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**(1996) 08 RAJ CK 0053**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 378 of 1994

Bhoora Lal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 14-08-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 193, 2, 201  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 14, 3

**Citation :** (1996) 3 RLW 32 : (1996) WLC 379 : (1996) 2 WLN 619

**Hon'ble Judges :** R.R. Yadav, J

**Bench :** Single Bench

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## Judgement

R.R. Yadav, J.—Facts of the present case are not disputed. It is evident from perusal of the order passed by both the courts-below that a complaint was filed before learned Munsif and Judicial Magistrate, Phalodi for the offence u/s 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act No. 33 of 1989 (hereinafter referred to as "Act No. 33 of 1989"), which was sent to Station House Officer, Police Station, Phalodi u/s 156(3), Cr.P.C. for investigation. After receipt of complaint u/s 156(3) Cr.P.C. an FIR was registered and investigation commenced. After investigation, the Investigating Agency submitted a final report: before the learned Munsif and Judicial Magistrate, Phalodi.

2. Against submission of final report by the Investigating Agency, a Protest Petition was filed by the complainant, which was rejected and final report was accepted by the learned Munsif and Judl. Magistrate Phalodi on 21.1.94.

3. Aggrieved against the acceptance of final report and rejection of protest petition moved by the complainant, the complainant filed a revision before the learned Additional Sessions Judge, Phalodi which was allowed on 13.4.94 and order passed by learned Munsif and Judl. Magistrate, Phalodi with a direction to take cognizance against the petitioners u/s 3(i)(iv)(v)(ix) and (x) of Act No. 33 of 1989.

4. Aggrieved against the order passed by the learned Additional Sessions Judge, Phalodi on 13.4.95, the present Criminal Misc. Petition u/s 482, Cr.P.C. has been filed before this Court.

5. Heard learned Counsel for the petitioner Mr. Prabhat Ojha as well as learned Public Prosecutor Mr. S.K. Vyas and perused the original records of both the courts-below.

6. It is contended by the learned Counsel for the petitioner that offence u/s 3 of Act No. 33 of 1989 is indisputably alleged to have been committed in District Jodhpur where notification u/s 9 Cr.P.C. read with Section 14 of Act No. 33 of 1989 has been issued on 30.1.90 constituting a Special Court for trial of the offences under the Act. No. 33 of 1989, hence, in the present case, learned Magistrate has no jurisdiction to take cognizance after establishment of Special Court within the territorial jurisdiction of Jodhpur.

7. A similar question arose before the learned Single Judge of this Court in case of Kedar Nath and Ors. v. State of Rajasthan reported in 1993 Cr.L.R. (Raj.) 613, where it is specifically ruled that a Magistrate even after establishment of Special Court within the meaning of Section 14 of Act No. 33 of 1989 has jurisdiction to direct a complaint made under the aforesaid Act for investigation to police agency as an information for proceedings u/s 156(3), Cr.P.C. in discharge of his primary duty to investigate before taking cognizance of offence under the said Act. According to the learned Single Judge of this Court in case of Kadar Nath(supra), even after establishment of Special Court, a Magistrate is not precluded from directing the complaint for investigation to the investigating agency u/s 156(3) Cr.P.C. in respect of those case, which are specifically triable by Special Court unless there are express provision to that effect.

8. In support of the aforesaid conclusion the learned Single Judge has referred the decisions rendered by the Apex Court in the cases of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, , Sampat Singh and Others Vs. State of Haryana and Others, and A.R. Antulay Vs. R.S. Nayak and Another, . With all respect at my command, I am not able to subscribe the view taken by the learned Single Judge and in my considered opinion, the decision rendered by the learned Single Judge requires re- consideration by a Larger Bench.

9. Before formulating the question for reference under the Rules of the Court, I propose to refer some of the mandatory provisions contained under Code of Criminal Procedure. Section 2(g) of the Code of Criminal Procedure (1973) defines "Inquiry" means every inquiry other than a trial conducted under the said Code by a Magistrate or Court. Sub-section (1) of Section 4 of the Code of Criminal Procedure Postulates that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained under the said Code. Sub-section (2) of Section 4 of the Code of Criminal Procedure envisages that all offences under any other law shall

be investigated, inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Sub-sec, (b) of Section 26, Cr.P.C. provides that any offence under any other law shall when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by the High Court or any other Court by which such offence is shown in the First Schedule to be triable. Section 201, Cr.P.C. provides that if the complaint is made to a Magistrate, who is not competent to take cognizance of the offence, he shall if the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect and if the complaint is not in writing, direct the complainant to the proper Court.

10. To my mind, after establishment of Special Court within the meaning of Section 14 of Act No. 33 of 1989, it is impossible to hold that Special Court can take cognizance of an offence under the aforesaid Act for trial only on proper committal by a Magistrate as envisaged u/s 193, Cr.P.C. Section 14 of Act No. 33 of 1989 specifically provides for speedy trial and as the Act itself has been enacted to prevent commission of offences of atrocities against the members of Scheduled Castes and Scheduled Tribes by providing Special Courts for trial of such offences, therefore, the applicability of Section 193, Cr.P.C. cannot be extended to a Special Court. Act No. 33 of 1989 nowhere provides for committal proceedings before taking cognizance by a Special Court.

11. From the aforesaid facts and circumstances of the case, I am of the view that a Special Court established u/s 14 of Act No. 33 of 1989 itself is empowered to take cognizance u/s 190, Cr.P.C. and the applicability of Section 193, Cr.P.C. is excluded.

12. In my considered opinion, where a Special Court receives a challan from investigating officer disclosing offence under Act No. 33 of 1989 it can certainly take cognizance of the same without committal proceedings by a Magistrate.

13. I am fortified in taking "the aforesaid views from a decision rendered by the Supreme Court in case of A.R. Antulay (supra), where the judgment rendered by the five Judges of Constitutional Bench was reviewed by Hon"ble Seven Judges and it was held by majority while Hon"ble the then Venkatachaliah and Rangnathan, JJ (Contra) to the effect that where the power is conferred upon a Special Judge making a provision for trial of the offences under the Prevention of Corruption Act by such Special Judge and the Supreme Court without conscious awareness of the exclusive jurisdiction of the Special Courts under the Prevention of Corruption Act, 1952 had transferred the case to the High court, was not found to be correct. It is to be mentioned here that learned Single, Judge himself in Paragraph 27 of his judgment has noticed the case of A.R. Antulay (supra) and quoted paragraph 24, which read as under:

Section 7(1) of the 1952 Act creates a condition which is since qua non for the

trial of offences u/s 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only....

14. After taking into account the aforesaid quotation from the case of A.R. Antulay (supra), I am of the view that after establishment of Special Court within the territorial limits of Jodhpur, a Magistrate has no jurisdiction to take cognizance of the offences under Act No. 33 of 1989. In my humble opinion, if a complaint is made in writing before a Magistrate within territorial limits of Jodhpur where a Special Court has been established u/s 14 of Act No. 33 of 1989 then in such a situation, within the meaning of Section 201, Cr.P.C. if the complaint is in writing, a learned Magistrate is under legal obligation to return it for presentation to the Special Court with an endorsement to that effect and if the complaint is not made in writing, direct the complainant to approach the Special Court established u/s 14 of Act No. 33 of 1989. Learned Magistrate within territorial limits of Jodhpur, where a Special Court has been established under Act No. 33 of 1989, has no jurisdiction to direct the investigating agency to conduct the investigation within meaning of Section 156(3) Cr.P.C. The procedure adopted in the present case by the learned Magistrate is absolutely illegal and without jurisdiction and I am also of the view that the learned Additional Sessions Judge has also no jurisdiction to entertain the revision and direct the learned magistrate to take cognizance against the petitioners u/s 3 (i), (iv), (v), (ix) and (x) of Act No. 33 of 1989.

15. In my humble opinion, for the reasons stated above, the decision rendered by the learned Single Judge of this Court in case of Kedar Nath (supra) requires re-consideration by a Larger Bench of this Court on the following points under the Rules of the Court:

1. WHETHER after establishment of Special Court u/s 9 Cr.P.C. read with Section 14 of Act No. 33 of 1989 Vide Notification dated 30.1.90, the Special Court alone has power to take cognizance u/s 190, Cr.P.C. without committal proceedings by a Magistrate and Section 193 Cr.P.C. is not applicable for trial of offences under Act No. 33 of 1989?

2. WHETHER after establishment of a Special Court within the territorial limits of Jodhpur, a Magistrate has no jurisdiction to entertain a complaint for the offences under Act No. 33 of 1989 and has no jurisdiction to direct the investigation of such offences in exercise of his power under Sub-section (3) of Section 156, Cr.P.C. ?

3. WHETHER if any complaint is made for an offence under Act No. 33 of 1989 before a Magistrate within the territorial limits of Jodhpur and such complaint is made in writing, then, he is under legal obligation u/s 201, Cr.P.C. to return such complaint to the Special Court established u/s 14 of Act No. 33 of 1989 with an endorsement to that effect and if the complaint is not made in writing, direct the complainant to approach to the Special Court for trial of offences under Act of 33

of 1989 ?

16. Office of the Registry is hereby directed to place the record of the instant case before Hon"ble the Acting Chief Justice for constituting a Larger Bench to reconsider the correctness of the decision rendered by the learned Single Judge of this Court in case of Kedar Nath (supra) on the points referred in the preceding paragraphs.