
(2000) 05 BOM CK 0002
In the Bombay High Court
Case No : Criminal Application No. 2 of 2000

Nana Shinde and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 2, 4, 4(1), 4(2)
Penal Code, 1860 (IPC) — Section 323, 34, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 2(1), 3, 3(1)

Citation : (2000) CriLJ 4778 : (2000) 3 MhLj 833

Hon'ble Judges : B.B. Vaganyi, J

Bench : Single Bench

Advocate : S.B. Talekar, for the Appellant; N.H. Borade, APP (for No. 1) and S.D. More, (for No. 2), for the Respondent

Judgement

B.B. Vaganyi, J.—Heard Shri S. B. Talekar, learned counsel for the petitioners, Shri N. H. Borade, learned A.P.P. for respondent No. 1 and Shri S.D. More, learned counsel for respondent No. 2.

2. The petitioner Nos. 1 to 5 have invoked the inherent powers of the High Court u/s 482 of Criminal Procedure Code for quashment of the order dated 17-12-1999 passed by the learned Judicial Magistrate, First Class; Bhoom, District Osmanabad.

3. The respondent No. 2 (original complainant) has filed private criminal complaint in the Court of Judicial Magistrate, First Class, Bhoom, District Osmanabad against the petitioners Nos. 1 to 5. According to the respondent No. 2, the petitioners Nos. 1, to 5, on 24-6-1999 at 6 p.m. at Bhoom assaulted him and intentionally insulted him with intent to humiliate him by making reference to his caste in the place within public view. The respondent No. 2 is a member of Scheduled Tribe. He had been to the police station but the Police Officer attached to the police station did nothing. Hence, he filed private criminal complaint in the

Court of the Judicial Magistrate, First Class, Bhoom.

4. On 23-7-1999 the learned Judicial Magistrate, First Class, Bhoom directed the complainant to lead evidence before issue of process. In response to the directions of the learned Judicial Magistrate, First Class Bhoom, the complainant i.e. respondent No. 2 examined himself and witnesses namely Tanaji Shinde, Mulay Kale, Jangu Kale and Baban More. The learned Judicial Magistrate, on the basis of the material placed on record, arrived at a conclusion that there is sufficient material to proceed with the case. Consequently, he passed the order of issue of process u/s 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act of 1989) and under Sections 323, 504, 506 r/w 34 of Indian Penal Code. This order of issue of process has been passed by the learned Judicial Magistrate, First Class, Bhoom on 17-12-1999.

5. Feeling dissatisfied with the impugned order dated 17-12-1999 passed by the Judicial Magistrate, First Class, Bhoom, the petitioners (original accused) directly came to this High Court for quashment of the aforesaid order on the ground that the Parliament in its wisdom had thought it necessary to constitute Special Courts to try the offences under the Act of 1989. According to the petitioners, the Court of Judicial Magistrate, First Class, Bhoom is not a Special Court within the meaning of Section 14 of the Act of 1989. This being the position, the learned Judicial Magistrate, First Class, Bhoom, had no jurisdiction to entertain the private complaint, examine the witnesses and to issue process for the offence punishable u/s 3(1)(x) of the Act of 1989 against the petitioners. It is further contended by the petitioners that the Special Court constituted u/s 14 of the Act of 1989 alone has powers to entertain the complaint and take cognizance of the offences under the Act of 1989. It is further contended by the petitioners that the learned Judicial Magistrate, First Class, Bhoom should not have entertained the complaint, recorded statements of the witnesses and decided the question whether prima facie case is made out for trial of the offence punishable u/s 3(1)(x) of the Act of 1989. According to the petitioners, the learned Judicial Magistrate, First Class, Bhoom has exceeded his authority in entertaining the private complaint filed by respondent No. 2 and taking cognizance of the offence punishable u/s 3(1)(x) of the Act of 1989. In the result, the petitioners have prayed for quashment of the order of issue of process u/s 482 of the Criminal Procedure Code.

6. The learned Advocate Shri Talekar for the petitioners vehemently submitted before me that the Special Courts are constituted u/s 14 of the Act of 1989 for the purpose of trial of the offences punishable under the Act of 1989 and this being the position, the learned Judicial Magistrate, First Class, Bhoom has no jurisdiction to entertain the private complaint filed by the respondent No. 2 for the offence punishable u/s 3(1)(x) of the Act of 1989. According to him, the entire procedure adopted by the learned Judicial Magistrate, First Class, Bhoom is not only erroneous but illegal. He further submits that the moment it is

disclosed that the offence is made out u/s 3(1)(x) of the Act of 1989, the learned Judicial Magistrate ought to have returned the complaint to the original complainant to present it to the Special Court, which is specially constituted for the trial of offences arising out of the Act of 1989.

7. In order to buttress his submissions, he relied upon following cases :

1. In Re: Director General of Prosecution, .

2. Hareendran v. Sarada 1995 AIHC 4542 : (1995) 1 Ker LT 231 (Full Bench).

3. Partap Chandra Barik Vs. State of Orissa, .

8. On the other hand, the learned APP Shri N. H. Borde for respondent No. 1 and learned Advocate Shri More for respondent No. 2 have strongly supported the impugned order passed by the learned Judicial Magistrate, First Class, Bhoom. According to them, the Special Court constituted u/s 14 of the Act of 1989 is constituted for the purpose of speedy trial and, therefore, all the pre-trial enquiry is legitimately required to be done by the Judicial Magistrate, First Class in case of private complaint filed under the provisions of Act of 1989.

9. I gave anxious consideration to the rival submissions made at the Bar. The Division Bench of Kerala High Court has taken a view in the case of In Re: Director General of Prosecution, that the Special Court constituted u/s 14 of the Act of 1989 can straight way take cognizance of the offences under the aforesaid Act and proceed with the trial unaffected by Section 193 of the Criminal Procedure Code. The correctness of the decision in this case has been doubted later on by same High Court and, therefore, the question with reference to jurisdiction was referred to a Larger Bench.

10. In the case of Hareendran v. Sarada 1995 AIHC 4542, Full Bench of Kerala High Court had affirmed the view taken by the Division Bench in the case of In Re : Director General of Prosecution. The Full Bench of Kerala High Court has observed that it is rather difficult to hold that the committal proceeding is indispensable as prelude to the case being tried by the Special Court. It is further observed that there is nothing in the Act of 1989 to indicate that the Special Court would get jurisdiction only on a committal order made by the Magistrate. It is further held that the Magistrate has no jurisdiction to take cognizance of the case u/s 3 of the Act of 1989.

11. In the case of Partap Chandra Barik Vs. State of Orissa, the Orissa High Court has taken a view that the Judicial Magistrate, First Class has no jurisdiction to take cognizance of the case punishable u/s 3 of the Act of 1989. The Orissa High Court has relied upon the earlier judgment of the same High Court reported in the case of Udhaba alias Udhaba Charan Kar and Another Vs. Gora Bindhani, wherein it has been held that the Special Judge should try the cases and for that purpose, committal order is not necessary. In the case of S. Damodar Reddy Vs. State of Andhra Pradesh and Others, , the High Court of Andhra Pradesh has taken a view that the Special Court could take cognizance of the offences arising

out of the Act of 1989 without order of committal by the Judicial Magistrate, First Class. However, the Division Bench of Andhra Pradesh High Court has taken a contrary view in the case of Referring Officer represented by Referring Officer Vs. SC 1/96 to 32/95 (Annexure-I) CC No. 1/96 and 59 other cases (As per list) and others, and overruled the case of S. Damodhar Reddy (cited supra). It is held that the Special Court can not take cognizance of the offences u/s 3 of the Act of 1989. It can deal with the matter only after committal by the Magistrate.

12. The Rajasthan High Court in the case of Bhura Lal and Others Vs. State and Others, has taken a somewhat different view. According to the Rajasthan High Court, Special Court constituted u/s 14 of the Act of 1989 and the Court of Magistrate could deal with the cases arising out of the Act of 1989 at pre-trial stages and that the provisions of Section 193 of Criminal Procedure Code are not applicable to such cases.

13. In order to digest the legal point involved in this matter, reproduction of Section 14 of the Act of 1989 is necessary. It 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 in each district the Court of Session to be a Special Court to try the offences under this Act.

14. Bare reading of Section 14 of the Act of 1989 would clearly go to show that the Government is very much anxious about speedy trial of the cases arising out of the Act of 1989 and to achieve this purpose, the Special Courts are constituted to try the offences under the Act of 1989. Enquiry and trial are two different things. The trial is not defined in Section 2 of the Criminal Procedure Code, 1973. However, Enquiry is defined in Section 2(g) of the Criminal Procedure Code, 1973 which reads as under :

Enquiry means every enquiry, other than a trial, conducted under this Court by a Magistrate or Court.

From the definition of Enquiry, it is abundantly clear that the enquiry is not a trial. The word "Enquiry" does not include a trial but only refers to judicial enquiry into the matter by a Magistrate. In short, enquiry relates to proceeding before the Magistrate prior to trial. The trial is a judicial proceeding before Court which ends in conviction or acquittal. If we take into consideration the very phraseology used in Section 14 of the Act of 1989, there is no manner of doubt that the Special Courts are constituted to ensure speedy trial of the offences arising out of Act of 1989. By the way, I would like to mention that under the Act of 1989, procedure for investigation, enquiry or trial of the offences arising out of Act of 1989 is not specifically provided. In the absence of a special procedure for investigation, enquiry and trial, one has to fall back on general provisions contained in Section 4 of the Criminal Procedure Code, 1973.

15. Sub-section (1) of Section 4 of the Code is not relevant for our purpose.

However, Sub-section (2) of Section 4 of the Code is very much relevant for our purpose. It says that all offences under any other law shall be investigated, enquired into, trial 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, enquiring into, trying or otherwise dealing with such offences. At the cost of repetition, I would like to mention that no special procedure for regulating the manner or place of investigating, enquiry into, trying or otherwise dealing with such offences is provided under the Act of 1989. Therefore, the general procedure for trial of the offences which is meant for the offences under the Indian Penal Code is required to be followed for all offences under any other law. Obviously, the procedure prescribed under the Criminal Procedure Code for trial is required to be followed for the trial of offences arising out of Act of 1989.

16. Section 193 of Criminal Procedure Code says that except as otherwise expressly provided, no Sessions Court can take cognizance of any offence without any commitment by a Magistrate. When an offence is exclusively triable by the Court of Session, the Magistrate shall commit the case to the Court of Session. Section 2(1)(d) of the Act of 1989 defines a Special Court. It is as follows :

(d) Special Court means a Court of Session specified as Special Court in Section 14.

By virtue of definition of Special Court, a Court of Session is necessarily a Special Court for the purpose of trial of the offences arising out of the Act of 1989. Therefore, the Special Court which is necessarily a Sessions Court, cannot take cognizance of any offence as a Court of original jurisdiction" unless the case is committed to it by a Judicial Magistrate under the Criminal Procedure Code.

17. The Supreme Court has put an end to the controversy once for all. The various aspects are dealt with by the Supreme Court in the case of Gangula Ashok and Another Vs. State of A.P., . In the said case, one Ku. Sweta lodged a complaint with the police. The first appellant is alleged to have committed the offence u/s 3(x) of the Act of 1989. The police filed charge sheet directly before the Sessions Court, Karim Nagar (Andhra Pradesh), which was designated as a Special Court for the trial of offences under the Act of 1989. The charge was framed by the Special Judge against both the appellants. The appellants moved the High Court of Andhra Pradesh for quashing the charge as well as charge sheet on various reasons. A single Judge of the High Court of Andhra Pradesh found that the procedure adopted by the Investigating Officer in filing the charge sheet straight way to the Special Court was not in accordance with the law and the Special Judge had no jurisdiction to take cognizance of any offence under the Act of 1989 without the case having been committed to that Court. Accordingly, the learned single Judge set aside the proceeding of the Special Court and directed the charge sheet and the connected papers to be returned to the police officer concerned, who in turn was directed to present the same before the

Judicial Magistrate, First Class for the purpose of committal to the Special Court. The appellants then filed an appeal by Special Leave before the Supreme Court and challenged the aforesaid order passed by the learned Single Judge of Andhra Pradesh High Court. The Supreme Court formulated the question for its consideration as to whether the Special Judge could take cognizance of the offence straight way without the case being committed to him. While discussing the various facets of the question involved, the Supreme Court has observed :

The Court of Session is specified to conduct a trial and no other Court can conduct the trial of the offences under the Act. The Legislature wanted Special Court to be the Court of Session and hence a particular Court of Session even after being specified as a Special Court, would continue to be essentially a Court of Session and designated by it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for trial before Court of Session.

18. While interpreting Section 193 of Criminal Procedure Code, the Supreme Court has observed that the section imposes an interdict on all Courts of Session 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. In para 11 of the judgment, the Supreme Court has observed that

Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (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 them that the charge sheet or a complaint can straight way be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical stages of the Criminal Court that the Court of Session is given a superior and special status. Hence, we think that the Legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

19. The Supreme Court has thus concluded in Para 16 of the judgment that a Special Court under the Act of 1989 is essentially the Court of Session 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, the complaint or, a charge sheet can not straight way be laid before the Special Court under the Act of 1989. The Supreme Court has taken a note of the pronouncements in this regard made by the High Court of Madhya Pradesh, Allahabad, Patna and Punjab and Haryana in the case of

1. Meera Bai Vs. Bhujbal Singh and Others, .

2. Pappu Singh Vs. State of U.P., .

3. Jhagru Mahto v. State of Bihar (1993) 1 Crimes 643 (Pat).

4. Jyoti Arora v. State of Haryana (1998) 2 All LR 73 : 1998 Cri LJ 2662.

The view taken by these High Courts is consistent with the view taken by the Supreme Court.

20. The Supreme Court has also made reference to the view taken by the High Court of Kerala in the case of In Re: Director General of Prosecution, and the case of Hareendran v. Sarada 1995 AIHC 4542. The latter decision in the case of Hareendran v. Sarada is of Full Bench of Kerala High Court. The Supreme Court has held that the legal position stated in the decisions of the Kerala High Court in the cases of In Re: Director General of Prosecution, and Hareendran v. Sarada is not in accordance with the law.

21. The Supreme Court has specifically made a reference to the decision of Division Bench of Andhra Pradesh High Court in the case of Referring Officer Vs. Shekar Nair @ Guru and Others, . The Division Bench of Andhra Pradesh High Court has held that there is no provision in the Act of 1989 which excludes the application of Section 193 of Criminal Procedure Code. The mere fact that no procedure is prescribed or specified under the Act does not mean that the Special Act dispenses with the procedure for committal in the cases triable by the Court of Session and that the Special Court gets original jurisdiction in the matter of initiation of enquiry or trial. There is no good reason why the procedure prescribed in the Criminal Procedure Code relating to power and mode of taking cognizance including Section 193 should not be applied to the Special Court. It is to be noted that the Supreme Court has specifically observed that the Division Bench of Andhra Pradesh High Court in the case referred supra has stated the legal position correctly.

22. In view of the discussion made in the foregoing paragraphs and the mandate of the Supreme Court, I am of the clear opinion that the impugned order dated 17-12-1999 passed by the Judicial Magistrate, First Class, Bhoom is perfectly legal and correct.

23. I am practically at the fag end of my judgment. Before parting with the judgment, I would like to comment on the divergent procedure adopted by the Special Courts. On the basis of the information received from the Sessions Judges, it is revealed that there is no uniformity with regard to procedure. In some districts, charge sheets are directly filed before the Special Courts. Similarly, private complaints are also directly presented before the Special Courts. Some of the Sessions Judges quickly responded to the ratio of Gangula Ashok and Another Vs. State of A.P., and issued appropriate directions to the police authorities. Taking into consideration the divergent procedure adopted in different districts, a direction is required to be issued to the Sessions Judges of respective districts. A Special Court constituted under the provisions of Act of 1989 has no original jurisdiction. It can take cognizance of the offence punishable under the provisions of the Act of 1989 only after the case is

committed to it by the Magistrate in accordance with the provisions of the Criminal Procedure Code. A private complaint or a charge sheet can not be filed before the Special Court directly. I, therefore, direct the Additional Registrar of this Court to circulate a copy of this judgment to all Sessions Judges in the State of Maharashtra with a direction to follow the correct procedure.

24. With these directions, Criminal Application stands disposed of. Interim relief stands vacated.