

him by reason of the abolition of "untouchability" under Art. 17 of the Constitution; shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.]

(2) Whoever,—

(i) denies to any person belonging to his community or section thereof any right or privilege to, which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practice "untouchability" that such person has done any act in furtherance of the objects of this Act,

<sup>1</sup>[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.]

#### COMMENTS

*The requirements of Sec. 7 (1) (b) and Sec. 1 (d).*—In *Patel Lilabhai Hirabhai v. State of Gujarat*.<sup>2</sup> "Sale Dheda, keep away, you have polluted us", were the words uttered by the accused while addressing the complainant he was reading a newspaper in a public place, viz. a public library, amount to an offence within the meaning of Sec. 7 (1) (b) and Sec. 7 (1) of the Civil Rights Act.

The accused by his aforesaid high handed conduct has injured and annoyed, as also boycotted the complainant by reason of his having exercised the said constitutional right, under Art. 17 of the Constitution. It is apparent that the conduct of the accused in uttering those words, when the complainant was reading at a public library, amounts to insulting the complainant on the ground of untouchability of the complainant by virtue of his belonging to the scheduled caste. It is indication of the practice of untouchability. The requirements, therefore, of Sec. 7 (1) (b) and Sec. 7 (1)(d) of the Protection of Civil Rights Act, are satisfied and the prosecution has, therefore, proved beyond reasonable doubt that the accused has committed the offences punishable under the said sections.

*Insult—Meaning of.*—The word "insult" in the legal parlance means to treat with offensive disrespect or to offer indignity to a person. The significance attached to the word used would depend on the facts and circumstances of each case, the occasion and the manner in which the words are used and person to whom they are addressed. Any act or speech meant to hurt the feelings or self-respect of another or treat a person with insolence or contempt by words or action would amount to an insult.<sup>3</sup>

*Insult on ground of untouchability—Test to determine.*—It is clear that insult *simpliciter* of a member of Scheduled Caste is not within the mischief of Cl. (d) of sub-section (1) of Sec. 7. It is further necessary that the insult must have been committed on the ground of untouchability. The test to determine whether the insult was or was not on the ground of untouchability is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the Scheduled Caste. If yes, the insult was insult *simpliciter* outside the ambit of Cl. (d). On the other hand, if insult had taken place only because the

1. Ins. by Act 106 of 1976, Sec. 9, (w.e.f. 19th November, 1976).

2. (1979) 20 Guj. L.R. 154 at pp. 155, 156.

3. *Baste Subrayalu v. Robert Mariadassou*, 1987 Cr. L. J. 272 at p. 274 (Mad).

victim was a member of scheduled caste and it would not have taken place if he had been of higher caste, then insult was insult on the ground of untouchability. Another rough and ready test, though not very infallible, would be to ask the question whether insult was part of personal quarrel which took place between a person of higher caste and a member of scheduled caste, or was the insult offered in cool and studied manner in the absence of any quarrel. In the first situation, the insult would most likely be insult *simpliciter* while in the second situation it would be insult on the ground of untouchability.<sup>1</sup>

*Sentence provided for untouchability.*—In the instant case the learned Trial Magistrate on evidence accepted the complainant's case who was supported by the evidence and finding a lady guilty of the said charge sentenced her to suffer a rigorous imprisonment for one month and to pay a fine of Rs. 100 in default to suffer further rigorous imprisonment for one month. It is true that under the Protection of Civil Rights Act, 1955, the minimum sentence prescribed is to the tune of one month. However, in similarly situated circumstances when the accused was tried for an offence under the Prevention of Food Adulteration Act wherein also a minimum sentence is prescribed as reported in *Umrao Singh v. State of Haryana*,<sup>2</sup> the Supreme Court awarded a sentence less than the one month that was prescribed and in fact the accused therein was released on the basis of the sentence already undergone. Relying on the same analogy as the situation is somewhat similar about the provisions of the two Acts, the petitioner herein also can be given the benefit instead of sending her back to the jail.<sup>3</sup>

*Whether a Buddhist is a member of a Scheduled Caste for the purposes of the Act?*—The accused in the instant case were prosecuted under Sec. 7 of the Act. Rejecting the defence of denial and holding the prosecution charge proved, the Trial Magistrate convicted the accused under the said Sec. 7. Uncontroverted and undisputed prosecution case itself thus all throughout being that the complainant is a Buddhist, it is extremely difficult to see how any presumption in relation to a member of a scheduled caste under Sec. 12 of the Act can at all arise in this case which relates to a Buddhist and consequently not a member of any scheduled caste. In the circumstances, there was hardly any question of a remand and a re-hearing or a re-trial. The impugned order of remand passed by the learned Sessions Judge was set aside and the accused stand acquitted of the offence charged with.<sup>4</sup>

<sup>5</sup>[7-A. Unlawful compulsory labour when to be deemed to be a practice of "untouchability".—(1) Whoever compels any person, on the ground of "untouchability" to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of a "untouchability".

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also

1. *Phul Singh v. State of Madhya Pradesh*, 1991 Cr. L.J. 2954 at p. 2956 (M.P.) : *Pala Kasiviswanadham v. State*, 1996 (1) Crimes 68 (A.P.).

2. (1981) 3 S.C.C. 91: (1981) Cr. L.J. 1704.

3. *Suhasini Baban Kate v. State of Maharashtra*, 1986 Cr. L. J. 876 at pp. 876, 877 (Bom).

4. *Mangala Parashram Kelkar v. State of Maharashtra*, A.I.R. 1979 Bom. 282 at pp. 283, 284, 285: 1979 Mah. L. J. 599.

5. Ins. by Act 106 of 1978 Sec. 10 (w.e.f. 19th November, 1976).