

(2014) 05 CAL CK 0052
In the Calcutta High Court

Case No : CRR No. 2486 of 2011 and CRAN No. 1152 of 2013

Ruma Raha Dutta and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 4
Constitution of India, 1950 — Article 359
Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 21, 319, 321, 323, 339
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 2(1)(f), 3, 3(1), 3(1)(x), 4

Citation : (2014) 05 CAL CK 0052

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Sekhar Basu, Mr. Prabir Mitra and Mr. Pinak Mitra, Advocate for the Appellant; Amarta Ghose for State, Mr. Sandeep Bhattacharya, Mr. Amitabha Ghosh and Mrs. Animita Bhattacharya, Advocate for the Respondent

Judgement

Ranjit Kumar Bag, J.—This criminal revision is preferred by the petitioners for quashing the proceeding being G.R. Case No. 807 of 2007 arising out of Dankuni Police Station Case No. 151 of 2007 dated 30.09.2007 under Sections 341/323/506/509/34 of the Indian Penal Code and under Sections 3(1)(x) and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending before the Court of Learned Additional Chief Judicial Magistrate, Serampore, Hooghly.

2. The Opposite Party No. 2 is the Assistant Teacher of Raghunathpur Balika Vidyalaya and her husband Shri Gora Chand Das is a Senior Labour Welfare Inspector of the Eastern Railway. The Petitioner No. 1 is the Headmistress of Raghunathpur Balika Vidyalaya. The Petitioner No. 2 is the Secretary, the Petitioner No. 3 is the President and the Petitioner No. 4 is the member of the Managing Committee of the said Raghunathpur Balika Vidyalaya. On 30.09.2007

the Opposite Party No. 2 filed one petition of complaint before the Officer-in-charge of Dankuni Police Station which was treated as Dankuni Police Station Case No. 151 of 2007 dated 30.09.2007. The allegations made by the Opposite Party No. 2 being the defacto complainant in the written complaint treated as F.I.R. are as follows:

On 29.09.2007 at 11.20 a.m. within the school premises Smt. Ruma Raha (Dutta), Shri Kamal Krishna Ghosh, Bhola Hazra, Johar Jyoti etc., the managing committee members of the school have assaulted mentally with uses filthy languages with loudly voice and tortured in a scientific manner. They have tried to hackle me and force me to leave the school for their detrimental attitude against S.C. community and reflected their way of various torturing since 2003. A no. of filthy languages with loudly voice was used to force me to leave the job and life threatening me being continued. Under the circumstances would request your attention to take necessary action in accordance with Article 359 of the constitution of Prevention of Atrocities Act, 1989 against them.

It is relevant to point out that the persons whose names are disclosed by the Opposite Party No. 2 in the F.I.R. are the petitioners of the instant criminal revision.

3. The police took up the investigation of the above criminal case. The Sub-Inspector of Police, Tapas Singha took up the investigation of the case, but subsequently one Manik Lal Das, Deputy Superintendent of Police, Traffic, Hooghly took up the investigation and submitted charge sheet against the petitioners under Sections 341/323/506/509/34 of the Indian Penal Code read with Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioners have prayed for quashing the said criminal proceeding.

4. The proposition of law laid down by the Supreme Court of India in the Case of Union of India (UOI) Vs. Prakash P. Hinduja and Another, for quashing the criminal proceedings by invoking inherent power u/s 482 of the Code of Criminal Procedure, 1973 is as follows: i) where the allegations made in the F.I.R. or complaint even if they are taken at their face value and accepted in entirety do not prima facie constitute any offence against the accused, ii) where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence against the accused, and iii) where there is an express legal bar engrafted in any of the provision of the Code of Criminal Procedure or the act concerned to the institution and continuance of the proceedings." It is also laid down by the Apex Court in the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, that the criminal proceedings may be quashed by exercise of inherent power of the High Court where the allegations made in the F.I.R. 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.

5. In view of the above proposition of law laid down by the Apex Court it is necessary to consider not only the contents of the written complaint treated as F.I.R. and the evidence collected by the investigating agency in course of investigation, but also the background of starting this criminal proceeding against the petitioners by the Opposite Party No. 2. However, before considering the background of commencement of this criminal proceeding, it will be prudent on my part to decide the issue of maintainability of this criminal revision as contended on behalf of the Opposite Party No. 2. Mr. Sandip Bhattacharya, Learned Counsel for the Opposite Party No. 2 submits that previously the present petitioners filed criminal revision being CRR No. 4308 of 2007 for quashing the instant criminal proceeding being Dankuni Police Station Case No. 151 of 2007 dated 30.09.2007, but the said criminal revision was dismissed on merit on 22.06.2011 and as such the present criminal revision is barred by the principles of res judicata. Mr. Bhattacharya relied on the decision of the Supreme Court of India in the case of M. Nagabhushana Vs. State of Karnataka and Others, in support of his contention that the present criminal revision is not maintainable in law. On perusal of the decision of "M. Nagabhushana" cited by Mr. Bhattacharya, I find that in the said case Learned Single Judge of the Karnataka High Court dismissed the writ petition holding that the acquisition proceedings in question were challenged by the writ petitioner in a previous writ petition which was initially accepted and the acquisition proceedings were quashed. However, on appeal the Division Bench of the Karnataka High Court reversed the judgment of the Learned Single Judge and thereafter the order of the Division Bench was upheld by the Supreme Court and the Supreme Court approved the acquisition proceedings. Therefore, the writ petition, out of which the appeal arose before the Supreme Court, purports to be an attempt to litigate once again, inter alia, on the ground that the aforesaid blocks of land were outside the purview of the framework of the agreement and notification issued under the Karnataka Industrial Areas Development Act. In this reported case, the original writ petition before the Single Bench, the appeal before the Division Bench and the appeal before the Supreme Court were decided on merit and as such the subsequent writ petition and appeal were held to be barred by the principles of res judicata and abuse of the process of the court. Mr. Sekhar Basu, Learned Senior Counsel appearing on behalf of the petitioners has pointed out the order of dismissal of criminal revision being CRR No. 4308 of 2007 in order to urge before this court that the previous criminal revision was not dismissed on merit. On perusal of the order dated 17.06.2011 passed in CRR No. 4308 of 2007 I find that none appeared to represent the petitioners and as such the hearing of the matter was adjourned till 22.06.2011 due to inclement weather on 17.06.2011. On perusal of the order dated 22.06.2011 passed in CRR No. 4308 of 2007 it is clear that none appeared on behalf of the petitioners and Learned Counsels appearing on behalf of the opposite parties submitted that the investigation was done and charge sheet was submitted before the Trial Court. In view of the fact that charge sheet was submitted the criminal revision was dismissed without hearing Learned Counsel representing the petitioners. Accordingly, the order dated

22.06.2011 passed in CRR 4308 of 2007 cannot be construed to be an order of dismissal on merit as contended on behalf of the Opposite Party No. 2. Since the criminal revision being CRR No. 4308 of 2007 was not dismissed on merit, the ratio of the decision of M. Nagabhushana Vs. State of Karnataka and Others, cannot be applicable in the facts of the present case. The irresistible inference is that the present criminal revision is maintainable in law as the same is not barred by the principles of res judicata as contended on behalf of the Opposite Party No. 2.

6. Now, it is relevant to point out from the materials on record the long standing animosity between the Opposite Party No. 2 and the petitioners before the incident dated 29.09.2007, which gave rise to the present criminal proceeding. It appears from the statement of the Opposite Party No. 2 recorded u/s 161 of the Code of Criminal Procedure that she has been working as Assistant Teacher of Raghunathpur Balika Vidyalaya since 03.04.1990. In the middle of the year 2003, the Petitioner No. 1 being the Headmistress of the school and the members of the managing committee of the said school requested all the teachers to donate Rs. 50,000/- each towards development fund of the school. The Opposite Party No. 2 refused to make donation and thereby strained relationship cropped up between the Opposite Party No. 2 and the petitioners. It appears from the materials on record that the Petitioner No. 1 stopped giving house rent allowance to the Opposite Party No. 2 with effect from 01.04.2005 on the ground that she did not submit the document in support of her declaration that her husband being a government employee is not drawing house rent allowance. The Petitioner No. 2 made correspondence with the Chief Personnel Officer of the Eastern Railway to ascertain whether the husband of the Opposite Party No. 2 had drawn the house rent allowance as an employee of the railways during the period for which the Opposite Party No. 2 claimed house rent allowance as Assistant Teacher of the school. It appears from the document marked Annexure-P3 to the application for criminal revision that the husband of the Opposite Party No. 2 had drawn house rent allowance as an employee of the railways from 01.03.2004 to 31.05.2005, but subsequently the husband of the Opposite Party No. 2 had refunded to the railways the said house rent allowance to the tune of Rs. 43,027/- and that prior to 01.03.2004 no house rent allowance was drawn by the husband of the Opposite Party No. 2 as he was living in the railway quarters prior to 01.03.2004. It is pertinent to point out that under the rules if the spouse of any teacher of the school draws house rent allowance, then the said teacher shall not be allowed to draw the house rent allowance. If both the spouses are employed, only one spouse is entitled to draw the house rent allowance by giving a declaration that the other spouse is not drawing the house rent allowance. However, ultimately the Opposite Party No. 2 moved the High Court by filing W.P. No. 4391(W) of 2007 and on 25.06.2007 the High Court passed the order that the Opposite Party No. 2 will get the house rent allowance along with arrears within the time frame given by the High Court. Two other writ petitions were also filed by the Opposite Party No. 2 against the petitioners being

W.P. 4391(W) of 2007 and W.P. 24929(W) of 2006. The above admitted facts go to establish that there was long standing animosity between the Opposite Party No. 2 and the petitioners for two reasons: first, the demand of donation of Rs. 50,000/- by the petitioners towards the development fund of the school and secondly, the stoppage of disbursement of house rent allowance of the Opposite Party No. 2 by the Petitioner No. 1 for failure of the Opposite Party No. 2 to submit document in support of the declaration that her husband is not drawing house rent allowance. It is true that the Opposite Party No. 2 had to move the High Court for getting arrears of house rent allowance, but her husband had drawn the house rent allowance for the period from 01.03.2004 to 31.05.2005, which was subsequently refunded by the husband of the Opposite Party No. 2. With the above background of facts, the Opposite Party No. 2 was absent from the school for more than three months on medical ground immediately before the incident. The incident took place when the Opposite Party No. 2 entered into the office room of the Petitioner No. 1 for submitting her application for leave on medical ground. With the above factual matrix, I would like to consider the submissions made by Learned Counsels of both sides to decide whether any offence is made out from the contents of written complaint treated as F.I.R. and from the evidence collected by the investigating agency in course of investigation.

7. Mr. Sekhar Basu, Learned Senior Counsel appearing on behalf of the petitioners submits that the contents of the written complaint treated as F.I.R. do not disclose that petitioners are not members of Scheduled Castes or Scheduled Tribes and that the Opposite Party No. 2 was insulted or intimidated or humiliated in a place within public view and as such no offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out against the petitioners. Mr. Basu has relied on the decision of Gorige Pentaiah Vs. State of A.P. and Others, and the decision of Asmathunnisa Vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another, in support of his contention that no offence is made out and as such the proceeding is liable to be quashed against the petitioners. It is relevant to quote paragraphs 5 and 6 of the case of Gorige Pentaiah Vs. State of A.P. and Others, , which are as follows:

5. Learned Counsel appearing for the appellant submitted that even if all the allegations incorporated in the complaint are taken as true, even then, no offence is made out u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and under Sections 447/427/506 of the Indian Penal Code, 1860. As far as Section 3(1)(x) of the Act is concerned, it reads as under:

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

(i)-(ix) * * *

(x) intentionally insults or intimidates with intent to humiliate a member of a

Scheduled Caste or a Scheduled Tribe in any place within public view;

6. In the instant case, the allegation of Respondent no. 3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent no. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

In the case of "Gorige Pentaiah" investigation was not complete, but in the case at hand the investigation is complete and as such the evidence collected by the investigating agency is also to be taken into consideration along with the written complaint treated as F.I.R. for deciding whether an offence is made out against the petitioners.

8. In the case of Asmathunnisa Vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another, , the Supreme Court has made the following observations in paragraphs 8 & 9:

8. In this connection, the learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in Krishnan Nayanar Vs. Dr. M.A. Kuttappan and Another, . The relevant paragraphs of this judgment are Paras 12, 13 and 18. The said paragraphs read as under:

12. A reading of Section 3(1) shows that two kinds of insults against the member of a Scheduled Castes or Scheduled Tribes are made punishable-one as defined under clause (ii) and the other as defined under clause (x) of the said section. A combined reading of the two clauses shows that under clause (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta, etc. need not necessarily be done in the presence of the person insulted and whereas under clause (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in clause (ii) of Section 3(1) of Act 3 of 1989. By avoiding to use the expression "within public view" in clause (ii), the legislature, I feel, has created two different kinds of offences, an insult caused to a member of the Scheduled Castes or Scheduled Tribes, even in his absence, by dumping excreta, etc. in his

premises or neighbourhood and an insult by words caused to a member of the Scheduled Castes or Scheduled Tribes "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the legislature would have avoided the use of the said expression which it avoided in clause (ii) or would have used the expression "in any public place".

13. Insult contemplated under clause (ii) is different from the insult contemplated under clause (x) as in the former a member of the Scheduled Castes or Scheduled Tribes gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrongdoer for which he must be present at the place.

18. As stated by me earlier the words used in clause (x) are not "in public place", but "within public view" which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view, the entire allegations contained in the complaint even if taken to be true do not make out any offence against the petitioner.

9. The aforesaid paragraphs clearly mean that the words used are "in any place but within public view", which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present.

Thus, it is laid down in the case of "Asmathunnisa" that the offence must be committed within public view to attract the provisions of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. On perusal of the written complaint treated as F.I.R. and the statements recorded u/s 161 of the Code of Criminal Procedure, I do not find any evidence to hold that the petitioners were not members of Scheduled Castes or Scheduled Tribes. On consideration of the statements of the witnesses in general and the statement of the opposite party no. 2 in particular recorded u/s 161 of the Code of Criminal Procedure, I find that only the Petitioner No. 1 being the Headmistress of the school was present in her room on 29.09.2007 at 11.20 a.m. when the Opposite Party No. 2 entered into her room for submitting her application for leave on medical ground for regularisation of her absence from the school from 18.06.2007 to 28.09.2007 and the Petitioner No. 1 refused to accept the application for leave of the Opposite Party No. 2 by stating that she would not be able to realise the difficulty of getting job, as she got the job in the quota and thereafter other petitioners turned up in the said room and she was driven out of the room by holding her on the neck. It appears from the statement of one Smt. Niva Rani Sarkar, another Assistant Teacher that she also got the opportunity to witness the incident as she went into the room of the Petitioner No. 1 after hearing hue and cry. This teacher also refused to give Rs. 50,000/- as donation to the development fund of the school as demanded by the

petitioners. On perusal of all the statements recorded u/s 161 of the Code of Criminal Procedure and on consideration of the written complaint treated as F.I.R., I do not find the presence of any member of the public in the place of the incident except the petitioners who are all accused persons and as such it cannot be construed that the incident took place within public view as laid down in Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and as laid down in the decision reported in *Asmathunnisa Vs. State of A.P.* represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another, . The only specific statement of the Petitioner No. 1 that the Opposite Party No. 2 got the service in the quota of Scheduled Castes cannot be construed to be an intentional insult or intimidation on the part of all the petitioners with intent to humiliate the Opposite Party No. 2 in a place within public view. In view of the proposition of law laid down by the Supreme Court in the case of "*Gorge Pentaiah V. State of Andhra Pradesh and Ors.*" and "*Asmathunnisa V. State of Andhra Pradesh*" cited on behalf of the petitioners, I am of the opinion that in the instant case no offence is made out u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

10. Now, I have to consider whether any offence is made out u/s 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides for punishment for neglect of duties as follows: "Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year."

The word "public servant" is not defined in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, but Section 2(1)(f) of the said Act lays down that the words and expressions used but not defined in this Act and defined in the Indian Penal Code, shall have the meanings assigned to them in the Indian Penal Code. Section 21 of the Indian Penal Code enumerates the category of persons falling under the description of "public servant". The petitioners are by no stretch of imagination fall within the category of "public servants" as laid down in Section 21 of the Indian Penal Code. Accordingly, the contents of written complaint treated as F.I.R. and the evidence collected by the investigating agency do not disclose any offence against the petitioners u/s 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11. Mr. S. Basu, Learned Senior Counsel contends that the instant case was investigated by one Sub-Inspector of Police in violation of the provision of Section 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Mr. Basu has pointed out that the Deputy Superintendent of Police of the Traffic Department of the district of Hooghly took

over the investigation at the last stage, but he did not record the statements of the witnesses and did not play any effective role in the investigation, except submitting the charge sheet on the basis of the materials collected by the previous investigating officer who happens to be the Sub-Inspector of Police. Relying on the decision of State of M.P. Vs. Chunnilal @ Chunni Singh, , Mr. Basu submits that the proceeding is liable to be quashed for carrying out investigation in violation of Section 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The observations made by the Supreme Court of India in paragraphs 7 and 8 of "State of Madhya Pradesh V. Chunnilal alias Chunni Singh" are as follows:

7. For appreciating the rival submissions, reference needs to be made to Section 9 of the Act and Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as "the Rules"). Section 9 of the Act and Rule 7 of the Rules read as follows:

9. Conferment of Powers-(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,--

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class of group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in subsection (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

7. Investigating officer-(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in charge of prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.

By virtue of its enabling power it is the duty and responsibility of the State Government to issue a notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigating officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer."

8. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence u/s 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence u/s 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence u/s 3 of the Act for taking cognizance of that offence.

12. Mr. Amarta Ghose, Learned Counsel appearing for the State submits that the investigation of the instant case was ultimately done by one Deputy Superintendent of Police as per mandate of law and the said investigating officer has ratified the action taken by the previous investigating officer and has accepted the materials available in the case diary after proper application of mind and as such the investigation is not vitiated for violation of Section 9 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Rules 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. On perusal of the materials available in the case diary, I find that the second investigating officer being the Deputy Superintendent of Police of the Traffic Department of the district Hooghly claimed to have interrogated the witnesses, but did not record the statements of the witnesses de novo on the ground that the witnesses have reiterated the previous statements, which have already been recorded by the previous investigating officer who happens to be the Sub-Inspector of Police. The second investigating officer also relied upon the sketch map prepared by the previous investigating officer. Since the first investigating officer was not authorized under the law to conduct the investigation, the second investigating officer being the Deputy Superintendent of Police should not have acted upon the materials collected by the first investigating officer for the purpose of carrying out the investigation under the Special Act. The argument advanced on behalf of the State that the investigation is not vitiated as the second investigating officer duly authorized under the law

ratified the materials collected by the first investigating officer, cannot be accepted on the ground that the first investigating officer had no authority under the law to conduct the investigation. In view of the proposition of law laid down by the Supreme Court of India in the cases of *State of M.P. Vs. Chunnilal @ Chunni Singh*, , I am constrained to hold that the investigation of the offences under Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 carried out in the instant case is not legal and valid and as such the criminal proceeding so far as the offence under Sections 3(1)(x) and 4 of the said Act are concerned, cannot be permitted to continue against the petitioners.

13. The next submission of Mr. Basu is that the contents of written complaint treated as F.I.R. also do not disclose any offence punishable under Sections 341/323/506/509/34 of the Indian Penal Code. Section 341 of the Indian Penal Code provides for punishment for wrongful restraint. Section 339 of the Indian Penal Code defines the offence of wrongful restraint, which is as follows: "Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person." In the instant case, it appears from the contents of the written complaint treated as F.I.R. and from the statements of the witnesses recorded u/s 161 of the Code of Criminal Procedure that the Opposite Party No. 2 was forcibly driven out from the room of the Petitioner No. 1 by holding her neck and as such there is no question to wrongful restraint of the Opposite Party No. 2. The logical inference is that no offence u/s 341 of the Indian Penal Code is made out against the petitioners.

14. Section 323 of the Indian Penal Code provides for punishment for voluntarily causing hurt. "Hurt" is defined u/s 319 of the Indian Penal Code, which is as follows: "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt." Section 321 of the Indian Penal Code defines "voluntarily causing hurt", which is as follows: "Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt." In the instant case, the statements recorded u/s 161 of the Code of Criminal Procedure coupled with the injury report of the Opposite Party No. 2 procured by the investigating officer, go to prima facie establish the offence punishable u/s 323 of the Indian Penal Code.

15. Section 506 of the Indian Penal Code provides for punishment for criminal intimidation. Criminal intimidation is defined u/s 503 of the Indian Penal Code, which is as follows: "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." On consideration of the

written complaint treated as F.I.R. and the statement recorded u/s 161 of the Code of Criminal Procedure, I am of the opinion that the prima facie offence punishable u/s 506 Part-I of the Indian Penal Code is made out against the petitioners.

16. Section 509 of the Indian Penal Code provides for punishment for using any word or showing any gesture or doing any act with intent to insult the modesty of a woman, which is as follows: "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both." In the instant case, on consideration of the written complaint treated as F.I.R. and the statement recorded u/s 161 of the Code of Criminal Procedure, I do not find any word or gesture or act intended to insult the modesty of the Opposite Party No. 2 and as such, I am of the opinion that no offence u/s 509 of the Indian Penal Code is made out against the petitioners. However, the offences under Sections 323 and 506 of the Indian Penal Code are prima facie made out and as such the criminal proceeding so far as the offence under Sections 323, 506 and 34 of the Indian penal code are concerned may continue against the petitioners.

17. In view of my above findings, I have no hesitation to hold that no offence is made out u/s 3(1)(x) and u/s 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 341/509 of the Indian Penal Code against the petitioners from the written complaint treated as F.I.R. and from the evidence collected by the investigating agency in course of investigation and as such the criminal proceeding being G.R. Case No. 807 of 2007 arising out of Dankuni Police Station Case No. 151 of 2007 is quashed so far as the above offences are concerned. However, the above criminal proceeding will continue against the petitioners so far as the offences under Sections 323/506/34 of the Indian Penal Code are concerned. The criminal revision is, thus, allowed in part. CRAN No. 1255 of 2011 is disposed of.

Let a copy of this judgment be sent down to the learned Court below forthwith for favour of information and necessary action.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties expeditiously after compliance with all necessary formalities.