

**Offence U/S 3(u) SC-ST Act For Promoting Hatred Against Community Not Attracted If Not In Public View: HC Grants Relief To Karnataka Golf Assn Office Bearers**

**2022 LiveLaw (Kar) 506**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**M. NAGAPRASANNA; J.**

**WRIT PETITION No.11949 & 12182 OF 2022; 2 November, 2022**

**DR. M.G. BHAT versus STATE OF KARNATAKA**

*Petitioners by A.S. Ponnanna, Sr. Advocate a/w Nayana Tara B.G., Advocate.*

*Respondents by K.P. Yashodha, HCGP for C.H. Hanumantharaya, Sr. Advocate a/w Abhinaya K., Advocate for R2*

**ORDER**

The petitioners in these petitions call in question registration of a crime in crime No. 119 of 2022 for offences punishable under Sections 504, 506 & 34 of the IPC and Sections 3(1)(r), 3(1)(s) and 3(1)(u) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short), pending before the LXX Additional City Civil and Sessions Court, Bengaluru.

2. Since both these petitions call in question registration of crime in Crime No. 119 of 2022 based upon a solitary incident, they are taken up together and considered by this common order. The petitioners in both these petitions will be referred to as the petitioners and the complainant/respondent No. 2 being common in both these cases would be referred to as the complainant or respondent No. 2.

3. Heard Sri A.S. Ponnanna, learned senior counsel appearing for the petitioner, Smt. K.P. Yashodha, learned High Court Government appearing for respondent No. 1 and Sri C.H. Hanumantharaya, learned senior counsel appearing for respondent No.2/complainant.

4. Brief facts that lead the petitioners to this Court in the subject petitions, as borne out from the pleadings, are as follows: -

The 2<sup>nd</sup> respondent is the complainant. Petitioners are office bearers of the Karnataka Golf Association (hereinafter referred to as 'the Association' for short). The 2<sup>nd</sup> respondent was a temporary member of the Association since 2014. On an incident that is said to have occurred in the year 2019, the 2<sup>nd</sup> respondent is suspended from his membership of the Association after conduct of an enquiry. The suspension comes about on 13.03.2019. On 01.09.2018, the 2<sup>nd</sup> respondent applies for membership again under the category of 'life member". On 14.10.2020, a communication is sent to the 2<sup>nd</sup> respondent that he has not secured adequate number of votes to become a life member of the Association. This is called in question by the 2<sup>nd</sup> respondent before the Registrar of Societies. The Registrar of Societies passes an order dated 04.12.2020, directing the Association to hold a fresh meeting of the Managing Committee to consider the application of the 2<sup>nd</sup> respondent to become a life member of the Association. The Association filed an application dated 21.12.2020, before the Registrar of Societies seeking recall of the order dated 04.12.2020. No orders were passed upon the said application seeking recall.

5. The 2<sup>nd</sup> respondent later files a civil suit in O.S.No.2763 of 2021 before the LIX Additional City Civil and Sessions Judge (CCH60), Bengaluru, seeking various reliefs including a declaration, as rejection of his life membership by the Association to be null and void and sought damages to the tune of Rs.6,50,000/-. The Association has filed its written statement and has contested the matter. Pending adjudication before the civil Court in O.S.No.2763 of 2021, the 2<sup>nd</sup> respondent approaches this Court in Writ Petition

No. 1144 of 2022, seeking to implement the order passed by the Registrar of Societies, which had directed to hold a fresh meeting to consider the candidature of the petitioner to become a life member of the Association. The writ petition, however, comes to be disposed of, without issuing notice to the Association but directing the Registrar of Societies to consider the grievance of the complainant after hearing the Association. The said order comes to be passed on 31-01-2022. Pursuant to the order passed by this Court, the Registrar of Societies called the Association for hearing. It is then, the Association comes to know that the writ petition was filed by the 2<sup>nd</sup> respondent before this Court in Writ Petition No. 1144 of 2022. The Association filed a detailed statement of objections before the Registrar of Societies in the matter, in which the 2<sup>nd</sup> respondent had sought a meeting to be conducted afresh to consider the membership of the 2<sup>nd</sup> respondent.

6. The Registrar of Societies by an order dated 19-05-2022 directed the Association to consider the membership of the 2<sup>nd</sup> respondent afresh within 30 days thereof. The petitioners who are office bearers of the Association received the order of the Registrar of Societies on 13-06-2022. It is averred in the petitions that the Association is taking steps to challenge the said order of the Registrar of Societies by separate proceedings. After receipt of the order on 13-06-2022, the Association convened a meeting of the Managing Committee to chalk out next course of action. The meeting of the Managing Committee of the Association was slated to be held on 14-06-2022 at 5.00 p.m., in the premises of the Association. While the meeting was in progress, it is averred that the 2<sup>nd</sup> respondent barged into the meeting hall and demanded that the order dated 19-05-2022 passed by the Registrar of Societies be implemented immediately, by inducting him as a member of the Association.

7. It is the submission that the petitioners spoke to the 2<sup>nd</sup> respondent informing that the meeting was to consider the next course of action upon receipt of the order from the Registrar of Societies and the next course of action would be intimated, the moment the meeting of the Managing Committee was over. The 2<sup>nd</sup> respondent appears to have insisted that he be made a member instantly. The meeting was disrupted and the 2<sup>nd</sup> respondent goes and registers a crime in crime No. 119 of 2022 for offences punishable under Sections 504, 506 and 34 of the IPC. The complaint did not stop at the offences under the IPC, but also alleged offences under Sections 3(1)(r), 3(1)(s) and 3(1)(u) of the Act. The moment registration of crime comes to the notice of the petitioners, all the petitioners who are office bearers of the Association have knocked the doors of this Court in the subject petitions. The petitions are entertained and an interim order interjecting continuation of investigation is granted by this Court on 17.06.2022 and 21.06.2022, respectively.

8. The 2<sup>nd</sup> respondent enters appearance and seeks the matter to be heard and disposed of and, therefore, with consent of parties, the matter is taken up for its final disposal.

9. The learned senior counsel Sri A.S.Ponnanna, representing the petitioners would seek to contend that nothing happened on 14-06-2022, for the complainant to register the complaint. The complainant wanted the Association to immediately implement the order passed by the Registrar of Societies and the office bearers of the Association inside the meeting hall were in discussion with regard to the next course of action as the Registrar of Societies had directed holding of a fresh meeting, to consider life membership of the 2<sup>nd</sup> respondent. It is in fact, the 2<sup>nd</sup> respondent/complainant who barged into the meeting hall, while the proceedings were going on, created a ruckus and went away saying that he will teach them a lesson and immediately registers the complaint. For not implementing

the order of the Registrar of Societies for the asking of the 2nd respondent, which he sought it to be implemented immediately, the crime invoking the provisions of the Act is registered without there being any substance. It is the submission of the learned senior counsel that the provisions of the Act are taken recourse as an abuse of process of law and as such, the petitioners have challenged the very registration of the crime itself. Even if hurling of abuses are considered to have happened, it is neither in the public place nor in a place of public view. He would seek quashment of entire proceedings.

**10.** On other hand, learned senior counsel. Sri C.H. Hanumantharaya, representing the 2<sup>nd</sup> respondent would seek to contend that initially, the petitioners did not know to which caste the 2<sup>nd</sup> respondent belongs till he filed an application to become a life member. It is his submission that he was the first member belonging to the Scheduled Caste to even apply for a life membership and therefore, would submit that the moment the petitioners came to know about the caste of the 2<sup>nd</sup> respondent, they did not want him in the Association and they have hurled abuses even if it is inside the meeting hall, where there were 2 or 3 people and, therefore, it would become an offence under the Act. He would contend that in view of FIR being registered, it is a matter of investigation and this Court should not interfere with the proceedings at this juncture and seeks dismissal of the petitions.

**11.** Both the learned counsel rely on certain authorities to buttress their respective submissions, which would be considered in the course of the order.

**12.** I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

**13.** The genesis of the problem is required to be noticed. In terms of the averments made in the petitions, the Managing Committee of the Association consists of officers of the cadres of IAS, IPS and IFS. The Society has five categories of members and maximum limit of members it can admit in each category is stipulated. The categories of members and the maximum thereto are (i) Founder Life Member - no person can be admitted under this category at present; (ii) Life Members 250; (iii) Permanent Members — 2500; (iv) Service Members -500 and (vi) Children of Members - there is no cap. The membership of each category is covered by set of Rules which form a part of the bye-laws. The Life Members to the Association are admitted in a procedure drawn up, which forms a part of the memorandum of writ petition. Since it is germane, it is extracted hereunder:

*"(a) Persons interested in becoming a life member have to submit an application along with prescribed fees and are wait listed to be considered as and when their turn comes up, provided they meet the prescribed qualifying criterion;*

*(b) The names of the candidates to be considered for membership are displayed on the Notice Board for a period of 30 days to invite any objections;*

*(c) The Managing Committee interviews eligible persons.*

*(d) The Managing Committee votes by way of a secret ballot to elect persons to the membership by way of a simple majority of the members of the Committee present and voting.*

*(e) The Chairman of the meeting has a casting vote. "*

Persons interested in becoming life member have to submit their applications and they would be considered when their turn comes up. The names of candidates considered for membership would be displayed on the notice board for a period of 30 days inviting objections. Interviews would be held to eligible persons. After a secret ballot, membership

would be decided by a simple majority of members present and voting.

**14.** The complainant becomes a temporary member in the year 2014. On certain misconduct, the temporary membership of the petitioner comes to be suspended on 14-03-2019 as complaints were received against him and the Managing Committee conducts an inquiry into the complaint after following due process and suspends the complainant from temporary membership with effect from 14-03-2019 to 13-09-2019. After the suspension of the complainant was over on 13-09-2019, the complainant submits an application to become a life member in the said category and remits a sum of Rs. 25,00,000/- as fees. On 03-08-2020, the Association invites him for an interview which was slated to be held on 22-09-2020 along with 32 other applicants, of all categories. After the interview, the Managing Committee of the Association holds a secret ballot to admit members who are interviewed. It is submitted that the 2<sup>nd</sup> respondent did not secure sufficient votes and therefore, could not become a life member of the Association. By a communication dated 14-10-2020, the Association informs the 2<sup>nd</sup> respondent that he has not become a life member and also enclosed a cheque for refund of the amount including the entrance fee that was remitted by him. The cheque is credited to his account.

**15.** The complainant approaches the Registrar of Societies under Section 25 of the Societies Registration Act, by filing a petition on 19-10-2020, seeking to set aside the rejection of his application to become a life member. The Registrar of Societies passes an order on 04-12-2020, directing the Association to hold a fresh meeting of the Managing Committee to consider the application of the complainant to become a life member. Immediately thereafter, an application is filed by the Association to recall the said order. The moment the said application is filed, the complainant chooses another route by filing a civil suit in O.S.No.2763 of 2021 seeking the very same relief, which is pending adjudication. During the pendency of these two proceedings, the complainant initiates a third proceeding by filing a writ petition before this Court in Writ Petition No. 1144 of 2022. This Court by its order dated 31.01.2022 passed the following order:

*"The short grievance of the petitioner is as to nonconsideration of his request for the implementations of the order made by respondent No. 2 after the Body was reconstituted with the intrusion of the constituent members.*

*2. Notice to respondent No. 3 is dispensed with since it will have opportunity of participation when respondent No. 2 addresses the grievance of the petitioner. Learned HCGP on request appearing for the official respondent Nos. 1 and 2 although initially opposed the writ petition, now agrees to instruct respondent No. 2 to consider or cause to be considered the grievance of the petitioner in terms of his own order and in accordance with law. This is fair enough.*

*In the above circumstances, this writ petition is disposed off. Time for compliance is eight weeks. All contentions are kept open.*

*It hardly needs to be stated that while addressing the grievance in question, respondent No. 2 shall give an opportunity of hearing to respondent No.3 - Karnataka Golf Association."*

A direction is issued to the 2<sup>nd</sup> respondent to consider the grievance of the complainant after hearing the Association. In the writ petition, the Association was not notified or heard in the matter. In pursuance of the order passed by this Court, the Registrar of Societies passes an order on 19.05.2022, which reads as follows:-

“ಆದೇಶ:

ಮೇಲೆ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಪ್ರತಿವಾದಿಯು ದೂರು ಅರ್ಜಿದಾರರ ಸದಸ್ಯತ್ವದ ಅರ್ಜಿಯನ್ನು ಕಾನೂನು ಚೌಕಟ್ಟಿನಲ್ಲಿ ಪರಿಶೀಲಿಸದೇ, ತಾರತಮ್ಯವೆಸಗಿರುವುದು ಸ್ಪಷ್ಟವಾಗಿರುತ್ತದೆ. ಅಲ್ಲದೇ ಅರ್ಜಿ ತೀರ್ಮಾನಕ್ಕೆ ಕಾರಣಗಳನ್ನು, ಸಮರ್ಥನೆಯನ್ನು ನೀಡುವುದಿಲ್ಲ. ಸದಸ್ಯತ್ವ ಕೋರಿ ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯನ್ನು ಪರಿಗಣಿಸಲು ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯು ಅನುಸರಿಸಬೇಕಾದ ಮಾನದಂಡಗಳನ್ನು ಅನುಸರಿಸುವುದಿಲ್ಲ. ಈ ದಿನೆಯಲ್ಲಿ ಈ ಪ್ರಾಧಿಕಾರವು ಅರ್ಜಿದಾರರ ಸದಸ್ಯತ್ವದ ಬಗ್ಗೆ ಕಾನೂನಿನ ಚೌಕಟ್ಟಿನಲ್ಲಿ ನಿರ್ಣಯ ಕೈಗೊಳ್ಳಲು ಸೂಚಿಸಲಾಗಿದ್ದರೂ ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯು ನಿರ್ಲಕ್ಷಿಸಿರುವುದು ಸಾಬೀತಾಗಿದೆ. ಆದುದರಿಂದ ಅರ್ಜಿದಾರರು ಪ್ರತಿವಾದಿ ಸಂಸ್ಥೆಯ ಸದಸ್ಯತ್ವವನ್ನು ಕೋರಿ ದಿನಾಂಕ:01-09-2018 ರಂದು ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯನ್ನು ನಿಯಮಾನುಸಾರ ಪರಿಗಣಿಸಿ ಅರ್ಜಿ ಶುಲ್ಕ ಪಾವತಿಸಿಕೊಂಡು ಅರ್ಜಿ ಸದಸ್ಯತ್ವವನ್ನು ಸರ್ಕಾರದಿಂದ ನಾಮಕರಣಗೊಂಡ ನಾಮ ನಿರ್ದೇಶಕರುಗಳು ಹಾಜರಿರುವ ಸಭೆಯಲ್ಲಿ ಮಂಡಿಸಿ ಸದಸ್ಯತ್ವವನ್ನು ನೀಡಲು ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಆದೇಶಿಸಿದೆ.

ಈ ದಿನೆಯಲ್ಲಿ 30 ದಿವಸದೊಳಗಾಗಿ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ನಿರ್ದೇಶಿಸಿದೆ.”

A direction was issued by the Registrar of Societies to consider the application of the complainant dated 01-09-2018, receive necessary fees, hold a meeting of the Managing Committee and admit the complainant to become a member. Time for compliance was 30 days. The complainant did not furnish copy of the order to the Association any time earlier. They received it by way of registered post on 13-06-2022, documents to that effect are appended to the petition and immediately, the Association decided to hold a meeting of the Managing Committee on 14.06.2022 at 5.00 p.m. One of the agenda for discussion was, the complainant's matter and legal opinion upon that. The happenings of the meeting on 14.06.2022 forms the substratum of the entire issue. The meeting was slated to be held at 5.00 p.m. On that day, the meeting was in progress. At that time, the complainant appears to have entered the meeting hall, where the office bearers were holding the meeting. When sought to be questioned as to why he entered the meeting hall, the complainant appears to have shown a letter of the Registrar of Societies with regard to the order. It is then certain altercations took place and the verbatim extracts of happenings of altercations pre produced along with the petition. Nowhere in the reproduction of transcript of the CCTV footage as appended to the petition or even produced as pen drive to this Court there is any hurling of abuses against the complainant. The complainant comes into the meeting hall, goes out of the meeting hall, comes back with the Police and alleges that members of the Managing Committee have hurled abuses taking his caste. The complainant says that he has nothing against any person except these four people, who are the office bearers of the Association, he registers the complaint.

**16.** In the complaint, the entire narration is to the past proceedings. What is germane in the complaint is found at paragraphs 9 and 10. Therefore, it is extracted hereunder for the purpose of quick reference:

“9 .....ನಾನು ಅವರಿಗೆ ನನ್ನ ಪರವಾಗಿದ್ದ ನ್ಯಾಯಾಲಯದ ಆದೇಶಗಳನ್ನು ನಿಮಗೆ ತಲುಪಿಸಿದ್ದರೂ ಕೂಡ ಯಾವುದೇ ಕ್ರಮ ಜರುಗಿಸಿದ ಬಗ್ಗೆ ಯಾವುದೇ ಮಾಹಿತಿ ನನಗೆ ಇರುವುದಿಲ್ಲ ಎಂದು ಕೇಳಿದ್ದಕ್ಕೆ ಅವರು ನೀನು ಯಾವ ನ್ಯಾಯಾಲಯದಿಂದ ಯಾವ ಆದೇಶ ತಂದರೂ ನಿನಗೆ ಸದಸ್ಯತ್ವ ಕೊಡುವುದಿಲ್ಲ. ನೀನು ಯಾವ ಜಾತಿ ಎಂದು ನಮಗೆ ಗೊತ್ತು, ನೀನು ಸತ್ತ ದನ ತಿನ್ನುವವನು, ಹಸು ತಿನ್ನುವ ಜಾತಿಯವನು ನೀನು ಏನಿದ್ದರೂ ನಮ್ಮಕಾಲು ಅಡಿಯಲ್ಲಿ ಕಸ ಗುಡಿಸುವ ಜಾತಿಯವನು, ಹೊಲೆಯ ಮಾದಿಗರಿಗೆ ಇಲ್ಲಿ ಸ್ಥಳವಿಲ್ಲ, ತೊಲಗು ಅನಾಗರಿಕವಾಗಿ ಅವಾಚ್ಛ ಶಬ್ದಗಳಿಂದ ಜಾತಿ ನಿಂದನೆ ಮಾಡಿ ನನ್ನನ್ನು ತಕ್ಷಣ ದಬ್ಬಾಳಿಕೆಯಿಂದ ನಿಂದಿಸಿರುತ್ತಾರೆ. ನಿನ್ನ ಆಸ್ತಿ ಹೇಗೆ ಕಿತ್ತುಕೊಳ್ಳುವುದು ಎಂಬುದು ನಮಗೆ ಗೊತ್ತು ಎಂದು ಬೈದು ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿ ಅಲ್ಲಿ ನೆರದಿದ್ದ ಸಾರ್ವಜನಿಕ ಸಮ್ಮುಖದಲ್ಲಿ ನನಗೆ ಅವಮಾನ ಎಸಗಿ, ದಬ್ಬಾಳಿಕೆ ಮಾಡಿದರು. ನಾನು ಏಕೆ ಈ ರೀತಿ ನಿಂದನೆ ಮಾಡುತ್ತಿರಿ ಎಂದು ಕೇಳಿದಾಗ, ಕತ್ತು ಹಿಡಿದು ನೂಕಿದರು. ಈ ಘಟನೆಯನ್ನು ಶಿವಶಂಕರ, ಶ್ರೀಧರ್ ಹಾಗೂ ನನ್ನ ಮಗನಾದ ಸುಭಾಷ್ ರಾಜ್ ಇತರರ ಪ್ರತ್ಯಕ್ಷವಾಗಿ ನೋಡಿದರು.

10. ನನಗೆ ಈ ದಿನ ನನಗೆ ಗೊತ್ತಿರುವ ವ್ಯಕ್ತಿಗಳ ಮುಂದೆ ಗಾಲ್ಫ್ ಸಂಸ್ಥೆಯ ಸಾರ್ವಜನಿಕ ಸ್ಥಳದಲ್ಲಿ ಮತ್ತು ಸಂಸ್ಥೆಯ ಆವರಣದಲ್ಲಿ ನನ್ನ ಜಾತಿ ಹಿಡಿದು ಬೈದು, ಹೀಯಾಳಿಸಿ ನನಗೆ ಗೊತ್ತಿರುವ ವ್ಯಕ್ತಿಗಳ ಮುಂದೆ ಅವಮಾನ ಮತ್ತು ಮಾನಸಿಕ ಹಿಂಸೆ ಉಂಟು ಮಾಡಿ ಎಂ.ಜೆ ಭಟ್ ಆದ್ವೈಕರು, ತಿವಾರಿ ಸಿಇಟಿ, ವೃದ್ಧಿರಾಜ್ ಅರಸ್ ಕ್ಯಾಪ್ಟನ್, ಸುರೇಶ್ ಜಾಯ್ನ್ ಚಂದ್ರಶೇಖರ್ ಕಾರ್ಯದರ್ಶಿ, ಹಾಗೂ ಕಮಿಟಿ ಸದಸ್ಯರು ಮೇಲೆ ಹೇಳಿದ 4 ಜನರು ಭಾರತ ಪರಿಶಿಷ್ಟ ಜಾತಿ ಮತ್ತು ಪಂಗಡ (ದಬ್ಬಾಳಿಕೆ ನಿಷೇಧ) ಕಾಯ್ದೆ, 1989 ರ ಕಲಂ 3(1) (ಆರ್)(ಎಸ್) ಮತ್ತು (ಯು) ಜೊತೆಗೆ ಐ.ಪಿ.ಸಿ ಸೆಕ್ಷನ್ 500, 504 ಮತ್ತು 506 ರೀತ್ಯಾ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ.”

The narration in the complaint is quite gory. Who has hurled what, is not indicated. Vague statements are made in the complaint and abuses have admittedly been hurled in the four corners of the meeting hall. The allegation is that, the office bearers i.e., the petitioners have hurled abuses in the meeting hall. Based on the said substratum of the complaint, a crime comes to be registered in crime No. 119 of 2022 for the aforesaid offences. If the narration of the complaint is juxtaposed to the link in the chain of events as narrated hereinabove, what would unmistakably emerge is that, the 2<sup>nd</sup> respondent is seeking to settle his score for the act of the petitioners for not having immediately implemented the order of the Registrar of Societies and admit him as a life member into the Association. The complainant becoming disgruntled is seeking to use the provisions of the Act against the petitioners in particular, alleging hurling of abuses.

17. The submission of the learned senior counsel appearing for the complainant is that, the Association did not know that the complainant belonged to Scheduled Caste or Scheduled Tribe till he submitted his application to become a life member. What is to be noticed is, the application submitted by the complainant to become a life member passes through the rigmarole of procedure. He does not secure adequate votes that are necessary to become life member. There were 32 applicants and the 2<sup>nd</sup> respondent who did not get adequate votes was not taken as a member. Therefore, the petitioners even assuming that they did not know the caste of the complainant, even according to the submission, they came to know that when his passport was submitted which is on 21-09-2018. Therefore, it would not have so many years for the petitioners to react, if it were to be a problem based upon the caste status of the complainant. The petitioners have produced format of the application before this Court or even the application submitted by the complainant. There is no column in the application that seeks caste status of a member. Therefore, it is only a figment of imagination or a figment of imagination of the learned counsel representing the complainant that the complainant's candidature came to be rejected only because he belonged to Scheduled Caste and the complainant belonging to Scheduled Caste was known only when he filed an application to become a life member and not till then.

18. The submission of the learned senior counsel for the complainant that he is the only member of the Scheduled Caste and has applied for life membership, is refuted by the learned senior counsel for the petitioners stating that there are several members belonging to the said caste and most of the members who have submitted the applications or recommended the candidature of the complainant are all belonging to Scheduled Caste. Therefore, those submissions made by the learned senior counsel for the complainant cannot be accepted.

19. The issue now is, whether there has been hurling of any abuse in public place or a place of public view. The allegations are the ones punishable under Section 3(1)(r), 3(1)(s) and 3(1)(u) of the Act. The said provision reads as follows:

**"3. Punishments for offences atrocities.** —3 [(1) Whoever, not being a member of a Scheduled Caste or a

*Scheduled Tribe, —*

- (r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*
- (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;*
- (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.”*

Section 3(1)(r) makes any person intentionally insulting or intimidating with an intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. Section 3(1)(s) of the Act, makes a person punishable if he has hurled abuses on any member of Scheduled Caste or Scheduled Tribe by taking the name of the caste in any place of public view and Section 3(1)(u) makes a person punishable if he has spoken words either written or by way of signs or by visible representation or otherwise, promotes or attempts to promote feelings of enmity, hatred or illwill. If the narration in the complaint is noticed with juxtaposition to the link in the chain of events, what would unmistakably emerge is, none of the provisions under which the crime is registered would even prima facie get attracted, as even according to the complaint, the entire thing has happened in the meeting hall where the petitioners were present and the complainant barged there. Therefore, it is a place which is neither in public view or a public place. Section 3(1)(u) of the Act makes the offence punishable for those ingredients. The petitioners cannot be alleged of promoting the feeling of any enmity, hatred or ill-will against members of Scheduled Castes and Scheduled Tribes. Therefore, none of the provisions of the Act get attracted.

**20.** Reference being made to the judgment of the Apex Court in the case of **HITESH VERMA v. STATE OF UTTARAKHAND**<sup>1</sup> wherein the Apex Court has held as follows:

*"11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26-1-2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:*

**3. (I)(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;'**

12. *The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view".*

13. *The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socioeconomic 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 2 has invoked the jurisdiction of the civil*

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<sup>1</sup> (2020) 10 SCC 710

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 2 is a 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) 5271 . 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) [Ed. : This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736de, and in the application of this principle in para 15, below: "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"]. The Court held as under: (SCC pp. 44344, para 28)**

*"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."*

*(emphasis in original)*

15. **As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 5271 , it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.**

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.

... ..

21. In *Gorige Pentaiah* [*Gorige Pentaiah v. State of A.P.*, (2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446], one of the arguments raised was non-disclosure of the caste of the accused but the facts were almost similar as there was civil dispute between parties pending and the allegation was that the accused has called abuses in the name of the caste of the victim. The High Court herein has misread the judgment of this Court in *Ashabai Machindra Adhaga/e* [*Ashabai Machindra Adhaga/e v. State of Maharashtra*, (2009) 3 SCC 789 . (2009) 2 SCC (Cri) 20] as it was not a case about the caste of the victim but the fact that the accused was belonging to upper caste was not mentioned in the FIR. The High Court of Bombay had quashed the proceedings for the reason that the caste of the accused was not mentioned in the FIR, therefore, the offence under Section 3(1)(xi) of the Act is not made out. In an appeal against the decision of the Bombay High Court, this Court held that this will be the matter of investigation as to whether the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. Therefore, the High Court erred in law to dismiss the quashing petition relying upon later larger Bench judgment.”

If the facts obtaining in the case at hand are considered on the touchstone of the principles laid down by the Apex Court in *Hitesh Verma* (supra) what would unmistakably emerge is that, further proceedings against the petitioners cannot be permitted to be continued qua the offences under the Act, as abuses as alleged even if it is construed to have been hurled, the place of such alleged hurling can neither be construed to be a public place or a place of public view. Insofar as the judgments relied on by the learned senior counsel for the complainant are concerned, there can be no qualm about the principles laid down therein. The judgment in the case of **SWARAN SINGH AND OTHERS v. STATE**<sup>2</sup> is considered by the Apex Court in the case of **HITESH VERMA** (supra) and the Apex Court has explained what is public place and what is a place of public view. Therefore, the judgment of the three Judge Bench in the case of **HITESH VERMA** (supra) would cover the field and not the judgment in the case of **SWARAN SINGH** (supra).

21. In the judgment of a co-ordinate Bench of this Court in the case of **RAJESH R. BAJAJ v. STATE OF KARNATAKA**<sup>3</sup>, the offences were clearly made out. Therefore, the said judgment would not become applicable to the facts of the case at hand. Insofar as the reliance placed upon the judgment rendered by the High Court of Kerala in the case of **DR. JEJEESH R v. DR. M.A. RAVENDRAN**<sup>4</sup>, which concerns offence under Section 3(1)(u) of the Act, the High Court of Kerala holds that the said offence was met as the act of the accused therein did meet the ingredients of the offence. That was a matter concerning grant of bail or otherwise. Therefore, the said judgments are of no avail to the complainant.

22. Therefore, the entire issue insofar as the offences alleged under the Act is covered by the judgment of the Apex Court in the case of **HITESH VERMA** (supra). In regard to other offences under the IPC which are Sections 504 and 506, Section 504 of the IPC deals with intentional insult with intent to provoke breach of peace. That is not even the allegation against the petitioners even in the complaint. Section 506 of the IPC deals with criminal intimidation. Criminal intimidation is also not the allegation in the complaint. The substratum of the complaint in its entirety is, hurling of abuses which are the offences under the Act. On the direction of the Court the learned senior counsel for the petitioners has placed the entire CC TV footage of what has happened on the said date and a copy of the transcript is also placed on record after serving it on the other side. The CC TV footage is seen in the peculiar facts of this case to avoid further litigation and the process of law getting abused. The contents of the CC TV footage clearly demonstrates that no

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<sup>2</sup> (2008) 8 SCC 435

<sup>3</sup> 2021 SCC Online Kar. 12057

<sup>4</sup> 2020 SCC Online Ker. 1743

such abuse has been hurled by any of the petitioners. It is in fact the complainant who threatens that if he is not put in as a member, he would register a case under the Atrocities Act. On all the totality of the circumstances, having found that the offences under the Act or under IPC, would not get attracted in the peculiar facts of this case, permitting any further proceedings against the petitioners would become an abuse of the process of law and degenerate into harassment to the petitioners and ultimately result in miscarriage of justice.

23. For the aforesaid reasons, I pass the following:

**ORDER**

(i) Writ Petitions are allowed.

(ii) FIR in Crime No. 119 of 2022 of Jeevan Bheemanagar Police Station, Bangalore and all further proceedings taken thereto, stand quashed.

(iii) It is made clear that the observations made in the course of the order would not come in the way of any proceeding pending before any judicial, quasi judicial fora or any other authority. The observations made are only for the purpose of consideration of the cases of the petitioners under Section 482 of the Cr.P.C.

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