



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 377 of 2023
Reversed on : 17.07.2025
Date of Decision : 28.07.2025

State of Himachal PradeshPetitioner
Versus
SarojioniRespondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? ¹ Yes

For the petitioner : Mr. Lokender Kutlehria,
Additional Advocate General.
For the respondent : Mr. Y.P. Sood, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the order dated 09.05.2022, passed by the learned Special Judge, SC and ST Act, Shimla (the learned Trial Court), vide which the respondent (accused before learned Trial Court) was discharged of the commission of an offence punishable under Section 3 (1) (s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Act (SC and ST Act). *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan before the learned Trial Court for the commission of offences punishable under Sections 451, 323, 504, and 506 read with Section 34 of Indian Penal Code (IPC) and Section 3(s) of SC & ST Act. Learned Trial Court held that the accused had married a person of the Scheduled Caste; therefore, she became a member of the Scheduled Caste after her marriage. Since an offence punishable under Section 3 (1)(s) of the SC & ST Act can only be committed by a person, who is not a member of Scheduled Caste; therefore, the accused could not have committed the offence punishable under Section 3(1)(s) of SC and ST Act; accordingly, the accused was discharged of the commission of an offence punishable under Section 3 (1)(s) of SC & ST Act, and the case was assigned to the learned Judicial Magistrate First Class, Chopal for trying the offences punishable under Sections 451, 323, 504 and 506, read with Section 34 of Indian Penal Code (IPC).

3. Being aggrieved by the order passed by learned Special Judge, the State has filed the present revision asserting that learned Trial Court erred in holding that the accused became a member of the Scheduled Caste after her marriage. The caste of a person does not change after marriage, and a person who does not belong to the Scheduled Castes will not become a member after her marriage. The whole premise of the order is incorrect; therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

4. I have heard Mr. Lokender Kutlehria, learned Additional Advocate General for the petitioner/State and Mr. Y.P. Sood, learned counsel for the respondent/accused.

5. Mr. Lokender Kutlehria, learned Additional Advocate General, for the petitioner/State, submitted that the learned Trial Court had wrongly discharged the respondent/accused of the commission of an offence punishable under Section 3 (1) (s) of SC & ST Act. It was wrongly held that the respondent/accused acquired the status of Scheduled Castes after her marriage to a member of Scheduled Castes. The caste is assigned at birth and does not change during the lifetime of a person; therefore, he

prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

6. Mr. Y.P. Sood, learned counsel for the respondent, fairly conceded that the person, who is not a member of the Scheduled Caste, will not become a member of the Scheduled Caste after her marriage, and the learned Trial Court had erred in holding otherwise. He submitted that the respondent/accused has a right to demonstrate before the learned Trial Court that no offence was made out. He prayed that the learned Trial Court be directed to hear the parties and determine whether any case for framing of charges is made out.

7. I have given considerable thought to the submissions made at the bar and have gone through the record carefully.

8. Learned Trial Court relied upon the judgment of Hon'ble Supreme Court of India in *Valsamma Paul (Mrs) v. Cochin University*, (1996) 3 SCC 545, to hold that a person not belonging to the Scheduled Caste will acquire the status of a Scheduled Caste after her marriage. However, this judgment does not lay down that a person who is not a member of the Scheduled Caste will acquire the status of the Scheduled Caste after her marriage; rather, it categorically lays down that she will not be entitled to

reservation. This judgment was considered by the Madras High Court in *Kaliya Perumal v. State*, 1997 SCC OnLine Mad 1034: 1998 Cri LJ 1467, and it was held that the marriage of a woman will not result in the change of her caste. It was observed at page 1468:

“6. Taking advantage of this admission made in the F.I.R. by the complainant, the petitioner has claimed that the complainant has become his relative and one of the members of his family and that therefore, even assuming that the petitioner used filthy and abusive language against the complainant in her caste name, that would not, attract the ingredients of the offence under the S.C., S.T. Act. In brief, the contention of the counsel for the petitioner is that once the woman belonging to a Scheduled Caste marries a person belonging to a Backwards Class community, she loses her birthright as Harijan and she becomes a member of the Backwards Class community, to which her husband belongs. To substantiate this, learned counsel for the petitioner has not cited any authority nor any valid reason to come to such a conclusion.

7. In order to answer this point, some of the observations made by the apex Court in *Vilsammal Paul v. Cochin University*. (1996) 3 SCC 545: AIR 1996 SC 1011: (1996 Lab IC 919): 1996 (1) CTC 301: (1996) 3 SCC 545, would in my view, be relevant and useful. In that case, the question raised is this: at page 1022 (of AIR).

“However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Art. 15(4) or 16(4), as the case may be?”

While answering this question, the apex Court elaborately considered by referring to the object of the special provisions under Art. 15(4) and 16(4) of the Constitution, which are intended for the advancement of the socially and educationally backward class

citizens, and on discussing the various authorities earlier given by several High Courts and the apex Court, held that the advancement of socially and educationally backward class citizens cannot be defeated by including candidates by allowance or any other mode of joining the community and it would tantamount to making mockery of the Constitutional exercise of identification of socially and educationally backward classes of citizens.

8. Some of the observations by the apex Court would be of much use to decide the question raised in this case.,

“Therefore, persons who by birth belong to Scheduled Castes, Scheduled Tribes or Backwards Classes alone are entitled to the benefit of Arts. 16(4) and 15(4). By marriage, adoption or any other device, viz., by procuring “false social status certificates, they are not eligible to avail of protective discrimination for appointment to an office or a post under the State or admission in an educational institution.”

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“Therefore, when a member is transplanted into the Dalit Tribes and OBCs. He/she must, of necessity, also undergo the same handicaps, be subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail of the facility of reservation. A candidate who had the advantageous start in life, being born in a forward caste and having a march of advantageous life, but is transplanted in a backwards caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Art. 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.”

9. These observations would make it clear that Haridoss, who belongs to the Yadhava community, by merely

marrying a Harijan lady, cannot claim to have become a Harijan and, as such, he is not entitled to the reservation as provided in Arts. 15(4) and 16(4) of the Constitution. So, the marriage does not create a conversion of the caste. In the same way, merely because a Harijan lady, who has suffered all along from her birth the handicaps, disadvantages and restrictions to which the members of the Scheduled Caste community were subjected to, married a member of the backward class community, she cannot be said to have acquired the backward class status by losing her birth right of reservation. A Harijan lady on marriage may become a member of the family of her husband, who belongs to a backwards or forward community. But it does not mean that the caste rigidity imposed upon her would become automatically broken down.

9. A similar view was taken by the Bombay High Court in *Rajendra Shrivastava v. State of Maharashtra*, 2010 SCC OnLine Bom 116: (2010) 2 Mah LJ 198, wherein it was observed at page 205:

“12. When a woman born in a scheduled caste or a scheduled tribe marries a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of a scheduled caste or a scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with a person belonging to a forward caste. The label attached to a person born into a scheduled caste or a scheduled tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.

13. If the interpretation sought to be put by the learned counsel appearing for the applicant is accepted, it will defeat the very object of enacting the said Act. It will defeat the innovative steps taken by the framers of our constitution for protecting the persons belonging to scheduled castes and scheduled tribes who have suffered for generations.

14. Thus, the question formulated by the learned Single Judge will have to be answered in the affirmative. The question formulated by us in paragraph one will have to be answered in the negative. A woman who is born into a scheduled caste or a scheduled tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of her husband by virtue of her marriage and, therefore, she cannot be said to belong to her husband's caste."

11. Karnataka High Court also took a similar view in

Bhimappa Jantakal and Ors. vs. State of Karnataka and Ors.

(10.05.2022 - KARHC): MANU/KA/2216/2022 and observed:

"Issue No. (i): Whether the mother of the complainant loses her status of being a member of Scheduled Caste the moment she marries the father of the complainant, who belongs to a forward caste?

8. The afore-narrated facts are not in dispute. The mother of the complainant belongs to 'Madiga' caste, which comes under Scheduled Caste gets married to the father of the complainant, who is a Vishwakarma by caste. The contention of the learned counsel for the petitioners is that, the moment woman belonging to Scheduled Caste gets married to a man belonging to forward caste, she would lose the status of a member belonging to Scheduled Caste and, therefore, the son also has lost the status of 'Scheduled Caste' and as such, the complaint was not maintainable. The first part of the submission, on the face of it, is unacceptable, as it is fundamentally flawed.

9. It is trite that a woman belonging to Scheduled Caste getting married to a man belonging to forward caste will

not lose her caste status as one belonging to Scheduled Caste. This issue need not detain this Court for long or delve deep into the matter as a Full Bench of the High Court of Bombay in the case of **RAJENDRA SHRIVASTAVA v. STATE OF MAHARASHTRA** MANU/MH/0036/2010 : (2010) 2 Mh.L.J. 198 answers the very question whether a lady belonging to Scheduled Caste or Scheduled Tribe marrying a person belonging to forward caste can be abused in the name of her caste by a member of the public or by the husband or his relative and whether offence under the Act can be registered. The full Bench answers the issue in the following manner:

"11. The observations made in paragraph 31 of the decision in the case of *Valsamma (supra)* [MANU/SC/0275/1996: 1997 (1) Mh.L.J. (SC) 618] above cannot be read as a ratio laying down that on marriage, a wife is automatically transplanted into the caste of her husband. The law on this aspect has been laid down by a larger bench of the Apex Court in the case of V.V. Giri (*supra*). The Constitution bench held that caste is acquired by birth and the caste does not undergo a change by marriage or adoption. The ratio of the decision in the case of *Valsamma Paul (supra)* [MANU/SC/0275/1996: 1997 (1) Mh.L.J. (SC) 618] is that acquisition of the status of a scheduled caste or a scheduled tribe by voluntary mobility into these categories would play fraud on the constitution. The Apex Court held that a candidate born in a forward caste who is transplanted in a family of backwards caste by adoption or by marriage does not become eligible for benefits of reservation under the Constitution. The observations made in paragraph 31 in the case of *Valsamma (supra)* [MANU/SC/0275/1996: 1997 (1) Mh.L.J. (SC) 618] are not to the effect that a woman born in a forward caste, on her marriage with a person belonging to a scheduled caste or a scheduled tribe, is automatically transplanted in the caste of her husband by virtue of her marriage. In fact, the ratio of the said decision is set out in

paragraph 34 of the judgment, which has been quoted above.

12. When a woman born in a scheduled caste or a scheduled tribe marries a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of a scheduled caste or a scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with a person belonging to a forward caste. The label attached to a person born into a scheduled caste or a scheduled tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.

13. If the interpretation sought to be put by the learned counsel appearing for the applicant is accepted, it will defeat the very object of enacting the said Act. It will defeat the innovative steps taken by the framers of our constitution for protecting the persons belonging to scheduled castes and scheduled tribes who have suffered for generations.

14. Thus, the question formulated by the learned Single Judge will have to be answered in the affirmative. The question formulated by us in paragraph one will have to be answered in the negative. A woman who is born into a scheduled caste or a scheduled tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of her husband by virtue of her marriage and, therefore, she cannot be said to belong to her husband's caste.

It is held that a woman who is born in a Scheduled Caste or Scheduled Tribe on marriage with a person belonging to a forward caste is not automatically transplanted into the

caste of the husband by virtue of her marriage, and she cannot belong to the caste of the husband. Therefore, the mother of the complainant continued to be a Scheduled Caste woman despite her marriage to a man belonging to the Vishwakarma caste. The first issue that fell for determination on the contention of the learned counsel appearing for the petitioners is answered against him, negating the submission that once the mother gets married to a forward caste man, she would lose the status of being a member of Scheduled Caste.

12. This position was reiterated in *State of Maharashtra v. Suresh Sakharam Sawant*, 2020 SCC OnLine Bom 180, wherein it was observed:

15. The prime ingredient, therefore, is complainant or victim or person who has been insulted should be a member of the Scheduled caste or Scheduled tribe. There is nothing in the evidence or on record to indicate that complainant Anusuya (PW-1) belonged to the Scheduled caste or Scheduled tribe. The caste certificate of the husband (PW-5), Govind Gangaji Lokhande, and the daughter Rama (PW-2) are on record that they belonged to the Mahar (Nav Baudh) community. But there is no such certificate of complainant on record. The question that arises is whether the complainant should independently produce her caste certificate, or whether the caste certificate of her husband or her daughter would suffice.

16. A full bench of this Court in *Rajendra Shrivastava v. State of Maharashtra* 2010 (2) Mh.L.J.198 considered the subject matter as to what happens when a woman born into a Scheduled caste or a Scheduled tribe marries a person of forward caste. Does her caste change by virtue of the marriage? The full bench has held that the label attached to a person born to a Scheduled caste or Scheduled tribe continues notwithstanding the marriage, the suffering of such a person by virtue of caste, is not wiped out by marriage with a person belonging to a

forward caste because person born as a member of Scheduled caste or Scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to a particular caste which he or she acquires involuntarily on birth. In my view, the judgment of the full court will be equally applicable in a case where a woman not belonging to a Scheduled caste or Scheduled tribe marries a person born into a Scheduled caste or Scheduled tribe. Just because the label of marriage is attached would not make that lady become a Scheduled caste or Scheduled tribe.

13. Therefore, it was rightly submitted on behalf of the State that the Caste is assigned to a person at birth and does not change during the lifetime of a person. Therefore, it was wrongly held by the learned Trial Court that the respondent-accused would become a member of the Scheduled Caste after her marriage and she cannot commit an offence punishable under Section 3(1)(s) of the SC & ST Act.

14. In view of the above, the order passed by the learned ? Trial Court is ordered to be set aside, and the matter is remitted to the learned Trial Court, which shall hear the parties and pass a fresh order regarding framing of charges/discharge. The parties, through their respective counsel, are directed to appear before the learned Trial Court on ____August, 2025.

15. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case

(2025:HHC:24439)
(Rakesh Kainthla)
Judge

28th July, 2025
(Ritu)

High Court of H.P.