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THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 224/2012 with Crl. M.A. 821/2012

Date of Decision:20.01.2012

KANHAIYA PASWAN Petitioner
Through Mr. Sunil Mehta, Adv.
versus
STATE & ORS. Respondent
Through Mr. M.N. Dudeja, APP

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. The present petition is against the order dated 16.11.2011 of the learned ASJ in SC No. 06/2011, CC No. 590/2011, P.S. Inder puri whereby the learned ASJ was pleased to give a finding that prima facie no offence under section 3(1)(X) SC & ST (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') was made out against the accused persons.

2. Brief facts necessitating the present petition are that a complaint under section 3(1)(X) SC & ST Act was filed by one Kanhaiya Pawan against the accused persons alleging that on 14.07.2010 at about 4.00 pm when his wife Shrimati Bhagwanti was alone in the house, the accused persons entered his house, assaulted his wife and damaged the movables lying in the house. At that time, the accused persons also passed caste based derogatory remarks against Smt. Bhagwanti, a member of Scheduled Caste in order to insult, intimidate and humiliate her. The incident was allegedly witnessed by one G.S. Pandey, a friend of the complainant and by Nand Kishore, the neighbour of the complainant. No action was taken by the police despite various written complaints given by the complainant. Consequent to the statement of the

complainant, victim and other witnesses recorded in the Court towards pre-summoning evidence, the accused persons were ordered to be summoned under section 3(X) of the Act and under Section 323/341 read with section 34 IPC. Aggrieved with the said order, the accused persons preferred a revision petition. In the mean time the complaint case on compliance of section 207 Cr.P.C. was committed to Sessions Court and learned ASJ passed the impugned order. Aggrieved with the said order, the petitioner/complainant has invoked the jurisdiction of this Court.

3. The learned counsel for the petitioner urged that the Ld ASJ had erred in not framing charge under section 3(1)(x) of the Act against the accused persons as prima facie case was made out against the accused persons.

4. The learned ASJ on consideration of the evidence available on record has given a finding of fact that there is not a whisper of any caste related remarks in the entire evidence of the complaint and hence no prima facie case under section 3(1) (x) of the Act is made out against the accused persons. The learned ASJ records that in the entire complaint it was nowhere even whispered by the complainant that Nand Kishore or any other public person was also present there on 14.07.2010. The Ld ASJ further records that a perusal of the said complaints would reveal that the complainant did not aver even once therein that any of the accused persons had uttered any caste related remark with intent to insult, intimidate or humiliate the complainant or his wife at the time of alleged assault. Likewise in the statement of injured Bhagwanti Devi, recorded by the police in the presence of the complainant on the date of incident, it was nowhere alleged by the victim that the accused persons had made any caste based remarks intending to humiliate or threaten her on that day. Similarly, in the complaints to the police made by the complainant,

Kanhaiya Paswan, it is nowhere mentioned that the incident was witnessed by G.S. Pandey and Nand Kishore or any other public person.

5. This Court in **Daya Bhatnagar and Ors. Vs. State** 109 (2004) DLT 905 held that the accused must have knowledge or awareness that the victim belongs to Scheduled Caste or Scheduled Tribe community and if an accused does not know that the person whom he is insulting, intimidating or humiliating is a member of a Scheduled Caste or Scheduled Tribe, no offence under the section would be constituted. It was also held that the expression 'public view' in section 3(1) (x) of the Act implied within view of a group of people of the place/locality/village not linked with the complainant through any kinship, business, commercial or any other vested interest, and who are not participating members with him in any way. This High Court interpreted the expression 'public view' in section 3(1)(x) of the Act as the presence of one or more persons who are neutral or impartial even though he may be known to the complainant to attract the ingredients of this offence. The offending expressions, therefore, should be uttered by the persons accused, in view of others unconnected with the complainant.

6. After a perusal of the complaint and considering the findings of the learned ASJ, I do not find any illegality or infirmity in the impugned order dated 16/11/2011 of the Ld ASJ and hence the present petition is dismissed.

M.L. MEHTA
(JUDGE)

January 20, 2012
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