

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 12th September, 2018

+ **CRL.L.P. 113/2016**

VIRENDER VERMA

..... Petitioner

Represented by: Mr. Jitendra K. Jha and Mr.
Sarsij Narayan, Advocates.

versus

NEERAJ BAJPAI & ORS

..... Respondents

Represented by: Mr.Rajesh Anand, Ms.Radha,
Mr.Pawan Yadav, Mr.Abhijit
Kumar, Advocate for
respondent Nos. 1 to 3.
Ms.Rajni Gupta, APP for the
State with ASI Amit Lal, PS
DIU/NDD

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 16th December, 2015 whereby the Learned Additional Sessions Judge acquitted the respondents for the offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') the petitioner/complainant has preferred the present leave to appeal petition.

2. Sequence of events leading to the prosecution case are that a written complaint was given by Virender Verma (petitioner herein) wherein he stated that he belonged to a Scheduled Caste namely 'Koli' caste and was working in United News of India (UNI) as a Senior Transmission Supervisor. He received a letter dated 2nd March 2013 from the UNI office

pursuant to which he had gone there to meet Neeraj Bajpai (respondent No.1 herein) on 14th March 2013 in his room where Ashok Upadhaya (respondent No.3 herein) and Mohan Lal Joshi (respondent No.2 herein) were already present. While Virender Verma was talking to Neeraj Bajpai regarding departmental work, Ashok Upadhaya and Mohan Lal Joshi started shouting at him and uttered the words "*saale hum log kisi chamar chumar avam ansuchit jati kay logo ko varishtha kay bavjud uprokt shakha kay pabhari nahi banatay hai.*" Neeraj Bajpai while abusing Virender Verma said "*saale chamar yaha se turant bhaag jaoo anaytha tumhari jaan ki khair nahi hai.*" Two senior journalists Dr. Samrendar Kant Pathak and M.A. Alamgir intervened when they witnessed such derogatory remarks being made against the petitioner. Written complaint was proved vide Ex.PW-3/A.

3. A preliminary inquiry was conducted by the ACP New Delhi District. On the basis of the aforesaid written complaint, FIR No.61/2013 (Ex.PX1) was registered at PS Parliament Street for offence punishable under Section 3(1)(x) SC/ST Act.

4. Upon registration of FIR, statements of Virender Verma, Dr.Samrendar Kant Pathak and M.A. Alamgir were recorded. The caste certificate of Virender Verma was received from him on 4th June 2013. Statements of several other employees who were present in the room adjacent to the place of incident were also recorded. The Call Data Records of Virender Verma, Neeraj Bajpai, Mohan Lal Joshi, Ashok Upadhaya, M.A. Alamgir and Samrendar Kant Pathak were obtained.

5. After completion of the investigation, charge-sheet was filed. Charge was framed vide order dated 8th May 2014 under Section 3(1)(x) of the SC/ST Act.

6. Virender Verma (PW-3) deposed in sync with his written complaint. In his cross-examination, he stated that his appointment at UNI was not made on the basis of his caste and he had been promoted three times between 1982-1989. There was no document to show that he had attended office on the date of the incident. He had not attended office since 7th January 2013. He had received a notice from Roshan Mehrotra regarding his absence in office pursuant to which he had been directed to join in January 2013. He did not send a reply to this notice. On 2nd March, 2013 an office memo had been issued to him regarding absence from duty without intimation to the office. He did not reply to the said office memo. He admitted that prior to 2nd March 2013, numerous memos had been issued to him by the Administrative Officer, UNI. He admitted that prior to 14th March, 2013 he and the two witnesses namely M.A. Alamgir and Samrendar Kant Pathak were either facing disciplinary action or had been transferred or suspended for serious misconduct. He was running an organization called 'UNI Bachao Andolan' along with Samrendar Kumar Pathak and M.A. Alamgir.

7. Samrendar Kant Pathak (PW-4) deposed that on 14th March 2013 he was present at the office along with M.A. Alamgir in a room adjacent to the room of Neeraj Bajpai. On hearing some persons screaming from the adjacent room, he peeped into the room of Neeraj Bajpai and saw Ashok Upadhaya, M.L. Joshi and Virender Verma in his room. He stated that Ashok Upadhaya and M.L. Joshi were abusing Virender Verma with caste specific derogatory remarks and said that they could not appoint a person of such caste to a senior post. Virender Verma was requesting the respondents with folded hands not to humiliate him. He along with M.A. Alamgir

intervened and brought Virender Verma out of the room. In his cross-examination he admitted that there was no document to show his presence in the office on the date of the incident. He stated that he was running an organization called 'UNI Bachao Andolan' along with Virender Kumar. They were participating in its day to day activities. He stated that on 14th March 2013 he along with Virender Verma and M.A. Alamgir had made a written complaint which was sent by post to the office of Special Registrar Societies, Parliament Street.

8. As per the charge-sheet there were only two witnesses to the incident. One of whom M.A. Alamgir could not be examined as he had expired. Both Virender Verma and Samrendar Kant Pathak admitted that they were running an organization 'UNI Bachao Andolan' and used to protest against the management of UNI and the respondents. They admitted that they were facing disciplinary proceedings in UNI prior to the date of the incident.

9. Virender Verma and Samrendar Kant Pathak were not only co-workers in UNI but are very closely associated with each other. They are also members of the same organization that has been agitating against the management of UNI wherein they have been making demands which included that all transfers, promotions, suspensions, demotions etc. passed after April 2012 be cancelled immediately. They are also facing disciplinary proceedings in UNI.

10. Learned Trial Court rightly excluded the testimony of Samrendar Kant Pathak from consideration keeping in mind his close, personal and professional association with Virender Verma as per the ratio laid down in Daya Bhatnagar v. State reported as (2004) 109 DLT 915. In Daya Bhatnagar (supra), it was held that 'public view' for the purposes of Section

3(1)(x) of the SC/ST Act would have to mean presence of public persons. It was held that the public persons present should be independent and impartial and not interested in any of the parties and persons having any kind of close relationship or association with the complainant would get excluded.

11. While Virender Kumar had deposed that he lodged the complaint in person along with Samrendar Kant Pathak and M.A. Alamgir, however, Samrendar Kant Pathak in his cross-examination stated that the said complaint had been sent through post and was not lodged in person. From the evidence of Samrendar Kant Pathak it is evident that he was trying to cover up the statement made by Virender Verma that they were both present in the office of Special Registrar Society at 5:00 P.M. on 14th March 2013.

12. Another aspect required to be appreciated is that when Virender Verma and Samrendar Kant Pathak jointly made a complaint against the same persons on the same day then it is quite unnatural for Virender Verma to have gone alone to the office of Neeraj Bajpai to discuss departmental issues while Samrendar Kant Pathak and M.A. Alamgir were present in the adjacent room.

13. Virender Verma admitted having received calls on 14th March 2013 at 4:51 P.M. and 5:01 P.M. The cell ID chart when compared with the CDR reflects that the location of the mobile phone of Virender Verma was at Mehrasons Jewellers and DLF City Square respectively, thus, making it unlikely for him to be present in the office of UNI at Rafi Marg at the time of the alleged incident.

14. View expressed by the learned Additional Sessions Judge based on the evidence on record is plausible. Hence, the impugned judgment

acquitting the respondents cannot be said to be perverse warranting interference of this Court.

15. Leave to appeal petition is dismissed.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 12, 2018

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HIGH COURT OF DELHI



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