned Standing Counsel for the State.

2. Petitioner, who was a student of Class-XII was covered by the policy of the C.B.S.E. Board dated 17.06.2021 for the purposes of declaration of his result as per the policy especially prepared for the Covid-19 year. Petitioner was not satisfied with his result and therefore, made a representation before the principal under the said policy dated 17.06.2021 and circular dated 08.08.2021. Before the principal could decide the said representation as per the aforesaid policy, all the record due to the large number of complaints was seized by the District Magistrate, Raibareli. Therefore, representation of the petitioner could not be decided on merits.

3. Admittedly, the said policy provides that in case principal finds favour with the petitioner and finds some discrepancy with the result he shall forward the same to the Board.

4. Learned counsel for respondent Board and Union of India submit that respondents have no objection in case principal of the institution decides the representation of the petitioner in accordance with the policy and circular.

5. For the said purposes, the District Magistrate, Raibareli is directed to hand over record of the petitioner to the principal of the institution. The principal shall decide the representation of the petitioner within a period of two weeks from the date of production of certified copy of this order before him.

6. In case principal finds favour with the petitioner, he shall forward the documents of the petitioner to respondent no.4 Regional Officer, C.B.S.E. Regional Office, Prayagraj, 35 Mahatma Gandhi Road, Civil Lines, Prayagraj as well as the Committee constituted, who shall take final decision on the same as per the aforesaid policy and circular. The entire exercise shall be completed within a period of one month from today.

7. With the aforesaid, present writ petition is disposed of. “

14. Learned counsel for the appellant further submitted that in compliance of the aforesaid judgment and order dated 01.10.2021, the Principal, B.S.S. Public School, Raebareli vide letter dated 19.10.2021 submitted a detailed report of the marks scored by the son of the complainant in Class Xth, XIth and XIIth to the CBSE.

15. Learned counsel for the appellant further submitted that the appellant vide letter dated 08.11.2021 submitted all the original documents to the CBSE i.e. marksheet, result sheet, answer copies, etc. of the son of the respondent no.3 in order to further make it convenient for the C.B.S.E. Board to assess the correct marks of the son of the respondent no.3.

16. Learned counsel for the appellant further submitted that the appellant made sincere efforts to qualify the son of the respondent no.3 in the Class XIIth Board Examination, however, the respondent no.3 determined to harass the appellant and he even did not allow his son to appear in the compartment exams conducted by C.B.S.E. Board, which could have allowed his son to pass the Board Examination. Thus, the complainant spared no effort to shatter the image of the appellant and his school in the society. It was the C.B.S.E. Board to take the final decision regarding declaration of the result of son of respondent No.3, the appellant or any other staff have no interference in the declaration of result as the C.B.S.E. Board is the final authority.

17. Learned counsel for the appellant further submits that when the Investigating Officer of the aforesaid case did not approach the appellant as

well as other persons named in the aforesaid F.I.R. for recording their statements, the appellant vide letter dated 15.01.2022 addressed to the Circle Officer, Raebareli gave reference of the letter dated 27.08.2021 and requested the concerned police officials to record his statement.

18. Learned counsel for the appellant further submits that since the respondent no.3 was continuously protesting against the school and was also physically hurting the staff members, therefore, on 27.01.2022, the Principal of the School lodged a complaint against the respondent no.3 in Police Station Kotwali Nagar, District Raebareli.

19. Learned counsel for the appellant further submits that despite repeated efforts of the appellant to co-operate with the investigation and writing numerous letters to the concerned police station requesting the Investigating Officer to record the statement of the appellant, the appellant was never called to record his statement due to which the appellant, vide a notarized affidavit dated 04.02.2022, submitted his statement alongwith the evidence addressed to the Superintendent of Police, Raebareli.

20. Learned counsel for the appellant further submits that when no effort was taken by the police officials of the concerned Police Station to record the statement of the appellant even after repeated efforts, the appellant was again constrained to submit his statement by means of a notarized affidavit dated 08.02.2022 to the Circle Officer, Raebareli requesting therein to take appropriate action as the appellant was continuously being threatened by the respondent no.3.

21. Learned counsel for the appellant further submits that statement of the informant i.e. respondent no.3, namely, Santosh Kumar Sonkar was recorded on 15.08.2021 under Section 161 Cr.P.C., wherein he reiterated the version of F.I.R. The respondent no.3 further stated that Ramgopal, Rakesh and Gayatri Devi were witnesses of the alleged incident. The statement of the respondent no.3 recorded under Section 161 Cr.P.C. is being quoted hereunder:-

बयान वादी – संतोष कुमार सोनकर पुत्र स्व० श्री रामबली निवासी– 277/15 प्रभु टउन थाना कोतवालीनगर जनपद रायबरेली ने बताया कि मैं बी०एस०एस० पब्लिक स्कूल प्रशासन द्वारा कक्षा 12 के सी०बी०एस०सी० बोर्ड के 70 बच्चों को फेल किये जाने के बाद उन्हें न्याय दिलाने के लिये पूरी तरह से तत्पर है और बच्चों के अभिभावक के रूप में स्कूल प्रशासन से बच्चों को न्याय दिलाने की बात लगातार करता हूँ जिसके कारण स्कूल प्रशासन मुझसे काफी चिढ़ा हुआ है इन्ही सब बात के कारण दिनांक-03.08.2021 को प्रबन्धक बी०एल० सिंह, प्रधानाचार्य बुधराज प्रभापति उप प्रधानाचार्य विकास सिंह, शिवम पटेल, चन्द्रन सिंह, राजीव रंजन, अवनीश सिंह, साहिल साहित अन्य कई अज्ञात व्यक्ति रात करीब 9:39 बजे अचानक मेरे आवास पर आये और कहा कि हमें आप से कुछ बातचीत करना है लेकिन कुछ देर बाद जब उनका उद्देश्य बातचीत से पूरा नहीं हुआ तो वे सब लोग मुझे प्रलोभन देने के उद्देश्य से 5,00,000 का ऑफर देने की बात कही तो मैं जवाब देते हुये कहा कि बच्चों के भविष्य के साथ खिलवाड़ नहीं कर सकता हूँ और आप इन पैसों को वापिस ले जाइये तो सभी लोग आग बबूला हो गये और कहा कि तुमको देख लूंगा और जान से मरवा दूंगा सारी हेकड़ी निकल जाएगी इससे पूर्व दिनांक- 01.08.2021 को एक प्रार्थना पत्र थाना कोतवाली में दिया है तथा स्पीड पोस्ट एवं स्वंग मिलकर श्रीमान् पुलिस अधीक्षक महोदय से न्याय की गुहार लगाई थी सभी लोगों द्वारा जो बच्चों की भविष्य बर्बाद की जा रही है तथा घूस देने व जान से मार देने की धमकी दी गई है उसके संबंध में विद्यालय में पढ़ने वाले अन्य अभिभावकों रामगोपाल, राकेश, व गायत्री देवी द्वारा भी विरोध किया जा रहा है जिस के सम्बन्ध में मैं आपको बता रहा हूँ तथा आवश्यकता पड़ने पर मैं अपना बयान पुनः दूंगा। यही मेरी बयान है। वादी मुकदमा से उसका जाति प्रमाण पत्र मांगा गया तो बाद में उपलब्ध कराये जाने की बात कही गई। तथा अपना आधार कार्ड उपलब्ध कराया गया जिसे संलग्न सीडी किया जा रहा है।

22. Learned counsel for the appellant further submits that on 25.08.2021, the statements of the witnesses named by the respondent no.3 were recorded under Section 161 Cr.P.C. However, it came to light that in the list of witnesses named by the respondent no.3, no witness with the name Rakesh exists. The name given by the informant was Ramgopal whereas the Investigating Officer took the statement of witness namely Ram Naresh, who has denied about having any knowledge of the alleged incident and other witness namely Gayatri Devi has not said anything about the alleged incident. Both the statements are being quoted hereunder:-

बयान चरमदीद गवाह रामनरेश पाल पुत्र स्व० रामअधीन पाल नि० कस्बा थाना भदोखर जनपद रायबरेली उम्र 51 वर्ष मो०नं० 9454677895 पूछने पर बता रहे हैं कि घटना दिनांक 30 जुलाई को मेरे लड़के अंकित पाल का रिजल्ट निकला तो मेरा लड़का इलाहाबाद में एन०डी०ए० की तैयारी कर रहा था मेरा लड़का ने फोन किया कि पापा मैं तो फेल हो गया तो मैंने बेटे को इलाहाबाद से बुलवा लिया उसके बाद मैं व मेरा लड़का बी०एस०एस० पब्लिक स्कूल अमोल बिहार गया, तो मैंने कार्यालय में मैनेजर साहब को पूछा तो नहीं मिले तो एक टीचर विकास सिंह से मेरी बात हुई और रिजल्ट के बारे में पूछा तो उन्होंने कहा मुझे फेल करने की राईट है आपको जहाँ जाना है जा सकते हैं कि प्रधानाचार्य व अपने क्लास टीचर से संपर्क करो तो

संपर्क करने का प्रयास किया गया परन्तु सम्पर्क नहीं हो सका और हम लोग डी0एम0 ऑफिस आये तथा डी0एम0 साहब व डी0आई0ओ0एस0 से मिला कि मेरे बच्चों के साथ अन्याय हुआ है। इसके बाद मैनेजर ने सेटलमेंट फार्म भरवाया कि यदि आपका बच्चा गलत फेल हुआ है। तो उसे पास कर दिया जायेगा। मेरे बच्चे का रिजल्ट अभी तक ठीक नहीं हुआ है। संतोष सोनकर के घर पर क्या घटना हुई है उसके बारे में मुझे कोई जानकारी नहीं है। यही मेरा बयान है।

बयान चश्मदीद गवाह गायत्री देवी पत्नी श्री ज्ञानचन्द्र तिवारी नि0 नेताजी सुभाष नगर कानपुर रोड थाना कोतवाली नगर जनपद रायबरेली उम्र 39 वर्ष मो0 9044833233 ने बताया कि मेरी लड़की प्रियांशू तिवारी बी0एस0एस0 पब्लिक स्कूल में कक्षा 12 की छात्रा है मेरी लड़की व अन्य लड़को का जब रिजल्ट आया तो मेरी लड़की का रिजल्ट ओपन नहीं हुआ तो स्कूल से सम्पर्क किया गया तो स्कूल के लोगों द्वारा बताया गया कि अभी प्रतीक्षा करिये रिजल्ट आ जायेगा विद्य लय द्वारा लगातार आश्वासन दिया जा रहा है। परन्तु अभी रिजल्ट नहीं आया है। साइन्स के छात्रों का काफी संख्या में रिजल्ट में सुधार हो गया है। सम्पर्क करने पर विद्यालय द्वारा एक दूसरे पर टाल दिया जाता है। तथा विद्यालय द्वारा कहा जाता था कि कोचिंग नहीं करोगे तो पास नहीं हो पाओगी। यही मेरा बयान है।

The above two independent witnesses namely-Ram Naresh and Gayatri Devi have not supported the case established by respondent No.3

23. Learned Counsel for the appellant further submitted that as per the version stated in the F.I.R., there is no mention about the presence of wife, namely-Poonam Sonkar, daughter, namely-Prachi Sonkar and son, namely-Ritesh Sonkar of the respondent No.3 at the place of alleged incident. He further submitted that the Investigating Officer recorded the statements of wife of respondent No.3, namely-Poonam Sonkar in her statement she has slightly modified the version of the F.I.R. and stated that the appellant alongwith other persons came outside the house of the respondent No.3 and offered money and also threatened her husband i.e. respondent No.3 with dire consequences but she has not stated anything that the appellant with other persons have abused the respondent No.3 with caste language in a place within public view. Even though, the daughter and son of the respondent No.3 have also stated the same version which their mother has earlier stated in her statement.

24. Learned counsel for the appellant further submitted that the version of the F.I.R. was changed by the wife, daughter and son of the respondent No.3, in which they have clearly stated that the appellant alongwith other persons

came outside their house, thus, it transpires that the statements made by the wife, daughter and son of the respondent No.3 were after thought and made only with the intention to bring the present case within the purview of provisions of SC/ST Act whereas, as per the version of the F.I.R., the appellant alongwith other accused persons were present inside the house of respondent No.3, where the alleged incident happened. Thus, story appears to be improbable and unbelievable. The statements of wife, daughter and son of the respondent No.3 is annexed as Annexure No.RA-1 to the rejoinder affidavit dated 31.10.2023, which is on record.

25. Learned Counsel for the appellant further submitted that the statement of the appellant under Section 161 Cr.P.C. was recorded on 01.11.2021, wherein the appellant has allegedly denied to give any statement except in the Court in presence of his Advocate as per the version of the chargesheet. In this context, learned counsel for the appellant submitted that the said statement was recorded by the Investigating Officer on his own in the absence or knowledge of the appellant, no any such statement was ever taken by the Investigating Officer.

26. Learned counsel for the appellant further submitted that the appellant has not committed any offence as alleged by the respondent No.3 and from a bare perusal of the evidence collected by the Investigating Officer, it is crystal clear that the appellant has not participated in the alleged offence. The chargesheet under Section 143 and 506 I.P.C. and under Section 3(1)(Dha) of the Act, 1989 has been filed by the Investigating Officer in a mechanical manner without considering the material and evidence on record.

27. Learned Counsel for the appellant further submitted that no offence under Section 143, 506 I.P.C. and under Section 3(1)(Dha) of Act, 1989 is made out against the appellant. According to the statement given by the complainant under Section 161 Cr.P.C., the said meeting took place inside the house of respondent No.3. During said meeting, the appellant had not abused

the complainant/informant by caste name and as per the own case of the respondent No.3, the appellant used the following words:-

".....प्रार्थी के आवास पर आये और कहा कि हमे आपसे कुछ बातचीत करना है लेकिन कुछ देर बाद जब उसका उद्देश्य बातचीत से पूरा नहीं हुआ तो वह प्रार्थी को प्रलोभन देने के उद्देश्य से 5,00,000/- ऑफर करने की बात कही तो प्रार्थी ने जवाब देते हुए कहा कि मैं बच्चो के भविष्य के साथ खिलवाड़ नहीं कर सकता हूँ और आप इन पैसो को वापिस ले जाइये तो वह लोग आग बबूला हो उठे और कहा कि तुमको देख लूंगा और जान से मरवा दूंगा, सारी हेकड़ी निकल जायेगी।"

It is thus, submitted that utterances of disparaging remark, if any, have been made inside the house of respondent No.3, which is not a public place nor within the public view, therefore, no offence under Section 3(1)(Dha) of the SC/ST Act will be made out against the appellant. Even though, none of the prosecution witnesses, namely-Ram Naresh and Gayatri Devi have supported the case of the respondent No.3, Ram Naresh has denied any such incident or about having any knowledge of such incident and Gayatri Devi did not say anything regarding the alleged incident, however, the wife, daughter and son of the respondent No.3 are interested witnesses and they have given their statements only to give gravity to the alleged incident and stated that the incident took place outside the house but have not stated that any public was present at the time of alleged incident.

28. Learned counsel for the appellant further submitted that the impugned order dated 07.02.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, by which cognizance was taken and the appellant was summoned, is also non speaking as the Magistrate has not considered any material available before him while summoning the appellant to face the trial. As such, the impugned order dated 07.02.2022 on the face of record appears to be unjustified and is passed without application of judicial mind, therefore, the same is liable to be set aside and further proceedings in pursuance to the above case may also be quashed by this Court and the present appeal be allowed.

29. In support of his arguments, learned Counsel for the appellant has placed reliance on following judgments of Hon'ble Apex:-

"(i) Hitesh Verma vs. State of Uttarakhand reported in (2020) 10 SCC 710.

(ii) Ramesh Chandra Vaishya vs. State of U.P. and Another reported in SCC OnLine SC 668.

(iii) Fakhruddin Ahmad vs. State of Uttranchal and Another repored in (2008) 17 SCC 157.

(iv) Ankit vs. State of U.P. and Another reported in JIC 2010 (1) Page 432.

(v) State of Haryana vs. Bhajanlal reported in 1992 SCC (Crl.) 426."

30. Shri Vaibhav Kalia, learned counsel for the respondent No.3 has opposed the arguments raised by the learned counsel for the appellant and has submitted that offences under Section 143 and 506 I.P.C. and under Section 3(1)(dha) of SC/ST Act are made out against the appellant. As per the version of the F.I.R. the appellant had abused the complainant/informant with caste words outside the house, where other persons were present, therefore, offence under Section 3(1)(dha) of SC/ST Act will be made out against the appellant. Similarly, outside the house other persons were also present, therefore, it is a public view. In these circumstances the impugned order dated 07.02.2022, summoning the appellant and taking cognizance, was rightly passed, as such, the same is not liable to be quashed and the instant appeal is liable to be dismissed.

31. In support of his argument, learned Counsel for the respondent No.3 has placed reliance on the judgment of Hon'ble Apex Court in the case of *Mohd. Allauddin Khan vs. State of Bihar and Others* reported in *(2019) 6 SCC 107*.

32. Ms. Charu Singh, learned A.G.A. for the State-respondent Nos.1 and 2 also made an agreement with the arguments of learned Counsel for the

respondent No.3 and submitted that prima facie offence is made out against the appellant and the court below has rightly passed impugned summoning order after considering the material placed on record, thus, the appellant is not entitled for any relief by this Court and the present appeal may be dismissed.

33. After considering the arguments advanced by learned counsel for the parties and perusal of record in light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and the contents of the F.I.R., statements of witnesses, chargesheet as well as summoning order dated 07.02.2022, this court is of the view that the Act, 1989 is meant to prevent the commission of offences of atrocities against the members of the Schedule Castes and the Schedule Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

34. It is further observed that the Act, 1989 was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act, 1989 is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act, 1989. The Act, 1989 thus intended 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. Section 3(1)(Dha) of the Act, 1989 or 3(1)(s) of the Act, 1989 would read as under:-

"Section 3(1)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989- abuses any member of a Scheduled Caste or a Schedule Tribe by caste name in any place within the public view"

Thus, the basic ingredient of the offence under Section 3(1)(Dha) can be clarified as abuse of any member of Schedule Caste or a Schedule Tribe by caste name in *any place within the public view*.

35. It is further observed that an offence under the Act, 1989 would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment in *any place within the public view*.

36. In the present case, this Court finds that the appellant has not abused the respondent No.3 by caste name in any place within the public view, even though, the respondent No.3 has not stated anything about abuses hurled to him by the appellant nor any caste language has been used against the respondent No.3, thus, the allegations as leveled in the F.I.R. does not constitute offence under Section 3(1)(Dha) of the Act, 1989.

37. It is further observed here that as per the version of the F.I.R. and the statement of the respondent No.3 recorded under Section 161 Cr.P.C. by the Investigating Officer, wherein the respondent No.3 clearly stated that the appellant alongwith other persons came inside the house of respondent No.3 and said the following words:-

".....प्रार्थी के आवास पर आये और कहा कि हमे आपसे कुछ बातचीत करना है लेकिन कुछ देर बाद जब उसका उद्देश्य बातचीत से पूरा नहीं हुआ तो वह प्रार्थी को प्रलोभन देने के उद्देश्य से 5,00,000/- ऑफर करने की बात कही तो प्रार्थी ने जवाब देते हुए कहा कि मैं बच्चो के भविष्य के साथ खिलवाड़ नहीं कर सकता हूँ और आप इन पैसो को वापिस ले जाइये तो वह लोग आग बबूला हो उठे और कहा कि तुमको देख लूंगा और जान से मरवा दूंगा, सारी हेकड़ी निकल जायेगी।"

Thus, from the perusal of the above no ingredients of Section 3(1)(Dha) of the Act, 1989 are attracted in the present case as there is no abuse by caste name in any place within the public view.

38. It is further observed that the two independent witnesses namely-Ram Naresh and Gayatri Devi, whose names were taken by the respondent No.3

for proving his case, Ram Naresh in his statement recorded under Section 161 Cr.P.C. stated that he was not aware about any such incident as alleged by the respondent No.3 and other witness, namely-Gayatri Devi had not said anything about the occurrence of the alleged incident, thus, the independent witnesses have also not supported the case as established by the respondent No.3.

39. It is further observed that as per his own case, the respondent No.3 clearly stated in the F.I.R. and in his statement recorded under Section 161 Cr.P.C. that whatever incident took place that took place inside his house, thus, it is not a place within a public view as no outsider was sitting in the room nor anyone has seen the alleged incident. Even the independent witnesses whose names were taken by the respondent No.3 were also not present inside the house at the time of the alleged incident and they have not supported the alleged incident in their statements recorded under Section 161 Cr.P.C.

40. It is further observed that offence under the Act, 1989 is not established merely on the fact that the informant/complainant is a member of Scheduled Caste unless there is an intention to humiliate a member of Schedule Caste or Schedule Tribe for the reason that the victim belongs to such caste. In the present case, the appellant runs an institution affiliated to C.B.S.E. Board and as per the allegations in the F.I.R., the respondent No.3 has made averments that the appellant had intentionally failed the son of the respondent No.3 but the result and examination is the sole responsibility of the C.B.S.E. Board it has nothing to do with the appellant or any other staff of his institution regarding declaration of result of Class XIIth.

41. It is further observed by this Court that before an accused is subjected to trial for commission of offence under Section 3(1)(Dha) of the Act, 1989 the utterances made by him in any "place within a public view" is mandatory and from the bare perusal of the F.I.R. as well as the contents of the independent witnesses, namely-Ram Naresh and Gayatri Devi, the utterances,

if any, as mentioned in Section 3(1)(Dha) are not fulfilled. The Investigating agencies while investigating the matter are duty bound to consider the factual aspects of the matter and also to consider the statement of witnesses, complainant as well as the appellant so as to ascertain whether the chargesheet makes out a case under the Act, 1989 having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence by learned Magistrate. In the present case from the factual aspects and statements discussed above, no offence is made out under Section 3(1)(Dha) of Act, 1989. Though, the learned Magistrate has not applied its judicial mind while taking cognizance in the matter and even though, he has only relied on the contents of the chargesheet and summoned the appellant by impugned order to face trial, which is very serious matter.

42. In view of the aforesaid discussion, this Court deems it proper to discuss some case laws.

43. Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710** has been pleased to observe in para 13, 14 and 18 as under :-

"13. 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 v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527]. 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 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 (sic) . 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 gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

18. Therefore, offence under 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. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

44. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya Vs. State of U.P. and Another; (2023) SCC OnLine SC 668** has been pleased to observe in paragraph 17, 18 and 21 as under:-

"17. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not "in any place within public view", the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)

(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge- sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21 st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial.

21. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for

which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "in his hand and other body parts". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC."

45. Further, the Hon'ble Supreme Court in the case of **Fakhruddin Ahmad Vs State of Uttranchal and another** reported in **(2008) 17 SCC 157**, discussed the expression "*taking cognizance of an offence*" by a Magistrate within contemplation of section 190 of the Cr.P.C and also discussed what must have been taken notice by the Magistrate while taking cognizance. Paras 11, 12, 13,14 and 15 being relevant are abstracted below:-

"11.The next incidental question is as to what is meant by expression 'taking cognizance of an offence' by a Magistrate within the contemplation of Section 190 of the Code?

12.The expression 'cognizance' is not defined in the Code but is a word of indefinite import. As observed by this Court in Ajit Kumar Palit Vs. State of West Bengal², the word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It

merely means--become aware 2 [1963] Supp. 1 S.C.R. 953 9 of and when used with reference to a Court or Judge, to take notice of judicially. Approving the observations of the Calcutta High Court in Emperor Vs. Sourindra Mohan Chuckerbutty³, the Court said that 'taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.'

13. Recently, this Court in *S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Ors.*⁴, speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase 'taking cognizance' under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in *Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee*⁵, which were approved by this Court in *R. R. Chari Vs. State of U.P.*⁶. The observations are:

3 (1910) I.L.R. 37 Calcutta 412 4 (2008) 2 SCC 492 5 A.I.R. (37) 1950 Calcutta 437 6 A.I.R. (38) 1951 SC 207 1 0 "7. ... What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

14. From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by 'taking

cognizance'. Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

15. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence."

(Emphasis supplied)

46. This Court in the matter of **Ankit Vs State of U.P. and another** reported in **JIC 2010 (1) page 432** has held that-

" Although as held by this Court in the case of Megh Nath Guptas & Anr V State of U.P. And Anr, 2008 (62) ACC 826, in which reference has been made to the cases of Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4[^]) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the

matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."

(Emphasis supplied)

Thus, in the present case learned Magistrate without considering the material available before him and even without considering the averments made in the F.I.R. in which as per the own case of the respondent No.3 the alleged incident took place inside his house and at that time no public was present nor there was any public view, even though the two independent witnesses namely-Ram Naresh and Gayatri Devi have denied about any such incident as alleged by respondent No.3. Learned Magistrate while taking cognizance did not consider the statements of the appellant and other named persons which was recorded by the Investigating Officer before filing the chargesheet. Thus, the ingredients of Section 3(1)(Dha) of Act, 1989 is not attracted in the present case and as such, no offence under the aforesaid section is made out against the appellant.

47. Further, the judgment of the Hon'ble Apex Court in the case of *Allauddin Khan (Supra)*, which has been relied upon by learned Counsel for the respondent No.3 is not applicable in the facts and circumstances of the present case.

48. It is further observed that provisions of Section 143 I.P.C. is also not attracted in the present case. Section 143 I.P.C. is quoted hereinbelow:-

"Section 143 I.P.C.-Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

In the present case even as per the prosecution case, the incident took place inside the house of the respondent No.3, the appellant alongwith other associates and respondent No.3 were present, thus, there was no formation of unlawful assembly. It is further observed that the averments of the F.I.R. and statement of respondent No.3 were not supported by any of the independent

witnesses, the named witnesses as per respondent No.3 have not supported the prosecution case, thus, the allegation of formation of unlawful assembly also blink the prosecution case, thus, the ingredients of Section 143 I.P.C. is also missing in the present case.

49. It is further observed that Section 506 I.P.C. is also not attracted in the present case. Section 506 I.P.C. is quoted hereinbelow:-

"Section 506 I.P.C.-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both"

In the present case, it is alleged in the F.I.R. and the statement of the respondent No.3 recorded under Section 161 Cr.P.C. that the appellant made an offer of Rs.5,00,000/- to the respondent No.3 to settle the matter. It is hard to believe that a person whose son has failed in Class XIIth examination conducted by C.B.S.E. Board wherein the appellant has no concern at all regarding the declaration of the result, why would the appellant offer Rs.5,00,000/- to the respondent No.3 when the final authority for declaring the result is C.B.S.E. Board, this story as made by the respondent No.3 appears to be unbelievable and unacceptable even though no independent witness has supported the case that the appellant has committed the offence of criminal intimidation, thus, the ingredients of Section 506 I.P.C. is also not attracted in the present case and no offence under Section 506 I.P.C. is made out against the appellant.

50. A perusal of the F.I.R. and the statements under Sections 161 Cr.P.C. of respondent No.3 and other independent witnesses clearly show that the essential ingredients of Section 506 I.P.C. are also missing in this case against the appellant.

It has been consistently held by the Hon'ble Apex Court and also by various High Courts that before an offence under this section is made out, it must be established that the accused had an intention to cause an alarm to the

complainant. In order to attract the ingredients of Section 506 I.P.C., the intention of the accused must be to cause alarm to the victim. Mere expression of words without any intention to cause alarm would not suffice. Mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean what he says and also when the person against whom the threat is launched, does not feel threatened actually. It should appear that the complainant was feeling fear for his life. In the case of **Mahadev Prasad Kaushik Vs. State of U.P. (2008) 14 SCC 479**, the Apex Court quashed the proceedings initiated against the appellants for the offences punishable under Sections 504 and 506 I.P.C. on the ground that there was no whisper about the threat alleged to have been given by the appellant to the complainant in the order passed by the Magistrate.

51. Since, the witnesses, namely, Gayatri Devi and Ram Naresh were examined under Section 161 Cr.P.C., however, Ram Naresh had completely denied about having any knowledge of alleged incident and Gayatri Devi has not said anything about the alleged incident. As such, they are prosecution witnesses but their statement recorded under Section 161 Cr.P.C. does not support the prosecution story as alleged in the first information report and the other three witnesses who are wife, daughter and son of the respondent No.3 are interested witnesses and in the F.I.R. their presence was not shown, later, their presence was shown to give colour to the gravity of the offence.

52. Thus, after perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and as per the contents of the F.I.R. as well as the statements of respondent No.3 and other witnesses and considering the various case laws referred above, the incident does not appear to happen, thus, Section 3(1)(Dha) of Act, 1989 is not attracted against the appellant as the incident did not occur in any "place within a public view", even though Sections 143 and 506 of I.P.C. are also not attracted against the appellant, as

such, considering the law laid down by the Hon'ble Apex Court in the case of **Hitesh Verma (Supra)**, **Ramesh Chandra Vaishya (Supra)**, **Fakhruddin Ahmad (Supra)** as well as law laid down by co-ordinate Bench of this Court in the case of **Ankit (Supra)** this Court is of the view that the learned court below has failed to appreciate the material available on record. The cognizance as well as summoning order dated 07.02.2022 passed by the court below is liable to be reversed and set aside as well as the entire criminal proceedings of the aforesaid case is liable to be quashed.

53. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- *(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426, (iii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iv) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (v) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.*

54. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued.

55. In *S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168*, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

56. Accordingly in view of the above discussions and observations made, the appeal is **allowed**, the impugned summoning as well as cognizance order dated 07.02.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, whereby the appellant has been summoned in Special Sessions Trial No.107 of 2022 (State Vs. Manager B.L. Singh and Others) arising out of Case Crime No.439 of 2021 under Section 143 and 506 I.P.C. as well as under Section 3(1)(Dha) of S.C./S.T. Act, 1989, Police Station-Kotwali, District-Raebareli, is hereby **set aside** and **reversed**, the criminal proceedings of the aforesaid case is also **quashed** so far as it relates to the present appellant.

57. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

58. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

59. No order as to the costs.

(Shamim Ahmed, J.)

Order Date :- 19.12.2023
(Piyush/-) / (Saurabh)