
(1999) 07 MP CK 0007
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 18/94

J.N. Fuloria

APPELLANT

Vs

Smt. Benibai and Another

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 197
Penal Code, 1860 (IPC) — Section 294, 500
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 13, 14, 3, 3(1), 4

Citation : (2001) ILR (MP) 560 : (2000) 2 MPHT 152 : (2000) 1 MPJR 67 :
(2000) 1 MPLJ 459 : (2000) 2 RCR(Criminal) 529

Hon'ble Judges : Rajeev Gupta, J

Bench : Single Bench

Advocate : S.K. Tiwari, for the Appellant; S.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

R.P. Gupta, J.

The petitioner was a Divisional Forest Officer, West Mandla on 6-11-92. He feels aggrieved by the order dated 4-1-1994 passed by Judicial Magistrate First Class, Mandla, in Complaint Case No. 1/94, whereby the Magistrate took cognizance of offence under Sections 294 and 500 I.P.C. and u/s 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and directed summons to be issued against him.

The allegations in the complaint were made by one Beni Bai that she was a daily wager in his department and she and other daily wagers were not given work in that particular period of November, 1992 because of non-availability of the budget allocation for that purpose. They approached Conservator of Forest and thereafter this petitioner, praying for work as before, but, he declined and since they had insisted on him time and again for that purpose, on that particular day on 6-11-92 at forest rest house, Mandla, this accused abused them by filthy

abuses calling them as low caste wretches. This complaint has been filed on 23-11-92.

The petitioner approaches this Court in revision petition.

There are three folds submissions by the counsel for the petitioner, one that Special Court had been constituted u/s 14 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, at the relevant time and the complaint should have been filed before the Special Court who could take cognizance, it was instead filed before a Magistrate. The Magistrate should not have exercised jurisdiction in those situations. The second argument is that on merits one of the witnesses produced by the complainant namely P.W. 3-Shamwati who was also allegedly asking for work and was present with the complainant, totally denied that any abuse was given by the petitioner accused. Similarly P.W. 4-Kamal Singh also denied any abuse having been given or any harsh words having been spoken by the petitioner. They say that the D.F.O. had simply stated that he had no time and that whenever budget allocation was received, work will be taken. This aspect has not been considered by the Magistrate who has gone simply on the statement of the complainant. The third assertion is that the petitioner was a Divisional Forest Officer discharging his duties at the relevant time and whether to employ somebody or not to employ somebody as daily wager was part of his duty and therefore this complaint could not be filed without sanction u/s 197 Cr.P.C.

Learned State counsel concedes that when Special Court had been constituted u/s 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, considering the interpretation given to those provisions by the Full Bench of this Court in case of Anand Swaroop Tiwari v. Ramratan Jatav and Ors., reported in 1996 J LJ 8, only the Special Court should exercise jurisdiction even in taking cognizance under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. The same pronouncement has been relied upon by the counsel for the petitioner also wherein a Full Bench of this Court (leading judgment given by His Lordship Chief Justice Shri U.L. Bhat) has observed that the procedure of the Special Court is not that of a Sessions Court and that it can take cognizance of offence. It was held that a Special Court exercising jurisdiction under the Act is not a Court of Sessions, nor is to function as Court of Sessions. Further it was observed in para 15 that the purpose of Section 14 of the Act is to prescribe the level of the Court and to ensure that officers of experience and knowledge are made available to exercise jurisdiction thereunder and not to lay down that Special Court is a Court of Sessions subject to the restrictions u/s 193 of the Code. Court of Sessions is to be specified as Special Court; once that is done, the Court is a Special Court and it does not continue to be a Court of Sessions. It was observed that cases of all the offences u/s 3 of the Act would be warrant cases and cases of offences under Sections 4 and 13 would be summons cases. So, necessarily trial of such cases would be governed by the provisions of the Code relating to trial of warrant cases or summons cases, as

the case may be, by Magistrate for this purpose. It was also observed that wherever the expression "magistrate" occurs in Chapter XIV or XX of the Code, it has to be read as "Special Court" as indicated in A.R. Antule's case. Special Court is not a Sessions Court, but, is a criminal Court of original jurisdiction and is not governed by the provisions of Section 193 of the Code. The Special Court can take cognizance in any of the circumstances referred to in Section 190 of the Code and is also governed by the provisions of Chapters XV and XVI of the Code which are not inconsistent with its status and functions as a Court of original jurisdiction.

In the present case by the impugned order the Magistrate took cognizance of offence against the accused and directed issue of warrant of arrest against him and further observed that the accused be produced before the Special Court as that Court has jurisdiction for trial.

The Magistrate has failed to consider that the Special Court had exclusive jurisdiction in cases of offence under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, even to take cognizance. Therefore, the exercise of jurisdiction by the Magistrate in entertaining this complaint making an enquiry and taking cognizance was without jurisdiction.

Second aspect urged by learned counsel for the petitioner also has sound basis. Two witnesses were not supporting the complaint and were denying that any sort of abuses was used by the accused. The concerned Court should have considered that the complainant was feeling aggrieved by the fact that she was not being given the job on daily wages, but, that was the compulsion of the petitioner due to lack of any budget allocation. In these circumstances the statement of the complainant could have been very much self-interested and revengeful. This aspect has not been given weight in considering whether to prefer the statement of the complainant or the two witnesses who were denying any sort of abuses was used by the accused. It can hardly be said that a prima facie case was made out for taking cognizance. The third argument of learned counsel has no weight whatsoever as, if somebody commits offence of this type in the manner as alleged, no sanction can be required.

In view of the above discussion, however, since the order was without jurisdiction, the petition succeeds. The impugned order is set aside. The proceedings in this case are quashed.