HIGH COURT OF ALLAHABAD

Bench: Shamim Ahmed, J.

Date of Decision: May 29, 2024

Case: APPLICATION U/S 482 No. - 1417 of 2010

Amit Kumar Singh …..Applicant

Versus

Gola And Another ….Respondents

Legislation:

Sections 323, 504, 506, 420 of the Indian Penal Code (IPC)

Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Application under Section 482 Cr.P.C. to quash the summoning order and criminal proceedings in a case involving alleged caste-based abuses and threats, claimed to be driven by political rivalry.

Headnotes:

Criminal Law – Quashing of Proceedings under SC/ST Act and IPC – High Court set aside the impugned order summoning the applicant – Application U/S 482 Cr.P.C. allowed – Insufficient evidence to substantiate charges under Sections 323, 505, 506, 420 IPC and Section 3(2)(v) of the SC/ST Act – Allegations were found to be politically motivated and driven by personal rivalry – The police inquiry and previous judicial orders were considered, revealing contradictions and a lack of credible evidence – Court emphasized the necessity of judicial application of mind by the Magistrate before taking cognizance – Previous dismissal of a similar complaint by the same complainant further discredited the allegations [Paras 1-57].

Application under Section 482 Cr.P.C. – High Court examined the evidence and police inquiry – Found contradictions and lack of material evidence – Previous dismissal of similar complaint considered – Abuse of process of law established – Allegations deemed fabricated and politically motivated – Judicial mind not applied adequately by the Magistrate in summoning order – Detailed analysis of the complainant's contradictory statements and the lack of public witnesses – Reference to precedents where similar proceedings were quashed due to lack of prima facie evidence – Cited Supreme Court decisions emphasizing that mere caste-based abuse without public view does not constitute an offence under SC/ST Act [Paras 10-15, 23-25, 39-49, 53].

SC/ST Act and Evidence Evaluation – High Court observed that essential ingredients for offences under SC/ST Act were not met – Incident occurred inside the complainant's house without public view, which is a crucial requirement for Section 3(1)(s) of SC/ST Act – No independent witnesses to substantiate the claims – Police report and inquiry by Circle Officer indicated that allegations were motivated by political rivalry – Summoning order criticized for lacking detailed reasoning and relying solely on the complainant's version without proper judicial scrutiny [Paras 26-37, 40-42].

Decision – Quashing of Criminal Proceedings – Held – The summoning order and subsequent criminal proceedings against the applicant are quashed – High Court found the incident did not occur in a place within public view, thus not fulfilling the requirements for offences under the SC/ST Act – Emphasized the need for careful judicial application of mind and detailed reasoning in judicial orders – Entire criminal proceeding quashed in the interest of justice – Reference made to relevant case laws and Supreme Court guidelines on the misuse of SC/ST Act and IPC provisions [Paras 55-57].

Referred Cases:

- Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710
- Ramesh Chandra Vaishya Vs. State of U.P. and Another; (2023) SCC OnLine SC 668
- Fakhruddin Ahmad Vs. State of Uttranchal and another, (2008) 17 SCC 157

- State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.) 426
- Allauddin Khan Vs. State of Bihar and Others, (2019) 6 SCC 107
- Ankit Vs. State of U.P. and another, JIC 2010 (1) page 432
- Lalankumar Singh and Others vs. State of Maharashtra, 2022 SCC Online SC 1383

Representing Advocates:

For Applicant: Rajeev Singh, Akhilesh Kumar Mishra, Alok Singh, Vijay Kumar

For Opposite Party: Govt. Advocate, Anurag Singh Chauhan

Hon'ble Shamim Ahmed,J.

1. Heard Sri Vijay Kumar, learned counsel for the applicant, Sri Anurag Singh Chauhan, learned counsel for the opposite party no.1 and Sri Ashok Kumar Singh, learned A.G.A.-I for the State Opposite Party No.2 as well as perused the record.

2. The instant application under Section 482 Cr.P.C. has been moved on behalf of the applicant, namely, Amit Kumar Singh with a prayer to quash the impugned order dated 29.05.2009 passed in Criminal Case No.897 of 2008 (Gola Vs. Ambar Singh and Others), under Sections 323, 505, 506, 420 I.P.C. and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Banthra, District Lucknow pending in the court of learned Special Judge, C.B.I., Lucknow.

3. Learned counsel for the applicant submitted that the applicant is a student of Hotel Management studying in Meridian International Hotel School, Sydney, Australia and the entire family of the applicant is law abiding and living peacefully.

4. He further submitted that some persons belonging to the pedigree of the applicant are jealous with the success of the family of the applicant as the elder brother of the applicant went to Australia on scholarship and settled in Sydney, therefore, only with intention to malign the dignity of the family of applicant, the impugned proceeding was instituted.

5. He further submitted that opposite party no.1 sent an application to the U.P. SC/ST Commission, 10th Floor, Indira Bhawan, Ashok Marg, Lucknow, wherein a direction was issued on 04.03.2008 to the Senior Superintendent of Police, Lucknow for conducting inquiry in the complaint of Sri Gola i.e. the opposite party no.1, therefore, the concerned Circle Officer conducted an inquiry, recorded the statements of villagers including complainant (Sri Gola) and found that a fake complaint has been moved by the complainant, as such, the proceeding was dropped.

6. He further submitted that the opposite party no.1 deliberately kept silent about nine months and then again filed an application under section 156(3) Cr.P.C. on the same fabricated story on behest of present village Pradhan, namely, Sri Shiv Shanker Singh against the applicant and his family members with the allegations that Shri Ambar Singh (uncle of the applicant) borrowed

Rs.500/- about three years prior from the date of application (no date and time is mentioned), however, when the opposite party no.1 asked to return the aforesaid amount, only Rs.150/- were returned to him and he also refused to pay the balance amount of Rs.350/-. Further allegation is that inspite of refusal of Sri Ambar Singh, the opposite party no.1 requested repeatedly for returning the balance amount of Rs.350/- but he always gave threat to the opposite party no.1 saying that if he will demand the balance amount, then he will be killed. Further allegation is that on 04.01.2008, when the opposite party no.1 again went to the applicant and demanded the balance amount of Rs.350/-, he was threatened to death and was also insulted by the applicant, who was accompanied with many persons alongwith fire arm weapons as well as lathi and danda.

7. He further submitted that further allegation is that on the next date i.e. 05.01.2008 at about 9.00 A.M. when opposite party no.1 was at his residence, Shri Ambar Singh and the instant applicant along with 7-8 persons armed with rifles, revolver, country made pistol and Lathi - Danda again came to his house and started abusing to the opposite party no.1. Thereafter, he was called by them and as soon as he came out from his house, a fire was opened by the applicant and the opposite party no. 1 tried to rescue himself but the applicant started beating with the help of Lathi Danda. Thereafter, an alarm was made by the family members of opposite party no.1, hearing which, several persons were collected on the place of incident but the applicant and other persons ran away giving threat to the opposite party no.1. Thereafter, the opposite party no.1 moved an application before the learned Judicial Magistrate (Court No.40), Lucknow under Section 156(3) Cr.P.C. for lodging an FIR, wherein the learned Magistrate, ordered to the Station Officer, Police

Station Banthra, District Lucknow for producing the police report in the Court on 04.11.2008.

8. He further submitted that the Station Officer, Police Station Banthra, District Lucknow submitted the police report before the learned Judicial Magistrate (Court No. 40) / Additional Civil Judge (Junior Division-VIII), Lucknow, wherein it was mentioned that the entire complaint is on the basis of fabricated facts and it is a result of political rivalry and no such incident took place. The relevant part of the police report submitted by the Station Officer on the Misc. Application No. 162/08 Gola Vs. Ambar Singh is being reproduced as under:-

"आवेदक श्री गोला पासी एस/ओ श्री प्रसादी पासी निवासी ग्राम अमावां थाना बंथरा जनपद लखनऊ की जांच मुझ उपनिरीक्षक द्वारा मौके पर जाकर की गयी तो वाकयात निम्न प्रकार पाये गये। आवेदक श्री गोला पासी उपरोक्त श्री नीटू सिह एस/ओ श्री राज बहादुर सिंह निवासी ग्राम अमावां से लगभग दो वर्ष पहले एक हजार रूपया अपनी पुत्री की शादी के लिए ले गया था। श्री गोला पासी की माली हालत बहुत ज्यादा खराब है। शादी की समय नीटू सिंह ने रूप्या दे दिया था जबकि गोला से श्री नीटू सिंह ने अपने उधार के रूपये मांगे तो टाल मटोल करने लगा और श्री नीटू सिंह का साथ श्री गोला पासी छोड़कर गाव के वर्तमान प्रधान श्री शिव शंकर सिंह निवासी ग्राम अमावा के साथ उठना बैठना और लेन-देन करने लगा। विपक्षी अम्बर सिंह एस/ओ पृथ्वी पाल सिंह, अमित कुमार एस/ओ हरिनाम सिंह, प्रवीण कुमार व नीटू सिंह पुत्रगण राज बहादुर सिंह निवासी ग्राम अमांवा थारा बंथरा लखनऊ की प्रधानी चुनाव के समय से वर्तमान प्रधान श्री शिव शंकर सिंह से प्रतिद्वन्दता चल रही है, विपक्षीगणों द्वारा हारे हुए प्रधान उम्मीदवार श्री देवेन्द्र सिंह एसओ श्री रामेश्वर सिंह निवासी ग्राम अमांवा को समर्थन किया था. इसी राजनैतिक प्रतिद्विन्दता के कारण श्री शिव शंकर सिंह वर्तमान प्रधान आवेदक श्री गोला पासी एस/ओ श्री प्रसादी पासी निवासी अमांवा को उकसा कर झूठा एवं मनगढन्त आरोप लगाकर प्रार्थना पत्र विपक्षियों के विरूद्ध दिला रहे हैं। आवेदक श्री गोला को मोहरा बनाकर

अपनी राजनैतिक प्रतिद्विन्दता निभा रहे हैं। विपक्षीगणों के विरूद्ध 500 रूप्ये उधार मांगने का आरोप एक हास्यास्पद है। विपक्षीगणों के पास अच्छी सम्पत्ति एवं सम्पन्न परिवार है, किसी भी व्यक्ति द्वारा उधार रूप्ये मांगने एवं लगाये गये आरोप की पुष्टि नहीं की है। उपरोक्त संबंध में लगाये गये आरोपों के संबंध में जितने भी शिकायती प्रार्थना पत्र दिए गए सभी की विधिवत जांच से कोई आरोप प्रमाणित नहीं हुआ। उपरोक्त आरोपों की जांच क्षेत्राधिकारी सरोजनीनगर महोदय द्वारा भी की जा चुकी है। लगाये गये आरोप असत्य हैं किसी कार्यवाही की आवश्यकता प्रतीत नहीं होती है।"

9. He further submitted that the police report was submitted in the Court of Additional Civil Judge (Jr. Division-VIII) / Judicial Magistrate Room No.40, Lucknow in relation to the application no.162/08 and after considering the police report, the contents of the application of Sri Gola and arguments of his counsel, the learned Court was pleased to decide the matter with reasoned and speaking order and rejected the same on 25.11.2008. The relevant part of the order dated 25.11.2008 passed by learned Judicial Magistrate, Court No.40 Lucknow in C.M. Application No.162/08 (Gola Vs. Ambar) is being reproduced as under:-

"प्रकीर्ण प्रार्थना पत्र संख्या-162/08

गोला बनाम अम्बर सिंह आदि

25.11.08

प्रार्थी गोला ने उक्त प्रार्थना पत्र अन्तर्गत धारा 156 (3) द.प्र.सं. प्रथम सूचना रिपोर्ट दर्ज करने के संबंध में दिया है।

प्रार्थी ने अपने प्रार्थना पत्र में कहा है कि प्रार्थी से लगभग तीन वर्ष पूर्व अम्बर सिंह पुत्र श्री पृथ्वीपाल सिंह निवासी ग्राम अमावा थाना बंथरा जिला लखनऊ में रूपये 500 उधार मांग ले गये थे और वापस देने का वायदा किया था शपथी के बहुत कहने पर अम्बर सिंह ने 150/- रूपये वापस कर दिये तथा रूपये 350/- शेष नहीं दिया, जब शपथी बकाया मांगने गया तो अम्बर सिंह, अमित कुमार, प्रवीण कुमार, नीतू सिंह ने अपने कई अन्य साथियों के साथ अपना लाइसेंसी राइफल, रिवाल्वर व देशी कट्टा व लाठी डंडा से लैस होकर शपथी को धमकाया व जान से मारने की धमकी दी अतः विपक्षीगण के विरूद्ध प्रथम सूचना रिपोर्ट दर्ज करने के संबंध में आदेश पारित करने की कृपा करें।

थाने से आख्या आहूत की गयी।

थाने की आख्या का अवलोकन करने पर पाया कि प्रार्थी व विपक्षीगण के मध्य चुनाव को लेकर आपसी रंजिश है।

प्रार्थी के विद्वान अधिवक्ता को सुना व थाने की आख्या व संलग्न प्रपत्रों का अवलोकन किया।

अवलोकन करने पर यह पाया कि प्रार्थी ने केवल मौखिक रूप से कहा है कि 500/- रूपये अम्बर सिंह ने उधार लिया था जिसमें से 150 रूपये प्राथी को मिल चुके हैं सिर्फ 350/- बकाया है जबकि प्रार्थी ने अपने प्रार्थना पत्र में कहा है कि प्रार्थी पासी जाति का है। प्रार्थी ने किसे समक्ष पैसा उधार दिया था, इसका उल्लेख प्रार्थना पत्र में नहीं किया है। न्यायालय की राय में प्रार्थी ने उक्त प्रार्थना पत्र मात्र प्रधानी के चुनाव की रंजिश में विपक्षीगण के विरूद्ध दिया है।.....

अतः विपक्षीगण के विरुद्ध पूर्ण रूप से संगेय अपराध का कारित किया जाना प्रतीत नहीं होता। प्रार्थना पत्र निरस्त होने योग्य है।

आदेश

प्रार्थी का प्रार्थना पत्र अन्तर्गत धारा 156 (3) दं०प्र०सं. निरस्त किया जाता है।

ह० अपठनीय

25.11.08

न्या० मैजि० कक्ष सं.-40

लखनऊ।"

10. He further submitted that annoyed with the aforesaid, the opposite party no.1 moved a fresh application on 06.12.2008 before the Court on the same facts and circumstances, wherein the opposite party no.1 concealed the facts and mislead the learned Magistrate by saying that the application under Section 156(3) Cr.P.C. has been disposed of on 25.11.2008, however, it was dismissed with a reasoned and speaking order after considering the inquiry report submitted by the police of Police Station Banthra, District Lucknow. He further submitted that in absence of the facts that the application of opposite party no. 1 has already been dismissed on 25.11.2008, the Hon'ble Court was pleased to pass an order on 08.12.2008 for registering a case as a Complaint Case No.897/08, under Sections 323/504/506/420 IPC and Section 3(2)(5) SC/ST Act.

11. He further submitted that the complainant also annexed a list of two witnesses, namely, (1) Monu Singh S/o Ram Shankar Singh and (2) Kamlesh S/o Annu residents of Village Amawa, Police Station Banthra, District Lucknow along with the copy of complaint dated 08.12.2008 but there was no whisper about the witnesses in the body of any complaint. He further submitted that it is relevant to mention here that Monu Singh is belonging to the family of the present Pradhan.

12. He further submitted that on 05.03.2009, the learned Special Judicial Magistrate, C.B.I., Lucknow recorded the statement of opposite party no.1 under Section 200 Cr.P.C., in which a new story was narrated by the complainant Gola, who stated that he was working as a labour for Ambar Singh and he worked about 25 days and in lieu of the payment of wages for 25 days, Rs.500/- was not paid by him and whenever, he went to the Ambar Singh for raising his demand, the same was ignored and thereafter on 04.01.2008, when the complainant went to the Ambar Singh, he was scolded and on 05.01.2008 at about 9.00 A.M., the applicant along with other family members and associates came to the house of complainant and a fire was opened on him but due to interference of the wife of complainant, the direction of fire was changed and he ran inside the house and closed the door.

13. He further submitted that on 04.04.2009, the statement of Monu Singh and Ram Kumar were recorded under Section 202 Cr.P.C. but it is pertinent to mention here that the complainant has set up a new story i.e. in contradiction with the facts mentioned in the complaint. He further submitted that it is also relevant to point out that there is no whisper available about the presence of the witnesses and in the list of witnesses, Sri Ram Kumar was not mentioned but his statement was recorded. He further submitted that it is also relevant to mention here that the respondents deliberately did not produce neighbours or his wife as witness.

14. He further submitted that the entire complaint was filed on the basis of fabricated facts as it was established during the course of police inquiry submitted in the Court as well as the inquiry conducted by Circle Officer on the behest of U.P. SC/ST Commission but in the most mechanical manner the

learned Magistrate had passed the impugned order dated 29.05.2009 and issued summons to the applicant and even a new story was set up in the statements recorded under Section 200 Cr.P.C. i.e. contradictory to the averments made in the complaint.

15. He further submitted that the impugned case is instituted only to malign the dignity of the family of applicant and the proceeding is in violation of the law laid down by the Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426 and the impugned order is perverse and it is passed in the most arbitrary and illegal manner.

16. He further submitted that it is well settled by this Hon'ble Court as well as by the Hon'ble Supreme Court that the abuse of process of law is not permitted and in the present case it is very much clear that the respondent is abusing the legal provisions only to harass the applicant on the behest of the one Sri Shiv Shankar Singh, the present village Pradhan which is very much clear from the police report.

17. He further submitted that the learned Magistrate passed the impugned order saying that Sri Ambar Singh borrowed Rs. 500/- from opposite party no.1 and Rs.350/- was not being returned to him, therefore, he was scolded by Sri Ambar Singh and his associates but on oath complainant stated that his labour charges that was due on Ambar Singh was not being paid and on the demand, he was scolded and manhandled by them, therefore, order is perverse and the same is liable to be quashed in the light of law laid down by the Hon'ble Supreme Court in the case of Bhajan Lal (Supra).

18. He further submitted that the impugned proceeding is under challenge in Criminal Misc. Case No.2468 of 2009 (Application under Section 482 Cr.P.C.) Ambar Singh & two others Versus Gola & another before the Hon'ble High Court, wherein, the Hon'ble Court was pleased to pass an Interim Order on 09.07.2009 and stayed the operation and implementation of the impugned order dated 29.05.2009. The order dated 09.07.2009 passed by co-ordinate Bench of this Court is being reproduced hereunder:-

"Heard the learned counsel for the petitioners, learned A.G.A. and perused the record.

Learned counsel for the petitioners has drawn my attention towards the material contradictions in the allegations made in the complaint and in the statement of the complainant recorded under section 200 Cr.P.C. He has further submitted that after rejection of the application under section 156(3) Cr.P.C., the complaint has been filed on the basis of the wrong facts and the allegations made in the complaint have not been corroborated by the statement of the complainant.

The learned A.G.A. has received notice on behalf of the opposite party no.2.

Issue notice to the opposite party no.1 returnable at an early date.

Let the steps be taken within three days.

The opposite parties may file their respective counter affidavit within six weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List after the expiry of the aforesaid period.

Till the next date of listing, the operation / implementation of the impugned order dated 29.05.2009 shall remain stayed."

19. He further submitted that the applicant is studying in Sydney, therefore, he was not aware about the impugned proceeding and it came into the knowledge of the applicant in the month of December 2009, but the applicant has already deposited the fees for the Hotel Management Course and in every month he has to appear in the examination, in these circumstances, the present petition was being filed after some delay but the same is bonafide. He further submitted that it is also relevant to mention here that the impugned criminal proceeding has been instituted only to malign the dignity of the family of the applicant, therefore, in the interest of justice, the entire proceeding is liable to be quashed.

20. Sri Anurag Singh Chauhan, learned counsel for the opposite party no.1 has opposed the arguments raised by the learned counsel for the applicant and has submitted that offences under Sections 323, 505, 506, 420 I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out against the applicant. As per the version of F.I.R., the applicant had abused the complainant/informant with caste abusive words in a public place, where other persons were present, therefore, offence under Section 3(2)(v) of SC/ST Act will be made out against the applicant. Similarly, in a public place other persons were also present, therefore, it is a public view. In these circumstances the impugned order dated 29.05.2009, summoning the applicant and taking cognizance, was rightly passed, as such, the same is not liable to be quashed and the instant application under Section 482 Cr.P.C. is liable to be dismissed.

21. In support of his argument, learned Counsel for the respondent No.1 has placed reliance on the judgment of Hon'ble Apex Court in the case of Mohd. Allauddin Khan vs. State of Bihar and Others reported in (2019) 6 SCC 107.

22. Sri Ashok Kumar Singh, learned A.G.A.-I for the State-respondent No.2 also made an agreement with the arguments of learned Counsel for the respondent No.1 and submitted that prima facie offence is made out against the applicant and learned trial court has rightly passed impugned summoning order after considering the material placed on record, thus, the applicant is not entitled for any relief by this Court and the present application under Section 482 Cr.P.C. may be dismissed.

23. After considering the arguments advanced by learned counsel for the parties and perusal of record in light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and the contents of the F.I.R. as well as summoning order dated 29.05.2009, this court is of the view that the Act, 1989 is meant to prevent the commission of offences of atrocities against the members of the Schedule Castes and the Schedule Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

24. It is further observed that the Act, 1989 was enacted to improve the social economic conditions of the vulnerable sections of the society as they have

been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act, 1989 is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act, 1989. The Act, 1989 thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community. Section 3(1)(Dha) of the Act, 1989 or 3(1)(s) of the Act, 1989 would read as under:-

"Section 3(1)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989- abuses any member of a Scheduled Caste or a Schedule Tribe by caste name in any place within the public view"

25. Thus, even though the basic ingredient of the offence under Section 3(1)(Dha) can be clarified as abuse of any member of Schedule Caste or a Schedule Tribe by caste name in any place within the public view.

26. It is further observed that an offence under the Act, 1989 would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment in any place within the public view.

27. In the present case, this Court finds that the applicant has not abused the respondent No.1 by caste name in any place within the public view, thus, Section 3(1)(Dha) of the Act, 1989 or 3(1)(s) of the Act, 1989 is also not attracted in the present case. Section 3(1)(s) of the Act, 1989 would read as under:-

"Section 3(1)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989- abuses any member of a Scheduled Caste or a Schedule Tribe by caste name in any place within the public view"

28. It is further observed that the complainant also annexed a list of two witnesses, namely, (1) Monu Singh S/o Ram Shankar Singh and (2) Kamlesh S/o Annu residents of Village Amawa, Police Station Banthra, District Lucknow along with the copy of complaint dated 08.12.2008 but there was no whisper about the witnesses in the body of any complaint and the witness Monu Singh is belonging to the family of the present Pradhan.

29. Further, in the present case, this Court finds that the offence under Section 3(2)(v) of the Act, 1989, whereby the applicant has been summoned vide impugned summoning order dated 29.05.2009, is also not made out against the applicant as from bare perusal of complaint as well as summoning order, the ingredients of the aforesaid Section is missing. Section 3(2)(v) of the Act, 1989 is being quoted hereunder:-

"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;"

30. It is further observed that as per his own case, the respondent No.1 clearly stated in the complaint and in his statement recorded under Section 161 Cr.P.C. that whatever incident took place that took place inside his house, thus, it is not a place within a public view as no outsider was sitting in the room nor anyone has seen the alleged incident. Even the independent witnesses whose names were taken by the respondent No.1 were also not present inside the house at the time of the alleged incident. Even though the ingredients of Section 3(2)(v) of the Act, 1989 is also not attracted in the present case.

31. It is further observed that offence under the Act, 1989 is not established merely on the fact that the informant/complainant is a member of Scheduled Caste unless there is an intention to humiliate a member of Schedule Caste or Schedule Tribe for the reason that the victim belongs to such caste.

32. This Court further observes that we rarely come across a society, in which crime is not committed by a person on another. There are number of penal laws to punish the offenders of such crimes. Such laws apply to every offender, irrespective of his caste or creed. However, taking into consideration the indignities to which persons belonging to scheduled castes or scheduled tribe were and are subjected and atrocities committed on them only on the ground that such persons belonged to such caste. The Parliament has enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to prevent atrocities on the persons belonging to scheduled castes or scheduled tribes. The object behind clause (v) of Section 3(2) of the Act is to punish the persons, who commit offences under the Indian Penal Code punishable for a term of ten years or more, against a members of

Scheduled Castes or Scheduled Tribes on the ground that such person belongs to Scheduled Castes or Scheduled Tribes or such property belongs to such person, by higher and more severe punishment.

33. This Court further observes that as special and stricter provisions have been made in the Act, it is the duty of the prosecution to examine the case more carefully. Registration of the offence under the Act, only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste was a mechanical exercise of authority and it has to be deprecated.

34. From the language used by the Legislature in Section 3(2)(v) of the Act, it is clear that this Section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such cases, meaning thereby that conviction and sentence under Section 3(2)(v) SC/ST Act, simpliciter is not permissible and in cases where an offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more is committed against a person or property on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, then in such a case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(v) SC/ST Act,

with imprisonment for life and also with fine. Thus, in order to attract the provision of Section 3(2)(v) the following ingredients must be established :

"(1) The offender should not be a member of a Scheduled Caste or a Scheduled Tribe;

(2) He must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;

(3) The commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;

(4) The offences must have been committed on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe."

35. The words “on the ground” have not been used in anywhere in the Act, except in clause (v) of Section 3(2) of the Act. It will be seen that only serious offences under the Indian Penal Code which are punishable with imprisonment for a term of 10 years or more are covered by clause (v). However, the provisions of the I.P.C. are universally applicable whereas the clause (v) is applicable only where the victim is a person belonging to a Scheduled Caste or Scheduled Tribe. The law therefore expects a graver kind of mens rea denoted by the words “ on the ground”, to render already serious offences under the Indian Penal Code more serious, which has the effect of making it punishable by no less a punishment than imprisonment for life. In order to constitute an offence under Section 3(2)(v) of Act, 1989, something more than 'intention' is needed – the offence against the victim must have been committed with a particular object, i.e., it must have been committed 'on the ground' that he was a member of a Scheduled Caste or Scheduled Tribe.

36. The expression “on the ground” has been subject matter of decision in a number of cases decided under the SC/ST (P.A.) Act. In the case of Masumsha Hasanasha Musalman v. State of Maharashtra, reported in AIR 2000 SC 1786 it was held that “ To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under the Section 3(2) (v) of the Act, is constituted.

37. It is further observed by this Court that from the bare perusal of the complaint, the utterances, if any, as mentioned in Section 3(2)(v) of the Act, 1989 are not fulfilled. The Investigating agencies while investigating the matter are duty bound to consider the factual aspects of the matter and also to consider the statement of witnesses, complainant as well as the applicant so as to ascertain whether the chargesheet makes out a case under the Act, 1989 having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence by learned Magistrate. In the present case from the factual aspects and statements discussed above, no offence is made out under Section 3(2)(v) of the Act, 1989. Though, the learned Magistrate has not applied its judicial mind while taking cognizance in the matter and even though, he has only relied on the contents of the complaint and summoned the applicant by impugned order to face trial, which is very serious matter.

38. In view of the aforesaid discussion, this Court deems it proper to discuss some case laws.

39. Hon'ble Supreme Court in the case of Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710 has been pleased to observe in para 13, 14 and 18 as under :-

"13. 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 socio-economic 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 No.2 has invoked the jurisdiction of the civil 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 No.2 is 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) 527]. 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) . The Court held as under :

“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.”

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."

40. Further, the Hon'ble Apex Court in the case of Ramesh Chandra Vaishya Vs. State of U.P. and Another; (2023) SCC OnLine SC 668 has been pleased to observe in paragraph 17, 18 and 21 as under:-

“17. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the

incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge- sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of

investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21 st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial.

21. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries “in his hand and other body parts”. If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent

are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC."

41. Further, the Hon'ble Supreme Court in the case of Fakhruddin Ahmad Vs State of Uttranchal and another reported in (2008) 17 SCC 157, discussed the expression "taking cognizance of an offence" by a Magistrate within contemplation of section 190 of the Cr.P.C and also discussed what must have been taken notice by the Magistrate while taking cognizance. Paras 11, 12, 13,14 and15 being relevant are abstracted below:-

"11.The next incidental question is as to what is meant by expression `taking cognizance of an offence' by a Magistrate within the contemplation of Section 190 of the Code?

12.The expression `cognizance' is not defined in the Code but is a word of indefinite import. As observed by this Court in Ajit Kumar Palit Vs. State of West Bengal2, the word `cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means--become aware 2 [1963] Supp. 1 S.C.R. 953 9 of and when used with reference to a Court or Judge, to take notice of judicially. Approving the observations of the Calcutta High Court in Emperor Vs. Sourindra Mohan Chuckerbutty3, the Court said that `taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.'

13. Recently, this Court in S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Ors.4, speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase `taking cognizance' under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee5, which were approved by this Court in R. R. Chari Vs. State of U.P.6. The observations are:

3 (1910) I.L.R. 37 Calcutta 412 4 (2008) 2 SCC 492 5 A.I.R. (37) 1950 Calcutta 437 6 A.I.R. (38) 1951 SC 207 1 0 "7. ... What is `taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

14. From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by `taking cognizance'. Whether the Magistrate has or has not taken cognizance of the offence will depend upon

the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

15. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence."

(Emphasis supplied)

42. This Court in the matter of Ankit Vs State of U.P. and another reported in JIC 2010 (1) page 432 has held that-

" Although as held by this Court in the case of Megh Nath Guptas & Anr V State of U.P. And Anr, 2008 (62) ACC 826, in which reference has been made to the cases of Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4^) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the

time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."

(Emphasis supplied)

43. Thus, in the present case learned Magistrate without considering the material available before him and even without considering the averments made in the complaint in which as per the own case of the respondent No.1 the alleged incident took place inside his house and at that time no public was present nor there was any public view. Learned Magistrate while taking cognizance did not consider the statements of the applicant. Thus, no offence is made out against the applicant.

44. Further, the judgment of the Hon'ble Apex Court in the case of Allauddin Khan (Supra), which has been relied upon by learned Counsel for the respondent No.1 is not applicable in the facts and circumstances of the present case.

45. It has been consistently held by the Hon'ble Apex Court and also by various High Courts that before an offence under section 506 I.P.C. is made out, it must be established that the accused had an intention to cause an alarm to the complainant. In order to attract the ingredients of Section 506 I.P.C., the intention of the accused must be to cause alarm to the victim. Mere

expression of words without any intention to cause alarm would not suffice. Mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean what he says and also when the person against whom the threat is launched, does not feel threatened actually. It should appear that the complainant was feeling fear for his life. In the case of Mahadev Prasad Kaushik Vs. State of U.P. (2008) 14 SCC 479, the Apex Court quashed the proceedings initiated against the appellants for the offences punishable under Sections 504 and 506 I.P.C. on the ground that there was no whisper about the threat alleged to have been given by the appellant to the complainant in the order passed by the Magistrate.

46. Thus, after perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and as per the contents of the complaint as well as the statement of respondent No.1 and considering the various case laws referred above, the incident does not appear to happen, thus, offence under the Provisions of Act, 1989 is not attracted against the applicant as the incident did not occur in any "place within a public view", even though Sections 323, 505, 506, 420 I.P.C. are also not attracted against the applicant, as such, considering the law laid down by the Hon'ble Apex Court in the cases of Hitesh Verma (Supra), Ramesh Chandra Vaishya (Supra), Fakhruddin Ahmad (Supra) as well as law laid down by co-ordinate Bench of this Court in the case of Ankit (Supra), this Court is of the view that the learned trial court has failed to appreciate the material available on record.

47. Further, Hon'ble the Supreme Court of India in the case of Lalankumar Singh and Others vs. State of Maharashtra reported in 2022 SCC Online SC 1383 has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

48. Further, Hon'ble the Supreme Court of India has provided guidelines in case of State of Haryana Vs. Bhajan Lal reported in 1992 Supp (1) SCC 335 for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

49. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426, (iii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iv) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (v) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.

50. From the aforesaid decisions, the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued.

51. In S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends

of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

52. In M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 (5) SCC 749, Hon'ble Apex Court has observed:

"Summoning of an accused in a criminal case, is a serous matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

53. In the instant case, there is nothing in the summoning order to show that the Magistrate concerned perused the material available on record before passing summoning order. Hence the summoning order is bad in the eyes of law and resultantly it is not sustainable.

54. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and also with the assistance of the aforesaid guidelines and keeping in view the nature and gravity and the severity of the offence which more particularly is a private dispute and differences, it deems proper and meet to the ends of justice that the proceeding of the aforementioned case are liable to be quashed.

55. Accordingly in view of the above discussions and observations made, the instant application under Section 482 Cr.P.C. is allowed. The impugned summoning as well as cognizance order dated 29.05.2009 passed by learned Special Judge, C.B.I., Lucknow, whereby the applicant has been summoned in Criminal Case No.897 of 2008 (Gola Vs. Ambar Singh and Others), under Sections 323, 505, 506, 420 I.P.C. and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Banthra, District Lucknow as well as the criminal proceedings of the aforesaid case are hereby quashed so far as it relates to the present applicant.

56. No order as to the costs.

57. Office is directed to transmit a copy of this order to the learned trial court concerned immediately for necessary compliance and information.

*Disclaimer: Always compare with the original copy of judgment from the official website.