

**File No.1736/12**

Applicant Bhupendra Rai @ Bhupendra Prasad is sought to be prosecuted under section 3(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short SC/ST Act) in Samastipur (Patori) P.S. Case No.200/11.

The case of the applicant is that there was family dispute between one Arjun Chaudhary and his son Sunil Kumar of village Imansarai. On being jointly nominated as panch by both father and son, the applicant along with other panches mediated and resolved the dispute on 7.10.2011 at 9 A.M. However, there was again quarrel between father and son in the evening. In the morning (8.10.2011) the dead body of Sunil Kumar was found. As per the applicant he had committed suicide. He had left behind a suicide note which was made to disappear. On the instigation of his enemies, the deceased's mother filed the case viz. Patori P.S. Case No.200/11 under section 302 IPC.

The case was found to be true under section 306/34 IPC as per Report-2 of S.P. Samastipur. DIG Darbhanga Range vide his memo no.3137/CR dated 18.12.2011 and Report-3 however held that offence under section 309 IPC, and not 306 IPC, was made out and he accordingly directed that final report be submitted in the case. At this stage, the CID took over the investigation.

The case of the applicant is that he was summoned by IG CID Sri Arvind Pandey and on his direction his statement was recorded on 24.4.2012. As per the applicant Sri Pandey told him to pay some money to the victim family and settle the matter. The applicant denied to do so saying that he had merely mediated and committed no wrong. Sri Pandey stated that he proposed to direct submission of charge sheet under section 3(x) of the SC/ST Act so that the victim family gets compensation, as per the Act, because in case of suicide, no compensation is payable. At this stage the applicant approached this Commission seeking its intervention.

The Commission vide order dated 24.5.2012 noted that the complaint was directed against an IG rank officer and in that view, called for report from the DGP. DIG (Human Rights) on behalf of DGP vide his letter dated 29.1.2013 brought on record the report of ADG CID dated 21.12.2012. The relevant part of the said report dated 21.12.2012 may be extracted as hereunder:-

“;g dkaM gR;k@vkRegR;k ds fy;s mRizsj.k dk izrhr gksrk gS ftlds fy;s firk vtqZu pkS/kjh nks"kh gSA ?kVuk ds Ik'pkr e`rd ds firk vtqZu pkS/kjh dk Qjkj gks tkuk rFkk ;gka rd fd iq= ds nkg-laLdkj ,oa Jk)&deZ esa 'kkfey ugha gksuk mlds fo:} vkjksi.k dks iq"Vh djrk gSA mUgksaus ;g Hkh vafdr fd;k gS fd e`R;q leh{kk izfrosnu esa e`rd ds 'kjhj ij ekhihV dk dksbZ t[e ugha ik;k x;k gSA flQZ xnZu ij Ligation mark ik;k x;k gSA vr% oknh ,oa vfHk;kstu ds dqN xokg (tks oknh ds gh ifjokj ls tqMs gSa) dk ;g c;ku fd Hkwisanz jk; }kjk e`rd dks ykBh ls ekj&ihV fd;k

x;k, lR; izrhr ugha gksrk gSA Lora= lkf{k;ksa us  
Hkh e`rd dls ekjihV fd, tkus dk leFkZu ugha fd;k gS  
rFkk 'kkar orkoj.k es iapk;rh gksus dh ckr crkbZ gSA  
ijUrq bl ckr dh laHkkouk ls budkj ughaa fd;k tk  
ldrk fd Hkwisanz jk; }kjk e`rd ds fo:) iapk;rh ds  
nkSjku dBksj 'kCn dk bLrseky fd;k gksxk ftldh  
izfrfdz;k esa e`rd us vkRegR;k dh gkaxh”

The latter part of the report (underlined by me) – which really concerns the applicant – is clearly based on conjectures and surmises. In the circumstances, the matter was fixed for hearing and notice was issued for hearing.

On 16.5.2013 the matter was heard for some time in presence of the applicant and S.P. (Weaker Sections) CID Sri Chaurasia Chandra Shekhar Azad who appeared along with the Investigating Officer of the case. The Commission asked them to refer to the materials/statements in the case diary which could prima facie constitute the offence envisaged in section 3(x) of the SC/ST Act. It may be mentioned here that section 3(x) refers to the act of insulting or intimidating with intent to humiliate a member of scheduled caste/tribe. The IO read out passages from the case diary including the statements under section 164 Cr.P.C. The Commission did not find anything incriminating at all so far as the applicant is concerned. Even the IO and S.P. Sri Chaurasia Chandra Shekhar Azad fairly stated that there was no material in the case diary constituting the offence under section 3(x) of the SC/ST Act. In the circumstances, the Commission postponed the hearing for the day observing that Sri Azad may discuss the matter with IG Sri Arvind Pandey. When the hearing was taken up today IG Sri Arvind Pandey himself appeared with the IO and the matter was heard.

Sri Pandey sought to justify his stand in directing submission of charge sheet under section 3(x) of the SC/ST Act. He submitted that physical assault in public view results in humiliation of the victim and where the victim belongs to a scheduled caste, the offence under section 3(x) is attracted. The submission overlooks the report of ADG CID – extracted above – to the effect that the statements of the witnesses about the applicant assaulting the victim by lathi do not appear to be true.

The Commission is of the view that prosecution of the applicant in the facts and circumstances would be gross abuse of the process of law, but that is a separate issue which may be gone into at another stage and forum. So far as this complaint is concerned, the Commission is of the view that the role of Sri Arvind Pandey, IG CID requires to be probed.

Let accordingly, notice in terms of section 16 of the Protection of Human Rights Act issue to Sri Arvind Pandey, IG CID to submit by 7.6.2013 his written defence in two sets out of which one set may be supplied to the applicant, and the matter be put up for hearing on 14.6.2013.

Copies of the applicant’s complaint (pages 5-4/c), his response (pages 17-13/c) and this order may be sent with the notice.

Copy of this order may also be sent to the applicant for information.

Date: 17.05.2013

Justice S.N. Jha  
Chairperson