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## Arsul Swain Vs State of Jharkhand

### Criminal M.P. No. 610 of 2003

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**Court:** Jharkhand High Court

**Date of Decision:** Aug. 18, 2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) " Section 482#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 " Section 3(1)

**Citation:** (2004) CriLJ 1842 : (2004) CriLJ 1842 : (2004) 3 RCR(Criminal) 247

**Hon'ble Judges:** Amareshwar Sahay, J

**Bench:** Single Bench

**Advocate:** Baban Lal and Ashok Kumar Sinha, for the Appellant; Assistant Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

In this application the petitioner has prayed for quashing of the First Information Report being SC/ST Ranchi P. S.

case No. 9 of 2003 (G.R. No. 879 of 2003) registered under Sections 147, 341, 323, 447, 504 of the Indian Penal Code as well as Section 3(1)

(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the petitioner and others on the written information

lodged by one Ganesh Ravi Das.

2. The allegations in the F.I.R. by the informant is that he belongs to Scheduled Caste (Chamar), was employed in MECON at Doranda, Ranchi.

In a meeting held on 27-1-2003 in the community hall of all the employees of MECON under the Presidentship of Chairman-Cum-Managing

Director. In the said meeting the informant is said to have stated that some of the employees of MECON have rented their official residence to the

outsiders and thereby entry of antisocial elements in. the colony has increased and therefore, inhabitants of the colony were feeling unsafe. In this

regard a written complaint was submitted by the informant on 6-2-2003 to the chairman-cum-Managing Director, MECON. Because of that,

those persons who had rented their official accommodation became furious against him and in that regard on 13-2-2003 at about 7.30 a.m.

informant's neighbours namely the petitioner and others who were, named in the F.I.R. came to the residence of the informant and started abusing

him by using the language. SALA CHAMAR HERO BANTA HAI. HUMLOG APNA AWAS KIRAYA PAR LEGAYA HAI TO TUMARA

KYA PHATATA HAI. HAMARA QUARTER HAI HUM KUCH BHI KAR SAKTE HAI. SAFE SAFE SUNLO YADI MECON

PRABANDHAN HUMLOG PAR KOI KARWAI KIA TO TUMAHARA SAB CHAMAR BUDHI NIKAL DENGE. Thereafter seeing the situation to be grave, the informant in order to save his life started going out on his Motor Cycle and at that moment those persons in order to kill

the informant attacked him and started assaulting him with fists and legs. Seeing the occurrence the nearby people assembled there and rescued the

informant. It is alleged by the informant that four persons named in the F.I.R. including the petitioner, belonged to higher caste and considering the

informant to the member of the Scheduled Caste (Chamar) abused and assaulted him. It is further alleged that his son was a student of D. A. V.

Jawahar Vidya Mandir, who was taking tuition from a teacher who was residing in the same block where accused persons were residing, was also

prevented from taking tuition just before his examination and because of that his son failed in the examination. It is further alleged that the informant

and his family members were being tortured by the accused persons only because they belonged to Scheduled Caste (Chamar),

3. On the basis of this written information F.I.R. was registered on 1-4-2003 and investigation was taken up by the police.

4. The learned counsel appearing for the petitioner has firstly submitted the F.I.R. has been lodged after an inordinate delay without any "sufficient

explanation, therefore, delay in lodging the F.I.R. itself creates doubt on the prosecution case. It was next contended that Section 3(x) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not attracted nor any case under the aforesaid provision is made out,

from the contents of the F.I.R. even if the allegation is taken to be true in its entirety.

5. According to the learned counsel for the petitioner, Section 3(x), provides that whoever not being the member of the Scheduled Caste and

Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, in any place within

public view then only the said Section 3(x) would apply. According to him one of the main ingredients of the said section is that insult or humiliation

to a member of Scheduled Caste and Scheduled Tribe must be made in a place within the public view. Since the allegation in the present F.I.R. is

that the accused persons came to the residence of the informant and committed the offence alleged, in his quarter and therefore, it cannot be said

that the said commission of offence was in a place within the public view. Therefore, Section 3(x) of the Scheduled Castes and the Scheduled

Tribes (Prevention of Atrocities) Act is not attracted. In support of his contention the learned counsel has relied on the decision of the M. P. High

Court in the case of Karan Singh and Others Vs. The State of M.P., .

6. It was next contended that the present case is fully covered by the proposition Nos. 5 and 7 of the Judgment of the Supreme Court in the case

of State of Haryana and others Vs. Ch. Bhajan Lal and others, and thereby he submits that the allegation made in the F.I.R. are absurd and

inherently improbable and further that criminal proceeding was instituted with mala fide intention with an ulterior motive, therefore, the F.I.R. is

liable to be quashed. He has relied on the decision of the Single Judge of the Patna High Court in the case of Harishankar Jha v. State of Bihar,

reported in 2000 (1) BBCJ 407.

7. In order to appreciate the submission of the learned counsel for the petitioner, it is relevant to quote Section 3(x) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads thus.

3. Punishment of offences of atrocities.--(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.

(i) to (ix) .....

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

8. Before dealing with the submission made on behalf of the petitioner, guidelines given by the Supreme Court in exercise of inherent power of the

High Court u/s 182 of the Code of Criminal Procedure has to be kept in mind. In the case of Kurukshetra University and Another Vs. State of

Haryana and Another, it has been held that this statutory power u/s 482, Cr. P. C. has to be exercised sparingly and with circumspection and that

also in the rarest of the rare case.

9. Regarding the quashing of the F.I.R. the Supreme Court in the case of State of West Bengal Vs. S.N. Basak, has held that the statutory power

of the police to investigate into a cognisable offence cannot be interfered with under the inherent power of the High Court u/s 482 of Cr. P. C.

when there was no case pending at the time excepting that a person against whom investigation had started.

10. No doubt there are cases in which the Supreme Court has held that if the averments made in the F.I.R. do not disclose the necessary

ingredients of the offence and from the face of the allegation made in the F.I.R. it is apparent and manifest that the allegations are so absurd that no

prudent person can believe the same, then in that cases the High Court in exercise of power u/s 482 of Cr. P. C. can quash such F.I.R. In the case

of State of Haryana and others Vs. Ch. Bhajan Lal and others, no doubt several propositions have been laid down in the said decision including

that proposition Nos. 5 and 7 that in case of absurd allegations in the F.I.R. and in a case where it appears that there is apparent mala fide intention

in lodging F.I.R. the High Court can exercise power u/s 482, Cr. P. C. for quashing of the F.I.R.

11. Therefore, the question boils down to this, that the Court has to examine the allegation made in the F.I.R. in its entirety and then if the Court

comes to the conclusion that from the allegations made in the F.I.R. that no case regarding the commission of the cognizable offence is made out,

which may require investigation by the police then certainly the High Court would be justified in interfering with the investigation and the F.I.R. can

be quashed in exercise of the power u/s 482, Cr. P. C.

12. Now coming to the allegations made in the F.I.R. as alleged by the informant in the present case, it appears that language used by the accused

persons ""SALA CHAMAR HERO BANTA HAL HUMLOG APNA AWAS KIRAYA PAR LAGAYA HAI TO TUMARA KYA PHATATA

HAI. HAMARA QUARTER HAI, HUM KUCH BHI KAR SAKTE HAI. SAAF SAAF SUNLO YADI MECON PRABANDHAN

HUMLOG PAR KOI KARWAI KIA TO TUMAHARA SAB CHAMAR BUDHI NIKAL DENGE"" itself makes out a case that the accused

persons used those languages in order to insult and humiliate the informant as he belonged to a member of the Scheduled Caste.

13. Therefore, in my view certainly offence of Section 3(x) of the said Act is prima facie made out against the petitioner and other accused

persons.

14. So far as the submission of the learned counsel for the petitioner, that Section 3(x) would not be attracted unless and until, insult and humiliation

is made at a place within the public view, in this regard the allegation made in the F.I.R. is that while the accused persons were insulting and

humiliating the informant, three persons arrived at that place who were eye-witnesses to the occurrence clearly makes out a case that the offence

was committed in a place within the public view. Therefore, the case of Harishankar Jha v. State of Bihar decided by the Patna High Court (supra)

is not applicable in the facts and circumstances of this case.

15. Neither the allegations made in the F.I.R. are absurd or improbable nor appears to be mala fide and therefore, in my view the proposition Nos.

5 and 7 as laid down in the decision of State of Haryana and others Vs. Ch. Bhajan Lal and others, does not apply in this case.

16. In view of my above discussions and findings no case at all is made out for exercise power u/s 182 of Cr. P. C., to quash F.I.R. and

investigation being made by the police.

17. In the result this application has got no merit. It is accordingly dismissed.