
(1990) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No. 150 of 1990

Banshilal Madholal Sarpanch

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 03-05-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 438(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18

Citation : (1992) 37 MPLJ 798 : (1992) MPLJ 798

Hon'ble Judges : K.K. Verma, J

Bench : Single Bench

Judgement

K.K. Verma, J.

This order shall dispose of the following point that has cropped up in Misc. Criminal Case No. 260/1990 (Guddu alias Wahid Khan v. The State) and Misc. Criminal Case No. 355/1990 (Bishambhar alias Satte v. The State): whether the applications u/s 438(1), Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") are tenable on coming into force of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") (No. 33/89) which was admittedly enforced with effect from 30-1-1990.

Section 18 of the Act runs as follows:

"Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

In Banshilal's case arising out of Crime No. 5/89, P. S. Manpur, the offences alleged were punishable under Sections 366A, Indian Penal Code and 376, Indian Penal Code. The prosecutrix, Mst. Geeta, is admittedly a member of Scheduled Caste.

In Gududdu alias Wahid Khan's case the alleged crime was registered by P. S. Badarwas as Crime No. 105/89 under Sections 376 and 506 (Second Part) read with Section 34, Indian Penal Code. The victims of the alleged offences were two Adiwasī girls.

In the case of Bishambhar the offences alleged are punishable under Sections 302, 147, 148 and 149, Indian Penal Code. The victim was admittedly a member of Scheduled Caste.

In all these cases, the accused persons are not members of the Scheduled Castes or the Scheduled Tribes.

The Act (No. 33 of 1989) enacted by the Parliament received assent of the President on 11-9-1989 and was published for general information in the Gazette of India (Extraordinary) Part LI, Section 1 (pages 1 to 9).

The preamble of the Act runs as follows :

"An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

The Statement of Objects and Reasons annexed to the Bill of the Act, published at page 11 of the Gazette of India on 9-8-1989 in Part II, Section 2 runs as follows :

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes they remain vulnerable. They are denied number of Civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc. they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to low them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.

Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-scheduled castes and non-scheduled tribes, has, therefore, become necessary.

The term "atrocities" has not been defined so far. It is considered necessary that not only the term "atrocities" should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoin on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.

The Bill seeks to achieve the above objects."

The definition-clause of the Act runs as follows :

"Section 2(1) In the Act, unless the context otherwise requires :

Section 2(a) "atrocities" means an offence punishable u/s 3;

(b) "Code" means The Code of Criminal Procedure, 1973;

(c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution;

(d) "Special Court" means a Court of Session specified as a Special Court in Section 14;

(e) "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an Advocate referred to in Section 15;

(f) words and expressions used but not defined in this Act and defined "in the Code or the Indian Penal Code shall have the meanings assigned to them respectively in the Code or as the case may be, in the Indian Penal Code."

In Chapter II (Offences of Atrocities) punishments for offences of atrocities have been provided. Of these, our immediate concern is with Sections 3 and 4. Section 3 runs as follows :

3.(1) Whoever, not being a member of the Scheduled Caste or a Scheduled Tribe, - . "

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult, or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets, the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his right over any land, premises or water;

(vi) Compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

/ (viii) Institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) 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;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging, to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of a public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

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

(i) gives or fabricates false evidence intending thereby because of knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the "time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled, Tribe shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground 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;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence;

or

(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.

Thus, the accused who are not members of a Scheduled Caste or a Scheduled

Tribe, come within the net of the aforementioned penal provisions.

Section 4 of the Act runs as follows :

"Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year."

Chapter IV, dealing with Special Courts, contains Sections 14 and 15. Section 14 says that for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court by notification in the official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

The State Government has specified all the Courts of Session to be Special Courts to try the offences under this Act by their notification F. No. I-2-90-XXI-B(I) dated the 30th January 1990.

Section 15 requires the State Government to specify it by a notification in the official Gazette a Public Prosecutor or appoint an Advocate who has been in practice as an advocate for not less than seven years as a Special Public Prosecutor for purpose of conducting cases in that Court.

The State Government has specified the Public Prosecutor or in his absence the seniormost Additional Public Prosecutor as a Special Public Prosecutor for the purpose of conducting cases in Special Court of the District in question (See Notification F. No. I-2-90-XXI-B(II) dated 30th January 1990.

I have heard learned counsel for the applicants. Their submission that the provisions of the Act (No. 33 of 1989) are not retrospective expressly or by necessary intendment is supported by Shri Rajeev Gupta, Advocate, appearing as an amicus curiae. The learned Deputy Government Advocate was also of the same persuasion.

Now, the statute, enacted on 11-9-1989, received the Presidential assent on 12-9-1989. Sub-section (3) of Section 1, the commencement clause of the Act runs as follows :

"(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

The commencement clause gives the first indication that the Act was not intended to be retrospective in operation.

The offences enumerated in Section 3 envisage that the victims of the offences have to come from the Scheduled Castes or the Scheduled Tribes within the meaning assigned to the term respectively under clause (24) and clause (25) of Article 366 of the Constitution, but the offenders must not be members of the Scheduled Caste or the Scheduled Tribe. Thus, a new species of offences were

brought into existence with effect from 30-1-1990. Now, the applicants before this Court have been accused or suspected of commission of offences which had been allegedly perpetrated by them before 30th January 1990. Thus, the accusations as initially laid against the present applicants could not be described - in fact and in law, that is, in terms of Sections 3 and 18 of the Act (No. 33 of 1989) as accusations of having committed an offence under the Act (No. 33 of 1989).

I, therefore, hold that the applications u/s 438(1), Criminal Procedure Code filed by the applicants are not hit by the provisions of Section 18: the applications are o maintainable u/s 438(1), Criminal Procedure Code, 1973. This finding shall also make the application u/s 438(1) of Ram Kumar Sharma (in Misc. Criminal Case No. 502/90) in respect of an offence u/s 376, Indian Penal Code, committed on 4-11-1989 maintainable in law.

Certified photostat copies of this order be placed in the connected cases, referred to in this order.