



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 814 of 2026

Rajan Bajaj

.....Applicant(s)

Versus

State of U.P.
and Another

.....Opposite Party(s)

Counsel for Applicant(s)	: Raghav Arora
Counsel for Opposite Party(s)	: G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard learned counsel for the applicant.
2. Learned counsel for the applicant submits that, in this case, opposite party No.2 filed an application under Section 156(3) Cr.P.C. before the court of the concerned Judicial Magistrate, Aligarh, and thereafter the learned Judicial Magistrate directed the concerned police station to lodge a First Information Report (F.I.R.) under the relevant sections of the concerned Act and accordingly, the police lodged the F.I.R. under the sections of the Indian Penal Code as well as SC/ST Act.
3. He further submits that after investigation, the Investigating Officer submitted a final report/closure report in the concerned court exonerating the applicant-accused and thereafter the concerned court invited a protest petition as per the judgment of the Hon'ble Supreme Court in **Bhagwant Singh vs. Commissioner of Police & Anr.; (1985) 2 SCC 537**.
4. Learned counsel for the applicant also submits that opposite party No.2 thereafter filed a protest petition and on the said protest petition,

the learned Special Judge, SC/ST Act, Aligarh proceeded with the matter as a complaint case and recorded the statements of the concerned persons under Section 200 and 202 Cr.P.C. Thereafter, the applicant-accused was summoned under Sections 323, 504 I.P.C. along with Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vide summoning order dated 30.04.2024.

5. For ready reference, the relevant portion of the summoning order dated 30.4.2024 is being pasted below:

“

मय शपथपत्र प्रस्तुत किया गया जिस पर न्यायालय के आदेश दिनांकित 29.03.2023 को प्रकरण को परिवाद के रूप में दर्ज किया गया।

3. परिवादपत्र के कथनों के समर्थन में परिवादी ने मौखिक साक्ष्य में स्वयं को धारा 200 द0 प्र0 सं0 तथा धारा 202 द0 प्र0 सं0 के अन्तर्गत साक्षी महेश चन्द्र व दिनेश नरेश कुमार को परीक्षित कराया गया है। परिवादी व गवाहान ने धारा-200 द0 प्र0 सं0 व धारा 202 द0 प्र0 सं0 की साक्ष्य तथा उपलब्ध प्रलेखीय साक्ष्य से घटना दिनांक 14.10.2016 शाम करीब 4 बजे की तस्दीक होती है। विपक्षीगण राजन बजाज व आशू राठी तथा उनके मजदूर परिवादी के खेत में गड्ढा खोद रहे थे। परिवादी ने मना किया तो इन लोगों ने चमार डेड़ा जातिसूचक शब्द कहकर गाली दी और परिवादी से मारपीट की। परिवादी के साथ उसका लडका महेश भी था।

5. उपरोक्तानुसार मामले के तथ्यों एवं परिस्थितियों के दृष्टिगत विपक्षीगण राजन बजाज व आशू राठी के विरुद्ध धारा-323,504 भा0 द0 सं0 व धारा- 3(2)(5) क अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम-1989 का मामला प्रथम दृष्टया बनता है तदनुसार विपक्षीगण आहूत किए जाने योग्य है।

आदेश

विपक्षीगण/अभियुक्तगण राजन बजाज व आशू राठी को धारा- 323,504 भा0 द0 सं0 व धारा 3(2)(5) अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम-1989 के अपराध के विचारण हेतु तलब किया जाता है। परिवादी वांछित पैरवी एक सप्ताह में करे। पत्रावली वास्ते हाजिरी मुल्जिमान दिनांक 24.06.2024 को पेश हो।

दिनांक 30.04.2024

विशेष न्यायाधीश एस0सी0/एस0टी0 एक अलीगढ़।

Compared by *[Signature]*

सत्य प्रतिलिपि
प्रधान प्रतिलिपिक
केन्द्रीय प्रतिलिपि विभाग
जजी. अलीगढ़

न्यायालय
जिला एवं सत्र
न्यायाधीश
अलीगढ़
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6. Learned counsel for the applicant further submits that along with Sections 323, 504 I.P.C., the provision of Section 3(2)(va) shall attract only if a *prima facie* offence is made out. He further submits that there is no provision of Section 3(2)(5) under the SC/ST Act, as mentioned in the summoning order dated 30.04.2024.

7. For ready reference, Section 3 of the SC/ST (Prevention of Atrocities) Act is being quoted below:

“Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;

(b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;

(c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighborhood;

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing mustaches, painting face or body or any other similar act, which is derogatory to human dignity;

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.—For the purposes of clause (f) and this clause, the expression "wrongfully" includes--

(A) against the person's will;

(B) without the person's consent;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe--

(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;

(B) not to file a nomination as a candidate or to withdraw such nomination; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of 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;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

Explanation.--For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

(w)

(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipients consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.--For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty.

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to--

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;

(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.]

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

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member

of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(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;

[(va) commits any offence specified in the Schedule, 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 such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;]

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

8. Learned counsel for the applicant further submits that the property in question is the genesis of the present dispute, which has been allotted by UPSIDC, Aligarh to the applicant after acquisition, declaring the area as an industrial area. Thus, as per the genesis of the incident, if there is any dispute, the same is between opposite party No.2 and UPSIDC, Aligarh rather than with the applicant-accused. It is further submitted that only to pressurize the applicant, opposite party No.2 has taken recourse in the criminal side.

9. It is further submitted that looking to the entire facts of the case, the Investigating Officer submitted a final report exonerating the applicant-accused but the then learned Special Judge, SC/ST Act, Aligarh ignored the provisions of Section 202 Cr.P.C., whereas he has to either conduct an inquiry himself or direct an investigation by the police or any other person to verify the facts, however, the same has not been done by the learned Special Judge, SC/ST Act, while the applicant-accused does not belong to the territorial jurisdiction of the concerned Presiding Officer.

10. The present Special Judge, SC/ST Act, Aligarh as well as the then Special Judge, SC/ST Act, Aligarh, who has passed the summoning order dated 30.04.2024, are directed to submit their explanation as to why the summoning order was passed in such a casual manner, violating the fundamental right of the applicant provided under Article 21 of the Constitution of India. The explanation shall be submitted through the Registrar (Compliance) of this Court on or before 30.01.2026.

11. Issue notice to opposite party No.2, Rampal S/o Bhudev, Resident of Village Harduaganj, Police Station Harduaganj, District Aligarh, through the Chief Judicial Magistrate, Aligarh as well as through the concerned Special Judge, SC/ST Act, Aligarh, to communicate this order to opposite party No.2 forthwith, enabling him to file counter affidavit in the matter.

12. Learned A.G.A., Shri Shashidhar Pandey, is also directed to communicate this order to opposite party No.2 through the concerned police station.

13. List this case on **30.01.2026 as fresh** for further hearing.

14. Till then, if any warrant has been issued against the applicant, the same shall be kept in abeyance.

(Praveen Kumar Giri,J.)

January 14, 2026

K.Tiwari