

(2007) 08 GUJ CK 0048

In the Gujarat High Court

Case No : Misc. Criminal Application No. 4749 of 1998

H.P. Dave, Police Sub-Inspector

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 202, 482

Penal Code, 1860 (IPC) — Section 323, 504, 506(2)

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 3(1)

Citation : (2008) 1 GLH 193 : (2008) 2 GLR 1702

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : S.V. Raju, for the Appellant; K.T. Dave, Assistant Public Prosecutor for Respondent No. 1 and Satyen B. Rawal, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this application u/s 482 of the Criminal Procedure Code, the petitioner-original accused has prayed for an appropriate order to quash and set aside the Special Case No. 27 of 1998 pending in the Special Court, Surendranagar as well as the order dated 15-4-1998 passed by the learned Special Judge, Surendranagar issuing process against the petitioner for the offences punishable u/s 323, 504, 506(2) of the Indian Penal Code ("I.P.C." for short) read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short).

2. Respondent No. 2 herein-original complainant filed private complaint being Criminal Inquiry Case No. 1 of 1998 in the Court of learned Special Judge against the petitioner for the offences punishable u/s 323, 504 and 506(2) of the I.P.C. read with Section 3(1)(x) of the Atrocities Act. It appears that before that respondent No. 2 lodged private complaint in the Court of learned J.M.F.C., Limbdi on 10-2-1998. However, same was returned to the complainant-respondent No. 2 herein, by the learned J.M.F.C., Limbdi holding that he has no

jurisdiction to proceed with the case as the offences alleged are under the Atrocities Act. That the learned Special Judge, Surendranagar initially passed order on 12-2-1998 in the aforesaid Inquiry Case No. 1 of 1998 directing learned J.M.F.C., Limbdi to hold inquiry u/s 202 of the Cr.P.C. and submit the report to him and after inquiry u/s 202 of the Cr.P.C., the learned J.M.F.C., Limbdi submitted report on 5-3-1998 and considering the same, learned Special Judge, Surendranagar by impugned order dated 15-3-1998 directed to register criminal case by further directing to issue summons/process against the petitioner for the offences under Sections 323, 504 and 506(2) of the I.P.C. read with Section 3(1)(x) of the Atrocities Act. The said inquiry case was subsequently registered as Special Case No. 27 of 1998 which is pending in the Court of learned Special Judge, Surendranagar. Being aggrieved and dissatisfied with the aforesaid special case and cognizance taken by the learned Special Judge, Surendranagar and issuing summons upon the petitioner, straightaway the petitioner-original accused has preferred the present application.

3. Mr. S.V. Raju, learned Advocate appearing on behalf of the original accused has submitted that apart from the fact that there is no merit in the allegations against the petitioner, Special Court constituted for the offence u/s 3(1)(x) of the Atrocities Act, the Special Court can only take cognizance of the matter as the Special Court has been constituted u/s 14 of the Atrocities Act. However, in the instant case, learned Special Judge directed inquiry u/s 202 of the Cr.P.C. to be conducted by the Judicial Magistrate, First Class, Limbdi which is contrary to the provisions of the Cr.P.C. It is also further submitted that even as held by the Hon'ble Supreme Court in the case of Gangula Ashok v. State of Andhra Pradesh reported in AIR2000 SCW 279 as well as in the case of M.A. Kuttappan Vs. E. Krishnan Nayanar and Another, Special Judge constituted under the Atrocities Act has no jurisdiction to entertain complaint alleging offence u/s 3(1)(x) thereof, take cognizance and issue process without the case being committed to it by a competent Magistrate. Under the circumstances, it is requested to allow the present application and to quash and set aside the aforesaid impugned complaint/criminal/special case as well as the order passed by the learned Special Judge issuing process upon the petitioner-original accused.

4. The application is opposed by Mr. Rawal, learned Advocate appearing on behalf of respondent No. 2 - original complainant and has submitted that after considering the report submitted by the learned J.M.F.C., Limbdi and after inquiry u/s 202 of the Cr.P.C., when the learned Special Judge has issued process against the petitioner-original accused, same is not required to be interfered by this Court in exercise of powers u/s 482 of the Cr.P.C. Under the circumstances, it is requested to dismiss the present application.

5. Mr. K.T. Dave, learned A.P.P. has requested to pass an appropriate order considering the decision of the Hon'ble Supreme Court referred to hereinabove.

6. Heard the learned Advocates appearing on behalf of the respective parties.

At the outset, it is required to be noted that impugned complaint has been filed by respondent No. 2-original complainant straightaway before the learned Special Judge, Surendranagar for the offences punishable under Sections 323, 504, 506(2) of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Same was sent to the learned J.M.F.C., Limbdi for inquiry u/s 202 of the Cr.P.C. and the learned Special Judge issued process against the petitioner for the offences punishable under Sections 323, 504, 506(2) of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989. In the case of Gangula Ashok v. State of Andhra Pradesh (supra), the Hon"ble Supreme Court in Paras 10 and 11 has observed as under:

10. Section 193 of the Code has to be understood in the aforesaid backdrop. The Section imposes an interdict on all Courts of Sessions against taking cognizance of any offence as a Court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting to those exceptions is indicative of the legislative mandate that a Court of Sessions can depart from the interdict contained in the Section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently, no Court of Sessions can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Sessions (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightaway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of Criminal Courts that the Court of Sessions is given a superior and special status. Hence, we think that the legislature would have thoughtfully relieved the Court of Sessions from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Sessions.

Aforesaid decision came to be considered by the Hon"ble Supreme Court in the case of Vidyadharan Vs. State of Kerala, and in Para 23, the Hon"ble Supreme Court has observed as under:

23. Hence, we have no doubt that a Special Court under the Act is essentially a Court of Sessions and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code.

In other words, a complaint or a charge-sheet cannot straightaway be laid down before the Special Court under the Act. We are reiterating the view taken by this Court in *Gangula Ashok v. State of A.P.* AIR 2000 SCW 279. In the above terms with which we are in respectful agreement. The Sessions Court in the case at hand, disputedly, has acted as one of the original jurisdiction, and the requirements of Section 193 of the Code were not met.

7. Aforesaid two decisions came to be considered by the Hon''ble Supreme Court in the case of *M.A. Kuttappan (supra)* and it is held that the Special Judge has no jurisdiction to entertain the complaint directly and to issue process after taking cognizance without the case being committed to it by a competent Magistrate. Under the circumstances and considering aforesaid three decisions of the Hon''ble Supreme Court, entertainment of the impugned complaint by the learned Special Judge himself directly and issuing process after taking cognizance without the case being committed to it i.e. learned J.M.F.C., Limbdi, itself is not tenable in law and same requires to be quashed and set aside.

8. For the reasons stated above, the application succeeds. The impugned complaint being Special Case No. 27 of 1998 pending in the Court of Special Court, Surendranagar as well as order dated 15-4-1998 passed by the learned Special Judge, Surendranagar issuing process against the petitioner is hereby quashed and set aside. However, it will be open for the respondent No. 2 - original complainant, if so advised to file a complaint before a competent Magistrate who shall consider the complaint on its merits and then proceed in accordance with law. Rule is made absolute to the aforesaid extent.