

(2021) 09 UK CK 0034

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 835 Of 2021

Pankaj Chaudhary And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 153A, 353, 503, 504, 506
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(1)(x), 3(2)(v),
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 482
Constitution Of India, 1950 — Article 226

Citation : (2021) 09 UK CK 0034

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, Pankaj Chaturvedi, Lalit Miglani, Lata Negi, Arvind Vashistha, Kaushal Pandey

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. Instant writ petition under Article 226 of the Constitution of India was initially filed for quashing of the FIR No. 198 of 2021, under Sections 147, 153A, 504 & 506 IPC and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act"), Police Station Jhabrera, District Haridwar and related reliefs. During the pendency of petition, charge sheet was submitted in the case. Thereafter, by way of amendment, the petitioners have also sought quashing of the charge sheet as well as the cognizance order 22.07.2021, passed by the District and Sessions Judge, Haridwar, in Special Sessions Trial No. 19 of 2021, State of Uttarakhand Vs. Pankaj Chaudhary and another.

2. Facts necessary to consider the controversy, briefly stated, are as hereunder:-

Respondent no. 3 filed an FIR on 19.05.2021, at 09:48 P.M. at Police Station

Jhabrera, under Sections 147, 153A, 504 & 506, IPC and Section 3 (1) (x) of the Act. According to it, on that date, Deshraj Karnwal ("the victim"), a Member of Legislative Assembly visited Primary Health Centre (for short, "PHC"), Jhabrera at about 11:30 A.M. When the victim was still inspecting the PHC, both the petitioners along with three unknown persons, reached at the spot and started making a video. They abused and threatened the victim to life. They insulted the victim saying that Chamar Gittal, we have committed a mistake by electing you as a Member of Legislative Assembly. You are working against gujjars. Thereafter, the petitioners and others made the video of this incident viral, so as to promote enmity between different groups of the society. Initially, this FIR was sought to be quashed.

3. After investigation in the matter, charge sheet was filed against the petitioners and others for the offences punishable under Sections 504, 506, 34 IPC and Section 3 (1) (r) & (s) of the Act. On 22.07.2021, cognizance was taken on the charge sheet and proceedings of the case were initiated. It has also been sought to be quashed by the petitioners.

4. It is the case of the petitioners that in order to politicize the whole incident, and for some ulterior purposes and motives, the FIR has been lodged in the case; perusal of the video footage of the incident reveals that as such, no threats were extended to the victim and no caste coloured remarks were made; the victim is a politically powerful person, therefore, under his influence, FIR was lodged; It is mala fide.

5. The informant, who is respondent no. 3 has filed his counter affidavit and categorically denied the averments made in the petition. According to respondent no. 3, the victim was given threat to his life and lewd language was used against him; the victim was harassed because of his caste.

6. State has also filed its counter affidavit. According to it, the averments have been made by the petitioners in order to safeguard themselves from the clutches of law. The Investigating Officer found that the petitioners have active role in the present case; they have been identified by the video clips and by the eyewitnesses; the petitioners have committed heinous offences;

7. The video clips of the incident and its transcription is also on record.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the petitioners makes the following arguments:-

1. Perusal of the video clippings reveals that no offence is made out. The petitioners did not extend any threat or used any caste coloured remarks against the victim. The FIR is nothing, but a cooked up story.

2. Being a member of Public, the petitioners only raised their grievances against their representative, who is the victim. The petitioners did not in any manner insult the victim.

3. The provisions of the Act are not applicable in the case because the victim has not been humiliated in any manner.

4. In any case, if anyone has uttered caste coloured remarks that also does not make out any case punishable under the Act, because the victim has not been insulted for his caste alone.

10. Learned senior counsel for the petitioners has made reference to various documents as well. In support of his contention, learned senior counsel placed reliance upon the principles of law, as laid down in the cases of *State of Haryana and Others Vs. Bhajan Lal and Others*, 1992 Supp (1) SCC 335, *Vineet Kumar and others Vs. State of Uttar Pradesh and another*, (2017) 13 SCC 369 *Prithvi Raj Chauhan Vs. Union of India and others*, (2020) 4 SCC 727 and *Hitesh Verma Vs. State of Uttarakhand and another* (2020) 10 SCC 710.

11. In the case of *Bhajan Lal (supra)*, Hon'ble Supreme Court discussed the scope of jurisdiction, under Article 226 of the Constitution of India and in para 102 of it, observed as hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR 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."

12. In the case of Vineet Kumar (supra), Hon'ble Supreme Court, inter alia, observed "inherent power given to the High Court under Section 482 Cr.PC. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold." In this case, the Hon'ble Supreme Court followed the principles of law, as laid down in the case of Bhajan Lal (supra).

13. In the case of Prithviraj (supra), which dealing with the provisions of the Act, The Hon'ble Supreme Court, observed "the Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised."

14. In the case of Hitesh Verma (supra), the Hon'ble Supreme Court relied on the principles of law, as laid down in the case of Khem Singh Vs. State of MP, (2020) 18 SCC 763, in which, in para 15, the Hon'ble Supreme Court observed as hereunder:-

"15 As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable."

15. Relying on the above principles, in the case of Hitesh Verma, the Hon'ble Supreme Court observed that "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."

16. On the other hand, learned senior counsel appearing for respondent nos. 3 and 4 would submit that the instant petition itself is not maintainable. It is argued that in the instant matter, charge sheet had already been filed and the petitioners have alternate remedy under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code"). Hence, instant petition is not maintainable.

17. Learned senior counsel for the respondent nos. 3 and 4 would also submit that;-

(i) the principles of law, as laid down in the case of Hitesh Verma (supra) does not apply in the instant case, because in that case, the facts were not in dispute, whereas, in the instant case, the facts are much in dispute.

(ii) There are few video clippings of the incident, but entire incident is not captured in any video clipping. There are witnesses, who have stated as to how the victim was insulted by using caste coloured remarks.

(iii) Factual aspects are involved in the instant case, which could not be considered in these proceedings under Article 226 of the Constitution of India.

(iv) In the video clippings, it is clearly audible that the petitioners have intimidated the victim by saying that they have kept a stick.

18. It is argued that offences are made out and the instant petition deserves to be dismissed. Learned counsel for the State submits that factual aspects are involved in the matter, hence no interference is warranted.

19. On the question of maintainability of the writ petition, learned senior counsel for the petitioners has placed reliance upon the principles of law, as laid down in the case of Anand Kumar Mohatta and others Vs. State (Govt. of NCT of Delhi) Department of Home and others, (2019) 11 SCC 706 to argue that the Hon'ble Supreme Court has held that proceedings for quashing of an FIR does not become infructuous merely because charge sheet has been filed, subsequently. In the same proceedings, the charge sheet may also be questioned. On this point, learned senior counsel for the respondent nos. 3 and 4 would submit that in the case of Anand Kumar Mohatta (supra) the petition was under Section 482 of the Code for quashing of an FIR and when the charge sheet was submitted, it was also questioned. Therefore, it is argued that the facts in the case of Anand Kumar Mohatta (supra) were different.

20. In the case of Anand Kumar Mohatta (supra), a petition under Section 482 of the Code was dismissed by the High Court on the ground that the petition has been filed prematurely as the case was still at the stage of investigation. During the pendency of the matter before the Hon'ble Supreme Court a report under Section 173 of the Code was filed. The petitioner in that case sought amendment and incorporated prayer for quashing of the charge sheet in addition to prayer for

quashing of the FIR. It was allowed by the Hon'ble Supreme Court.

21. The scope of jurisdiction under Article 226 of the Constitution of India is, in fact, quite wide to ensure justice. In the case of Bhajan Lal (supra) guidelines have been provided under which this jurisdiction may be exercised.

22. On behalf of the petitioners, it is submitted that clauses 1, 2, 3 and 7, in Para 102, in the case of Bhajan Lal (supra) are squarely applicable in the instant case. It is also settled law that at this stage, the Court should not generally consider the material which is not part of the investigation. It is also settled law that factual aspects may not be deeply investigated in such matters. In other words, at this stage, a mini trial should not be conducted and a legitimate prosecution is not to be scuttled at its threshold.

23. The question of maintainability of the instant petition has been raised on behalf of the private respondents. Availability of alternate remedy is not absolute bar for this Court to entertain a petition. Every case has to be decided on the basis of the facts. There cannot be a straight jacket formula to oust the jurisdiction of this Court particularly under Article 226 of the Constitution of India. Initially, the petition was filed for quashing the first information report. Up till that stage, there was no objection with regard to the maintainability. It so happened that during pendency of this petition on 22.07.2021 charge sheet was submitted in the matter. It is thereafter, the petitioners sought amendment in the petition by incorporating the prayer for quashing the charge sheet as well as cognizance order.

24. Instant petition was filed on 28.05.2021. Pleadings had mostly been exchanged before the date when charge sheet was filed in the matter. It is a matter of chance that the petition could not be disposed of before 22.07.2021. Merely because during pendency of this petition, charge sheet has been filed and petitioners made amendment in the petition, it cannot be said that the petitioners should be redirected to seek remedy under the provisions of the Code. Existence of remedy under the Code is one thing, but under the facts and circumstances of the case, when this Court travelled a long path in deciding this petition, in the opinion of the Court, it may be unjust, if this petition is now termed as non maintainable due to availability of alternate relief. Therefore, this Court is of the view that availability of alternate relief may not be a bar to entertain the instant petition.

25. It is being argued on behalf of the petitioners that no prima facie case is made out against the petitioners. The FIR does not disclose any cognizable offence and the proceeding is manifestly attended with malafides.

26. What is malafide? How to define it? In the case of State of Bihar and another Vs. P.P. Sharma I.A.S. and another, 1992 SCC (Cri.) 192, the Hon'ble Supreme Court observed that "the question of malafide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorized purpose." The Court observed as

hereunder:-

"49. The focal point from the above background is whether the charge-sheets are vitiated by the alleged mala fides on the part of either of the complainant R.K. Singh or the Investigating Officer G.N.Sharma. In Judicial Review of Administrative Action by S.A. de Smith, (3rd edn. At p.293 Ed. 4th Edn., p. 335 stated that:

"The concept of bad faith ... in relation to the exercise of statutory powers ... comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or private interest. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise The administrative discretion means power of being administratively discreet. It implies authority to do an act or to decide a matter a discretion....."

"50. Mala fides means want of good faith, person bias, grudge, oblique or improper motive or ulterior purpose....."

"51. The action taken must, therefore, be proved to have been made mala fide for such considerations Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."

27. In the case of State of Karnataka vs. M. Devendrappa and another, (2002) 3 SCC 89, the Hon'ble Supreme Court observed "Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly."

28. In the case of State of Punjab Vs. V.K. Khanna and others, AIR 2001 343, the Hon'ble Supreme Court had occasion to interpret the concept of malafide and the Court observed that "The expression 'mala fide' has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide - actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is inaccompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act."

29. Malice, bad faith, wreaking vengeance, vendetta, these all words are

connected with malafide, which means not in good faith. The instant matter has to be examined on these concepts also.

30. Charge sheet has been submitted under Sections 504, 506 and 34 IPC and Section 3 (1) (r) & (s) of the Act. Section 504 IPC provides for punishment in case of intentional insult with intent to provoke breach of peace. It is as hereunder:-

504. Intentional insult with intent to provoke breach of the peace.-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

31. Section 506 IPC prescribes punishment for criminal intimidation. It is as hereunder:-

"506. Punishment for criminal intimidation.-Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

32. Criminal intimidation, as such, has been defined under Section 503 IPC which is as hereunder:-

"503. Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

33. In the case of Manik Taneja and another Vs. State of Karnataka and another, (2015) 7 SCC 423, Hon'ble Supreme Court while interpreting the provisions of Section 503 IPC observed "It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of criminal intimidation. The threat must be with the intention to cause alarm to the complainant or to cause that person to do or omit to do any work". The Court further observed "mere expression of any words without any intention

to cause alarm could not be sufficient to bring in the application of this section. But, material has to be placed on record to show that the intention is to cause alarm to the complainant." In the case of Manik Taneja (supra), these observations were made in a petition which had challenged an FIR lodged under Sections 353 and 506 IPC. Finally, the Hon'ble Supreme Court had quashed the FIR in the case.

34. In the case of Vikram Johar Vs. State of Uttar Pradesh and another, (2019)14 SCC 207, the Hon'ble Supreme Court observed as to what are essential ingredients of Section 506 IPC. The Court held as hereunder:-

"25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:

"... The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above."

35. In the case of Parminder Kaur Vs. State of Punjab, (2020) 8 SCC 811 also the Hon'ble Supreme Court had occasion to interpret the applicability of Section 506 IPC and the Court observed that "Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a prerequisite of successful conviction under Section 506 IPC"

36. It may be noted that instant is not a matter at the stage of final judgment. Prima facie, nature of the things are to be seen only.

37. In the case of Amulya Kumar Behera Vs. Nabaghani Behera and others, 1995 Cri LJ 3559. The Hon'ble Orissa High Court had occasion to interpret the provisions of Section 506 IPC. The Court noted its essentials as hereunder:-

"7. Section 506, IPC deals with punishment for criminal intimidation. Section 503

defines the said offence. It has following essentials.

(1) Threatening a person with any injury;

(a) to his person, reputation or property ; or

(b) to the person or reputation of any one in whom that person is interested.

(2) The threat must be with intent;

(a) to cause alarm to that person; or

(b) to cause that person to do any act which he is not legally bound to do as means of avoiding execution of such threat; or

(c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat.

Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person. Here expression of any words without any intention to cause alarm would not be sufficient to bring in application of Section 506, IPC. The gist of the offence is the effect which the threat is intended to have upon mind of person threatened. It is clear that before it can have effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The section has undergone a complete transformation since its first draft which, after enumerating certain offences such as murder, hurt, mischief, house breaking, unnatural offence and rape, made the offence *inter alia*, depend upon the causing of distress or terror to the person intimidated. (Clause 482). The word "distress" was naturally objected to, though the Law Commission defended its retention. (2nd Report, Section 417). The original clause was apparently taken from Russel's Work on Crimes and it was both disjointed and incomplete. The present section is practically new, and the substitute of the word "alarm" for distress and terror is intended to confine the offence only to cases where the effect thereof is to cause more pain than is covered by those words. The anxiety and mental anguish caused by an injury threatened may often be as or even greater than the actual injury. Lord Ellenborough said "To make it indictable, the threat must be of such a nature as is calculated to overcome a firm and prudent man...The Law distinguishes between threats of actual violence against the person, or such other threats as a man of common firmness cannot stand against and other sorts of threats". Intention is a mental condition which has to be gathered from the circumstances of the case. The threat must be intended to cause alarm from which it follows that, ordinarily, it would be sufficient for that purpose. The degree of such alarm may vary in different cases, but the essential matter is that it is of a nature and extent to unsettle the mind of the person on whom it operates and take away from his acts that element of free voluntary action which alone constitutes consent. The case where the threat produces an alarm is comparatively a simple one, for all that has then to be proved is that

threat was given and that the alarm was due to the threat; but where the threat has not that effect, it involves a question whether it was sufficient to overcome a man of ordinary nerves. The Court may hold it to be an empty boast, too insignificant to call for penal visitation of Section 506. "Intimidate" according to Webster's Dictionary means "(1) to make timid, make afraid, overawe; (2) force or deter with threats or violence, cow". Threat referred to in the section must be a threat communicated or uttered with intention of its being communicated to the person threatened for the purpose of influencing his mind. Question whether threat amounts to a criminal intimidation or not does not depend on norms of individual threatened if it is such a threat as may overcome ordinary free will of a man of common firmness. "Threat" is derived from Anglo-Saxan word "threoton to lire", (harass). It is the declaration of an intention to inflict punishment, loss or pain on another, "injury" is defined in Section 44. It involves doing of an illegal act. If it is made with intention mentioned in the section, it is an offence. Whether threat was given with intention to cause alarm to the person threatened has to be established by evidence to be brought on record. Material in that regard is totally lacking in the case at hand. Though learned JMFC has erroneously held that the complainant having not got terrified the section has no application, yet he is right in his conclusion that no evidence was there to show that the accused person intended to cause alarm to the complainant."

38. Intention, undoubtedly being a state of mind cannot be read or noted without ascertaining the actions and attending factors. That is how it is to be seen. A few facts may be kept in view, while dealing with this case. The petitioners are villagers, who approached the victim when he was visiting the PHC Jhabrera. The victim is a member of Legislative Assembly of the area. The FIR was lodged by the Personal Secretary of the victim. According to the FIR, the incident took place at about 11:30 in the morning and the information was reached at the Police Station at 9:48 PM on the same day.

39. FIR as such has to be seen. According to it, when the victim was inspecting PHC the petitioners and other person reached there, started making video, abused, threatened the victim with caste coloured remarks. The FIR records that the petitioners made the video of the incident viral, to promote enmity in the society. According to the FIR, the video of the incident was made public. It went viral and it was so done so as to promote enmity. The Court is cautious that it is at the initial stage of the criminal case and under Section 226 of the Constitution of India, deeper scrutiny is not generally permitted. According to the FIR, whatever happened on the date of incident was video graphed by the petitioners and they made it public.

40. Now, the investigation is complete. In his statement given to the Investigating Officer, ("the IO") the informant has stated about the video. The victim has also stated that the petitioners made video though at one stage the victim tells to the IO that the petitioners had stopped making video, but again he would say that certain parts of the video were made public. There are two

Personal Security Officers of the victim. Constable Police Harbhajan Singh and Constable Police Dhvajveer Singh, both have stated about the video which was made. There is a witness called Saurabh, who is the Driver of the victim. He has not stated about any video. Other witnesses have also stated about the incident. In the charge sheet, the IO records that based on what was stated in the video and the statement of the witnesses, the case was proved. The IO did not base the case on the video of the incident alone.

41. State has filed transcript of the conversation which took place between the victim and the petitioners and of which the video was made. There are total seven videos and the transcripts as submitted are as hereunder:

"video number 1

Mehkar - The goods that have been kept will have to be distributed

Mangeram - Talk to me for sure. When will you work

Other things in the video are not clearly understood.

video no.2

MLA - I will remain here for you, now I have become a resident of Bhaktowali.

Pankaj - Deshraj ji Deshraj ji, listen to me, a child of a Bhaktowali is telling you one thing, you are an MLA, your position is respected, the day you step away from the MLA and come again to ask for votes, then there is a stick in the gallery, take care I am telling about this, I am telling you and on behalf of the whole village. Only your position has dignity, otherwise nothing else, you are a man worth shaving. You didn't do anything here, well no, didn't come since that day, when you came to the hospital the day after yesterday, why didn't you look back and put a video sitting with a criminal rapist just that I did it. You come here and do not catch a journalist in any way, you have a phone. You upload your video from your phone. Not that you will do this by sitting next to that rapist.

Rohtas - Well who got this cleaning done here? What have you done?

Yo who got you photographed here?

MLA - yes I have done it

Mehkar - You have not done anything in our village, have done nothing.

MLA - Now count 10 works.

All the villagers - Hey brother, from where did you count, Maharaj?

Rohtas - Tell any one person, have we got this path built?

Manoj - Here what has been done in our area, what have been done in the Gujjars, keep your full talk, what have been done in the Gujjars, count one work

that I have got it done. Rohtas - You can tell on a man.

MLA - Listen to me.

Mangeram - Now listen to me MLA ji, I went to your house 3 times, the day it rains, neither does water fill my gallery.

Mehkar - Why does the whole village fill in your gallery. Mehkar - There are three roads, water fills all the three ways to reach the village and no one is there to say.

From where they will see the situation, they do not take time to come.

(The speaker is not visible in the video)

Villager - Tell a man that brother, we have done work.

MLA - Hey son, all the work is also the headman inside the village. Villagers- Even if we go out in the street, elderly men also live, they fall and get hurt.

MLA - The MLA will do all the work only a little.

Villager - What will the Aji and the MLA do?

Mangeram - What else have you come to do after writing this work in your main register and it was said that work will be done in 4 days, Vijayanthi Mala had gone to see it herself on the spot.

Legislator ji - The talk of the drain is such that it is near in the Gram Panchayat.

Rohtas - Aji is nowhere near, there is a Parle wala, what is the need of the urlewal.

There is no running water in the drain, what will be the use of it.

MLA - I did not know which one is pass and which one is not.

Mehkar - From the day you became you, you asked someone's problem, did you come?

MLA- Did you call?

Mehkar- when you were contesting the election, you were called and made a meeting of the whole village by sitting you in the circle. Wasn't it done?

MLA- Yes it was done.

Mehkar - did all the expenses on his own, did not take any money from anyone. You asked, what do you want, brother?

MLA ji - Good dear brother, tell me one thing, people of the village.....

Pankaj - Hey listen one thing and there was a meeting of KhatikSamaj and Kashyap Samaj, they had said this on the temple that they should go to take votes from Mahakar's place. We will not vote and listen you once asked who voted on the trust of a man.

MLA ji - Hey leave brother, the video has become enough now.

Pankaj - Listen one thing and in this street there are 2 handicapped people living in the street of Mangeram, both are husband and wife, the path for them is not such that they both leave.

Mehkar - Enough is enough, stop talking about it.

video no. 3

On going to the hospital, initially the voice in the video is not understood.

Mahkar - You just have to eat money, tell me what work to do, get a name written.

Rohtas - Today you got it installed here (points in gesture) MLA ji, listen to me well, this is the Ravidas temple from there.

Video number 4

Neetu - Till now no clarification has been done, the money that came, ate the answer.

MLA - Video has become a goat, now listen to me.

Pankaj - Video Somewhere we have to get married MLA, let's see the order.

Mehkar - Look at whose order, first listen to the talk, there is such an epidemic, you have kept some staff for the night, you tell me what we will do after 4 hours a day.

MLA Ji- Listen PHC I live from 8:00 AM to 2:00 PM Pankaj - MLA ji there is no fixed time in this epidemic. MLA- Corona virus hospital is going to open here soon.

Neetu - 80 lakhs of 20 lakh Tripathi is being given to you, out of one crore, Tripathi. Give Tripathi work.

Mahkar - Can not give a single penny to any of them, to fill your stomach.

Neetu - Telling 20 lakhs will go to Tripathi, 80 lakhs will go to you. Pankaj - Tell me one thing. Listen MLA ji, you have come among the general public today night you were sitting there, Dr. Brahmpal's boy was jailed in a rape case. You are giving video while sitting with a criminal, yes I have done it. Why are you not telling the people here in the society.

Mehkar - Give even one proof in our village, what to do.

Rohtash - Oh it will happen when you don't work.

video 5

Mehkar - no road is built here

MLA - Listen, you are not listening to me.

Neetu - These people had also got the Jhabreda area out of the Kumbh area, if the work is not done here, it will be insulted, then it will be the people of Jhabreda, these people rob 5 years of fun and will be furious.

Video number 6

MLA - Hey man, listen, I did not come, look at the order.

Mehkar - Our minister is coming here, you are not coming.

MLA - It is amazing, the minister is saying that I am going there.

Mehkar - Then you don't even meet at such a time.

MLA - The work of cleaning the drain belongs to the chairman Mahkar - You tell me what is your work. What work did you get done in our village by putting a board of 45 thousand and we showed this work. Didn't do anything

Pankaj - You did not see from that day It has been 3 years since you became an MLA. You do not know whether the doctor is living here or not. Visible today. No one cleans here and sent a cleaner.

MLA - The cleaning work belongs to the municipality, I will do the cleaning work, the Nagar Panchayat will do it. Mehkar-You didn't do anything.

MLA G-35 years vs 5 years. Will I show you 5 years?

Jal Singh - Show me what you will see.

Mehkar- Don't do anything, you know how to eat and eat money.

MLA - I have got the lights installed.

Pankaj - Which light, where is it installed?

Mehkar - Tell me what work got you done here.

Pankaj - This is Deshrajji. your program was done at home. Voted you, made you MLA. That's why not in 4 years you are visible today. Your car turned around.

MLA let it be, let it be.

Neetu - Heerakhedi Wala Omveer, stayed here all night, I called Jitendra 10 but you didn't come out of the bathroom. Madam said it is in marriage.

Rohtash - Take photos wherever you want.

MLA - I did not come to your house yesterday. Did not sanitize your house.

video number 7

Mahkar - The goods that have been kept will have to be distributed

Mangeram - Talk to me for sure. When will you work

Other things in the video are not clearly understood."

42. While hearing this matter, the videos of the incident were played in the Court. The conversation was very normal. There was no high tone and tenor, gesture on the part of any party involved in the conversation. The transcript of the conversation, as recorded hereinabove, shows that in fact the villagers were complaining the victim, who is their MLA, about his non performance.

43. Learned senior counsel for the respondent nos. 3 and 4 would submit that the petitioner Pankaj had told it to the victim that after stepping down as an MLA if he visits and asks for vote they have kept a stick. It is argued that it amounts to intimidation. It is true that such words were, according to that transcript, uttered by the petitioner Pankaj. But, it was in the form of complaint. The intention was not to intimidate or alarm the victim. It was not uttered to compel the victim to commit any act, which he was not legally bound to do or omit to do what he was legally entitled to do. It was the statement given by the petitioner Pankaj. It is also true that according to the transcript of the conversation, petitioner Pankaj told it to the victim that they respect his position, otherwise he deserves thrashing. But, it is also a mere utterance. One word here and one word there cannot be read in isolation. Entire conversation has to be seen. It has to be seen alongwith the surrounding circumstances. It is the petitioners and others who were making the video. They were questioning the victim about his non performance. Therefore, this Court is of the view that the utterance which was allegedly made by the petitioners does not amount to criminal intimidation. It was not made with the intent to alarm the victim. It was not made with the intention to insult/humiliate the victim.

44. The transcript also does not make out the case of intentional insult with intent to provoke breach of peace. Whatever was allegedly told by the petitioners was in the presence of the Security Officers of the victim. They were not promoting any breach of peace. As stated, they were complaining about non performance of the victim, who was their representative. Accordingly, the Court is of the view that even if the FIR is accepted in its entirety, it does not make out any case under Sections 504, 506 IPC.

45. Now, the question is about the applicability of the offences in the Act. In the FIR, it is recorded that the petitioners used the words "saale chamar gittal, which were caste coloured remarks, but the FIR also says that the incident was video-graphed and made public. Admittedly, in the seven videos which have been referred to herein above, these words are not heard.

46. Learned senior counsel for respondent nos. 3 and 4 would submit that the entire incident was not video-graphed and since victim has heard those words, he was humiliated. Hence, offence under the Act is made out and this Court should not scrutinize the evidence to that extent.

47. The Court is not probing deeper than what is expected at this level. The petition has been filed on the ground of malafide also. As stated, the alleged

incident had occurred at 11:38 AM and the report was lodged late in the evening in the police station.

48. Charge sheet has been filed under Section 3 (1) (r) & (s) of the Act. They are as hereunder:-

"3. Punishments for offences of atrocities- (1) Whoever, not being a member or 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;"

49. Section 3 (1) (r) of the Act speaks of intentional insult or intimidation with intent to humiliate. Section 3 (1) (s) of the Act is about abuse in any public place. The victim is member of Legislative Assembly and at the time of incident, he was with his personal security officers. This Court has already held that whatever was told to the victim at the time of incident does not amount to criminal intimidation. It was not uttered with the intent to cause any alarm to the victim.

50. The question is with regard to caste coloured remarks. According to FIR, the entire incident was video-graphed and made public to promote enmity, but the video does not contain any such caste coloured remarks. In fact, the informant tells the IO that the incident was video-graphed. As stated, in the video these words are not heard. It is not in the transcription.

51. In the case of Hitesh Verma (supra), the Hon'ble Supreme Court held that unless there is an intention to humiliate, the offence under the Act does not get attracted. In the instant case, this Court had held that the conversation between the petitioners and the victim was not for the purpose or intention of insulting or humiliating the victim. It was a complaint against the victim. It was questioning of the victim, who happened to be the local MLA. The victim was alongwith his security staff. Under the facts and circumstances of the case, any statement of the witness that any caste coloured remarks were made by the petitioners, appears to have been made with some ulterior motive to wreak vengeance and it is malafide also. Accordingly, interference is warranted.

52. In the instant case, the Court has already held that utterance of caste coloured remarks by the petitioners, as stated by the witnesses, appears to be malafide. Therefore, there is no question of any intention to use such words. Even otherwise, as stated hereinabove, the intention of the petitioners and other villagers was to question their public representative for his non performance. He happened to be the victim. He was questioned and in fact, cornered by the

petitioners and the villagers for his non performance. It also appears that the victim had no grievance till video was not made public. But, once it was made public with ulterior motives, the FIR was lodged. The FIR, it appears to have been lodged to silence the voice of those who questioned the non performance of the victim. It may be well termed as malafide criminal proceedings.

53. In view of the above, this Court is of the view that it is a case which warrants interference and the petition deserves to be allowed.

54. The writ petition is allowed.

55. The FIR No. 198 of 2021 of Police Station Jhabrera, District Haridwar, the charge sheet dated 22.07.2021 submitted by the Investigating Officer in Case Crime No. 198 of 2021 of Police Station Jhabrera, District Haridwar under Sections 504, 506, 34 IPC and Section 3 (1) (r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as cognizance order dated 22.07.2021, passed in Special Sessions Trial No. 19 of 2021, State of Uttarakhand Vs. Pankaj Chaudhary and another by the court of District and Sessions Judge, Haridwar are hereby quashed.