

**IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI**

COMPLAINT CASE NO. 694 OF 2022

IN THE MATTER OF

**Dal Chand Kapil
S/o Sh. Hari Singh,
R/o 95, Surya Kiran Apartment,
Freedom Fighter Road, Gate No. 4,
Neb Sarai, IGNOU Road,
Delhi-110068.**

..... Complainant

Versus

- 1. State
Through SHO
PS Neb Sarai,
Sector-5, South Sainik Farm,
Delhi-110062.**
- 2. Arvind Kejriwal
S/o Sh. Gobind Raj Kejriwal,
R/o K-87, K-Block,
B. K. Dutt Colony, New Delhi.**
- 3. Gopal Rai
R/o A-Wing, 7th Level,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.**
- 4. Rajender Prasad
SDM District-South New Delhi.**
- 5. Vinod Kumar Yadav
Returning Officer.**

**6. Prakash Jarwal
S/o Sh. Jagdish Prasad,
R/o B-148, Tigri Extension,
New Delhi-110062. Respondents/Proposed Accused**

**DATE OF INSTITUTION : 16.09.2022
DATE OF RESERVING ORDER : 20.09.2022
DATE OF PRONOUNCEMENT : 27.09.2022**

ORDER

1. Vide this Order, I shall decide application u/s 156(3) Cr.P.C. of the complainant. No complaint u/s 200 Cr.P.C. has been preferred.

2. Complainant Sh. Dal Chand Kapil is the member of the Scheduled Caste Community who had contested Legislative Assembly Elections from Deoli (SC) Assembly constituency – 47 in the year 2015 and year 2020. Respondent no. 6 Sh. Prakash Jarwal had also contested these elections from Deoli (SC) Assembly constituency in the years 2015 and 2020.

3. The complainant has filed the present complaint u/s 156(3) Cr.P.C. against respondents no. 2 to 6 (proposed accused persons) on the ground that even though respondent no. 6 was not eligible to contest the above-said elections from Deoli (SC) Assembly constituency–47 which was reserved for Scheduled Caste Community, he was made a candidate by the leadership of Aam Aadmi Party (AAP), namely, respondent no. 2 Sh. Arvind Kejriwal

and respondent no. 3 Sh. Gopal Rai. It is alleged that respondent no. 6 was deliberately made a candidate from the Deoli (SC) Assembly constituency only to deprive any member of the Scheduled Caste Community to get elected from the reserved constituency. It is further alleged that respondent no. 6 belongs to Bairwa/Berwa Community which falls in the category of OBC in Delhi. It is alleged that election of respondent no. 6 from this constituency has reduced the representation of SC Community in the Delhi Assembly by one seat.

4. It is further alleged by the complainant that as a part of the above-said conspiracy, a false and forged SC Certificate of respondent no. 6 was used to misinform and cheat the Returning Officer / other officials of Election Commission of India. On the basis of this false document, the Returning Officer and other ECI Officials were caused to use their lawful power in accepting the nomination papers of respondent no. 6 allowing him to contest from the Delhi constituency reserved for the SC Community. It is submitted that respondents no. 2 and 3 are jointly and severally liable for the conspiracy of reducing Scheduled Caste representation in Delhi Assembly by giving a non SC candidate i.e. respondent no. 6, AAP Party ticket from Deoli (SC) Assembly constituency.

5. It is further alleged by the complainant that being a candidate in the Delhi Assembly Elections 2020, he had objected to the nomination of respondent no. 6 on the day of scrutiny i.e.

22.01.2020 but the Returning Officer at the office of Dy. Commissioner, South, M.B. Road, Saket did not take any action.

6. Complainant also lodged a written complaint dated 03.02.2020 with the Returning Officer. In his reply dated 05.02.2020, respondent no. 5 / Returning Officer replied that reliance had been placed upon the caste certificate issued by respondent no. 4 / SDM, South District, New Delhi.

7. It is alleged that the Scheduled Caste Certificate No. SC/5/52/5779/2014/2006/220/43558 dated 11.05.2006 of respondent no. 6 was a false and forged document which was got prepared by respondent no. 6 from respondent no. 4 / SDM. Complaint dated 14.04.2021 in this regard was also filed with the SHO concerned but no FIR was registered. Thereafter, a complaint was also lodged with the DCP concerned vide application dated 16.04.2021 but to no avail. It is submitted that by not registering the FIR, the police officers concerned were liable u/s 4 of the SC & ST Act and under Rule 5(1) of the SC & ST Rules 1995.

8. Offences punishable u/s 3 (1)(q), 3(2)(v), 3(2)(va) and 3(2)(vii) of the SC & ST Act, 1989 apart from Sections 420/468/471/120B have been sought to be invoked against respondents no. 2 to 6. Sections 166, 167, 190, 193, 196, 197, 198, 199 & 217 IPC have also been sought to be invoked against respondent no. 5 / Returning Officer.

9. I have heard detailed arguments on behalf of the complainant and have perused the records carefully including the Written Submissions.

10. Before embarking upon discussion on the matter in hand, certain provisions of law under the SC & ST Act, 1989 must be reproduced.

11. **Section 2(a) of SC & ST Act, 1989** provides as under :

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

(a) “atrocities” means an offence punishable under section 3.”

12. **Section 3(2)(v) of SC & ST Act, 1989** provides as under :

“3. Punishments for offences of atrocities.—

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or 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 imprisonment for life and with fine.”

13. **Section 3(2)(va) of SC & ST Act, 1989** provides as under :

“3. Punishments for offences of atrocities.–

(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 or 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.”

14. **Section 3(2)(vii) of SC & ST Act, 1989** provides as under :

“3. Punishments for offences of atrocities.–

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

15. During the course of arguments, it was specifically submitted on behalf of the complainant that the respondent no. 6

belonged to Bairwa caste which was a Scheduled Caste in Rajasthan but not in Delhi. It was submitted that in Delhi, Bairwa caste fell in the list of Other Backward Castes (OBC).

16. The allegation of the complainant is that the Scheduled Caste Certificate dated 11.05.2006 issued by the then Sub-Divisional Magistrate is a forged document. From the tenor of the complaint, it is apparent that forgery has been claimed on the ground that the said certificate was issued even though Bairwa caste was not included in the list of Scheduled Castes / Tribes in Delhi. I have perused the Scheduled Caste Certificate dated 11.05.2006 carefully. Vide this certificate, it has been certified by the SDM concerned that Sh. Prakash S/o Sh. Jagdish Prasad R/o B-148, Tigri Extension, New Delhi-62 of State/UT Delhi belongs to Bairwa caste / tribe which is recognized as Scheduled Caste / Tribe. It is further mentioned in the said certificate as follows :

“Application in the case of Scheduled Castes / Tribes person who have migrated from other state/U.T. Administration.

This certificate is issued on the basis of the Scheduled Caste/Tribe certificate issued to Shri / Smt / Kumari SURESH KUMAR Brother of Sh/Smt/Kumari PRAKASH resident of who belongs to BAIRWA caste/ tribe in the State / U T RAJASTHAN issued by S.D.M., DISTT. SOUTH, NEW DELHI. vide their No. 535 Dated: 12.01.2004.”

17. The above-said contents of the caste certificate would show that the caste certificate was issued in favour of the respondent no. 6 by the SDM concerned under the category of such SC / ST person who had migrated from other State / UT Administration.

18. In this regard, it would be apt to take judicial notice of the directions dated 22.02.2018 of Government of India (Ministry of Social Justice and Empowerment) No. 12017/2/2018-SCD(RL Cell). Vide these directions, reference was made to Letters No. BC-16014/1/82-SC & BCD-I dated 06.08.1984 & by 22.02.1985 of Ministry of Home Affairs vide which the prescribed Authority of all State Governments / Union Territory Administrations were requested that they may issued Scheduled Caste / Tribe certificate to a person who has migrated from another State on the production of the genuine certificate issued to his / her father by the prescribed Authority of the State of the father's origin except where the prescribed Authority feels that detailed inquiry was necessary through the State of origin before issue of certificate. It was further directed that the certificate would be issued irrespective of whether the Caste / Tribe in question was Scheduled or not in relation to the State / Union Territory to which the person has migrated. It was also clarified that the Scheduled Caste / Scheduled Tribe person on migration from the State or his / her origin to another State will not loose his / her status as Scheduled Castes / Scheduled Tribes but he / she would be entitled to the concessions / benefits admissible to the Scheduled Castes / Scheduled Tribes from the State of his / her

origin and not from the State where he / she migrated.

19. In view of the above-said directions of Government of India as also the contents of the Scheduled Caste Certificate dated 11.05.2006, the Court is unable to take a prima facie view that the Scheduled Caste Certificate dated 11.05.2006 is a forged or false document or that it was got prepared by furnishing a false information. No offence punishable under Sections 420/465/468/471 IPC is made out. It also appears that the complainant has taken the plea of conspiracy to somehow bring the present case in the sphere of the scheduled offence u/s 120B IPC. Consequently, no offence punishable u/s 3(2)(v)(va) & (vii) of the SC & ST Act is made out.

20. Reliance has also been placed by the complainant on the Counter Affidavit in Reply of Election Commission of India in the Election Petition No. 6 of 2020 filed by the complainant before Hon'ble High Court of Delhi against Election Commission of India, respondent no. 6 Sh. Prakash Jarwal and the Returning Officer of Assembly constituency-47, Deoli (SC). In the Election Petition before Hon'ble High Court of Delhi, the complainant has sought to declare the election of Sh. Prakash Jarwal from Deoli (SC) Assembly constituency held on 08.02.2020 as void and has prayed for fresh elections in this constituency. Declaration has also been sought for declaring Sh. Prakash Jarwal as ineligible to contest elections from any Delhi Assembly constituency reserved for the Scheduled Castes. In the Counter Affidavit, the Election

Commission of India has submitted that a person was entitled to contest elections under the reserved category of Scheduled Castes only if he or she is a member of Scheduled Caste notified in the particular state where the reserved constituency is located. The issue is still sub-judice before Hon'ble High Court of Delhi.

21. The present case is clearly a subject matter of the Representation of the People Act, 1951 recourse to which has already been taken by the complainant in the year 2020 itself. Now the complainant is somehow trying to bring this issue within the ambit of SC & ST Act, 1989. Section 3 (1)(q) of the SC & ST Act provides as follows :

“3. Punishments for offences of atrocities.– (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;”

22. Even if it is assumed at this stage (even though the issue is still sub-judice before Hon'ble High Court of Delhi) that respondent no. 6, being a person of SC/ST Community in Rajasthan but of OBC Community in Delhi was not eligible to contest Assembly Election from the reserved assembly constituency in Delhi, the act of his contesting the Delhi State Assembly Election

2020 from such reserved seat does not fall within the meaning 'atrocities' as defined in Section 2(a) r/w Section 3(1)(q) of the SC & ST Act, 1989.

23. **Section 44 IPC** provides that the word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation or property. It has already been discussed above that, there is nothing to show that the said Caste Certificate was got prepared by respondent no. 6 fraudulently. The issue of validity of his election from a seat reserved for SC candidate in Delhi is the subject matter of Election Petition No. 06/2020 pending before Hon'ble High Court of Delhi. In such circumstances, the Court does not find any ground to hold that any injury or annoyance as envisaged u/s 3(1)(q) of the SC & ST Act has been caused to the complainant.

24. It is noted that the present complaint has been filed after two years of filing of the Election Petition before Hon'ble High Court of Delhi and after one year of filing of complaint before the SHO concerned. No cogent reason has been provided for this delay. It has been submitted that the complainant did not have good legal assistance and he was scared of standing up to the mighty politicians. The perusal of the record would show that sound legal assistance was available to the complainant way back in the year 2020 when Election Petition No. 6/2020 was filed by him against respondent no. 6. The complainant himself has contested Delhi Assembly

Elections from the Deoli (SC) Assembly constituency in the years 2015 and 2020. Be that as it may, the attempt of the complainant to bring the subject matter of the Representation of the People Act, 1951 within the ambit of the SC & ST Act, 1989 is an abuse of process.

25. In view of above discussion, the circumstances put forth in the present complaint u/s 156(3) Cr.P.C. do not disclose commission of any cognizable offence. There are no grounds to direct registration of FIR or to take cognizance. The application u/s 156(3) Cr.P.C. is, therefore, dismissed with cost of Rs 1000/- to be deposited in DLSA.

**PRONOUNCED IN OPEN COURT ON THIS 27th DAY OF
SEPTEMBER 2022**

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**