1. **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(2)(v) (Para 14):**

- For an act to be considered an offence under this Act, it must involve an accused, not belonging to SC/ST, committing an offence under the IPC that is punishable with a term of 10 years or more, against an SC/ST member with the knowledge of them belonging to the SC/ST community.
- Primary allegation under the IPC was attempted murder (Section 307), based on a gunshot fired by the accused, which did not result in injury. The court found no evidence to suggest that the accused, belonging to an upper caste, committed this offence with the knowledge that the victim belonged to the Scheduled Caste community. Consequently, the proceedings were quashed.
- **Criminal Trial and Framing of Charge (Criminal Procedure Code, 1973 – Section 173):**
- Charges should only be framed if the evidence, as presented in the Investigating Officer's report under Section 173 CrPC, clearly indicates the presence of all necessary ingredients of the alleged offence.
    - If the prosecution's admitted evidence does not establish these necessary ingredients, the court is not obligated to frame a charge for that offence against the accused.
- **2023 SCeJ 475**, **(2023-4)212 PLR 186 (SC)**,
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(2023-4)212 PLR 186 (SC), **2023 SCeJ 475**

SUPREME COURT OF INDIA

Before : Justice Pamidighantam Sri Narasimha and Justice Sandeep Mehta.

Shashikant Sharma & Ors. – Appellants

Versus

State of Uttar Pradesh & Anr. – Respondents

Criminal Appeal No(s).3663 of 2023(Arising out of SLP(Criminal) No(s). 5323 of 2023).

01.12.2023.

Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 Section 3(2)(v) – For offence to be constituted, there must be an allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the IPC punishable for a term of 10 years or more

against a member of the Scheduled Caste or Scheduled Tribe knowing that such person belongs to such `community' – Indian Penal Code, 1860 Sections 147, 148, 149, 307, 323, 504. [Para 14]

The highest case of prosecution, the only offence under IPC punishable with imprisonment of 10 years or more being the offence under Section 307 IPC has been applied on the basis of the gun shot allegedly fired by the accused, which admittedly did not result into any corresponding injury observed on his person. Hence there is no such allegation that the offence under IPC punishable with imprisonment of 10 years or more was committed by an accused of upper caste upon a person belonging to the Scheduled Caste community with the knowledge that such person belonged to the said community. Proceedings quashed

Criminal Procedure Code, 1973 Section 173 – If from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under section 173 CrPC, 1973 if the necessary ingredients of an offence are not made out then the Court is not obligated to frame charge for such offence against the accused. *Suresh @ Pappu Bhudharmal Kalani v. State of Maharashtra, AIR 2001 SC 1375, relied.* .

For the Appellants :- Mr. R Basant, Sr. Advocate, Mr. Neeraj Sharma, Mr. Amit Shrivastava, Mrs. Priyanka Sharma, Mr. Prahil Sharma, Mr. Harender Singh, Mr. Pawan Sharma, Advocates. For the Respondents :- Mr. Sharan Dev Singh Thakur, A.A.G., Ms. Ruchira Goel, Mr. Siddharth Thakur, Mr. Aviral Saxena, Mr. Sharanya Sinha, Mr. Mustafa Sajad, Mr. Adit Jayesbhai Shah, Ms. Keerti Jaya, Mr. Sanjay Hegde, Sr. Advocate, Mr. Swetashwa Agarwal, Mr. Sanchit Garga, Ms. Mithu Jain, Mr. Kunal Rana, Ms. Sneha Goswami, Advocates.

Cases Referred :-

1. Suresh @ Pappu Bhudharmal Kalani v. State of Maharashtra, AIR 2001 SC 1375.

JUDGMENT

Mehta, J. – Leave granted.

2. The instant appeal has been preferred by the accused appellants questioning the legality and validity of the Order dated 6th April, 2023 passed by the learned Single Judge of the High Court of Judicature at Allahabad rejecting the Criminal Appeal No. 3107/2023 preferred by the accused appellants under Section 14A(1) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 (hereinafter being referred to as the `SC/ST Act'). The learned appellate Court affirmed the Order dated 14th March, 2023 passed by the learned Special Judge SC/ST(PoA) Act, Hathras in Session Case No. 228/2021, rejecting the application for discharge filed by the accused appellants under section 227 of the Criminal Procedure Code, 1973(hereinafter being referred to as the `CrPC') and directing framing of charges against them for the offences punishable under Sections 147, 148, 149, 307, 323, 504 of Indian Penal Code, 1860 (hereinafter being referred to as the `IPC') and section 3(2)(v) of the SC/ST Act. By the said Order, the learned Special Judge also directed that the accused appellants shall remain present in the Court on the appointed date.

3. It may be mentioned that vide Order dated 19th May 2023, this Court had directed that the bonds executed by the accused appellants in pursuance of the Order dated 2nd September, 2022 passed by the High Court shall remain in force and non-bailable warrants which had been issued at that stage, shall not be executed until further consideration.

4. Learned senior counsel for the appellants, at the outset, conceded that so far as the offences punishable under IPC are concerned, the prayer for discharge would require extensive evaluation of evidence and hence, he gave up the challenge made on behalf of the accused appellants to the Order framing charges qua these offences. However, the fervent contention of learned senior counsel was that the ingredients of section 3(2)(v) of the SC/ST Act are not prima facie made out against the accused appellants from the admitted allegations of the prosecution and hence, the accused appellants deserve indulgence of this Court and the impugned orders are liable to be interfered with to this extent.

5. Learned senior counsel contended that for the offence under section 3(2)(v) of the SC/ST Act to be made out, there must be a specific allegation of the prosecution that the accused committed an offence punishable under the provisions of the IPC against a member of the Scheduled Caste/Scheduled Tribe knowing that the victim belongs to such community. Referring to the impugned orders, the allegations made in the FIR and the statements of the witnesses recorded during investigation under section 161 CrPC, 1973 learned senior counsel pointed out that as per the highest case of prosecution, the accused Vinod Upadhyay fired a gun shot at Rinku Thakur which hit him in the left thigh. The only projection made in the prosecution case regarding the offence under SC/ST Act was that the witness Virender Kumar being a member of SC community was subjected to casteist abuses by the accused appellants after the gunshot had been fired at Rinku Thakur. He urged that the entire thrust of the prosecution case regarding the offences committed under the provisions of the IPC is focussed qua Rinku Thakur and thus, there is no factual or legal basis for the charge framed against the accused appellants for the offence punishable under sections 3(2)(v) of the SC/ST Act.

6. Without prejudice to the above, learned senior counsel urged that the entire prosecution case is false and fabricated and lodged as a counterblast on account of political vendetta. He urged that the theory set up by the prosecution in the FIR and in the statement of the prosecution witnesses that Rinku Thakur was caused a fire arm injury is patently falsified from the medicolegal report prepared by the Medical Jurist who examined Rinku Thakur opining that a boil/abscess was noticed on his thigh and no evidence of gun shot was found.

7. He submitted that it is the members of the complainant party who killed Pushpendra from the side of the accused appellants and, thereafter, in order to create defence, a patently false criminal case was registered against the accused appellants on fabricated allegations. On these grounds, learned senior counsel implored the Court to accept the appeal and reverse the impugned orders to the extent of the charge framed against the accused appellants for the offence punishable under sections 3(2)(v) of the SC/ST Act.

8. Per contra, learned AAG representing the State of Uttar Pradesh and learned counsel

representing the complainant respondent no. 2 vehemently and fervently controverted the submissions of learned counsel for the appellants. It was submitted that the accused appellants launched a concerted attack upon the members of the complainant party simply because they were canvassing for the other political party.

9. The Court was taken through the order passed by the learned Special Judge with particular reference to the allegation that the investigating officers were pressurised to give negative report under section 173 CrPC, 1973. Using their political clout, the accused persons even managed to obstruct the lodging of FIR and with great difficulty and after intervention of the Court, the FIR was got registered. The investigation was manipulated at the instance of a former Cabinet Minister in the Government of Uttar Pradesh. They urged that from the statement of Virender Kumar recorded under section 161 CrPC, 1973 it is clearly borne out that after the accused persons had fired the gun shot at Rinku Thakur, they turned their attention towards the witness and hurled caste-based abuses towards him and threatened him with dire consequences.

10. As per the learned AAG appearing for the State of Uttar Pradesh and learned counsel for the complainant, the allegations set out in the FIR and statements of the witnesses examined under section 161 CrPC, 1973 clearly disclose necessary ingredients of the offences alleged and as per them, there is no scope for interference in the impugned orders. They sought dismissal of the appeal. These oral submissions have further been supplemented by written submissions which are virtually reiteration of what was argued before the Court.

11. We have carefully considered the submissions made by the learned counsel at the Bar and have perused the material available on record.

12. At the outset, it may be emphasised that in the written submissions filed on behalf of the State, the pertinent plea raised by the learned counsel for the appellants that necessary ingredients of the offence punishable under section 3(2)(v) of the SC/ST Act are not made out from the admitted allegations of the prosecution, has not been specifically controverted. There cannot be any quarrel with the principles laid down in the judgments cited by the State counsel in the written submissions that at the stage of framing of charges, the Court is not required to undertake a meticulous evaluation of evidence and even grave suspicion is sufficient to frame charge. Nevertheless, there is also a long line of precedents that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under section 173 CrPC, 1973 if the necessary ingredients of an offence are not made out then the Court is not obligated to frame charge for such offence against the accused. Reference in this regard may be made to the judgment rendered by this Court in the case of ***Suresh @ Pappu Bhudharmal Kalani v. State of Maharashtra reported in AIR 2001 SC 1375***.

13. Learned senior counsel representing the accused appellants had restricted his submissions to the extent of charge framed under section 3(2)(v) of the SC/ST Act. Thus the language of the said provision needs to be considered and the same is reproduced hereinbelow for the sake of ready reference:-

"3. Punishments for offences of atrocities.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, –

....

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

14. From a bare perusal of the provision, it is crystal clear that for the above offence to be constituted, there must be an allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the IPC punishable for a term of 10 years or more against a member of the Scheduled Caste or Scheduled Tribe knowing that such person belongs to such `community'.

15. Going by the material collected during investigation, it is manifest that the incident had the undertones of a political rivalry. At this stage, we may note that though learned counsel for the appellants gave up the challenge to the charge framed against the accused appellants for the offence punishable under Section 307 IPC but the fact remains that when the witness Rinku Thakur who alleged that he was shot upon by the accused Vinod Upadhyay, was medically examined, no corresponding gun shot injury was observed on his person.

16. Be that as it may, as per the highest case of prosecution, the only offence under IPC punishable with imprisonment of 10 years or more being the offence under Section 307 IPC has been applied on the basis of the gun shot allegedly fired by the accused Vinod Upadhyay upon Rinku Thakur, which admittedly did not result into any corresponding injury. After perusal of the entire material on record, we have no hesitation in concluding that from the admitted case set up by the prosecution, there is no such allegation that the offence under IPC punishable with imprisonment of 10 years or more was committed by an accused of upper caste upon a person belonging to the Scheduled Caste community with the knowledge that such person belonged to the said community.

17. Hence, there is merit in the contention of learned counsel representing the appellants that prima facie ingredients of the offence punishable under section 3(2)(v) of the SC/ST Act are not made out from the admitted allegations of prosecution and to this extent, the charge framed against the accused appellants is groundless.

18. Resultantly, the impugned orders to the extent of charge framed against the accused appellants for the offence punishable under sections 3(2)(v) of the SC/ST Act and the order rejecting the appeal cannot be sustained and are hereby quashed and set aside. However, the trial of the accused for the remaining offences shall continue. The accused appellants already stand released on bonds as indicated in the Order dated 19th May, 2023 passed by this Court. The bonds so submitted shall enure till conclusion of the trial. The non-bailable warrants issued against the accused by the trial Court are hereby quashed. As a

consequence of quashing of the charge for the offence punishable under the SC/ST Act, and since the remaining charges are for the offences punishable under IPC, the trial of the case shall stand transferred from the Special Court to the Court of Sessions having jurisdiction to try the case.

19. The appeal stands allowed as above.

20. Pending applications, if any, shall stand disposed of.