



2026:DHC:7954



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

% **Reserved on: August 21, 2026**
Pronounced on: September 17, 2026

CNR No. DLHC012480952017

+ **CRL.REV.P. 410/2017, CRL.M.A. 9230/2017**

PROSECUTRIX R

.....Petitioner

Through: Ms. Suman Arora, Mr. Satya
Prakash Gautam, Mr. Ajay Danial
and Ms. Geeta, Advs.

Versus

STATE OF NCT OF DELHI & ORS

.....Respondents

Through: Mr. Satish Kumar, APP for the State
with Mr. Aditya Vikram Singh and
Mr. Gourav Singh, Advs.
SI Akash Kumar, PS Bhajan Pura
Mr. J. M. Kalia, Mr. Siddhartha
Shukla and Mr. Dhruv Kalia, Advs.
for R-3

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present petition under *Sections 397/401/407* read with *Section 482* of the Code of Criminal Procedure, 1973¹, the petitioner/ victim/ affected party² seeks amendment of the order on framing of charges dated 04.03.2017³, passed by the learned Additional Sessions Judge-01, Special Court (POCSO Act), North-East District, Karkardooma Courts,

¹ Hereinafter referred to as "*CrPC*"

² Hereinafter referred to as "*affected party*"

³ Hereinafter referred to as "*impugned order*"



New Delhi⁴ in SC No.146/ 2016 arising out of FIR No.282/2016 registered at Police Station Bhajanpura, to the extent of adding the provisions of *Section 328* of the Indian Penal Code, 1860⁵, *Section 14(3)* of the Protection of Children from Sexual Offences Act, 2012⁶ and *Sections 3(1)(e), (r) and (w)* of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989⁷.

2. As per FIR, on 31.03.2016, the affected party went to her School to collect her Class 10th result, however, since the board examinations were underway, she was waiting outside the school gate, when at about 9:30AM the accused/ respondent no.2/ Tarun @ Jhabbar⁸ arrived there on a Scooty along with two other boys, who dropped the respondent no.2 and left the spot.

3. Shortly thereafter, co-accused juvenile 'P' reached there on a bike. Respondent no.2 took the bike from him and forcibly made the affected party sit thereon, whereafter, he took her to 5th Pushta, Usmanpur, and made a phone call from there. Pursuant whereunto, a white-coloured i20 Car driven by the accused/ respondent no.3/ Sumit Dedha @ Shannu⁹, arrived there. Respondent no.2 then forcibly made the affected party sit in the said Car and took her to Noida via Gandhi Nagar. On the way, respondent no.2 forced the affected party to consume beer purchased by the respondent no.3.

4. After that, both respondent nos.2 and 3 took the affected party to a room, where respondent no.2 raped her and then threatened her of not

⁴ Hereinafter referred to as "*Trial Court*"

⁵ Hereinafter referred to as "*IPC*"

⁶ Hereinafter referred to as "*POCSO Act*"

⁷ Hereinafter referred to as "*SC/ ST Act*"

⁸ Hereinafter referred to as "*respondent no.2*"

⁹ Hereinafter referred to as "*respondent no.3*"



disclosing the incident to her family members or else he would defame her by circulating video of the incident. He also told her that his father was a wealthy person and that no harm would befall him.

5. Thereafter, respondent nos.2 & 3 brought the affected party back to 5th Pushta, Usmanpur, and made her board a rickshaw.

6. On the basis of the aforesaid allegations, the present FIR under *Sections 376/365/506/34* of the IPC and *Sections 6/8* of the POCSO Act was registered against respondent nos.2 & 3.

7. During investigation, the affected party in her statement under *Section 164* of the CrPC reiterated the allegations contained in the FIR and stated that the respondent no.2 had raped her and the respondent no.3 had made a video of the incident and he also attempted to commit rape upon her but could not do so as the owner of the house came there.

8. Subsequently, first Charge Sheet dated 03.06.2016 was filed under *Sections 363/328/376(2)(g)/506/120B/34* of the IPC and *Sections 6/12/17* of the POCSO Act. However, pursuant to the recommendation of the SC/ ST Commission made on the complaint filed by the father of the affected party, provisions of the SC/ ST Act were also invoked in the present case and consequently, second/ supplementary Charge Sheet under *Sections 363/328/376D/120B/34* of the IPC and *Section 06/14* of the POCSO Act and *Sections 3(1)(e), (r) and (w)* of the SC/ ST Act was filed on 03.01.2017.

9. Charges were thereafter framed against respondent nos.2 and 3 under *Sections 363/366/506* of the IPC read with *Section 120B* of the IPC and under *Section 6* of the POCSO Act read with *Section 5(g)* thereof, alternatively under *Section 376D* of the IPC vide impugned order dated



04.03.2017 passed by the learned Trial Court, however no charges were framed under *Sections 328/366A* of the IPC, *Section 14(3)* of the POCSO Act and under *Sections 3(1) (e), (r) and (w)* of the SC/ ST Act.

10. Aggrieved by the aforesaid impugned order dated 04.03.2017 of the learned Trial Court, the affected party is before this Court.

11. Learned counsel for petitioner opened his arguments by first submitting that the learned Trial Court was not competent to frame charges in the present case as it was not a notified Special Court under the SC/ ST Act.

12. On merits, learned counsel then submitted that the learned Trial Court, while discharging respondent nos.2 and 3 of the offences under the SC/ ST Act, has failed to appreciate the legislative intent and object behind the said enactment. The aforesaid submission has been supported by the learned APP as well.

13. Learned counsel for petitioner further submitted that merely because the FIR and the subsequent statement of the affected party under *Section 164* of the CrPC do not contain the name of the caste to which the affected party belongs or any allegation that she had been kidnapped and raped on account of her belonging to the Scheduled Caste, cannot be a ground for not framing charges under the provisions of the SC/ ST Act. Learned counsel also submitted that such an approach would effectively defeat the very object of the SC/ ST Act for which it was enacted. Even otherwise, the learned counsel submitted that the FIR is not as an encyclopaedia of every



fact or circumstance. Reliance in this regard is placed upon ***Ashabai Machindra Adhagale v. State of Maharashtra***¹⁰.

14. Learned counsel for petitioner also submitted that the learned Trial Court also failed to take into consideration the statutory presumption under *Section 8(c)* of the SC/ ST Act, which clearly provides that where an accused like the respondent nos.2 & 3 had personal knowledge of the affected party or his/ her family, then the Court has to mandatorily presume that the accused like the respondent nos.2 & 3 were having the knowledge of the caste or tribal identity of the affected party. The learned counsel further submitted that the material collected during investigation demonstrates that both the respondent nos.2 and 3 were acquainted with the affected party and were residing in the same neighbourhood.

15. Moreover, that the respondent no.2 and 3 were also aware of affected party belonging to the Scheduled Caste community is evident from the Interrogation Report, wherein the affected party stated that respondent no.2 on several occasions had taunted her by making remarks, “... ..tu cxxxxxx mein kese peda ho gyi, tujhe to gurjron mein peda hona chahiye tha... ..” as also from the statement of respondent no.2 itself wherein he stated that the other co-accused, namely respondent no.3 and juvenile ‘P’, had told him that the affected party belonged to a lower caste and therefore he should take advantage of her.

16. Learned counsel for the petitioner also submitted that the charges should also have been framed against respondent nos.2 and 3 under *Section*

¹⁰ (2009) 3 SCC 789



14(3) of the POCSO Act and *Section 328* of the IPC as there was sufficient material to charge them under the said sections.

17. Learned APP has supported the aforesaid submissions made by the learned counsel for the petitioner. The learned APP, in fact, submitted that mere averment of the affected party was sufficient for framing of charge.

18. *Per contra*, learned counsel for respondent no.3 supporting the impugned order to the limited extent of discharge submitted that neither the complaint dated 31.03.2016 nor the FIR or the statement of the affected party recorded under *Section 164* of the CrPC contain any allegation so as to make out any case under the SC/ ST Act. Such an allegation only cropped up after a lapse of *six months* when the father of the affected party filed a complaint before the SC/ ST Commission. The learned counsel submitted that the aforesaid delay in coming with the allegation *qua* the SC/ ST Act shows that same were only an afterthought.

19. Learned counsel for respondent no.3 then submitted that none of the statements given by the affected party even remotely indicate that the respondent no.3 was acquainted with the affected party or her family or knew her caste. On the contrary, it is relevant to note that the affected party had herself admitted that she had never met the respondent no.3 herein.

20. In addition, learned counsel for respondent no.3 submitted that the learned Trial Court was also correct in discharging the respondent no.3 *qua* offences under *Section 14(3)* of the POCSO Act, 2012 and *Section 328* of the IPC for want of foundational material.

21. Since there has been no appearance on behalf of respondent no.2 on and from 19.12.2025, and despite repeated opportunities, no written



submission has been filed on his behalf, as also considering that the case pertains to the year 2017, the respondent no.2 is proceeded *ex parte*.

22. Heard learned counsel for petitioner, learned counsel for respondent no.3 and the learned APP as also gone through the materials on record and the judgment relied upon.

23. Before advertng to the merits of this case, this Court, at the outset notes that the SC/ ST Act was enacted constituting a legislative measure intended to protect members of the Scheduled Castes and Scheduled Tribes who had suffered centuries of caste-based indignity, humiliation, discrimination and atrocities. The SC/ ST Act is nothing but a legislative manifestation of *Articles 14, 15, 17 and 21* of the Constitution of India.

24. Significantly, *Chapter II* of the SC/ ST Act and in particular *Section 3* thereof, enumerates various acts which constitute offences when committed against members of the scheduled castes or scheduled tribes.

25. *Notably*, as per *Section 3* of the SC/ ST Act, though there are certain offences which expressly require the prosecution to establish that the act was committed only on account of the victim belonging to a scheduled caste or scheduled tribe, however, there are other offences too where the threshold of proving crime is comparatively lower, which only require the prosecution to show that the perpetrator committed the act with the knowledge of the caste/ tribe of the victim so as to sustain a conviction.

26. Coming to the facts of the present proceedings, and insofar as non-competence of the learned Trial Court to frame charges against the respondent nos.2 and 3 is concerned, since the same has been raised for the very first time before this Court and that too only while addressing final arguments, and only after the petitioner being duly represented/ appearing



in the proceedings before the learned Trial Court on more than *ten occasions*, it is too late in the day for the petitioner to contend as such, more so, whence the petitioner seeks to assail the impugned order on charge passed nearly *nine years* ago.

27. Insofar as non-framing of charges under the SC/ ST Act against the respondent nos.2 and 3 is concerned, a perusal of the impugned order reflects that the learned Trial Court has not proceeded to frame charges under the provisions of the SC/ ST Act *primarily* as the affected party neither in her initial complaint made to the Police on 31.03.2016, nor in her statement under *Section 164 CrPC* recorded on 07.04.2016, uttered a single word *qua* the allegation that the respondent nos.2 and 3 committed offences upon her on account of her belonging to the SC/ ST community and the said provisions were invoked only pursuant to the filing of the first charge sheet, and presumably on legal advice and that too on the recommendations of the SC/ ST Commission based on the belated complaint dated 07.09.2016 made by the father of the affected party. However, in the considered opinion of this Court, mere non-mentioning of allegations pertaining to the offences under the SC/ ST Act either in her initial complaint/ FIR or in her statement under *Section 164 CrPC* and/ or a mere delay of six months cannot be treated as sufficient reason(s) to discard the applicability of the provisions of the SC/ ST Act, *particularly*, whence the affected party at the time of the offence was only a school going minor girl, who, had been subjected to gang rape, which being a bodily and heinous offence shook her mentally, physically and psychologically. It can easily be gauged that the affected party must have been under immense shock, trauma and humiliation, which, in all likelihood would, certainly have



affected her ability to process, recollect and articulate every facet of the occurrence on the very first opportunity. Under such circumstances, time means patience, and amendments and/ or improvements by the affected party have to be given due weightage as they cannot simply be discarded and/ or brushed aside on the grounds of delay and/ or afterthoughts, unless there are some contradictions therein.

28. The learned Trial Court further declined to frame charges under *Sections 3 (1)(e), (r) and (w)* of the SC/ ST Act on account of the fact that for attracting such provisions, the act should have been committed against the affected party ‘only’ on the ground of her belonging to schedule caste. However, as noted before, the ingredients of the offences enumerated under *Section 3* of the SC/ ST Act are not uniform. A perusal of *Section 3(1)(e)*¹¹ and *Section 3(1)(r)*¹² of the SC/ ST Act reflect that the provisions therein are different from the provisions contained in *Section 3(1)(w)*¹³ thereof as

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

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;

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

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

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

(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;



mere knowledge of the fact that the victim is a member of a schedule caste or tribe would be sufficient to constitute the offence under *Section 3(1)(w)* of the SC/ ST Act, and does not require the prosecution to establish as an additional ingredient that the sexual act was committed solely or exclusively on account of the victim's caste/ tribe.

29. As such, at the stage of framing of charge under *Section 3(1)(w)* of the SC/ ST Act, the learned Trial Court was only required to, *prima facie*, ascertain as to whether, there was material on record establishing that the respondent nos.2 and 3 were having the knowledge of the affected party's caste, while committing the offence or not.

30. As per the Charge Sheet, both the respondent no.2 and the affected party were acquainted with each other, and were, admittedly, residing in the same locality/ vicinity at Ambedkar Basti. It is also relevant that the respondent no.2 in his own statement has stated that the affected party was his girlfriend, which, in itself was a relevant factor for the learned Trial Court to, *prima facie*, draw a presumption under *Section 8(c)* of the SC/ ST Act that respondent no.2 was aware of the caste and identity of the affected party.

31. What is further significant is that the affected party in her Interrogation Report has revealed that the respondent no.2 while stalking, had taunted her by saying "... ..tu cxxxxxx mein kese peda ho gyi, tujhe to gurjron mein peda hona chahiye tha... ..".

32. The aforesaid *prima facie* establishes that the respondent no.2 was aware that the affected party belonged to the schedule caste, which, in the considered opinion of this Court, was sufficient for the learned Trial Court



for framing charges under *Section 3(1)(w)* of the SC/ ST Act against the respondent no.2.

33. The same, however, does not apply in the case of the respondent no.3 as the affected party in her Interrogation Report herself has stated that she did not know him prior to the incident and had met him for the first time on the date of the incident. It is also relevant to note that barring the statement of respondent no.2, there exists no material whatsoever to indicate that respondent no.3 was acquainted with the affected party or was aware of her caste identity.

34. Further, the respondent no.3 is a resident of House No.A-29, Gamri Road ,Village Ghonda, Delhi and not of the same locality as of the affected party.

35. Thus, in the absence of material establishing that respondent no.3 had knowledge of the affected party's caste identity at time of commission of the offence, the learned Trial Court was justified in declining to frame charge under *Section 3(1)(w)* against respondent no.3.

36. Regarding *Section 3(1)(e)* of the SC/ ST Act, though the affected party has been subjected to rape, which undoubtedly is a grave offence, but the material on record does not disclose that the said act was committed with the object of publicly humiliating the affected party in the manner contemplated by the said Section. As such, under these circumstances, the offence under *Section 3(1)(e)* of the SC/ ST Act are not attracted against the respondent nos.2 & 3.

37. Similarly, regarding *Section 3(1)(r)* of the SC/ ST Act, this Court finds that there is no *prima facie* material to indicate that either of the respondent no.2 and 3 had any intention to insult and/ or intimidate the



affected party only for the reason that she belonged to Scheduled Caste, which, as held by the Hon'ble Supreme Court in *Hitesh Verma v. State of Uttarakhand*¹⁴ and *Shajan Skaria v. State of Kerala*¹⁵ is an essential ingredient for constituting the offence. Accordingly, the learned Trial Court was justified in discharging the respondent nos.2 and 3 under *Section 3(1)(e)* of the SC/ ST Act.

38. Regarding the issue of framing of charges under *Section 328*¹⁶ of the IPC against the respondent nos.2 & 3, in view of the allegation that the affected party was forcibly made to consume beer mixed with some stupefying substance, is based on bare statement with no substantive basis, the finding *qua* that by the learned Trial Court in not framing any charge thereunder needs no interference by this Court. That neither any empty bottle nor any such substance was recovered during investigation nor any medical opinion in the MLC of the affected party indicates administration of any stupefying or intoxicating substance adds onto the same. Thus, the learned Trial Court has committed no error in declining to frame charge under *Section 328* of the IPC against the respondent nos.2 & 3.

39. Similarly, the learned Trial Court was also justified in discharging the respondent nos.2 and 3 of the charge under *Section 14(3)*¹⁷ of the POCSO Act inasmuch as, as apart from the statement of the affected party alleging that respondent no.3 had made a video of the incident, there is no

¹⁴ (2020) 10 SCC 710

¹⁵ 2024 SCC OnLine SC 2249

¹⁶ **328. Causing hurt by means of poison, etc., with intent to commit an offence**—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹⁷ **14. Punishment for using child for pornographic purposes**—

(3) If the person using the child for pornographic purposes commits an offence referred to in Section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.



supporting material showing that any such video was actually recorded. Moreover, neither the mobile phone used for recording video of the incident has been recovered nor is there any other electronic evidence demonstrating existence of such recording.

40. *Ergo*, as a sequitur of the aforesaid discussions, the impugned order dated 04.03.2017 passed by the learned Trial Court is modified to the limited extent that an additional charge under *Section 3(1)(w)* of the SC/ ST Act be framed against the respondent no.2. Resultantly, the remaining part of the impugned order dated 04.03.2017 passed by the learned Trial Court is not interfered with.

41. Needless to say, any observations made herein shall not prejudice the case of parties at the stage of trial.

42. Accordingly, the present petition is partly allowed to the limited extent as indicated above.

43. A copy of this judgment be sent to the learned Principal District and Sessions Judge, Karkardooma Courts for information and to do the needful in accordance with law.

SAURABH BANERJEE, J.

SEPTEMBER 17, 2026/So/GA