



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 7662/2025

Dr. Deepak Arora S/o Nandlal Arora, Aged About 46 Years, R/o H09, Teacher Colony, PS Gumanpura, District Kota At Present Assistant Professor, IIT Jodhpur, Karwar, Jodhpur City East, Rajasthan, India.

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Ankur Gupta S/o Ramkishore Gupta, Acting Registrar, IIT Jodhpur, Karwar, Jodhpur City East.

----Respondents

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For Petitioner(s) : Mr. Rajesh Joshi, Sr. Adv.  
Mr. Harshit Bhurani

For Respondent(s) : Mr. Deepak Choudhary, AAG  
Mr. Lalit Kishor Sen, Dy. GA  
Mr. Bharat Raj, Ad. S.P. CID (CB)  
Jaipur  
Mr. Hemendra Singh  
Mr. Moti Singh

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**HON'BLE MR. JUSTICE SANDEEP SHAH**

**Judgment**

**REPORTABLE**

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| 1. Date of conclusion of arguments                                     | 27.01.2026    |
| 2. Date on which judgment was reserved                                 | 27.01.2026    |
| 3. Whether the full judgment or only the operative part is pronounced: | Full Judgment |
| 4. Date of pronouncement   | 07.02.2026    |

1. Petitioner- an Associate Professor working at Indian Institute of Technology, Jodhpur has filed the present criminal miscellaneous petition with the following prayer:-

*"A. It is, therefore, most respectfully prayed to this Hon'ble Court that the present misc. petition may kindly be allowed and the FIR No.118/2025 Dated 02.09.2025 registered at*



*P.S. Karwar, District Jodhpur City East for offences under Section 121(1) & 132 of Bharatiya Nyay Sanhita. & 3(1)(r), 3(1)(s) & 3(2)(va) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and all further proceedings initiated thereto may kindly be quashed and set aside.*

**Factual Matrix:-**

2. The brief facts of the case are that the complainant Ankur Gupta, Acting Registrar, IIT, Jodhpur lodged an FIR No.118/2025 registered at Police Station Karwar, District Jodhpur for the offences punishable under Sections 3(1)(r), 3(1)(s), and 3(2)(va) of SC/ST Act on 02.09.2025 while alleging therein that on 02.09.2025 at around 11.30 a.m., the present petitioner was in a discussion with the Director of IIT Jodhpur, Professor Sh. Avinash Agarwal at the Director's Office at the 2<sup>nd</sup> floor of the Western Administrative Wing (Chanakya Building) and at the relevant time Dr. Parag Deshpande, Head of Chemical Engineering Department and Dr. Neeraj Jain, Dean, Faculty Affairs were present in the office of the Director. It was alleged in the FIR that during the discussion, Dr. Deepak Arora present petitioner attempted a life threatening assault on the Director, Professor Mr. Avinash Agarwal and also physically attacked him. In retaliation and in self defence, the Director, Professor Mr. Avinash Agarwal caught both the hands of the petitioner, upon which the petitioner kicked the Director and obstructed the exit to ensure that the Director does not leave the office. It has further been alleged that due to the kick caused by the petitioner, the Director, Professor Mr. Avinash Agarwal suffered an injury on his right foot. The FIR further narrates that some other officers working under the Director came to intervene in the



Director's Office, upon which, the petitioner started assaulting them also and even abused Mr. Vivek Gautam using caste based slurs and even called him 'neech'. The petitioner further started abusing Mr. Vivek Gautam and threatened him with dire consequences and further stated that the family members of Mr. Vivek Gautam will be killed. It was further stated in the FIR that Mr. Vivek Gautam sustained an injury on his right hand due to assault made by the petitioner. Finally the request was made for initiating appropriate proceedings against the petitioner.

3. Post lodging of the FIR, the present petition was filed for quashing of the FIR wherein this Court vide order dated 18.12.2025 had issued notices to the complainant and after considering the arguments raised by the learned counsel for the petitioner as well as the material on record had directed that no charge-sheet shall be filed in the instant matter without the leave of this Court and further directed that no corrective action shall be taken against the petitioner, as and until directed, subject to cooperation of the petitioner during the course of investigation. The matter was thereafter fixed for final disposal. On the next date i.e. on 16.01.2026, the Court had directed the Investigating Officer to remain present along with the case diary. The matter was thereafter fixed on 27.01.2026 and on the same date the matter was heard and the case diary was perused.

**Arguments by learned counsel for the petitioner:-**

4. Learned counsel for the petitioner asserted that, even, if the averments made in the FIR are treated to be correct, then none of the ingredients of the offences alleged are made out. As regards





the provisions of Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC/ST Act) more particularly Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act, the same are not made out. Learned counsel further submitted that simply because a person belongs to SC/ST it is not sufficient to make out offences under the sections as stated above. It has to be shown that there was a necessary element of *mens rea* for committing the offence and further the offence should be in public place or within public view. He further asserted that to bring home offences under Sections 3(1)(r) and 3(1)(s) of SC/ST Act, the person concerned should be abused in the name of the caste and not otherwise. He further submitted that as far as the case in hand is concerned, since the place of offence alleged is shown to be the office of the Director of the IIT, the same cannot be treated as a 'public place' or 'within public view'. He further submitted that there is no allegation of using any caste based slur or abuse in name of caste and, therefore, even the offence under Section 3(1)(s) of SC/ST Act is not made out. He further submitted that the allegation regarding offence under the SC/ST Act has been levelled only with a view to ensure that the petitioner does not get anticipatory bail and gravity of offence is increased. Without there being any ingredient connecting the incident with the offence in question, the FIR has been lodged as a counter-blast and to teach a lesson to the petitioner without there being any substance in the allegation. He further asserted that as far as offence under Sections 121(1) and 132 of BNS, 2023 are concerned, the same can be applicable only if the officer concerned, against whom the offence has been committed is





shown to be a public servant. He asserted that the Professor Mr. Avinash Agarwal, i.e. Director of IIT would not fall within the definition of public servant and thus the offences in question are not made out. He further asserted that Mr. Vivek Gautam was not discharging any public duty at the relevant time and there is no allegation of any intention on part of petitioner to deter or prevent him from discharging his duty, thus no offence under Section 3(2) (va) of SC/ST Act is made out. Learned counsel for petitioner further submits that as far as the offence under Section 3(2)(va) of SC/ST Act is concerned, none of the ingredients are present to make out the offence, inasmuch as, there is no allegation of the petitioner causing any hurt or grievous hurt to Mr. Vivek Gautam while he was discharging his duty as a public servant or with an intent to prevent or deter him from discharging his duties as such public servant.

5. To buttress his submissions, learned counsel placed reliance on the judgments passed by the Hon'ble Apex Court in case of **"Karuppudayar v. State Representing by the Deputy Superintendent of Police, Lalgudi Trichy & Ors."** 2025 INSC 132, **"Swaran Singh & Ors. v. State and Anr."** (2008) 8 SCC 435 and **"Keshaw Mahto @ Keshaw Kumar Mahto v. State of Bihar & Anr."** SLP (Criminal) No.12144/2025 dated 12.01.2006, **"State of Haryana & Ors. v. Bhajan Lal & Ors."** (1992) Supp. 1 SCC 335, **"Shajan Skaria v. State of Kerala"** 2024 INSC 625 decided on 23.08.2024, as also judgments of this Court passed in **S.B. Criminal Appeal No.2169/ 2023 "Achal Singh & Ors. v. State of Rajasthan & Anr."** decided on 12.11.2024 and **S.B. Criminal Misc. Petition No.1600/2018**





**"Shilpa Raj Kundra v. State of Rajasthan & Anr."** decided on **18.10.2024**. Learned counsel also places reliance upon the judgment passed by Delhi High Court in the case of **"Daya Bhatnagar & Ors. v. State"** in **Criminal Writ No.402/2001** decided on **17.01.2004**.

6. Learned counsel also placed reliance upon the judgment passed by Punjab and Haryana High Court in **Criminal Misc. Petition No. 42685/2021 "Bhagwant Singh Randhawa & Anr. v. State of Punjab"** decided on **12.10.2021**.

**Arguments by learned counsel for respondents:-**

7. *Per contra*, the learned GA-cum-AAG, Mr. Deepak Choudhary appearing for respondent-State as well as Mr. Moti Singh, learned counsel appearing for the complainant objected to the prayer made by the petitioner and submitted that the FIR in question discloses commission of a cognizable offence and to investigate into a commission of a cognizable offence it is a statutory right of the Investigating Agency which should sparingly be interfered by the Court even while exercising its power under Section 482 Cr.P.C. (Section 528 of BNSS, 2023). Learned counsel submit that if the contents of the FIR are taken as it is, then it is clear that the offences as alleged are made out. Learned counsel further submitted that the petitioner was well aware that Mr. Vivek Gautam belonged to Scheduled Caste and in spite of that caste based hurls were made and even he was assaulted by the petitioner intentionally with the intent to intimidate him and humiliate him. They further submitted that presence of other people at the site in question clearly shows that the insult and the humiliation was done in a place within public view, and therefore,





the necessary ingredients of the alleged offence are made out. They further submitted that the petitioner has used the word 'neech', which is a caste-based slur and, therefore, the arguments made by the counsel for petitioner are without any substance. Learned counsel for respondents further submitted that the Director of the IIT would fall within the definition of 'public servant' as defined under Section 2(bg) of the Scheduled Caste and Schedules Tribes (Prevention of Atrocities) Act, 1989, as the Director has been treated as a deemed public servant under the Indian Institute of Technology Act, 1961 and, even otherwise, since the IIT is governed by the Indian Institute of Technology Act, 1961 which is a Central Act, wherein there is a specific provision for appointment of Director and the duties assigned to him, the Director of IIT would fall within the definition of 'public servant' under Section 21 of the Indian Penal Code, 1860 and corresponding definition of 'public servant' under Section 2(28) of the BNS, 2023. They further submitted that since the Director is paid by the Government of India for performance of the public duty, he would fall within the definition of Section 2(28) of the BNS, 2023 wherein public servant has been defined.

8. Learned counsel have relied upon the following judgments passed by Hon'ble Apex Court in "**State of Haryana & Ors. v. Bhajan Lal & Ors.**" (1992) Supp. 1 SCC 335, "**MEDCHL Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd. & Ors.**" (2000) 3 SCC 269, "**Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.**" (2011) 12 SCC 437, "**Veer Prakash Sharma v. Anil Kumar Agarwal & Anr.**" (2007) 7 SCC 373, as also, the judgment of "**Neeharika**





***Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.”***  
**(2021) Cr.L.R. (SC) 1212.** The above-mentioned judgments point out the parameter of the interference by the Courts, specially High Court under Section 482 Cr.P.C. (528 BNSS) as far as quashing of FIR or criminal proceedings are concerned.

9. **Following issues have arisen in the case in hand for consideration before this Court:-**

(1) What is the scope of interference by this Court, as far as cognizable offence is concerned, while exercising its powers under Section 528 BNSS, 2023(Old Section 482 Cr.P.C.)?

(2) Whether the incident in question can be said to have occurred in a place within public view for the purpose of bringing home the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST Act?

(3) Whether the use of word 'neech' would constitute caste based name or should be treated as the caste-based hurl for the purpose of Section 3(1)(s) of the SC/ST Act.

(4) Whether the Director of the IIT would fall within the definition of public servant under Section 2(28) of the BNS, 2023.

(5) Whether in the facts of the present case offence punishable under Section 3(2)(va) of the SC/ST Act is made out.

**Analysis:-**

10. Heard the arguments advanced by learned counsels for both the sides as well as perused the material available on record.

**Issue No.-1:-What is the scope of interference by this Court as far as cognizable offence is concerned, while exercising its powers under Section 528 BNSS, 2023(Old Section 482 Cr.P.C.)?**





11. As far as the judgments cited by the learned counsel for respondents are concerned, there is no dispute in the proposition that to investigate into a complaint received qua commission of cognizable offence, is a statutory right of the investigating agency and the Court should be very sloth in interfering with the investigation by way of quashing of the FIR or the criminal proceedings initiated by the prosecution.

12. The Hon'ble Apex Court in case of "**State of Haryana v. Bhajan Lal (Supra)**" has specially laid down the guidelines in this regard and has further clarified that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is a field exclusively reserved by the Executive through the police department. The Executive is charged with a duty to keep vigilance over law and order situation and is obliged to prevent crime. Further, it is the duty of the Executive to ensure that if the offences are alleged to have been committed, they investigate into the complaint qua the offence and bring the offender before the Court. In doing so, the investigating agency shall collect the evidence for the purpose of proving the offence. Once the investigation is complete, the report is submitted before the Court and thereafter, the Court takes cognizance of the offence. At that stage, the duty of the investigating agency comes to an end and the Court takes over for the purpose of undertaking the trial and imposing the appropriate punishment, if the accused is found guilty.

13. The Hon'ble Apex Court has further laid down the guidelines for interference by the High Court while exercising extraordinary





powers under Article 226 of the Constitution of India or inherent powers under Section 482 of the Cr.P.C. 1973 (528 of BNS) 2023.

The Hon'ble Apex Court has held as under:-

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

**1.** *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*

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

**3.** *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

**4.** *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*

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

**6.** *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a*





*criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

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

14. The above-mentioned judgment has consistently been followed in the subsequent judgments relied upon by the learned counsel for the State as well as counsel for the respondent-complainant, wherein time and again the Hon'ble Apex Court has held that the Court should exercise the jurisdiction under Section 482 of the Code at the nascent stage only in exceptional cases where if the contents of the FIR are taken to be true, even then to the ingredients of offence in question are not made out and where continuance of the proceedings would be a total abuse of process of Court. In rest of the cases, the Court should not scuttle the prosecution at the initial stage. It is further been held that at the initial stage, the Court should not analyse the case of the complainant in the light of all probabilities in order to determine whether conviction would be sustainable or not, for the purpose of quashing of the proceedings.

15. However at the same time, it has been emphasized that it is bounden duty of the Court, while exercising powers under Section 482 Cr.P.C.(528 of BNS 2023), to ensure that the criminal prosecution is not used for the purpose of abuse of process of Court and the Court should not be hesitant to exercise its inherent powers and jurisdiction, if the complaint, even at face value, taken to be correct in its entirety, does not disclose an offence as alleged





in the complaint and also to secure the ends of justice. The above mentioned power can also be exercised when it can be shown that there is a legal bar against institution or continuation of such proceedings example- for want of sanction etc. It has further been held that the Court should exercise such powers also in cases where allegations construed an offence alleged but there is no legal evidence adduced clearly or where evidence taken at face value also manifestly fails to prove the allegation. The entire case law in this regard has further been considered in the "**Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.**" (2021) Cr.L.R. (SC) 1212, wherein, both the contingencies with regard to when the power should be exercised by the High Court and when it should not be exercised has been dealt with in paragraph 10 of the judgment by Hon'ble Apex Court, which read as under:-

*"10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad (supra), the following principles of law emerge:*

*(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*

*(ii) Courts would not thwart any investigation into the cognizable offences;*

*(iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*

*(iv) The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.);*





**(v)** While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

**(vi)** Criminal proceedings ought not to be scuttled at the initial stage;

**(vii)** Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

**(viii)** Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482CrPC.

**(ix)** The functions of the judiciary and the police are complementary, not overlapping;

**(x)** Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

**(xi)** Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

**(xii)** The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

**(xiii)** The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court;

**(xiv)** However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid





down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal(supra)*, has the jurisdiction to quash the FIR/complaint; and **(xv)** When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”



16. In view of the catena of judgments of Hon'ble Apex Court and the language of Section 528 (corresponding old Section 482 Cr.P.C), the law is well settled and clear that the scope of interference of Court to interfere with the investigation, being done by the police officials into commission of a cognizable offence, is very narrow and should be exercised in rarest of rare cases, where the continuation of proceedings would be an abuse of process of Court; where even if the contents of the FIR are treated to be true on its face value then too, no cognizable offence or offence of any kind is made out or where the non-interference would result in miscarriage of justice, as also, when there is a legal embargo for continuation of proceedings viz. want of sanction or otherwise. The issue is thus, answered accordingly.

**Issue No.2:-Whether the incident in question can be said to have occurred in a place within public view for the purpose of bringing home the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST Act?**

17. As far as issue No.2 is concerned, it is first relevant to refer to provisions of Sections 3(1)(r) and 3(1)(s) of SC/ST Act which provide as under:-



**"Section 3(1)(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;

**Section 3(1)(s)-** abuses any Member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;"

18. A perusal of Section 3(1)(r) of SC/ST Act will reveal that the intentional insult or intimidate shall with the intent to humiliate a Member of SC/ST has to be in a place within the public view, for the purpose of constituting an offence. Similarly, for constituting an offence under Section 3(1)(s) of SC/ST Act, it is mandatory that the accused abuses the Member of SC/ST by caste name in any place which is within the public view. As far as the issue of public view is concerned, the same has not been defined under the Act of 1989, however, to understand the intention of the Legislature the definition of the expression '*public*' provided in various dictionaries and IPC would be relevant. As per the Oxford Law Dictionary, the same has been defined as under:-

**"public/ pablik/ adjective & noun. LME.**

[ORIGIN Old French & mod. French *public, ique* or Latin *publicus* from *pubes adult infl. by poplicus, from populus*  
PEOPLE noun: see-ic.]

A adjective. **1** Of or pertaining to the people as a whole; belonging to, affecting, or concerning the community or nation. LME.

**2** Carried out or made by or on behalf of the community as a whole; authorized by or representing the community. LME. b. Orig., belonging to, authorized by, or acting for a university as a corporate body (as opp. to a college or other individual member). Now also (passing into senses 3a, 4), open to all members of a particular university. M16.





**3** Open or available to, used or shared by, all members of a community; not restricted to private use. Also (of a service, fund, amenity, etc.) provided by local or central government for the community and supported by rates or taxes. LME. b At the service of the public in a professional capacity; working in local or central government. E19.

a public baths, public library, public park, public rooms, public telephone, public toilet, etc.

**4** Open to general observation, sight, or knowledge; existing or done openly; accountable to the general public. Formerly also, (of a book etc.) accessible to all, published, (chiefly in made public). LME.

**5** Of or pertaining to a person in the capacity in which he or she comes in contact with the community, as opp. to his or her private capacity etc. M16.....”

19. The Black Law’s Dictionary 6<sup>th</sup> Edition defines ‘public’ as under:-

“the whole body politic, or the aggregate of the citizens of a state, nation, or municipality. In one sense, everybody, and accordingly the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or country, the people. In another sense the word does not mean all the people, nor most of the people nor very many of the people of a place, **but so many of them as contradistinguishes them from a few.** Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; the people of the neighborhood. Also, a part of the inhabitants of a community.”

20. Similarly word ‘public’ has been defined under Section 12 of Indian Penal Code to mean as under:-

**“Public**-The word “person” includes any class of the public, or any community.”

21. Similarly, word ‘public nuisance’ has been defined under Section 268 IPC as under:-





**"Public Nuisance-** A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage."

Identical definitions have been given under Section 2(27) and Section 270 of BNS, 2023.

22. The definition essentially signifies plurality and not a few but body of people at large, community of people at large. Thus, a few known people cannot constitute public and it has to be certain other un-known people which are in large number, not confined to two or three people. Thus, for the purpose of determining whether what should be considered as public view, as provided under Section 3(1)(r) and 3(1)(s) of the SC/ST Act is concerned, a broader definition cannot be given and strict interpretation has to be done, the same being a penal provision. The definition as provided under the Black's Law Dictionary, Oxford Dictionary or identical definitions given under the other Dictionaries as well as under IPC/BNS, 2023 will reveal that the same would amount to hearing, knowledge, or accessibility of a group of people of a locality in question as distinct from a few private people or known people. The purpose of the definition being insult before the public itself will show that it has to be in front of larger number of persons who are strangers and not linked with the complainant. Rather using the caste-based hurls before the close relatives or be it persons in the office or known under a business or a commercial





interest or having a vested interest would thus not be considered within public view. The presence of the strangers and many people, though belonging to same village or a locality is a *sine qua non* for bringing home the offence in question, more particularly, when determining whether the offence was done in a public view.

23. Considering the facts of the present case, a perusal of the FIR will reveal that the allegation made was that scuffle took place between the Director Mr. Avinash Kumar Agarwal and the present petitioner in the office of Director at the Administrative Block in the presence of Dr. Parag Deshpande, Head of Chemical Engineering Department and Dr. Neeraj Jain, Dean, Faculty Affairs. Post seeing that, few employees working under the Director including Mr. Vivek Gautam came in the office and thereafter it has been alleged that the petitioner used the word '*neech*' and hurled caste-based abuse to Mr. Vivek Gautam. The issue for consideration is whether the same would come within the definition of public view. Firstly the office in question was a confined place which cannot be assessed by the public nor the public could hear the utterances made at the site. The offence allegedly took place within the four corners of the office where, the public was having no access, nor was it in the public view. Secondly, there was admittedly no presence of the public at large and only few employees who were working under the Director were shown to be present. The place was a private one and not a public place nor could the same be said to within the public view. Had it been a case where the offence took place within the open premises of the campus and many students as well as faculties





present would have witnessed the same, the same could have been said to be public view, however, in the present case since the offence has been alleged to have been committed inside a building and rather inside a chamber, the same cannot be treated to be within the public view.

24. Hon'ble Supreme Court in the case of "**Swaran Singh & Ors. v. State and Anr.**" (2008) 8 SCC 435 while dealing with an issue as to whether the offence committed near a parking space in an open premises would constitute within a public view or not, held as under:-

**"28.** *It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a 'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaonsabha or an instrumentality of the State, and not by private persons or private bodies."*

25. Recently, the Hon'ble Apex Court in the case of "**Karuppudayar v. State Representing by the Deputy**





***Superintendent of Police, Lalgudi Trichy & Ors.” 2025 INSC 132*** while considering the judgment in ***“Swaran Singh & Ors. v. State through Standing Counsel & Anr.”*** and ***“Hitesh Verma v. State of Uttarakhand & Anr.”*** held as under:-

***“10. The term “any place within public view” initially came up for consideration before this Court in the case of Swaran Singh and others v. State through Standing Counsel and another. This Court in the case of Hitesh Verma v. State of Uttarakhand and another referred to Swaran Singh (supra) and reiterated the legal position as under:***

***“14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh v. State, Singh v. State [Swaran (2008) 8 SCC 435: (2008) 3 SCC (Cri) 527]. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.”***

26. A perusal of the above-mentioned judgments would clearly reveal that a closed premises, which is not accessible to the public at large, cannot be treated to be within public view. In the present case, a perusal of the FIR as well as a perusal of the case diary clearly reveals that the offence alleged has been committed within the four corners of the office of the Director and thus would not fall within the public view which is a necessary *sine qua non* for bringing home the offence under Sections 3(1)(r) & 3(1)(s) of the





SC/ST Act. In view of the above-mentioned finding, the contents of the FIR qua allegation for commission of offence under Sections 3(1)(r) & 3(1)(s) of SC/ST Act even if, taken on their face value to be correct, do not constitute an offence and, therefore, continuation of proceedings for the offences above-mentioned would be nothing but an abuse of process of Court. The issue No.2 is answered accordingly.

**Issue No.3:-Whether the use of word 'neech' would constitute caste based name or should be treated as the caste-based hurl for the purpose of Section 3(1)(s) of the SC/ST Act.**

27. The contents of the FIR will reveal that the word used for the purpose of allegedly insulting or intimidating with the intent to humiliate the petitioner was 'neech'. Furthermore, it has been stated that caste based hurls were given, however, no details qua the same have been given. This Court had perused the case diary, and the statements recorded under Section 188 of BNS. A perusal of the same will reveal that persons present at the office including Mr. Vivek Gautam, there is no averment with regard to any caste based abuse and the only word alleged to be used by the petitioner was 'neech'. The same is the case, in the statement of Mr. Ankur Gupta-the complainant, Dr. Neeraj Jain, Dr. Parag Deshpande. Rather the other persons, shown to be present i.e. Dr. Neeraj Jain & Dr. Parag Deshpande have not even referred to the presence of Mr. Vivek Gautam at the site nor have alleged use of any word including 'neech'. In supplementary statements, being taken after two months, Dr. Parag Deshpande and Dr. Neeraj Jain





have rather refused of seeing any incident as alleged in the FIR and have rather simply stated that Mr. Vivek Gautam along with three more persons had taken the petitioner away from the Director in a separate room. Mr. Vivek Gautam in his supplementary statement recorded on 02.11.2025 had again stated the use of word 'neech' and nothing beyond that, by the petitioner. If the entire incident is seen, it is clear that there was no dispute alleged between the petitioner and Mr. Vivek Gautam and the dispute is essentially shown to her being between Dr. Avinash Aggarwal and the petitioner. It was later on that Mr. Vivek Gautam came upon the site to un-scuffle the Director and the petitioner that the alleged incident has been shown to have been taken. The arguments of learned counsel for the petitioner thus have substance that there was no intention to cause any caste based insult or humiliation to the respondent -complainant and the necessary *mens rea* was missing.

28. The Hon'ble Apex Court in the case of ***Shajan Skaria v. State of Kerala***" 2024 INSC 625 has dealt with the aspect of the intention to humiliate as provided under Section 3(1)(r) of the SC/ST Act while emphasizing that the intention has to be there to humiliate and in absence of that intention to humiliate, the offence would not be made out. Even if, the accused is aware about the community of the complainant or the victim that would not be sufficient as the penal statute must receive strict construction. The necessary intention is conspicuously missing in the present case, which is clear from the averments made in the FIR and the investigation done by the police.





29. Even otherwise, this Court is of the view, that simpliciter use of word '*neech*' would not amount to use of caste name so as to bring home the offence under Section 3(1)(s) of the SC/ST Act. '*Neech*' essentially means despicable, low and is often used to describe someone with poor moral character. Thus, the word cannot be associated with a particular community or a caste though it has negative connotation and intends to be used for somebody inferior or despicable but the same does not denote or refer to a caste. The issue whether using the word '*neech*' would constitute an offence or not, came up for consideration before this Court and this Court in **S.B. Criminal Appeal No.2169/2023 "*Achal Singh & Ors. v. State of Rajasthan & Anr.*"** held that the use of word '*neech*' or '*bhangi*' (*bikhari*) cannot be treated as caste name to bring home the offence under Section 3(1)(s) of the SC/ST Act.

30. Identical findings have been given by this Court in **S.B. Criminal Miscellaneous Petition No. 1600/2018 "*Shilpa Raj Kundra v. State of Rajasthan & Anr.*"** wherein the use of word '*bhangi*' has held not to be amount to an offence as it lacks any contents or intent to inflict harm or pressure upon the Members of *Valmiki* Community under the SC/ST Act. This Court while passing the above-mentioned judgment had heavily relied upon the judgment passed by the Hon'ble Apex Court in ***Shajan Skaria v. State of Kerala (supra)***".

31. It is thus clear that as far as the knowledge of a person being a Member of a Schedule Caste or a Schedule Tribe, same by itself would not be sufficient to bring home the offence under





Section 3(1)(s) of SC/ST Act and further the use of caste name is essential to bring home the offence under Section 3(1)(s) of the SC/ST Act. The use of word 'neech'/ despicable/ lowly, would not amount to the using caste name and thus in the present case the necessary ingredients of offence punishable under Section 3(1)(s) of the SC/ST Act are missing. The issue no.3 is answered accordingly.

**Issue No.4:-Whether the Director of the IIT would fall within the definition of public servant under Section 2(28) of the BNS, 2023.**

32. The third line of argument of the learned counsel for the petitioner was that even for offences punishable under Sections 121 & 132 of BNS, 2023, the FIR in question deserves to be quashed for the reason that, even if, it is assumed that the petitioner had caused hurt or used criminal force or assaulted the Director, he does not fall within the definition of public servant and therefore, the FIR qua that Section also deserves to be quashed and set aside. As far as definition of public servant is concerned, the SC/ST Act, Section 2(bg) provides as under:

**"Section 2(bg)-** "public servant" means a public servant as defined under Section 2 of the Indian Penal Code(45 of 1860), as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;]"

33. A perusal of the same will reveal that except for the people, who have been defined as public servant under Section 21 of IPC, any person deemed to be a public servant under any law for the time being in force including the persons working in his official





capacity under the Central Government or the State Government have been treated as public servant.

34. Section 21 of IPC provides as under:

**"21. "Public servant".** The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:-

<sup>2</sup>[\*\*\*]

**Second.-** Every Commissioned Officer in the Military, [Naval or Air] Forces <sup>4</sup>[<sup>5</sup>[\*\*\*] of India];

<sup>6</sup>[**Third.-** Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

**Fourth.-** Every officer of a Court of Justice "[including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

**Fifth.-** Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

**Sixth.-** Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

**Seventh.-** Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

**Eighth.-** Every officer of the Government) whose duty it is, as such bring offenders to justice, or to protect the public health, safety of officer, to prevent offences, to give information of offences, to convenience,

**Ninth.-** Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue process, or to investigate or to report, on any matter affecting the pecuniary interests of document relating to the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interest of [the





Government], or to prevent the infraction of any law for the protection of the pecuniary interest of [the Government].

**Tenth.-** Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

**[Eleventh.-** Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

**[Twelfth.-** Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

#### Illustration

A Municipal Commissioner is a public servant.

**Explanation 1.** Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

**Explanation 2.** Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

**[Explanation 3.** The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

<sup>2</sup>[\*\*\*]

35. Interestingly, Rajasthan Amendment further provides as under:

“

#### STATE AMENDMENT

**Rajasthan.-**In section 21, after clause twelfth, add the following clause, namely:-





**"Thirteenth.-** Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

**Explanation.-** The expression 'Public Body' includes-

(a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and

(b) a local authority."

[Vide Rajasthan Act, 4 of 1993, sec. 2 (w.e.f. 11-2-1993)]."

36. Even under the BNS, 2023 the public servant has been defined under Section 28 as under:

**"public servant"** means a person falling under any of the descriptions, namely:-

(a) every commissioned officer in the Army, Navy or Air Force;

(b) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(c) every officer of a Court including a liquidator, receiver or commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court to perform any of such duties;

(d) every assessor or member of a panchayat assisting a Court or public servant;

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court, or by any other competent public authority;

(f) Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(g) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(h) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the





Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

**(i)** every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax or any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

**(j)** every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

**(k)** Every person.-

**(i)** in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

**(ii)** in the service or pay of a local authority as defined in clause (31) of section 3 of the General Clauses Act, 1897, a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

**Explanation.-**

**(a)** persons falling under any of the descriptions made in this clause are public servants, whether appointed by the Government or not;

**(b)** every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation is a public servant,

**(c)** "election" means an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under any law for the time being in force."

37. A perusal of Clause-I will reveal that even a person in service of pay of the Government or remunerated by the fees or Commission for performance of any public duty by the Government has been included in the definition of public servant.





38. The definition of 'public servant' with reference to the Prevention of Corruption Act, 1988 came up for consideration before the Hon'ble Apex Court way back in the year 1969 and the Hon'ble Apex Court in the case of "**LD Healy v. State of Uttar Pradesh**" **1969 1 SCC 149** while considering provisions of Section 21 of the Penal Code held as under:

"9. We pass on to consider the alternative question raised on behalf of the respondent, namely, whether the appellant was a public servant within the meaning of the twelfth clause in Section 21, Penal Code, 1860, as it stood after the Criminal Law (Amendment) Act, 1958 (Act 2 of 1958). Under this clause the words "public servant" include "every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in Section 617 of the Companies Act, 1956." In view of Explanation 4 the expression "corporation engaged in any trade or industry" includes a banking, insurance or financial corporation, a river valley corporation and a corporation for supplying power, light or water to the public. It is not disputed in the present case that the appellant was in the service of the State Electricity Board which falls within the language of Explanation 4. But it was contended for the appellant that he was performing only routine clerical duties and cannot be treated as an officer within the meaning of clause (12) to Section 21, Penal Code, 1860. The question to be considered therefore is whether as Head Clerk employed under the State Electricity Board and attached to the officer of the Executive Engineer, the appellant could be said to be an officer within the meaning of clause (12) of Section 21, Penal Code, 1860. In Reg. v. Ramaji Rao Jivhaji it was held by West, J., that the word "officer" meant some person employed to exercise to some extent and in certain circumstances a delegated function of Government. He was either himself armed with some authority or representative character or his duties were immediately auxiliary to those of some one who was so armed.

In the course of his judgment, West, J., observed as follows:

"Seeking the help of English law, we find, in Bacon's abridgment at Vol. 6, p. 2, the article headed 'Of the nature of an officer, and the several kinds of officers,' commencing thus: 'It is said that the





*word officium principally implies a duty, and, in the next place, the charge of such duty; and that it is a rule that where one man hath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer.' And the next para goes on to say: 'There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to make any, herd a flock, & c.; which differ widely from that of steward of a manor, & c. The first of these paras implies that an officer is one to whom is delegated, by the supreme authority, some portion of its regulating and coercive powers, or who is appointed to represent the State in its relations to individual subjects. This is the central idea; and applying it to the clause which we have to construe, we think that the word 'officer' there means some person employed to exercise, to some extent, and in certain circumstances, a delegated function of Government. He is either himself armed with some authority or representative character, or his duties are immediately auxiliary to those of some one who is so armed.'*

39. A bare perusal of the judgment itself will reveal that the definition is wide enough to include the employees working under the corporation, the Government companies or even education institutions, which are funded by the Government or enacted under the Act promulgated by the Government.

40. The Hon'ble Apex Court in the case of "**Indian Institute of Technology v. Raja Ram Verma & Ors.**" 2010 14 SCC 86 while dealing with the provisions of the IIT Act and status of IIT has held as under:-

**37.** *It is clear from Section 2 of the aforesaid Act that IIT, Kanpur is an institution of national importance. Section 4 of the Act makes it clear that each of the institutions mentioned in Section 2 shall be a body corporate having a perpetual succession and a common seal.*

**41.** *Under Section 31 of the Act the Central Government may by a notification in the Official Gazette establish a Central body to be called the Council and in the Council the Minister in charge of*





*technical education of the Central Government shall be the ex-officio Chairman."*

41. A bare perusal of the entire judgment will reveal that though the autonomy of the IIT has been emphasized however, the control of the Central Government and the functions being discharged by the IIT and its officers have been treated to be at par with the Government functions.

42. As far as IITs are concerned, the Central Government has enacted the Indian Institute of Technology at 1969, the Preamble of which provides as the same as an Act to declare certain institutions of technology to be institutions of national importance and to provide for certain matters connected with such institutions. Under the IIT Act itself, the Director has been defined under Section 3(f) of the SC/ST Act and further the duties of the Director have been provided under Section 17 of the Act of 1969 which provides as under:-

**"17. Director.-(1)** *The Director of each Institute shall be appointed by the Council with the prior approval of the Visitor.*

**(2)** *The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration of the Institute and for the imparting of instruction and maintenance of discipline therein.*

**(3)** *The Director shall submit annual reports and accounts to the Board.*

**(4)** *The Director shall exercise such other powers and perform such other duties as may be assigned to him by the Act or the Statutes or Ordinance."*

43. Sections 21 to 23 of Indian Institute of Technology Act, 1961 further provide as under:

**"21. Grants by Central Government-** *For the purpose of enabling the Institutes to discharge their functions efficiently*





under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to each Institute in each financial year such sums of money and in such manner as it may think fit.

**22. Fund of the Institute.- (1)** Every Institute shall maintain a Fund to which shall be credited-

- (a) all moneys provide by the Central Government;
- (b) all fees and other charges received by the Institute;
- (c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and
- (d) all moneys received by the Institute in any other manner or from any other source.

**(2)** All moneys credited to the Fund of any Institute shall be deposited in such Banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

**(3)** The Fund of any Institute shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

**23. Accounts and audit.- (1)** Every Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance-sheet, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

**(2)** The accounts of every Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the comptroller and Auditor-General of India.

**(3)** The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of any Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute.

**(4)** The accounts of every Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government





*and that Government shall cause the same to be laid before each House of Parliament.”*

44. A perusal of the provisions quoted above will reveal that the Director is appointed by the Council of the Central Government, which consists of Minister in Charge, the Chairman of each Institute, Director of each Institute, Chairman UGC, Director General, Council of Scientific and Industrial Research and Member of Parliament etc. The allowances are also paid by the Central Government and the funding of the Institutions are also done by the Central Government. Thus, it is clear that the post of Director holds all the indices of public servant as defined under Section 21 IPC, Section 28 of the BNS as well as under Section 2(bg) of the SC/ST Act. Thus, the argument of learned counsel for petitioner with regard to the Director of IIT not being a public servant is without any substance and is unacceptable.

45. It is thus clear that, as far as, the offence alleged under Sections 121 (1) and 132 of BNS are concerned, at this stage, no case for quashing of the FIR is made out as the police has the power to undertake the investigation qua the same. *Prima facie* the contents of the FIR, if accepted to be true on its face value, do disclose the commission of the offence in question. Thus, the Court at this stage would not like to exercise its inherent powers under Section 482/528 BNS qua offences in question. The issue number 4 is decided accordingly.

**Issue No.5:- Whether in the facts of the present case offence punishable under Section 3(2)(va) of the SC/ST Act is made out.**





46. As far as, the arguments of the learned counsel for the petitioner with regard to none of the ingredients being made out for making out offence under Section 3(2)(va) of SC/ST Act is concerned, it will be relevant to first quote the provision which provides as under:-

**"(2)** *Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-*

*[(va) commits any offence specified in the Schedule, against a person of property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code(45 of 1860) for such offences and shall also be liable to fine;]"*

47. Further a perusal of Schedule annexed with the Act of 1989 will reveal that Sections 319, 320 & 332 of the IPC which deals with definition of hurt and grievous hurt as also voluntary causing hurt to deter the public servant from discharging his duty have been included within the Schedule. This along with the alleged offence under Section 121(1) of BNS will reveal that the person to whom hurt is caused, must be one belongs to Scheduled Caste/Scheduled Tribe and was discharging his duties as a public servant at the relevant time. Section 121(1) of BNS, 2023 provide as under:-

**"Section 121.** *Voluntary causing hurt or grievous hurt to deter public servant from his duty.*

**(1)** *Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."*





48. An overall analysis of the provisions referred to supra collectively will reveal that for the purpose of bringing home the offence under Section 3(2)(va), it is necessary to show that person concerned is a Member of Scheduled Caste and Scheduled Tribe and further the hurt was caused to public servant who was discharging his duties as such or with the intent to prevent or deter that person or any other public servant from discharging his duty as such public servant.

49. In the present case, there is no allegation that at the relevant time Mr. Vivek Gautam was discharging his duty as a public servant or that he was deterred or prevented from discharging his duties as such. Needless to emphasize that, Mr. Vivek Gautam has been shown to be an Office Assistant working under the IIT and it is not the case of the complaint or the prosecution that he was discharging his duty as a public servant at the relevant time and was deterred or prevented in discharging his duty as such.

50. Rather, as stated supra, the incident has been shown to have occurred between the petitioner and the Director of the IIT and later on after seeing the scuffle Mr. Vivek Gautam and other employees came to the rescue of the Director. Thus, there was no element of discharging of public duty in the capacity of being a public servant as far as Mr. Vivek Gautam is concerned, at the relevant time.

51. Furthermore, the necessary intent to cause injury to Mr. Vivek Gautam is missing as the entire scuffle took place between the petitioner and the Director of IIT. As far as the case in hand is





concerned, a perusal of the Schedule annexed with the Act of 1989 will reveal that, even if allegations are accepted as it is, then too, only all the three offences can be deemed to have been committed as per the averments made in the FIR and the statement made before the police officials i.e. offences punishable under Sections 319, 320 and 332 of IPC. Since the FIR in question has been lodged with allegation of causing hurt to the Director and the offences alleged are punishable under Sections 121(1) and 132 of BNS, 2023, thus reference to Section 319 and 320 IPC is totally irrelevant and only case for consideration is whether the offence in question would fall within the four corners of Section 332 IPC or not. As far as discharge of public duty is concerned, there has to be some semblance of the act done by the accused with the corresponding discharge of public duty of the respondent and there being any intention to deter or prevent the complainant/injured from discharge of such public duty. An issue in this regard came out for consideration before the Hon'ble Apex Court in the case of "**D. Chattaiah & Anr. v. State of Andhra Pradesh**" (1979)1 SCC 128 wherein hurt was caused to a typist working in the same office along with the accused. The Hon'ble Apex Court while dealing with the issue of discharge of public duty observed that the FIR did not alleged anything that the incident was outcome of anything connected with performance of complainant's duty as a public servant nor was there any suggestion that he was assaulted with the intent to prevent or deter him from doing his official duty. The Hon'ble Apex Court thus held that the charge





under Section 332 of IPC and conviction therein was not made out.

52. The observations made by the Hon'ble Apex Court are as under:-

*"8. In his evidence at the trial, the complainant (PW. 1) disclosed other facts which put it beyond doubt that the incident was the sequel of a private quarrel which took place between the complainant and the accused on the preceding day when the complainants as returning home from Samiti office, & was abused by the accused. In regard to the occurrence, the complainant's version at the trial was that while he was at his work at about 1.00 P.M., appellant I came, demanded an explanation why he was carrying on propoganda against family planning and abusing him. The complainant denied. Thereupon, A-1 slapped him and then A-2 hit him with a ruler and A-3 with a stick. The complainant caught hold of the stick. A-3 then picked up a pair of scissors from the complainant's table and hit him below left eye.*

*9. It was thus manifest that the assault on the Typist (P.W. 1) had no real nexus or causal connection, or consequential relation with the performance of his duty as public servant. There was not even a soientilla of evidence from which it could be reasonably inferred that the intent of the assailants was to prevent or dater P.W. 1 from the discharge of his duty as such public servant,*

*10. In view of the above, the charge as laid under Section 332 I.P.C. and, the conviction of the appellant on that count, cannot be sustained. The appellants could, at the most, be held guilty under Section 323 I.P.C. the injuries caused being simple."*

53. The above-mentioned judgment was subsequently considered by Bombay High Court in case of "**Balasaheb Nivrutti Jagtap v. Sate of Maharashtra**" (2018) SCC OnLine Bom 372 wherein a scuffle took place between two public servants, like in the present case, the Bombay High Court considered the fact that although the incident had occurred at the bus where both the public servants were working, however, there was no connection of the incident with the discharge of public duty and the cause of





incident was also not on account of duty performed by the complainant. The motive attributed to the accused for committing crime was that the accused had questioned the complainant about lodging of some complaint against him by the complainant.

54. Coming to the facts of the present case, identical situation exist, inasmuch as, there was no question of any enmity between the petitioner and Mr. Vivek Gautam. Rather, Mr. Vivek Gautam came on the site after seeing the scuffle between the petitioner and the Director Avinash Agarwal. Thus the necessary element of causing any hindrance or deterring Mr. Vivek Gautam while discharging his public duty is conspicuously missing in the present case. The offence under Section 3(2)(va) of the SC/ST Act has been alleged only on the count of the scuffle of the petitioner and the alleged injury (though simple in nature, as stated in the injury report) on the body of Mr. Vivek Gautam and not qua the scuffle between the petitioner and the Director of IIT- Mr. Avinash Agarwal. Thus, none of the ingredients of the offence under Section 3(2)(va) of the SC/ ST Act are made out in the case in hand, even if the allegation in the FIR are treated to be correct as it is on the face value. The issue is answered accordingly.

**Conclusion:-**

55. In view of the above discussion, it is held that the contents of the FIR, even if taken to be true as it is on the face value, do not constitute commission of offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act. Thus, the FIR to the extent of said offences deserves to be quashed and set aside. As regards the offences under Sections 121(1) and 132 of BNS,





2023 are concerned, the petitioner has not been able to show that, even if, the contents of the FIR are taken on their face value, the above-mentioned offences are not made out.

56. As an upshot, the Present Criminal Miscellaneous Petition is partly allowed. The FIR No.118/2025 registered at Police Station Karwar, District Jodhpur East to the extent of offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST Act, 1989 is quashed and set aside. The Police shall however continue with the investigation, as far as, offences punishable under Section 121 (1) & 132 BNS, 2023 are concerned. Needless to emphasize that the investigating agency shall not be prejudiced or influenced by any observations made in the present order qua the offences as stated above and shall independently investigate into the matter, strictly in accordance with law.

57. All Pending applications, if any, stand disposed of.

**(SANDEEP SHAH),J**

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