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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(CRL) 3083/2016**

**Judgment reserved on:** **09.02.2017**

**Judgment delivered on:** **03.07.2017**

**MS GAYATRI @ APURNA SINGH** ..... Petitioner

Through: Mr. Puneet Mittal, Mr. Aman Sareen,  
Ms. Nidhi Raj Bindra & Ms. Aarushi  
Tangai, Advocates.

versus

**STATE & ANR** ..... Respondents

Through: Ms. Nandita Rao, ASC along with  
ACP Diwan Chand Sharma, for the  
State.  
Mr. Hem C. Vashishst, Advocate for  
respondent No.2.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**JUDGMENT**

**VIPIN SANGHI, J.**

1. The petitioner has preferred the present writ petition to seek a writ quashing FIR No.1162/2015 registered at Police Station – Saket, New Delhi under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC/ST Act”

for short), and the proceedings arising therefrom. The aforesaid FIR has been registered on the complaint of respondent No.2.

2. The petitioner/ accused and the respondent No.2/complainant are co-sisters. They are married to two brothers. According to the petitioner, the mother-in-law of the petitioner severed her relationship from the husband of respondent No.2 sometime in August 2015 and disowned him from all her movable and immovable properties. The said development has led to respondent No.2 becoming inimical towards the petitioner and her family members.

3. The case of the complainant/ respondent no.2 in her complaint-on the basis of which the aforesaid FIR has been registered, is that the petitioner:

*“is continuously harassing and abusing on my caste on social network sites/ facebook). Since 18 July 15 till today 1 Aug 15 she is updating a bad words like cheap, kutta, donkey etc for DHOBHI’s. As I also belong from DHOBHI category, it is unacceptable for me. I want you to take a legal action according to SC/ST Act as it is very insulting & dominating updates put by her for DHOBHI community.”* (emphasis supplied)

4. Along with her complaint, the complainant also enclosed certain printouts, wherein the petitioner/accused claimed that she belongs to Rajput community, and that persons belonging to the ‘Dhobi’ community have no standard of living and they are cheap people. The aforesaid printouts are from the facebook account of the petitioner. The complainant made the aforesaid complaint dated 02.08.2015, which was diarised on 03.08.2015 vide Diary No.872-LC.

5. Since, it is the utterances attributed to the petitioner on her facebook “Wall” which form the basis of the FIR in question, I consider it appropriate to set out the posts attributed to the petitioner on her facebook ‘wall’. The same are as follows:

**“Gayatri Singh**

**July 28 at 11:53pm Edited**

*Pehla Gadha: Yaar Main Jis Dhobi Ke Ghar Kaam Karta Hoo, Vo Mujhe Bahut Marta Hai.*

*Doosra Gadha: Tu Ghar Chor Kar Bhaag Kyo Nahi Jata.*

*Pehla Gadha: Kya Batau Yaar Dhobi Ki Ek Ladki Hai, choti DHOBAN Vo Jab Bhi Shararat Karti Hai To Dhobi Kehta Hai Ki Teri Shaadi Kisi Gadhe Se Kar Dunga.*

*Bas Yeh Soch Kar Ruka Hua Hoo.*

***Moral of the story that Dhoban is Brand ambassador of fools & donkeys and only they r follow her always***” (Emphasis supplied)

**“Gayatri Singh**

**12 hrs Edited**

*U hv find many DHOBI jokes on biggest social site of Google like DHOBI ka kutta na ghar ka na ghaat ka, u understand na what I want to say so please increase ur level of education first bcoz I am not a Kid I am a daughter of Rajput –feeling super.”*

**“Gayatri Singh**

**July 29 at 11:13pm**

*Joke: one Fb user apne dost se apne dushman ke bare mein baat karte hue kahta hai who hamesha mera fb account check karta rahta hai aur mujhe follow karta hai par mujhe to yein sab karne mein koi interest nahi ...*

*Kamina Dost: agar tum bhi uska fb account check nahi karte rahte ho to how do u know that he checked always ???*

*Moral of the story: for example If u can eat ashirwad mill flour so that's not mean that nobody can eat that bcoz every one prefer brand 1<sup>st</sup> who live the life with hight standard always but low standard people always try to prove it and speak again & again that I hv standard. It's called cheep people and only one brand available for these people: DHOBI BRAND – feeling naughty.” (emphasis supplied)*

6. Ms. Rao, learned ASC, who appears for the State has tendered in Court the aforesaid printouts, which show that they have been printed by accessing the facebook page of the petitioner by a person disclosing her identity as “Veronica”. The said printouts have been taken between 31.07.2015 and 01.08.2015.

7. The submission of the petitioner is that a reading of the complaint – on the basis of which the aforesaid FIR has been registered; the FIR, and; the contents of the aforesaid printouts, does not disclose commission of an offence under Section 3(1)(x) of the SC/ST Act.

8. Section 3(1)(x) of the SC/ST Act at the relevant time, i.e. in July 2015 read as follows:

*“3.(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- ... ... ...*

*(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; ... ... ...*

*shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.” (emphasis supplied)*

9. I may observe that Section 3(1) has been substituted by Section 4(i) of Act 1 of 2016 with effect from 26.01.2016.

10. The submission of Mr. Mittal, learned counsel for the petitioner is that to constitute an offence under Section 3(1)(x) of the SC/ST Act, it is essential that the accused should intentionally insult, or intimidate with intention to humiliate “*a member of a Scheduled Caste or a Scheduled Tribe*”. He submits that the use of the expression “*a member*” shows that the Legislature intended to make an offence - the insult, or intimidation with intention to humiliate, a particular member of the Scheduled Caste, or a Scheduled Tribe, and not a generalized community of Scheduled Caste, or Scheduled Tribe.

11. Mr. Mittal submits that in the present case, the facebook posts attributed to the petitioner, even if they are assumed to be true to have been posted by the petitioner on her facebook wall, do not disclose the intentional insult or humiliation – with intention to humiliate any individual, much less, the complainant as there is no mention of the name of any individual. There is no basis to claim that the said post was directed against, and obviously against, the complainant.

12. Mr. Mittal submits that in the post attributed to the petitioner of 28.07.2015 at 11:53 p.m., the objectionable content is as follows:

*“Moral of the story that Dhoban is Brand ambassador of fools & donkeys and only they r follow her always”*

13. Mr. Mittal submits that the said post is directed against the females of the ‘Dhobi’ community in general, and not against any specific individual, much less against the complainant.

14. Similarly, Mr. Mittal submits that the post attributed to the petitioner of 29.07.2015 at 11:13 p.m., does not name or refer to the complainant, and the only alleged insulting or intimidating words are *“it is called cheep people and only one brand available for these people: DHOBI BRAND –... ... ...”*, which is also a generalised comment and not directed against any individual, much less, the complainant.

15. Mr. Mittal submits that in the present case, the facebook pages relied upon by the complainant have apparently been accessed with the identity of ‘Veronica’. He submits that the petitioner had blocked respondent No.2 from accessing her facebook account – meaning thereby, that she would not be able to access the facebook account of the petitioner, and not read the posts found on the facebook ‘wall’ of the petitioner. This itself shows that the allegedly offending posts were certainly not insults or intimidations intended to humiliate the complainant, as they were not directed at her, and were not intended to be seen or read by her. However, respondent No.2, had deliberately used a pseudo name and a false identity to be able to open the

facebook account of the petitioner, and to read the posts on the facebook ‘wall’ attributed to the petitioner.

16. Mr. Mittal submits that the petitioner is entitled to her views and to share her views within her own friend circle, who are members/ subscribers on facebook. He submits that if someone ventures into the facebook account of another, uninvited, and by assuming a pseudo name, such a person does so at his/ her own peril and cannot claim that the posts on the facebook ‘wall’ of the member’s account accessed were intentional insults, or intimidations with intention to humiliate such a person, who is a member of a Scheduled Caste or a Scheduled Tribe. In support of his submissions, Mr. Mittal has placed reliance on a Division Bench judgment of this Court in ***D.P. Vats Vs. State***, 2002 (99) DLT 167.

17. Mr. Mittal submits that, firstly, there has to be intentional insult, or intimidation with intention to humiliate a particular person. The person accused of the offence under Section 3(1)(x) of the SC/ST Act should have knowledge that the particular person/ victim is a member of a Scheduled Caste, or a Scheduled Tribe. If he had no knowledge that the caste of the person against whom the intentional insult, or intimidation with intention to humiliate is directed, was a scheduled caste or scheduled tribe, no offence under Section 3(1)(x) of the SC/ST Act would be made out.

18. Similarly, if utterances of the accused were not directed against a particular member of SC/ST - in contradistinction with the community of SC/ST as a whole, the offence under Section 3(1)(x) of the SC/ST Act would not be made out. Mr. Mittal submits that in ***D.P. Vats*** (supra), the

expression “*a member*” has been interpreted by the Division Bench to mean that the intentional insult, or intimidation with intention to humiliate must be directed against an individual member, and not against a group of members, or the crowd, or public in general - though they may comprise of persons belonging to SC/ST community. If the intentional insult, or intimidation with intention to humiliate when made is in generalized terms against all and sundry, and not against a specific individual of the particular SC/ST community, it would not make out an offence under Section 3(1)(x) of the SC/ST Act.

19. Mr. Mittal submits that in the facts of the present case, the alleged intentional insult, or intimidation with a view to cause humiliation was not made against the complainant in particular - who belongs to the Dhobi community. This is for the reason that the petitioner had not added the complainant as a friend and, therefore, she would not get to see the posts put up by the petitioner/ accused on her facebook ‘wall’ automatically. In fact, the petitioner had blocked the complainant, and she could not have accessed the facebook account ‘wall’ of the petitioner, except by faking her identity – which she did. The petitioner/ accused had no reason to assume that the complainant would, of her own volition, visit the facebook page/ wall of the petitioner to read the petitioner’s posts by assuming a false identity. Mr. Mittal submits that in these circumstances, there was no question of the petitioner having the intention of insulting, or intimidating with a view to cause humiliation to any specific person, much less respondent No.2. Moreover, since the facebook posts attributed to the petitioner do not specifically mention the complainant directly, or by obvious implication, it

cannot be said that the intentional insult/ intimidation with a view to cause humiliation, was directed against respondent No.2 on account of her being a member of the Dhobi community. Like in the case of *D.P. Vats* (supra), in the present case, the utterances/ posts attributed to the petitioner on her facebook ‘wall’ are in generalized terms, and not attributed directed against any particular person, much less respondent No.2.

20. Mr. Mittal in support of his contention that the provisions of the SC & ST Act are not attracted, places reliance on *State Vs. Om Prakash Rana & Ors.*, 2014(1) JCC 657.

21. Mr. Mittal further submits that the said insult or intimidation, with intention to humiliate, should take place at a place which is “*within public view*”. He submits that the alleged posts are claimed to have been put up by the petitioner on the ‘wall’ of her facebook account which, according to Mr. Mittal, is not “*a place within public view*”. Mr. Mittal submits that the posts put up on his ‘wall’ by the facebook account holder member/ subscriber – even when the privacy setting is set to “public”, must be shown to have been read by a member of the public, i.e. it must be claimed to have been read by a member of the public, which is not the case in hand. Mr. Mittal submits that the posts on his/ her facebook ‘wall’ put up by a member/ subscriber are accessible to those who are befriended by the member/ subscriber. Merely because the facebook profile of the petitioner shows that the same had been edited to ‘public’ - so as to make it accessible to the public generally, the same cannot be labeled as a place within public view, since, to view the said post a member of the public would have to visit the facebook account of the petitioner by disclosing his or her identity. Anybody, who does not so

access the facebook account of the petitioner would not become aware of what has been posted by the petitioner on her facebook ‘wall’. He submits that it is not the case of respondent No.2/ complainant that any member of the public who is a stranger to the petitioner and the complainant/respondent No.2 has visited the facebook page of the petitioner and viewed the posts put up by the petitioner on her facebook “wall”.

22. Mr. Mittal places reliance on several cases dealing with the interpretation of the expression ‘public view’ – viz. **Daya Bhatnagar Vs. State**, 2004 (109) DLT 915; **Smt. Usha Chopra Vs. State & Anr**, 115 (2004) DLT 91; **Kanhaiya Paswan Vs. State**, 2012 (4) ILR (Del) 509; and **Kusum Lata Vs. State & Ors.**, 2016 (4) AD (Delhi) 362.

23. Mr. Mittal submits that the privacy setting of the facebook account of the petitioner, even though edited to ‘public’ – to enable any other facebook user to view the petitioner’s posts on her ‘wall’, does not make the same a “place within public view”. Mr. Mittal also placed reliance on **Ram Nath Sachdeva Vs. Govt. of N.C.T. of Delhi**, 2001(60) DRJ 106, wherein the learned judge observed as follows:

*“5. ... Thus, as per the prosecution case, only the complainant who was accompanied by Shashi Pal, was present inside the house at the time the petitioner allegedly insulted him by uttering the remarks as noted in complaint. In my view, such insult not being ‘within public view’ would not attract said clause(x) of Section 3(1) of the Act. As laid down in the decision in State of Haryana and others v. Ch. Bhajan Lal and others, AIR 1992 Sc 604 one of the categories wherein power under section 482 Cr.P.C. can be exercised is where the allegations made in the FIR or complaint even if they are taken on their face value and accepted in their entirety do not prima facie*

*constitute any offence or make out a case against the accused... ”.*

24. The State has opposed the petition. Learned ASC submits that on a perusal of the allegations contained in the FIR, it cannot be said that the ingredients of the offence under section 3(1)(x) of the SC/ST Act are not present. She submits that the present petition is premised on disputed questions of fact, which would require a trial.

25. Ms. Rao places reliance on ***Ram Babu v. State of Madhya Pradesh & Ors.***, (2009) 7 SCC 194, in support of her submission that at this stage when the investigation is in progress and the charge sheet has not even been filed, this Court would not examine whether there is any truth in the allegations made. The only question that this Court would consider is whether, on the basis of the allegations contained in the FIR, a cognizable offence or offences are made out against the petitioner/ accused. The allegations made in the complaint are to be taken as they are, without adding or subtracting anything and only if this Court finds that no cognizable offence is made out even if the allegations are considered to be truthful, would this Court quash the FIR and the proceedings arising therefrom in exercise of powers u/s 482 Cr PC. Ms. Rao submits that the intention of the petitioner while making offending posts on the ‘wall’ of her facebook account was clearly to insult and/or intimidate with an intent to humiliate respondent no.2, whom she knows is a member of a Scheduled Caste, namely, “Dhobi” caste. She submits that the petitioner has herself narrated that she and respondent no.2 are co-sisters i.e. they are married to two brothers and there is acrimony between the two families. It is precisely for this reason that the petitioner

had picked the “Dhobi” community for making insulting and humiliating statements. The petitioner was aware of the fact that respondent no.2 and others of her community could log into the facebook account of the petitioner and view the posts uploaded by the petitioner on her facebook ‘wall’.

26. Ms. Rao submits that the petitioner deliberately edited the privacy status of her account from ‘private’ to ‘public’, so as to enable the reading of her insulting and humiliating posts against the members of the ‘Dhobi’ community by the public. The offending posts uploaded by the petitioner are directed against, and only against respondent no.2, since respondent no.2 belongs to the ‘Dhobi’ community; is the sister-in-law of the petitioner, and; has an acrimonious relationship with the petitioner. Otherwise, there was no reason for the petitioner to harbor ill-will against the members of the ‘Dhobi’ community.

27. Ms. Rao further submits that during the course of investigation, petitioner/ Gayatri Singh was examined in the presence of her husband and lady officer, and she accepted the fact that she made the facebook posts in question by using her mobile phone, model name Lenovo S850, which was later thrown away by her, by claiming that the same was damaged by her daughter. Consequently, Section 201 IPC was added in the FIR. Respondent No.2 has adopted the aforesaid submissions of Ms. Rao.

28. In ***Manoj Kumar Sharma and Ors Vs. State of Chhattisgarh and Ors***, 2016 (97) ALLCC 926, the Supreme Court re-stated the factors to be

considered by the Court while examining a prayer for quashing of an F.I.R. The Court observed as follows:

*"In State of Haryana and Ors. v. Bhajan Lal and Ors (1992) Supp SCC 335, wherein this Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power Under Section 482 of the Code for quashing of the FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations 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; where there is an expressed legal bar engrafted in any of the provisions of the Code; and 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. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice." (emphasis supplied)*

29. Further, the Supreme Court in *Swaran Singh and Ors Vs. State*, (2008) Cri LJ 4369, has observed in paragraph 8 as under:

*“It may be noted that the trial has still to be held and the appellants will have an opportunity of establishing their innocence in the trial. At this stage all that the High Court can see in the petition under Section 482 Cr.P.C. or in a writ petition, is whether on a perusal of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar vide Indian Oil Corporation v. NEPC India Ltd. AIR 2006 SC 2780 (vide para 12); State of Orissa v. Saroj Kumar (2005)13 SCC 540 (vide paras 9 and 10), etc. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High Court, and that will be seen at the trial. It has to be seen whether on a perusal of the FIR a prima facie offence is made out or not”. (emphasis supplied)*

30. In the light of the aforesaid settled legal position, this Court would proceed to examine the submissions of learned counsels on the assumption that the facebook posts attributed to the petitioner, which are set out in para 5 above, were indeed made by the petitioner on the ‘wall’ of her facebook account, and the same were open to view by any member of the public, on account of the privacy settings having been changed from ‘private’ to ‘public’. Though the petitioner claims – and this claim has not been refuted by respondent no.2/ complainant, that the complainant had been blocked by the petitioner from accessing the facebook account of the petitioner, and that is why she accessed the petitioner’s facebook account by a fake name and identity of “Veronica”, this Court would also assume against the petitioner that she had not blocked respondent no.2 from being able to see her posts on her facebook ‘wall’.

31. Section 3(1)(x), though quoted herein above in para 8, may be once again set out for ready reference, which reads as follows:

*“3.(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- ... ... ...*

*(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; ... ... ...*

*shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.” (emphasis supplied)*

32. The ingredients of the aforesaid offence were culled out in *Daya Bhatnagar* (supra) as follows:

*“15. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows: (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present... ...”.* (Emphasis supplied)

33. In *D.P. Vats* (supra), the Division Bench examined whether the uncontroverted allegations made in the FIR in that case - even if taken on face value, would constitute the alleged offence under Section 3 of the SC/ST Act, or for that matter, under the IPC. The ingredients of Section 3(1)(x) and Section 3(1)(xi) of the SC/ST Act were taken note of by the Division Bench in the following words:

“9. ....

(a) *A person making the alleged derogatory utterance must know that the person whom he was intentionally insulting, intimidating with intent to humiliate him was a member of SC/ST.*

(b) *Such intentional insult, intimidation or humiliation must be directed against and made to a member of SC/ST and for being member of SC/ST.*

(c) *The utterance must be made at any place within “public view”.*” (emphasis supplied)

34. The Division Bench observed in paragraphs 10, 12 and 13 of this decision as follows:

“10. *In the present case, we are concerned with the first two ingredients and it emerges therefrom that a case would fall under the first sub-section only when the person making the derogatory utterance knows that the person whom he was intentionally insulting or intimidating or humiliating in the name of the caste was a member of SC or ST. If he had no knowledge of his caste status, the offence under sub-section (1)(x) would not be constituted. Similarly if his utterance was not directed against a member of SC/ST in contradistinction to a group of members of SC/ST or the community as a whole, it would not again make out an offence under sub-section (1)(x). The word “a member” occurring in the provision assumes crucial importance in this context and leaves no scope for doubt that it must be directed against the individual member and not against a group of members or the crowd or the public in general though these may comprise of SC/ST. If it is made in generalized terms against all and sundry and is not individual specific in the name of caste, it would not make out an offence under the first sub-section, the rationale being that intentional insult, intimidation and humiliation made in the name of caste was liable to be caused to a person and in this*

*case to an individual member of SC/ST and not to a group of members or public in general.*

11. x x x x x x x x x x

**12. That being so, we hold that derogatory utterance made in generalized terms in a public gathering, even in the name of caste would not attract an offence u/s 3(1)(x) unless it was directed against an individual member of the caste/Tribe and the person making it knew that the victim belonged to SC/ST. For sub-section (xi) also, it was an essential requirement that the person using force or assaulting a women of SC/ST must know that she belonged to that caste/Tribe.**

**13. It does not, therefore, appear to us that uncontroverted allegations contained in FIR No.678/01, even if taken on face value, would attract an offence under sub-sections (1)(x) or (1)(xi) of SC/ST (POA) Act 1989. This is so because petitioner had made the utterance “CHUDE CHAMARON TUMHE MAAR DUNGA MAIN TUMSE NAHIN DARTA” in generalised terms. It was not directed against any particular member of SC/ST to attract the offence u/s 3(1)(x) of the Act. Nor was it shown or known whether he knew anyone in the group or crowd to be a member of SC or ST to whom the utterance could be linked. The same holds true of the alleged offence under the other sub-section. The allegations in the FIR nowhere disclose that petitioner had assaulted or used force against any woman in the gathering whom he knew to be belonging to SC/ST. That is not to suggest that allegations made in the FIR had to state all the ingredients of the offence. But the allegations were required to lay at least the factual foundation for attracting the offence under section 3(1)(x) and (xi) which is lacking in the present case.” (Emphasis supplied)**

35. The case of the complainant, as stated in her complaint, is that the petitioner:

*“is continuously harassing and abusing on my caste on social network sites/ facebook). Since 18 July 15 till today 1 Aug 15*

*she is updating a bad words like cheap, kutta, donkey etc for DHOBHI's. As I also belong from DHOBHI category, it is unacceptable for me. I want you to take a legal action according to SC/ST Act as it is very insulting & dominating updates put by her for DHOBHI community.”* (emphasis supplied)

36. From the aforesaid complaint itself it would be seen that the complaint of the complainant/ respondent no.2 is not that the petitioner had insulted, or intimidated her with intent to humiliate her in particular, i.e. individually, by writing the offending words on her facebook ‘wall’. The complaint of the complainant/ respondent no.2 is that the petitioner is “*harassing and abusing on my caste on social network sites/ facebook*” and that she is using bad words “*for Dhobi's*”. It is because respondent no.2/ complainant is a member of the Dhobi community, that she has taken affront, as the statements of the petitioner were not acceptable to her. Thus, it is not even the complainant’s case in her complaint that the petitioner has intentionally insulted or intimidated with intent to humiliate her individually or “a member” of a scheduled caste i.e. Dhobi caste/ community. It is not the complainant’s case that she was a friend of the petitioner on the facebook. Consequently, the posts put by the petitioner on her facebook wall did not automatically show up on the complainant’s facebook account. The offending posts put by the petitioner on her facebook ‘wall’ do not, directly or indirectly, name or refer to respondent no.2/ complainant. Even if one were to accept that the background in which the petitioner has put up her posts on her facebook ‘wall’ is that the petitioner and respondent no.2 are co-sisters – married to two brothers, and there is acrimony between them in the family, in my view, that would not suffice to conclude that the posts

put by the petitioner on her facebook ‘wall’ are intentional insults or intimidation with intent to humiliate the complainant.

37. A perusal of the offending posts put by the petitioner on her facebook ‘wall’ do not show that they were directed against any individual member of any scheduled caste or scheduled tribe. In *D.P. Vats* (supra), the Division Bench set out the ingredients of the offence u/s 3(1)(x) and 3(1)(x)(1) of the SC/ST Act which have been taken note of herein above. To constitute an offence under the said provision, the person making the alleged derogatory utterances must know that the person whom he was intentionally insulting or intimidating with intent to humiliate was a member of the SC/ST. Secondly, the intentional insult or intimidation to humiliate must be directed against and made to a member of the scheduled caste or scheduled tribe on account of the fact that the said person is a member of the scheduled caste or scheduled tribe. The Division Bench specifically observed that if utterances was not directed against a member of scheduled caste or scheduled tribe, but were directed against members of scheduled caste or scheduled tribe or the community as a whole, it would not make out an offence u/s 3(1)(x). The Division Bench in *D.P. Vats* (supra) deliberated on the words “a member” occurring in section 3(1)(x) and observed that the said words leave no scope for doubt that the utterances should be directed against the individual member and not against a group of members or crowd or public in general, though they may comprise of members of scheduled caste and scheduled tribe. Generalized statements against all and sundry, and not against specific individual belonging to the scheduled caste or scheduled tribe, would not make out an offence u/s 3(1)(x) of the SC/ST Act.

38. Thus, in my view, the first two ingredients of the offences u/s 3(1)(x) – as set out in **D.P. Vats** (supra), viz. (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST, are not present in the facts of the present case.

39. I now proceed to consider the second limb of the submission of Mr. Mittal that the facebook ‘wall’ of a member cannot be described as a place within public view. The issue as to what constitutes a place within public view was considered in **Daya Bhatnagar** (supra).

40. **Daya Bhatnagar** (supra) was a decision rendered by the learned Single Judge on a reference being made to him on account of a difference of opinion between two learned Judges constituting the Division Bench. The learned Single Judge S.K. Aggarwal, J. concurred with the view of B.A. Khan, J and disagreed with the view of V.S. Aggarwal, J. S.K. Aggarwal, J. approved the following observation of B.A. Khan, J. in his opinion:

*"If the accused does not know that the person whom he was intentionally insulting or intimidating or humiliating is a member of SC or ST, an offence under this section would not be constituted. Similarly, if he does not do all this at any place within "public view", the offence would not be made out. Therefore, to attract an offence under Section 3(i)(x), an accused must know that victim belongs to SC/ST caste and he must intentionally insult, intimidate and humiliate him/her at a place within "public view". The place need not be a public place. It could be even at a private place provided the utterance was made within "public view"."* (emphasis supplied)

41. S.K. Aggarwal, J. proceeded to examine the meaning of the expression “public view” used in section 3(1)(x) of the SC/ST Act. He referred to the meaning of the word “public” found in legal dictionaries, and also referred to the Statement of Object and Reasons of the SC/ST Act. After analyzing the provisions of the SC/ST Act and in particular sub-clause (x) of section 3(1) of the said Act – which makes “utterances punishable”, he observed:

*“The Legislature required 'intention' as an essential ingredient for the offence of Insult', "intimidation' and "humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:*

*"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business,*

*commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used. (emphasis supplied)"*

42. In **Daya Bhatnagar** (supra), the majority view taken by the Court was that to attract the offence under Section 3(1)(x) of the SC/ST Act the place where the offending action takes place should be within public view that does not mean that the place should be a public place. It could well be a private place, provided the utterance was made within public view. "Public view" is understood to mean a place where public persons are present – howsoever small in number they may be. Public persons are independent and impartial persons who are not interested in any of the parties. The same has been explained to mean persons not having any kind of close relationship or association with the complainant. Such persons are as good as strangers who do not have any liking for the complainant through any close relationship or any business commercial or other vested interest and who are not participating members with him in any way.

43. When a member registered with facebook changes the privacy settings to "public" from "private", it makes his/ her writings on the "wall" accessible not only to the other members who are befriended by the author of the writings on the "wall", but also by any other member registered with facebook. However, even if privacy settings are retained by a facebook member as "private", making of an offending post by the member – which falls foul of Section under Section 3(1)(x) of the Act, may still be punishable if any of the befriended facebook members do not suffer from the limitations

carved out in *Daya Bhatnagar* (supra), i.e. if any of the befriended facebook members of the author of the offending post is an independent and impartial and not interested in any of the parties, i.e. is not a person having any kind of close relationship or association with the complainant. Therefore, to my mind, it would make no difference whether the privacy settings are set by the author of the offending post to “private” or “public”. Pertinently, Section 3(1)(x) of the Act does not require that the intentional insult or intimidation with intention to humiliate a member of the Scheduled Caste or Scheduled Tribe should take place in the presence of the said member of the Scheduled Caste or Scheduled Tribe. Even if the victim is not present, and behind his/ her back the offending insult or intimidation with intention to humiliate him/ her – who is a member of the Scheduled Caste or a Scheduled Tribe takes place, the same would be culpable if it takes place within public view.

44. The next issue that arises for consideration is whether, on a reading of the complaint/ FIR in question, it could be said that the same discloses facts sufficient to constitute the offence, in the light of the essential requirement that the intentional insult or intimidation with intention to humiliate should take place in any place within public view.

45. Pertinently, the complainant does not claim that the utterances made by the petitioner on her facebook ‘wall’ were made in full public view directed against her, or that there were witnesses when the said utterances were so made and directed against her, or till the time the offending posts remained on the wall of the facebook account of the petitioner. She does not name any other person – a member of the public who may have read the

allegedly offending posts of the petitioner put up on the petitioner's facebook wall.

46. In ***Om Prakash Rana*** (supra), the Court observed:

*"9 .In Deepa Bajwa vs. State(supra), where quashing of FIR under section 3 of SC/ST Act, 1989 was sought, it was held by this court that for ascertaining that a complaint on the basis of which the complainant seeks registration of FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the FIR ... . . . . ."*

*10. In the present case, the original complaint lodged by the complainant does not mention in whose presence the offending words were used by the respondents/accused persons... There is nothing on record to show that the offending words were used in full public view. The names of alleged witnesses are not mentioned in the complaint dated 18.7.2012. The witnesses i.e. Meenakshi and Durga Dutt have alleged themselves to be the eye witnesses. But their names have not been stated by the complainant in her complaint. The supplementary statement dated 27.8.2012 of the complainant giving the names of alleged witnesses can't fill up the lacuna. There is also delay of 3 days in lodging the FIR. The delay is not explained. The basic ingredients of Section 3(x) of the SC/ST Act are missing in the present case . . . . ."*  
(emphasis supplied)

47. Thus, the complaint of respondent no.2/ complainant does not even satisfy the test laid down in ***Om Prakash Rana*** (supra).

48. In the light of the above discussion, I am of the considered view that the necessary ingredients of the offence constituted under Section 3(1)(x) of

the Scheduled Castes & Scheduled Tribes Act, as discussed above, are not made out on the reading of the complaint/ FIR.

49. For all the aforesaid reasons, the aforesaid FIR as well as the proceedings qua the petitioner under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are hereby quashed.

**(VIPIN SANGHI)  
JUDGE**

**JULY 03, 2017**

*B.S. Rohella/sr*



**राष्ट्रीय लोक न्यायालय**