

(2025) 04 JH CK 1307

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 1146 Of 2023

Sunil Kumar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 342, 366(24), 366(25)

Indian Penal Code, 1860 — Section 323, 341, 354, 504, 506

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 2(c), 2(1)(r), 3(1)(r), 3(1)(s)

Citation : (2025) 04 JH CK 1307

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Chandana Kumari, Ashutosh Anand, Binit Chandra, Sahay Gaurav Piyush, Amrendra Datri

Final Decision : Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Writ Petition has been filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to quash the FIR being Dumka Sadar SC/ST P.S. Case No. 07 of 2023 dated 19.10.2023 registered for the offences punishable under Sections 341, 323, 504, 506, 354 of Indian Penal Code and under Section 3 (1) (r) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which has been mentioned as SC/ST Act, 2016 in the formal FIR as well as the endorsement regarding registration of the case made on the FIR by the Officer-in-Charge of the concerned SC/ST police station.

3. The allegation against the petitioner is that the petitioner while posted as settlement officer was approached by the informant-respondent no.4 lady with

an application under Right to Information Act. It is alleged that the petitioner became enraged and refused to receive the said application under the Right to Information Act and told informant-respondent no.4 that they are insane Adivasis and they are coming to annoy and thereafter abused using obscene language and indecent behaviour and pushed the informant-respondent no.4 out of his chamber which humiliated the informant-respondent no.4. It is further alleged that many persons were present in the chamber of the settlement officer at the time of occurrence.

4. On the basis of the written report submitted by the informant-respondent no.4, registered Dumka Sadar SC/ST P.S. Case No. 07 of 2023 and took up investigation of the case and it is submitted at the Bar that the investigation of the case is still going on.

5. It is submitted by the learned counsel for the petitioner by drawing attention of this Court to Section 2 (c) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, Clauses 24 and 25 of Article 366 of the Constitution of India and also Articles 341 and 342 of the Constitution of India that conjoint reading of the same goes to show that only the castes, races or tribes or parts of or groups within such castes, races or tribes as

are deemed under Article 342 of the Constitution of India can be termed as Scheduled Tribes and those castes which has been mentioned in Article 341 of the Constitution of India can be termed as Scheduled Castes within the meaning of Section 2 (c) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is next submitted by the learned counsel for the petitioner that the only caste which has been stated in the FIR is "Adivasi".

6. Drawing attention of this Court to Annexure-9 which is the copy of the Constitution (Scheduled Tribes) Order, 1950 at page no. 75 of the brief which is part XXII relating to Jharkhand, it is submitted by the learned counsel for the petitioner that caste Adivasi has not been included in part XXII of the said Constitution (Scheduled Tribes) Order, 1950 and undisputedly, as the occurrence took place in the District of Dumka, which is within the State of Jharkhand and the only caste name that cropped up from the FIR is that the informant is a Adivasi but the caste Adivasi does not come under the ambit of Scheduled Castes or Scheduled Tribes mentioned in Section 2 (c) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 hence, the sine-qua-non to constitute the offence under Section 2 (1) (r) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989; that the victim must be a member of schedule caste or a schedule tribe, is lacking so even if the entire allegation made in the FIR are considered to be true in its entirety, still the offence punishable under Section 3 (1) (r) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out. It is next submitted by the learned counsel for the petitioner that in order to constitute the offence punishable under Section 3(1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 also, the essential requirement is that the

victim must be a member of Schedule Caste or a Schedule Tribe and additionally the victim must be abused by the caste name. It is then submitted by the learned counsel for the petitioner that in this case no caste name of any scheduled castes or scheduled tribes have been mentioned, so the offence punishable under Section 3 (1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also not made out.

7. It is further submitted by the learned counsel for the petitioner that there is no statute named as SC/ST Act, 2016 in respect of which FIR has been registered. Thus, otherwise also, the FIR in respect of the offences punishable under SC/ST Act, 2016 is not maintainable.

8. So far as the offence punishable under Section 354 of Indian Penal Code is concerned, it is submitted by the learned counsel for the petitioner that there is no allegation of any intention of the petitioner to outrage the modesty of the informant and in the absence of the same, as also in the absence of any allegation against the petitioner that the petitioner by the act done by him knew that by such act the modesty of the informant would be outraged, therefore, the offence punishable under Section 354 of Indian Penal Code is also not made out either from the FIR.

9. So far as the offences punishable under Section 504, 506 and 323 of Indian Penal Code are concerned, it is submitted by the learned counsel for the petitioner that those offences are non-cognizable offences. It is then submitted that those offences are not made out even if the entire allegation made against the petitioner are considered to be true in its entirety.

10. So far as the offence punishable under Section 341 of Indian Penal Code is concerned, it is submitted by the learned counsel for the petitioner that there is no allegation against the petitioner of obstructing any person including the informant in such a manner so as to prevent the movement of the informant or any other person in certain direction in which she had the right to proceed so, the offence punishable under Section 341 of Indian Penal Code is not made out even if the entire allegation against the petitioner are considered to be true in its entirety.

11. It is then submitted by the learned counsel for the petitioner that the informant has been set up by the persons inimical to the petitioner, to prevent the career progression of the petitioner by getting him embroiled in false cases. It is further submitted that it is needless to mention that the petitioner is not the Information Officer under the Right to Information Act, hence, there was no occasion for the informant to approach the petitioner with the application, purportedly under the provisions of Right to Information Act. It is next submitted that there is also no averment in the FIR that petitioner was the Information Officer. It is lastly submitted that, as none of the offences in respect of which FIR being Dumka Sadar SC/ST P.S. Case No. 07 of 2023 has been registered therefore, it is submitted that the prayer as prayed for in this writ petition be

allowed.

12. Learned counsel for the respondent no.4 files a counter affidavit. Keep the same in the record.

13. It is submitted by the learned counsel for the respondent no.4 that the writ petition is a premature one as investigation is still going on. It is next submitted by the learned counsel for the respondent no.4 that the FIR disclose commission of the cognizable offences in respect of which FIR has been registered. It is then submitted by the learned counsel for the respondent no.4 that the plea taken by the petitioner in this writ petition is untenable hence, this writ petition being without any merit be dismissed.

14. Learned counsel for the respondent nos.1 to 3 adopts the argument put forth by the respondent no.4 and submits that this writ petition being without any merit be dismissed.

15. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is appropriate to refer to Section 2 (c) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads as under:-

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution;"

A plain reading of Section 2 (c) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 goes to show that the words "Scheduled Caste/Scheduled Tribe" as has been used in the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 only in the context of meaning assigned to Scheduled Castes and Scheduled Tribes respectively under clause (24) and clause (25) of Article 366 of the Constitution of India.

16. It is also relevant to refer to clause 24 and 25 of Article 366 of the Constitution of India which reads as under:-

"366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution;"

A plain reading of Clause 24 of Article 366 of the Constitution of India goes to

show that Scheduled Castes means castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution.

17. It is further relevant to refer Article 341 of Constitution of India which reads as under:

"341. Scheduled Castes.—(1) The President [may with respect to any State [or Union Territory], and where it is a State [* * *], after consultation with the Governor [* * *] thereof,] by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

which envisages that The President may inter alia with respect to any State , after consultation with the Governor of the State, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution of India be deemed to be Scheduled Castes in relation to that State, concerned.

18. Similarly, a plain reading of Clause 25 of Article 366 of the Constitution of India goes to show that Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 of the Constitution of India; to be Scheduled Tribes for the purposes of the Constitution of India.

19. It is also relevant to refer to Article 342 of the Constitution of India which reads as under:-

"342. Scheduled Tribes.—(1) The President [may with respect to any State [or Union territory], and where it is a State [* * *], after consultation with the Governor [* * *] thereof,] by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

which goes to show that The President may inter alia with respect to any State , after consultation with the Governor of the State concerned by public notification,

specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution of India be deemed to be Scheduled Castes in relation to that State.

20. Thus, the conjoint reading of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Clauses 24 and 25 of the Article 366 of the Constitution of India as well as Articles 341 and 342 of the Constitution of India, goes to show that unless the name of the caste or tribe finds place in the public notification made by The President of India, specifying the tribes or tribal community or parts of or groups within tribes or tribal community or castes, races or tribes or parts of or groups within castes, races or tribes; such person cannot be treated as a Scheduled Caste or a Scheduled Tribe; as has been referred to in the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 or in other words unless the name of castes, races or tribes or tribal community or parts of or groups within tribes or tribal community finds place in the public notification, such person cannot be treated as Scheduled Castes or Scheduled Tribes for the purpose of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

21. Now coming to the facts of the case, the only allegation against the petitioner is that he has used the word that the informant is an insane Adivasi. Now coming to Annexure-9 of this writ petition which is a document of unimpeachable character, being the copy of the Constitution (Scheduled Tribes) Order, 1950 in part XXII goes to show that the caste Adivasi does not find place in the said public notification. There is no allegation in the FIR that the informant belongs to any of the castes mentioned in part XXII which is applicable to the State of Jharkhand in the said Constitution (Scheduled Tribes) Order, 1950. It is not the case of the informant that she is a member of scheduled castes. Under such circumstances, this Court finds force in the submission of the learned counsel for the petitioner that, even if the entire allegation made against the petitioner are considered to be true in its entirety, still, neither the offence punishable under Section 3 (1) (r) nor the offence punishable under Section 3 (1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out.

22. It is pertinent to refer to Section 3 (1) (r) and Section 3 (1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads as under:-

“3. Punishments for offences of atrocities.— [(1) Whoever, not being a member of 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;”

23. A plain reading of the same reveals that in order to constitute the offence punishable under Section 3 (1) (r) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, the essential ingredients are that the victim must be a member of a Scheduled Caste or a Scheduled Tribe and unless the victim is a member of a Scheduled Caste or a Scheduled Tribe, no offence punishable under Section 3 (1) (r) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 could be made out and for the same reason, unless the victim is a member of Scheduled Caste or a Scheduled Tribe, the offence punishable under Section 3 (1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 could not be made out.

24. As already indicated above, even if the entire allegation made in the FIR are considered to be true in its entirety, still, the informant has not disclosed anywhere that she belongs to any of the castes, tribes or tribal community as mentioned in the Constitution (Scheduled Tribes) Order, 1950 as is applicable to the State of Jharkhand and undisputedly, the place of occurrence is in the District of Dumka which comes under the State of Jharkhand. Under such circumstances, this Court is of the considered view that even if the entire allegation against the petitioner made in the FIR are considered to be true in its entirety, still, none of the offences punishable under Section 3 (1) (r) or the offence punishable under Section 3 (1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out; in absence of any material in the record to suggest that the informant is either a person belonging to scheduled caste or a person belonging to scheduled tribe.

25. This Court also finds force in the contention of the learned counsel for the petitioner that there is no statute named as SC/ST Act, 2016 as has been mentioned in the formal FIR as well as in the endorsement of registration of Dumka Sadar SC/ST P.S. Case No. 07 of 2023 as has been made at the body of the FIR by the Officer-in-Charge of the concerned police station and on this score also, the registration of the FIR is bad in law, so far as the offence punishable under Sections 3 (1) (r) and 3 (1) (s) of SC/ST Act, 2016 is concerned.

26. So far as the offence punishable under Section 354 of Indian Penal Code is concerned, the essential ingredients to constitute of the offence punishable under Section 354 of Indian Penal Code are :-

- (a) That the person assaulted must be a woman;
- (b) The accused must have used criminal force on her; and
- (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty or knowing the act would likely to outrage her modesty

as has been laid down by the Hon'ble Supreme Court of India in the case of Raju Pandurang Mahale vs. State of Maharashtra & Anr. reported in (2004) 4 SCC 371 : AIR 2004 SC 1677 which has been followed by the Hon'ble Supreme Court of India in the case of Naresh Aneja @ Naresh Kumar Aneja vs. U.P. reported in

2025 INSC 19.

27. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner pushed the informant out from his chamber being annoyed by her conduct intending to submit an application under Right to Information Act. There is no allegation against the petitioner that the petitioner assaulted or used criminal force to the informant intending to outrage or knowing it to be likely that it will outrage the modesty of the informant. In the absence of essential ingredients regarding the intent of the petitioner to outrage the modesty of the informant or the petitioner knowing that his act would outrage the modesty of the informant, this Court is of the considered view that even if the entire allegations against the petitioner are considered to be true in its entirety, still, the offence punishable under Section 354 of Indian Penal Code is not made out against the petitioner.

28. So far as the offence punishable under Section 341 of Indian Penal Code is concerned, the essential ingredients to constitute the offence punishable under Section 341 of Indian Penal Code are as under :-

- (a) The accused obstructed a person;
- (b) The accused did it voluntarily;
- (c) The obstruction prevented such person from proceeding in certain direction in which he had the right to proceed.

29. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of obstructing the informant or preventing the informant from proceeding in the direction she has a right to proceed. Under such circumstances, this Court is of the considered view that even if the entire allegation made in the FIR are considered to be true against the petitioner in its entirety, still, the offence punishable under Section 341 of Indian Penal Code is not made out.

30. So far as the offences punishable under Sections 323, 504 and 506 of Indian Penal Code are concerned, they are all non-cognizable offences. Hence, for the limited purpose of this writ petition, this Court is not delving at length regarding the same.

31. In view of the discussions made above, as no cognizable offences punishable in law is made out against the petitioner even if the entire allegation made against him are considered to be true in its entirety hence, this Court has no hesitation in holding that continuation of this criminal proceeding against the petitioner, who is undisputedly a public servant and the occurrence took place when he was discharging his duty as such public servant, will amount to abuse of process of law. Therefore, this is a fit case where the FIR being Dumka Sadar SC/ST P.S. Case No. 07 of 2023 be quashed and set aside.

32. Accordingly, the FIR being Dumka Sadar SC/ST P.S. Case No. 07 of 2023 is

quashed and set aside.

33. In the result, this writ petition is allowed.

34. The interim relief granted earlier vide order dated 20.02.2024 is vacated.

35. Registry is directed to intimate the court concerned forthwith.