

(1999) 09 MAD CK 0103

In the Madras High Court

Case No : Criminal O.P.No. 5615 of 1998

P. Alagarsamy

APPELLANT

Vs

State of Tamil Nadu and four others

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 14, 154, 154, 156, 156(2)

Penal Code, 1860 (IPC) — Section 147, 323, 341, 355

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

Citation : (1999) 3 CTC 464 : (1999) 2 LW(Cri) 871

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. P. Rathinam, for the Appellant; Mr. Karthikeyan, Government Advocate and Mr. R. Shanmugham, for the Respondent

Judgement

1. Alagarsamy, a member of the Scheduled Caste and a victim for the offence u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "the Act"), having suffered by the alleged mala fide investigation made by the Inspector of Police, Devakottai Taluk Police station and the Deputy Superintendent of Police, Sivaganga, has tapped the doors of the highest court of this State requesting to invoke the inherent power of this Court u/s 482 of Cr.P.C. to correct the injustice done to him.

2. The factual matrix, which are required for solving the controversy, could be summarised as follows:

(a) Alagarsamy, the petitioner herein, is the resident of Keerani Village, Devakottai Taluk. He is an agriculturist. He belongs to Scheduled Caste. He is also connected with the organisations which used to fight for the redressal of grievances of the members of Scheduled Caste by reporting to the authorities for proper reliefs. He made a complaint to the Revenue Authorities with regard to the cutting of trees in the waste land of the Government by some unauthorised

people.

(b) On 10.11.1997 at about 4.30 P.M., while he was standing in front of the rice mill belonged to Lakshmanan of Anumanthakudi, one Subramanian of Alangudi and other persons of Lakkamari and Alangudi belong to Kallar caste came and surrounded him. The said Subramanian took out his chappal and began to beat him on head and cheek by shouting

When the petitioner shouted and resisted the beating by both hands, other four persons beat him with hands. On hearing the noise, Nanakudi Thains and Chettianthal Duriraju came and intervened and rescued the petitioner from the assault by the persons mentioned above.

(c) Immediately thereafter, on the same day at about 8.00 P.M., he came to Devakottai Taluk Police station and gave a complaint. One Arul San-thosamuthu, Sub-Inspector of Police received the complaint and registered a case in Crime No. 229 of 1997 for the offences u/s 147, 341, 355 and 323, I.P.C. read with Section 3(1)(x) of the act against the said Subramanian and 4 others.

(d) The original copies of the F.I.R. were immediately sent to the Special Court (Principal Sessions Court) at Sivaganga and Mr. Nagarajan, the Deputy Superintendent of Police, Sivaganga (5th respondent herein) for making investigation under Rule 7 of the Act, as the Deputy Superintendent of Police is the competent authority to investigate the offences committed under the Act.

(e) On 10.11.1997 at 8.45 P.M., the first informant was examined by Doctor, who found injuries on his cheek and head. It is stated in the wound certificate that he was alleged to have been attacked with hands and chappals by known persons.

(f) Mr. Nagarajan, the Deputy Superintendent of Police, on receipt of F.I.R. copy on 12.11.1997 at about 1.00 P.M., took up investigation and went to the spot at 3.00 P.M. At Anumanthakudi, he examined Alagarsamy, Lakshmanan, Chelliah, Manickam, Ramanathan and Chellan.

(g) Witness No.5 Ramanathan and witness No. 6 Chellan were the witnesses for the observation mahazar and the sketch. Witness No. 1 Alagarsamy would state about what had happened, as stated in the F.I.R. Witness No.2 Lakshmanan and Witness No.3 Chellaiah would state that though the occurrence had taken place, the accused persons did not abuse by using caste name.

(h) On the basis of these statements, Mr. Nagarajan, Deputy Superintendent of Police, came to the conclusion that the complaint was given by Alagarsamy with exaggerated version and that though the occurrence had taken place, it has been falsely stated in the complaint that he was abused by using the name of caste, in order to harass the accused persons

(i) Therefore, the Deputy Superintendent of Police decided to delete the offence u/s 3(1)(x) of the Act and directed the Inspector of Police, Taluk Police Station, Devakottai (6th respondent herein) to take further action in respect of other

offences under Sections 147, 341, 355 and 323, I.P.C. The entire file was sent back to the Inspector of Police, Devakottai Taluk on 12.11.1997 itself.

(j) On receipt of the file, the Inspector of Police, Devakottai Taluk, on 20.11.1997 took up the matter for further enquiry in respect of offences under Sections 147, 341, 355 and 323, I.P.C. and again went to the spot on the same day and examined 8 witnesses.

(k) Alagarsamy, witness No.1, spoke about the occurrence. Witness Nos. 2 and 3 Lakshmanan and Chellaiah also spoke about the occurrence. They would state that no caste name was used. Witness No.4 Manickam and Witness No. 5 Ramanathan would state that they did not know anything about the occurrence. Witness No. 5 Ramanathan and Witness No. 6 Chellan are mahazar witnesses. Witness No. 7 Durairaju would state that the accused subramanian questioned Alagarsamy as to why he sent petition in respect of cutting of trees and beat him on the cheek Witness No. 8. Thains would state that there was a quarrel between Alagarsamy and Subramanian over the cutting of the trees and he separated them.

(l) On the basis of further investigation, the Inspector of Police, Devakottai Taluk, concluded that offences under Sections 341 and 323 alone were made out and arrested Subramanian on the same day. Since the F.I.R. was pending before the Special Court at Sivaganga, he sent a requisition dated 20.11.1997 through police constable Michael to Sivaganga praying the special Court to transfer the F.I.R. and the complaint copy to the Judicial Magistrate, Devakottai to enable him to remand the accused. Since the Special Judge was on leave, the Inspector of Police himself released the accused on bail asking him to appear before released the Magistrate, Devakottai on 28.11.1997.

(m) Thereafter, he prepared charge-sheet against Subramanian only for the offences under Sections 341 and 323, I.P.C. after deletion of the offence u/s 355, I.P.C. and sent the same to the Judicial Magistrate, Devakottai on 21.11.1997 itself. As stated earlier, he sent the above requisition to the Special Judge, Sivaganga on the ground that the offence u/s 3(1)(x) of the Act was deleted by the Deputy Superintendent of Police on the basis of the first investigation made by him.

(n) On 25.11.1997, the Special Judge cum Principal Sessions Judge, Siva-ganga, in pursuance of the said requisition, ordered for the transfer of the F.I.R. to the Judicial Magistrate Devakottai.

(o) On 28.11.1997, the case was taken on the file of the learned Judicial Magistrate, Devakottai in S.T.C. No. 656 of 1997 in respect of the offences under Sections 341 and 323, I.P.C. against Subramanian alone and on that date, the accused was present before the Court. On question- ing, he pleaded guilty and he was convicted on the plea of guilt for the offence u/s 341 and sentenced to pay a fine of Rs. 100, in default to undergo simple imprisonment for 1 week and for the offence u/s 323, I.P.C., he was sentenced to pay a find of Rs. 150, in

default, to undergo simple imprisonment for 3 weeks. On the same day, the fine amount was paid and the case was closed.

(p) Thus, even without any intimation to the first informant/the petitioner herein, about the dropping of the offence under the Act and the transfer of F.I.R. from the Special Court, Sivaganga to the Judicial Magistrate's Court, Devakottai and deletion of another offence u/s 355 I.P.C. and the filing of charge-sheet for the minor offences under Sections 341 and 323 I.P.C. and the case was taken on file and the accused was convicted on the plea of guilt and on payment of fine, the entire proceedings was closed.

3. On having aggrieved over the improper and biased investigation conducted by the police agency and the illegal procedure adopted by the Special Court, Sivaganga and the Judicial Magistrate's Court, Devakottai, the petitioner has filed this petition before this Court seeking for suitable relief through proper direction that may be issued by this Court in order to render justice to him.

4. Heard Mr. Rathinam, learned counsel for the petitioner and Mr.R. Shanmugham, the learned senior counsel appearing for the 5th respondent Mr. Nagarajan, the Deputy Superintendent of Police and Mr. Karthikeyan, learned Government Advocate, Appearing for the other respondents.

5. Mr. Rathinam, the learned counsel appearing for the petitioner, would point out the following illegalities:

(A) The Deputy Superintendent of Police, who is the competent authority to investigate the offences under the Act, has to send a report after investigation to the Special Court stating the result of his investigation. He cannot delete the offences under the Act and direct the Inspector of Police to conduct further enquiry in respect of the I.P.C. offences alone. This is in violation of the provisions of the Act.

(B) The Inspector of Police cannot send a requisition to the Special Court at Sivaganga for transfer of the F.I.R. to the Court of Judicial Magistrate, Devakottai stating that the offence u/s 3(1)(x) of the Act has been deleted by the Deputy Superintendent of Police and as such, he would file a final report to the Judicial Magistrate, Devakottai only in respect of I.P.C. offences. Equally, the Special Court ought not to have allowed the application filed by the Inspector of Police for transfer of the F.I.R. to the Judicial Magistrate, Devakottai and it should have directed the Deputy Superintendent of Police to file the report on the investigation made by him.

(C) Both the Special court while transferring the F.I.R. and the learned Judicial Magistrate while taking the case on the file in respect of the minor offences under Sections 341 and 323, I.P.C. after omitting the major offences u/s 355, I.P.C. and u/s 3(1)(x) of the Act ought to have given an opportunity of being heard to the first informant, the petitioner herein, by sending notice to him and then passed the final order in accordance with law. Obviously, this was not done.

Thus, both the judicial forums have committed serious illegality.

6. On the other hand, Mr. Shanmugham, the learned senior counsel appearing for the 5th respondent, the Deputy Superintendent of Police, filed a written submission stating that the Deputy Superintendent of Police had conducted the investigation fairly and as the allegations under the Act were not made out, the Deputy Superintendent of Police transferred the investigation to the Inspector of Police for further investigation and consequently, the Inspector of Police, after investigation, filed a charge sheet and the Judicial Magistrate, Devakottai had also convicted the accused and that therefore, the judgment of the Judicial Magistrate, Devakottai became final and without challenging the said conviction by an appeal or revision, the present petition u/s 482 Cr.P.C. requesting for fresh investigation on the complaint of the petitioner, is not maintainable u/s 482, Cr.P.C.

7. Mr. Karthikeyan, the teamed Government Advocate, would also file a written submission and would state that the first informant must be given an opportunity only when the final report submitted to the Special Court referring the entire case and no opportunity need be given to the first informant, since only F.I.R. was requested to be transmitted to the judicial, Magistrate, Devakottai and the final report was filed for other I.P.C. offences. He would also submit that, at any rate, it is open to the first informant/the petitioner herein to file a private complaint in respect of the offence under the Act, since the earlier conviction for the I.P.C. offences being the distinct offences would not be a bar for the same as per the provision of Section 300, Cr.P.C.

8. The counsel for the parties would cite very many authorities, which we shall consider later.

9. Before we deal with the question that arises for consideration in this case, it shall be stated at the outset that the Deputy Superintendent of Police/the 5th respondent herein, was initially represented by the Public Prosecutor. Earlier, a counter affidavit dated 18.8.1998 had been filed before this Court on behalf of the Deputy Superintendent of Police by the Public Prosecutor. But, for the reason best known to him, the 5th respondent has now engaged Mr. Shanmugham, the learned senior counsel to appear on his behalf separately. The learned senior counsel also filed a written submission dated 19.7.99 on behalf of the 5th respondent. This conduct itself, in my view, does not sound well.

10. He filed the first counter dated 18.8.1998 through the Public Prosecutor before this Court.

11. He filed another written statement dated 19.7.1999 through Mr. Shanmugham, the learned Senior Counsel, before this Court.

12. Neither the counter dated 18.8.1998 filed through the Public Prosecutor nor the written submission dated 19.7.1999 filed by the Senior Counsel for the 5th respondent would show that the first informant was examined by the Deputy

Superintendent of Police during the course of investigation. Besides this, there are some variations between these two statements.

13. But, the perusal of the case diary, produced before this Court would show that as if he had taken up the investigation on 12.11.1997 and examined all the witnesses. The statement of Alagarsamy, the first informant is available in the case diary and it would show that he narrated the incident in the same way as he had stated in the F.I.R.

14. Admittedly, the Deputy Superintendent of Police did not examine the two witnesses, Nanakudi Thains and Chettianthal Durairaju mentioned in the F.I.R. As per the case diary, it is stated that the witness No.2 Lakshmanan and witness No.3 Chellaiah would state about the occurrence, but there is no reference about the abuse by caste name. Witness No.2 would state about one accused, whereas witness No.3 would state about all the 5 accused. So, in the absence of examination of the witnesses mentioned in the F.I.R. and in the light of the statement stated to have been recorded by the Deputy Superintendent of Police from the first informant, which is available in the case diary, the Deputy Superintendent of Police, if he was really interested to make a fair and unbiased investigation, must have verified with the other witnesses mentioned in the F.I.R. and concluded the investigation and then he must have sent a report to the Special Court, where the F.I.R. was pending.

15. I am at a loss to understand as to why the Deputy Superintendent of Police, who took up the investigation on 12.11.1997 and sent the file on the same day to the Inspector of Police, Devakottai Taluk after deleting the offence u/s 3(1)(x) of the Act and directing him to conduct further investigation in respect of the other offences, especially, when the F.I.R. was pending before the Special Court.

16. This act of the Deputy Superintendent of Police, in my view, would certainly amount to violation of the provisions of the Act, particularly, when the legislature by introducing Rule 7(1) of the Act, imposed confidence only on the officers in the rank of Deputy Superintendent of Police hoping that they would conduct fair, unbiased and effective investigation without allowing the lower hierarchy of the police to take up the investigation.

17. There is yet another aspect of the matter. During the course of investigation, the Deputy Superintendent of Police concluded that only the offence u/s 3(1)(x) of the Act was not made out, but other offences under Sections 147, 341, 355 and 323 were made out, since it was revealed that 5 persons were involved in the act of committing the offences under Sections 341, 355 and 323, I.P.C.

18. Strangely, the Inspector of Police, who is said to have conducted further investigation, came to the conclusion that the offences under Sections 147 and 355, I.P.C. were also not made out.

19. This also would show that both the Deputy Superintendent of Police and the Inspector of Police, who are members of the law enforcing agency, were unduly

hasty to drop the main offence u/s 3(1)(x) of the Act initially and to drop another main offence u/s 355 of the I.P.C. later without giving any regard to the required procedure contemplated under law.

20. The climax is that the Special Court also "in obedience to the "direction"" (requisition) dated 20.11.1997 of the Inspector of Police, transferred the F.I.R. to the Judicial Magistrate, Devakottai without applying its judicial mind as to whether it could do it at all.

21. Though the charge-sheet was dated 21.11.1997, the case was taken on file by the learned Judicial Magistrate on 28.11.1997 for the offence under Sections 341 and 323, I.P.C., Even though the other main offences were dropped and proceedings were dropped in respect of other 4 accused, the learned Judicial Magistrate hastened to record the plea of the accused on the same day and convicted him for the minor offences under Sections 341 and 323, I.P.C. by imposing petty fine.

22. It is held by a Division Bench of this Court in *Padmini v. State of Tamil Nadu*, 1993 L.W.487 that a Judicial Magistrate has to satisfy himself in all respects of a report submitted by the Police and he shall not be guided by the opinion of the Police alone. He shall exercise his discretion to find out as to whether the facts disclosed constitute the offence to decide what offences are made out, he shall also see the evidence and if there is such evidence against a particular accused, whether forwarded by the Police or not, may summon him to take the charge in accordance with law. In case, the materials and the proposed evidence are not adequate, the Magistrate shall order for re-investigation. The informant's position and the role at the stage of the report by the Police to the Magistrate u/s 173(2) Cr.P.C. can be appreciated by a prescription in this behalf in Section 173(2)(ii), which says,

"The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

23. As observed above, the purpose of introduction of this Section is that the first informant, who is the really aggrieved person, must know the result of the investigation on his complaint. The learned Judicial Magistrate, Devakottai had not verified the fact whether any such communication was sent by the Police as mandated u/s 173(2)(ii) Cr.P.C.

24. The entire reading of the records and papers would clearly show that both the Special Court and the learned Magistrate's Court have contributed their judicial negligence in the matter of disposal of the case relating to the very serious offence under the Act by passing respective orders utterly violating the procedure under Cr.P.C. and the provisions of the Act.

25. The Deputy Superintendent of Police, who is empowered to investigate such offence, has to finish the investigation and then to file a report intimating the

result to the Special Court to enable the Special Court to take appropriate decision on that. By the act of the Deputy Superintendent of Police directing the Inspector of Police to investigate and filing of the requisition by the Inspector of Police for the transfer of F.I.R. from the Special Court to the Judicial Magistrate Court, the Special Court had been virtually prevented from exercising its discretion to take appropriate decision on receipt of report of police and on its perusal.

26. In this connection, the following observation of the Supreme Court in *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, would be quite relevant.

"Thus, a Magistrate who on receipt of a complaint, orders an investigation under, Section 156(3) and receives a police report u/s 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fits. Thereafter, he may dismiss the complaint or issue process, as the case may be."

27. Thus, the Deputy Superintendent of Police, in the event of coming to the conclusion that the offence u/s 3(1) of the Act is not made out, he shall report to the Special Court, which in turn, may accept or may not accept or in the alternative, it may take cognizance in respect of the offence u/s 3(1) of the Act also, if materials are available or it may direct further investigation u/s 173(8) Cr.P.C. But, this was not done, I would rather say, this was not allowed to be done by the Deputy Superintendent of Police.

28. The Deputy Superintendent of Police has no authority to direct the Inspector of Police to conduct investigation in respect of the I.P.C. offences alone.

29. In the same way, the Inspector of Police also cannot drop the offence u/s 355 I.P.C., since there are materials available in the form of the statement of the first informant to show that he was beaten with chappal by the accused.

30. Even assuming that the investigation would disclose that the caste name was not used, the very fact that the accused persons beat a member of the Scheduled Caste with chappal would clearly attract Section 3(1)(x) of the Act, since the intentional insult or intimidation of the Scheduled Caste member would be an offence under the Act.

31. That apart, when the Deputy Superintendent of Police concluded that the offences under I.P.C. including Section 355 I.P.C. were made out, there is no reason as to why the Inspector of Police dropped main offence u/s 355, I.P.C.

32. As indicated earlier, in the counter filed through the Public Prosecutor, the Deputy Superintendent of Police would state that the entire investigation was done by the Inspector of Police under his supervision. But, in the subsequent written submission, he would state that he initially conducted the investigation and thereafter, directed the Inspector of Police to take up further investigation in respect of the offences under I.P.C.

33. Under these circumstances, I am of the view that both the law enforcing agencies, namely, the Deputy Superintendent of Police and the Inspector of Police on the one hand and the subordinate judiciary, namely, the Special Court, Sivaganga and the Judicial Magistrate's Court, Devakottai, on the other hand, have become equally responsible, knowingly or unknowingly, for the injustice done to the First Informant/Petitioner.

34. It is settled law, as laid down by the Supreme Court that in a case, where the Court to whom a report was forwarded u/s 173, Cr.P.C. decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground to proceed the same against the persons mentioned in the F.I.R., the Court shall give notice to the informant and provide an opportunity to the informant of being heard at the time of consideration of the report.

35. In the instant case, if the learned Judicial Magistrate had taken cognizance of the offences including offence u/s 3(1)(x) of the Act, he could have taken the case on file and committed to the Special Court.

36. As indicated above, the Magistrate decided to take cognizance of the offences under Sections 341 and 323, I.P.C. alone. In other words, he decided not to take cognizance of the offence u/s 355, I.P.C. and u/s 3(1)(x) of the Act. Moreover, there are 5 persons mentioned in the F.I.R. But, the learned Judicial Magistrate decided to take cognizance against only one accused, as the proceedings as against other 4 accused were dropped by the police.

37. When such being the situation, the learned Magistrate ought to have given notice to the informant and provided him an opportunity of being heard at the time of consideration of the final report as laid down by the Supreme Court in Bhagwant Singh Vs. Commissioner of Police and Another, .

38. Yet another feature deserves to be mentioned here. On 12.11.1997, the Deputy Superintendent of Police took up the investigation and on the same date he returned the file to the Inspector of Police deleting the offence u/s 3(1)(x) of the Act and directing him to conduct investigation in respect of the offences under the I.P.C.

39. On 20.11.1997, in pursuance of the order of the Deputy Superintendent of Police, the Inspector of Police took up further investigation. The case diary shows that the charge sheet was prepared on 20.11.1997 itself. It is also stated in the case diary that on 21.11.1997, the charge-sheet had been sent to the Judicial Magistrate, Devakottai.

40. But it shall be noticed that the F.I.R. itself was transferred by the learned Special Judge on 25.11.1997. The administrative order passed by the Special Court would show that in the requisition sent by the police, it is stated that already charge-sheet had been filed for the offences under Sections 341 and 323, I.P.C.

41. Thus, it is clear that the entire investigation had been finished and charge-sheet had been filed by the Inspector of Police, even before the F.I.R. was transferred. This also is a very serious illegality.

42. A fresh investigation can be directed to be made when the Special Court decides on receipt of police report that no offence is made out u/s 3(1)(x) of the Act, after hearing the first informant.

43. The fresh investigation can be made by the Deputy Superintendent of Police under Rule 7(1) of the Special Act. As a matter of fact, in the present case, the Deputy Superintendent of Police, by usurping the judicial powers vested with the Special Court, deleted the offence u/s 3(1)(x) of the Act and directed the Inspector of Police to conduct the investigation only for the I.P.C. offences.

44. On going through the records called for from the learned Judicial Magistrate in S.T.C.No. 656 of 1997, the following factors are revealed:

(a) The complaint given by Alagarsamy on 10.11.1997 registered by Arul Santhosa Muthu, the Sub Inspector of Police, Devakottai Taluk for the offences under Sections 147, 341, 355 and 323 I.P.C. and u/s 3(1)(x) of the Act was sent to the Special Court, which in turn received the same on 11.11.1997 at 3.30 P.M. The Special Judge also put his initial with date and time.

(b) It is also mentioned in the printed F.I.R. that the investigation has been forwarded to Mr. Nagarajan, the Deputy Superintendent of Police. After 11.11.1997, there is no intimation sent by the Deputy Superintendent of Police, the investigating officer, who is competent to investigate the case, to the Special Court that he took up investigation.

(c) On the other hand, on 21.11.1997, the Inspector of Police, Devakottai Taluk, filed & requisition before the Special Court to transfer the F.I.R. in Crime No. 229 of 1997 for the offences under Sections 147, 341, 355 and 323 I.P.C. and u/s 3(1)(x) of the Act pending before the Special Court to the Judicial Magistrate's Court Devakottai, as the Deputy Superintendent of Police already returned the case diary to him for further investigation after deleting the offence u/s 3(1)(x) of the Act from the F.I.R. and thereafter, he took up further investigation and he also dropped another offence u/s 355, I.P.C.

(d) The Inspector of Police, Devakottai Taluk arrested the accused Subrama-nian of Alangudi on 20.11.1997. The arrest card shows that he was arrested on 21.11.1997. But, the requisition dated 20.11.1997 was sent by the Inspector of police to the Special Judge, Sivaganga praying transfer of F.I.R. to the learned Judicial Magistrate, Devakottai to enable him to produce the accused before the

learned Judicial Magistrate, Devakottai for remand. However, since the Special Judge was on leave on that date, the said requisition was submitted before the Special Judge, Sivaganga only on 21.11.1997.

(e) On the very same day, the learned Special Judge passed an order as follows: "Grant if in order". The prayer in the requisition is to transfer the F.I.R. to the learned Judicial Magistrate, Devakottai, since minor offences alone were made out.

(f) But, the wordings of the said order would show, as if the Special Judge granted permission to give the copy of the F.I.R. However, the administrative order dated 25.11.1997, which was received by the Judicial Magistrate on 26.11.1997, would reveal that the entire papers in Crime No. 229 of 1997 have been transferred to the Judicial Magistrate, Devakottai. The wordings of the said order are as follows:

"As per requisition of Inspector of Police, Devakottai Taluk circle as per reference Ist cited, the F.I.R. and the connected papers (pages 1 to 12) in Cr.No. 229 of 1997 of Devakottai Taluk Police Station is herewith transferred to Judicial Magistrate, Devakottai, since the charge sheet has filed before this Court u/s 341, 323, I.P.C. which is triable by Judicial Magistrate."

(g) It would appear from the reading of the order referred to above that the learned Special Judge passed an order of transfer under misconception that the F.I.R. which was registered u/s 147, 341, 355 and 323 I.P.C. and u/s 3(1)(x) of the Act was investigated and the charge-sheet was filed before the Special Judge only for the minor offences, namely, u/s 341 and 323, I.P.C., which are triable by the Judicial Magistrate and therefore, the F.I.R. and other records were transferred for trial by the Judicial Magistrate, Devakottai.

(h) But, the facts are otherwise. A perusal of the other papers in the original records would reveal that the charge sheet was filed by the Inspector of police, Devakottai Taluk only on 28.11.1997 before the Judicial Magistrate. This was taken on file in S.T.C. No. 656 of 1997 for the offences under Sections 341 and 323, I.P.C. The relevant wordings of the orders passed are as follows:

S.T.C. 656 of 1997:-

Taken on file u/s 341 and 323 I.P.C. and posted today.

Sd/

Judicial Magistrate

Devakottai."

(i) Strangely, on the very same day, the accused Subramanian appeared before the Judicial Magistrate, Devakottai. The arrest card shows that the accused was arrested on 21.11.1997 and kept in lock-up and sent for remand. It is noticed from the other records that the Police themselves released him directing to

appear before the Judicial Magistrate, Devakottai on 28.11.1997, though the date of release was not mentioned.

(j) As already stated, in the case diary, it is written that he was released by the police on 21.11.1997. Whatever it may be. The requisition submitted by the Inspector of Police before the Special Court for transfer of F.I.R. to the Judicial Court, Devakottai was ordered only on 25.11.1997.

(k) The release order would also show that there is some correction in the date. The last page of the records would give the following particulars:

"S.T.C. 656 of 1997

Complainant: Inspector of Police, Devakottai Taluk, Cr.No. 229 of 1997.

Accused: Subramanian

Office: u/s 341, 323 I.P.C.

Date of filing: 28.11.1997

Date of hearing: 28.11.1997

28.11.1997

Accused present, Copies furnished

Questioned. Admitted the offence

Accused is found guilty u/s 341 I.P.C.

Convicted and sentenced to pay fine of Rs. 100 i/d S.I. for one week.

Under Section 323 I.P.C. convicted and sentenced to pay fine of Rs. 150 i/d S.I. for 3 weeks

Total fine Rs. 250.

Sd/

Judicial Magistrate.

Devakottai.

45. According to the Deputy Superintendent of Police, who conducted the investigation, the investigation made by him disclosed that only the offences under Sections 147, 341, 355 and 323, I.P.C. were made out. According to the Inspector of Police, who conducted the further investigation, the investigation disclosed that only the offences under Sections 341 and 323 were made out.

46. Both of them have ignored the statement and the F.I.R. given by the first informant, which was supported by the Certificate of the Doctor, who found injuries on him. The medical certificate would also reveal that he was alleged to have been beaten by 5 known persons with chappal and hands. This had not

been taken note of by the investigating agency.

47. That apart, the accused was released by the police on 21.11.1997 itself on condition that he should appear before the Judicial Magistrate, Devakottai on 28.11.1997 at 10.00 A.M.

48. I am unable to understand as to how the Inspector of Police came to the definite conclusion that the papers would be transferred from the Special Court, Sivaganga to the Judicial Magistrate's Court, Devakottai and that the matter would be called on 28.11.1997 by the learned Magistrate. As noted above, the teamed Magistrate also took up the case on file on 28.11.1997 and closed the case on the same date.

49. These things would show that the entire disposal of the case had been made by the learned Judicial Magistrate, Devakottai in a hurried manner probably to please the police by acting as their "obedient servant".

50. The fact that the learned Judicial Magistrate took up the case on file, recorded the plea of accused and let him off with petty fine on the same date, would clearly reveal that the learned Judicial Magistrate did not go through the papers at all and had no inclination to apply his judicial mind for the reason best known to him.

51. The entire reading of the papers and records would clearly reveal one thing. The Inspector of Police, Devakottai Taluk, the Deputy Superintendent of Police, Sivaganga, the Special Judge, Sivaganga and the Judicial Magistrate, Devakottai, all have joined together to give a ceremonious burial of this case by ignoring the scope and object of the Act.

52. So, the entire proceedings, which culminated into recording of conviction for the petty offences under Sections 341 and 323 I.P.C. are completely illegal, as the same cannot be said to be valid and sanctioned by law.

53. Consequently, filing of the charge sheet by the Inspector of Police and taking of cognizance and recording of conviction by the learned Judicial Magistrate without hearing the first informant, have resulted in the serious illegality.

54. I am very much pained to see that both the police agency and the subordinate judiciary have ignored the purpose for which the S.C. & S.T. Act was brought into force.

55. Before the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed, the Parliament had passed an Act, known as "The Protection of Civil Rights Act, 1955" to prescribe punishment for the preaching and practice of "Untouchability".

56. Subsequently, the Parliament passed an Act known as "The Untouchability (Offences) Act, 1955", in order to make an act penal, if any person on the ground of untouchability is subjected to any disability with regard to the observance of any social or religious custom, usage or ceremony or taking part in

any religious procession.

57. Despite the introduction of these Acts providing for stringent action against the offenders of the Untouchability Act, the atrocities committed on Scheduled Castes and Scheduled Tribes had not diminished. Therefore, the Parliament passed the present Act known as "The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989."

58. The preamble of the Act is quoted below:

"An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

59. The Statement of Objects and Reasons appended to the Bill while moving the same in the Parliament, read as follows:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons."

60. From the reading of the preamble of the present Act, it is clear that the Act had been enacted to prevent the commission of atrocities against the members of the Scheduled Castes and Scheduled Tribes effectively.

61. It is contended by the teamed senior counsel now appearing for the 5th respondent and the learned Government Advocate, the erstwhile counsel for the 5th respondent and the counsel appearing for other respondents, would submit with equal vehemence that this application could not be maintained u/s 482, Cr.P.C.

62. They would cite the following authorities, viz, (1) Palaniappa Gounder Vs. State of Tamil Nadu and Others, and (2) R.P. Kapur Vs. The State of Punjab, .

63. In these decisions, the guidelines have been given under what circumstances the inherent power of the High Court has to be invoked. The complete reading of the above judgments of the Apex Court, would be, in my view, helpful to the petitioner, since as per these decisions, necessary orders shall have to be passed u/s 482 Cr.P.C. to prevent the abuse of process of law of or otherwise to secure the ends of justice.

64. As a matter of fact, it is held in Palaniappa Gounder Vs. State of Tamil Nadu and Others, that eventhough an application u/s 482 Cr.P.C. is not maintainable, when there is an express provision governing a particular subject matter, that would not affect the power of the High Court vested under the other Section, merely because the application was wrongly described.

65. Under these circumstances, when this Court finds serious illegality committed and grave injustice perpetrated by both the police agency and the judicial forums, this Court would certainly invoke the inherent power to correct the injustice inflicted upon the complainant, who became the second victim at the hands of the above authorities.

66. In this context, the following observation of the Supreme Court, while dealing with the inherent power of this Court, in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, is quite relevant:

"But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power will be tantamount to recognition of "Divine Power" which no authority on earth can enjoy."

67. In the light of above observation, this Court has got power to pass suitable orders to redress the grievance of the first informant.

68. When a victim, a member of the Scheduled Castes, tapped the door of the authorities, namely, the police agency and the Court, seeking to redress the grievance of his having been subjected to the atrocities at the hands of the so called higher caste people, should they not take suitable action by realising their responsibility in the light of the purpose of the Act and the intention of the Parliament? Why should it empower the Special Court being the Sessions Court to have a trial, that too, speedily?

69. Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 states as follows:

"7. Investigation Officer -- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government, Director General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The Investigating Officer so appointed under Sub-rule (1) shall complete the investigation within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director, General of Police of the State Government."

70. It is evident from Rule 7 of the said Rules that the police officer not below

the rank of Superintendent of Police shall be authorised by the State Government taking into account his past experience, sense of ability and justice to perceive the implications of the case and such competent officer shall complete the investigation within 30 days and submit the report to the Superintendent of Police, who in turn, will send the report to the Director General of Police of the State Government. Thus, the wordings contained in sub-rule (1) (2) of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 would reflect the consideration of the legislature with reference to the seriousness of the offences under the Act.

71. Similarly, the Act provides for the constitution of a Special Court by the State Government with the concurrence of the Chief Justice of the High Court u/s 14 of the Act, which means a Court of Sessions for the purpose of providing for speedy trial.

72. Thus, both Sections and Rules were introduced with the intention and fond hope of providing speedy relief and rehabilitation of the victim of such offences under the Act.

73. As discussed above, in the present case, the intention of the Parliament had been thrown into wind by both the police agency and the subordinate judiciary, who ultimately saw to it that the case was buried under the Bay of Bengal.

74. Thus, the victim, the first informant in this case, has not only been subjected to the alleged atrocity committed by the accused persons, but also has again become a victim at the hands of both the police agency and the subordinate judiciary.

75. In this context, it would be appropriate to refer to some of the provisions of the Criminal Procedure Code, which ought to have been followed by the police agency and the subordinate judiciary.

76. u/s 156, Cr.P.C., the officer-in-charge of a police station has the power to investigate any cognizable offence. Section 157, Cr.P.C. lays down that when information about any cognizable offence is received, the officer-in-charge of the police station shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Thereafter, he shall proceed to the spot to investigate the facts and circumstances of the case.

77. u/s 173, Cr.P.C. as soon as the investigation is completed, the officer-in-charge of the police station shall forward the police report to the Magistrate empowered to take cognizance of the offence. Sub-section (2)(ii) of Section 173 states that the officer shall also communicate, the action taken by him to the person by whom the information relating to the commission of the offence was first given. Section 190 Cr.P.C. empowers the learned Magistrate to take cognizance upon the said police report.

78. u/s 154(2), Cr.P.C. when the first informant lodged the First Information

Report, a copy of which has to be supplied to him by the police. If the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient grounds for investigation, he is required under sub section (2) of section 157 to notify to the informant the fact that he is not going to investigate, the case. Then again, the Officer is obligated under sub-section 2(ii) of Section 173 to communicate the action taken by him to the informant, even when the report is filed before the Magistrate.

79. These provisions would disclose that when an informant lodges the F.I.R. with the police, he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the first information report lodged by him.

80. The first report shall be filed before the Magistrate u/s 173(2)(i) Cr.P.C. The report may be a positive report or a negative report. On a positive report being filed to the effect that the offence had been committed by a particular person, the Magistrate may do either one of the three things: (1) he may accept the report and take cognizance of the offence; or (2) he may disagree with the report and drop the, investigation; or (3) he may direct further investigation and require the police to make a further report.

81. In the event of the police filing a negative report to the effect that no offence has been committed by a particular person, the Magistrate may do either one of the three things: (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence; or (3) he may direct further investigation to be made by the police u/s 156(3), Cr.P.C.

82. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence, the informant should not be prejudicially affected because cognizance of the offence was not taken by the Magistrate for the offence alleged.

83. But, if the Magistrate decides to accept the the negative report of the police officer and to drop the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the first informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part.

84. Similarly, if the learned, Magistrate decides to take cognizance for some offences and to drop the proceeding in respect of other main offences, then also, the first informant would certainly be prejudiced.

85. So, under those circumstances, the learned Magistrate on consideration of the report made by the officer-in-charge of the police station under sub-section (2)(ii) of section 173, is not inclined to take cognizance of the main offences the

informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance in respect of other offences also.

86. These are the principles laid down by the Supreme Court in Bhagwant Singh Vs. Commissioner of Police and Another, while dealing with the provisions mentioned above. But, as stated earlier, this has got been followed either by the learned Special Judge, Sivaganga or by the learned Judicial Magistrate Devakottai.

87. In view of the legal infirmities found available, this Court felt that an opportunity should be given to the accused, as he was not made a party in this petition, and that the accused, who was convicted in this case, must be heard before passing the final order in this case.

88. Hence, notice was issued to the accused. The counsel for the petitioner was also permitted to take private notice. However, it is brought to the notice of this Court that the private notice sent to the accused by the counsel for the petitioner was refused to be received by him and the same has been returned to the sender. To this effect, the counsel has filed an affidavit. Thereafter, this Court directed the learned Public Prosecutor to serve the notice on the accused through police. Accordingly, the police served the notice on him. However, the accused did not choose to appear before this court for the reason best known to him, despite the case was adjourned periodically to different dates. Therefore, this Court is constrained to dispose of this matter after hearing the counsel or the parties available.

89. In the light of the above legal and the factual situations earlier, let me now consider the question as to what are the reliefs which may be granted to the petitioner to redress his grievance, in order to secure the ends of justice, which has been made a casualty in the present case.

90. The prayers sought for in the petition filed by the petitioner are three numbers.

91. The first prayer is for a direction to be issued to the Home Department of the State Government, the first respondent herein, and the Superintendent of Police, Sivganga District, the third respondent herein, to appoint an Officer in compliance with Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 for making a fresh investigation on the petitioner's complaint in Crime No. 229 of 1997.

92. The second prayer is to pay compensation for the suffering of the petitioner, in addition to the relief amount provided under the relevant Rules.

93. The third prayer is to initiate departmental and criminal proceeding against Mr.T. Nagarajan, the Deputy Superintendent of Police, Sivaganga, the 5th respondent herein, and Mr.B. Balasubramanian, the Inspector of Police, Devakottai Taluk, the 6th respondent herein, for their violation of law in dealing

with the complaint of the petitioner in Crime No. 229 of 1997.

94. As regards the first prayer, I shall have to give the proper relief, in order to do complete justice, so that the law would take its own course, in pursuance of the complaint given by the petitioner, which would enable the Criminal Court to conduct enquiry into the offences alleged in the complaint and to give punishment to the person concerned, in the event of the offences are proved.

95. As I have discussed earlier, the entire proceedings right from the sending back the file from the Deputy Superintendent of Police, Sivaganga to the Inspector of Police, Devakottai Taluk upto the recording of conviction of plea of guilt for the minor offences by the learned Judicial Magistrate, Devakottai, are quite illegal.

96. Therefore, I set aside the order of the trial court convicting the accused, as it cannot be held to be a legal order and I direct the Superintendent of Police, Sivaganga District to appoint some other Deputy Superintendent of Police to conduct fresh investigation on the complaint of the petitioner dated 10.11.1997 under his direct supervision and after finishing the investigation, the Deputy Superintendent of Police shall file a report before the learned Judicial Magistrate Devakottai for the appropriate offences within three months from the date of communication of this order.

97. If the learned Magistrate, after perusal of the police report, finds that there are sufficient materials available on record for the offence committed under the S.C. & S.T. Act, he shall commit the same to the Special Court to have a trial for the offences under the I.P.C. and for the offences under the S.C. & S.T. Act

98. As regards the second prayer, I am of the view that the question of compensation cannot be decided at this state, in view of this relief that has been granted on the basis of the first prayer.

99. In regard to the third prayers, I do not deem it fit to give any direction as prayed for.

100. But, at the same time, I cannot but express my displeasure especially over the conduct of the 5th respondent, viz. the Deputy Superintendent of Police, Sivaganga, in simply sending back the file to the Inspector of Police, Devakottai Taluk to take up further investigation without approaching the Court concerned for getting the appropriate orders for the same. This conduct, in my view, would reflect the attitude of the Officer concerned which would indicate that he had not given due regard and respect to the intention of the legislature for introducing the Act. This, I would emphatically say, is highly condemnable.

101. In view of the above observation, it is for the State Government to take appropriate action against the 5th respondent herein, as it may deem fit.

102. Before parting with this case, I deem it appropriate to direct the Home Department, the first respondent herein to take copies of this Order and to

communicate the same to the Police Officers of all the Districts in the State so that at least in the future, the Officers competent to investigate the offences under the S.C. and S.T. Act. would not indulge in such process adopted by the Deputy Superintendent of Police in the present case. Similarly, the subordinate judiciary also shall understand the procedure to be followed while dealing with the cases involving the offences under the S.C. and S.T. Act. Hence, the Registry is directed to place this order before My Lord The Honourable The Chief Justice for approval to circulate the order copies to the Judges of the Special Courts constituted under the S.C. and S.T. Act.