
(2010) 09 AHC CK 0332

In the Allahabad High Court

Case No : Criminal Revision Nos. 1433 and 1305 of 1993

Laxmi Chandra Gupta and Another

APPELLANT

Vs

IInd Addl. Sessions Judge, Badaun and Another

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 200, 202, 4(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 3(i)(10), 3(i)(x)

Citation : (2010) 09 AHC CK 0332

Hon'ble Judges : Y.C.Gupta, J

Final Decision : Allowed

Judgement

Y.C. Gupta, J.—I have heard learned counsel for the revisionists, learned AGA and perused the record.

2. Challenge in these revisions is to the order dated 30.8.1993, whereby the Additional Sessions Judge, Badaun has taken cognizance against the revisionists for offences under the provisions of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Act").

3. In short, one Daya Ram (respondent No. 2) filed a complaint in the Court of 1st Additional Chief Judicial Magistrate, Badaun against the revisionists Laxmi Chandra Gupta, Vishnu Sharma and Mallu. It appears that after perusal of the complaint, A.C.J.M. sent the complaint to the Court of 2nd Additional Sessions Judge, Badaun presumably for the simple reason that under Section 14 of the Act, the Court of Additional Sessions Judge was specified as Special Court for conducting trials of offences under the aforesaid Act. On receipt, the complaint was given as Special Trial No. 6 of 1993 (Daya Ram v. Laxmi Gupta and others) under Section 3 (i)(10) of the Act. It is revealed that after taking notice of accusations made in the complaint, learned Additional Sessions Judge held an enquiry into the allegations, examined the complainant Daya Ram and his witness Satya Pal Singh under Sections 200 and 202 Cr. P.C. and thereafter by

order dated 30.8.1993 taking the cognizance against the accused/revisionists, summoned them through warrant to face the trial under Section 3(i) (X) of the Act. It is in this backdrop of the facts, the present revisions have been filed with the prayer to quash the impugned order dated 30.8.1993.

4. The 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 of the Act reads as under:

"14: Special Court. 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."

5. A perusal of this provision would show that it merely lays down for the Constitution of Special Courts and provides/ specifies a Court of Session in each district to be a Special Court for the trial of offences under the provisions of the Act. Taking cognizance of an offence and trial of an offence are two different things. As it appears from the provisions of the Section it was meant for the trial of the offences under the provisions of the Act. There is nothing in the Section or in the Act to suggest that the Additional Sessions Judge can take cognizance of the offences under the provisions of the Act. In fact the Act does not provide for any procedure to be adopted for the trial of the offence under the Act. In view of this, it is obvious that the general procedure laid down in the Code of Criminal Procedure is to be followed.

6. The Code of Criminal Procedure regulate investigations and trial of all offences under the provisions of Indian Penal Code. Section 190 Cr. P.C. provides for taking cognizance by a Magistrate either on complaint or on police report and also on information and his own knowledge. Section 4(2) Cr. P.C. further provides that the provisions of Cr. P.C. shall be applicable to all offences under any other law also but subject to any restriction contained in any such other special or local law which may provide contrary to the Cr. P.C. As pointed out above, there are no provisions to the contrary contained in the aforesaid Act.

7. It is also to be noticed that any Special Court specified under the provisions of the aforesaid Act is essentially to be a Court of Sessions and can exercise only such powers a Court of Session possesses, therefore, would not be able to take cognizance of any offence because of the restrictions placed upon it by the provisions of Section 193 Cr. P.C. which provides that "Except as otherwise expressly provided by this Code or 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 a Magistrate under this Code". The Court of Session is not a Court specified in Section 190 Cr. P.C. as competent to take cognizance, therefore, Section 193 Cr. P.C. also forbids taking cognizance by the Court of Session unless there is special provision empowering them to do so.

8. In view of the above in taking cognizance, the provisions of Section 190 Cr. P.C. would apply and it is only a Magistrate who can take the cognizance of an offence under the provisions of the Act. Cognizance, therefore, taken by the Additional Sessions is without jurisdiction. The impugned order is invalid and liable to be set aside.

9. As a result, both the revisions are allowed and the impugned order dated 30.8.1993 passed by Additional Sessions Judge, Badaun is hereby set aside. The 2nd Additional Sessions Judge, Badaun is directed to remit the record of the case back to the Court of concerned Magistrate, who will hold an inquiry into the complaint in accordance with the provisions of Cr. P.C. and will proceed further according to law.

10. Office is directed to send a copy of this Order to Sessions Judge, Badaun for compliance of this order by the Court concerned.