

(1994) 02 AHC CK 0054
In the Allahabad High Court
Case No : Criminal Revision No. 15 of 1994

Iqbal Bahadur and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 04-02-1994

Acts Referred:

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

Citation : (1994) 02 AHC CK 0054

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

Final Decision : Allowed

Judgement

J. K. Mathur, J.—These revisions are directed against the order passed by the Additional Sessions Judge taking cognizance of the offence punishable under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). I have heard learned counsel for the revisionists and the learned Government Advocate appearing on behalf of the opposite party.

2. The main contention raised on behalf of the revisionists is that cognizance of an offence can be taken only by a Magistrate under Section 190, Cr. P. C. and in view of the fact that the aforesaid Act does not provide for any different mode of taking of cognizance, the provisions of Code of Criminal Procedure would be applicable. Cognizance can, therefore, be taken only by a Magistrate and not by Additional Sessions Judge who may be specified as a special court in Section 14 of the aforesaid Act.

Section 14 reads as follows:

"14. Special Court.Pot 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."

3. A perusal of this provision would show that a Court of Session in each of the Districts is to be specified as a Special Court for trial of the case under this Act.
4. This provision merely means that offences under this Act are to be tried by a Court of Session and one of such Courts in each district is to be specified for trial of these cases.
5. This provision or any other provision does not provide for taking of cognizance by the Special Judges.
6. Section 190, Cr. P. C. provides for taking of cognizance by Magistrates either on complaints or on police reports and also on information and his own knowledge. Additionally, Section 193 provides that except as otherwise expressly provided by this Code by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by the Magistrate under this Code. The Court of Session is not only a Court specified in Section 190, Cr. P. C. as competent to take cognizance of an offence, but the provisions of Section 193, Cr. P.C. also forbid taking of cognizance by the Courts of Session unless there is specific provision empowering them to do so.
7. Any Special Court specified under the provisions of the aforesaid Act is essentially a Court of Session and can exercise only such power a court of Session possessed therefore, would not be able to take cognizance of any offence because of the restriction placed upon it by the provision of Section 193, Cr. P. C. In any case, if not being a Court of Magistrate, would not be competent to take cognizance of an offence under the provisions of Section 190 Cr. P. C.
8. The provisions of the Code of Criminal Procedure regulate investigation and trial of all the offences under any law other than Indian Penal Code also subject to any provisions contained in any special law which may provide to the contrary, in view of the provisions as contained in Section 4(2), Cr.P. C. As pointed out above, there are no provisions to the contrary contained in the aforesaid Act.
9. As a result, in taking of the cognizance the provisions of Section 190, Cr. P. C. would apply and it is only a Magistrate who can take cognizance of an offence committed under the provisions of the Act. Cognizance, therefore, taken by the Additional Sessions Judge is not in accordance with law. The impugned orders are, therefore, bad and liable to be set aside.
10. As a result, these revisions are allowed. The impugned orders are hereby set aside. It will be open to the investigating officer to present the charge sheet before the Magistrate empowered to take cognizance under Section 190, Cr. P. C.

Revision allowed.