
(2000) 05 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 12880-M of 2000

Avtar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-05-2000

Acts Referred:

Citation : (2001) 3 AICLR 471 : (2001) 2 RCR(Criminal) 67

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. P.P.S. Sidhu, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Notice to the State of Punjab.

On the asking of the Court Mrs. S.K. Bhatia, DAG, Punjab accepts the notice.

Petitioners Avtar Singh and Mander Singh are seeking quashment of the challan submitted by the State under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1987. It may be mentioned here that both the petitioners are being prosecuted under Sections 376, 452 and 506 I.P.C. and the offence has been registered against them in Police Station Raman, District Bathinda for allegedly committing rape upon Rani, who belongs to scheduled caste community.

2. The learned counsel for the petitioners submits that the challan has been directedly presented in the Special Court which is a Court of Session and in these circumstances, being a Court of Session, the Special Court could not take the cognizance directly unless the challan is committed to it by the Area Magistrate. In support of his contention, he relies upon Gangula Ashok and another v. State of A.P., 2000(1) RCR(Cr.) 797 (SC) : 2000(1) All India Criminal Law Reporter 578 , a judgment of the Hon'ble Supreme Court, where it has been observed as follows :

"9. Thus the Court of Session is specified to conduct a trial and no other court

can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of Session can be specified as a Special Court ? Evidently the legislature wanted the Special Court to be Court of Session. Hence, the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fascicules of provisions for "Trial before a Court of Session".

3. In this view of the matter, the prosecution could not produce the challan directly to the Court of Session. It was supposed to be presented before the Magistrate.

4. Resultantly, the present petition is hereby allowed and directions are given to the learned Special Judge at Bathinda to transfer the challan to the Court of area Magistrate, who, after supplying the copies of the documents being relied upon by the prosecutions, shall again commit the challan to the Court of Special Judge.

5. Since the point which has been tackled in this case is likely to effect many such cases which may be put by the prosecution in future, therefore, Registry is directed to issue a circular and the attention of the Judicial Officers of Punjab, Haryana and Chandigarh may be drawn to the judgment of the Hon"ble Supreme Court reported as 2000(1) All India Criminal Law Reporter 578.