

**(2007) 07 BOM CK 0141**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 374 of 2006**

Ramesh Sadar

APPELLANT

Vs

State of Maharashtra and Smt. Prabhabei Jadhav

RESPONDENT

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**Date of Decision : 18-07-2007**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 193, 200, 202  
Penal Code, 1860 (IPC) — Section 323, 354, 447, 504, 506  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 14, 3, 4

**Citation : (2007) 07 BOM CK 0141**

**Hon'ble Judges : C.L. Pangarkar, J**

**Bench : Single Bench**

**Advocate : V.G. Wankhede, for the Appellant; S.J. Khandalkar and A.S. Sonare, Assistant Public Prosecutor, for the Respondent**

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## **Judgement**

C.L. Pangarkar, J.—By this Criminal Writ Petition, the petitioner seeks to quash the Criminal Case No. 50/2004 before the Judicial Magistrate (F.C.) at Chikhali, Distt.Buldhana.

2. A few facts may be narrated thus The petitioner is a Police Patil and owns a field. The respondent is a neighbouring field owner. The respondent filed a report with Police Station, Chikhali alleging that the accused had come to her house and had abused her and caught her hand on account of the fact that there was some dispute over grazing of cattle in the field of respondent. Police did not take cognizance of the complaint. The respondent, therefore, filed private complaint seeking to prosecute the petitioner for offences under Sections 447, 354, 323 of Indian Penal Code and Section 3(i)(x)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It appears from the order passed by the Judicial Magistrate on 2/1/2004 that he recorded the verification statement of the complainant i.e. respondent and directed the complaint to be sent to Police u/s 156(3) of Code of Criminal Procedure. It also appears that the Police did not send the report as such u/s 173 of the Cr.P.Code to the Magistrate.

The Police, on the other hand, sent a simple report that since the offences are non-cognizable, Non-cognizable Case No. 109 of 2004 under Sections 504, 506 of Indian Penal Code is sent to the court. After receipt of this report, the Magistrate ordered process to be issued under Sections 447, 323, 504 of Indian Penal Code and 3(i)(v)(x)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act against accused No. 1 and u/s 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act against accused No. 2. A revision against this order is dismissed by Additional Sessions Judge.

3. The petitioner does not seek to challenge these two orders as such but seeks to quash the complaint itself.

4. The things seem to have become complicated in the matter. We have seen from order dated 2/1/2004 that the learned Magistrate has passed an order u/s 156(3) of Code of Criminal Procedure after recording of verification statement of complainant. Provisions of Section 156(3) can be resorted to before taking cognizance of the complaint. Once Magistrate resorts to recording verification statement as envisaged by Section 200 of Code of Criminal Procedure, he is deemed to have himself taken cognizance of the complaint. If he has to pass an order u/s 156(3) of the Code, he must refrain from recording verification Statement. In this case, not only Magistrate went wrong in sending the complaint u/s 156(3) of the Code after recording verification statement but even the police seem to have gone wrong. Section 156(3) of the Code envisages that when a Magistrate sends a complaint to the Police, the Police Officer is bound to treat the complaint as report and register an offence on basis of the complaint and investigate it and submit a report u/s 173 of Code of Criminal Procedure. It was obviously wrong on the part of Police Officer not to have registered an offence on basis of the complaint and to have informed the Magistrate that a non-cognizable case is filed.

5. Be that as it may, the fact is that Magistrate did not receive any report u/s 173 of Code of Criminal Procedure as such, since what is sent is neither a charge-sheet nor a summary. It appears that it could be taken as a report upon an enquiry u/s 202 of Code of Criminal Procedure. The Magistrate disagreeing with the Police has issued a process in this case. There cannot be any doubt that the Magistrate has every right to disagree with the report sent either u/s 173 or 202 of Cr.P.Code and to proceed to take cognizance. But here was a case when Magistrate could not have issued a process without examining of the witnesses, since the offence u/s 3 of the Atrocities Act is triable by court of Sessions. When even one of the offences alleged, is triable by Court of Sessions, the Magistrate has to adhere to the procedure prescribed under the proviso to Sub-section 1 and 2 of Section 202 of Cr.P.Code. Since in this case a final report u/s 173 of Cr.P.Code is not submitted the Magistrate was bound to go by the above provisions. He having not followed the procedure as laid down u/s 202 of Cr.P.Code, both orders dated 2/1/2004 and 7/4/2004 need to be quashed and set aside. Since the Magistrate has recorded the verification statement, he shall not

now revert to Section 156(3) of Cr.P.Code but shall proceed u/s 202 of Cr.P.Code.

6. It was contended that since special courts are established under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the Magistrate has no power to take cognizance of the complaint under the Act. Section 14 of the Act says that Special Court shall be the court of Sessions. The Special court is not empowered to take cognizance directly as is the case under the Prevention of Corruption Act. Section 193 of the Code of Criminal Procedure prohibits any Sessions court from taking cognizance of any offence unless the case is committed to it. The learned Counsel for the petitioner relied on the two decisions of this Court reported in 2000 (2) Mh.L.J. 770 Nandkishor Madanlal Choube v. State of Maharashtra and 2000 (2) Mh.L.J. 748 Dhrupadabai Ananda Labade v. State of Maharashtra. I respectfully disagree with the propositions in the above two decisions for the simple reason that although Special courts are established, they are essentially courts of Sessions. No court of Sessions can take cognizance of an offence unless the case is committed to it. Section 14 does not authorise a Sessions Judge to take cognizance of any offence directly as is taken in cases of Prevention of Corruption Act. Even otherwise, in view of the decisions of the Supreme Court in following two cases, the above two decisions of this Court is no more a good law. In Vidyadharan Vs. State of Kerala, the Supreme Court observes as follows

20. Neither in the Code nor in the Act is there 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 think that the charge- sheet or a complaint can straightway be filed before such special court for offences under the Act. It can be discerned from the hierarchical settings of Criminal Courts 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. In AIR SC 740 Gangula Ashok and Anr. v. State of A.P. the Supreme Court observes as follows

16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Sessions 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, a complaint or a charge-sheet cannot straightway be laid before the Special Court under the Act. In view of this, the Magistrate has power to take cognizance and to commit the case to the court of Sessions. The Sessions court cannot take cognizance of the offence under the Act directly. It is for this reason that the Magistrate was bound to proceed as contemplated by Section 200 and 204 of Cr.P.Code.

7. After having gone through the complaint, it is found that in the complaint the caste of the complainant is given as Mahar and it is also alleged that the accused

is SavarnaHindhu, therefore, necessarily not belonging to Scheduled Caste. It is also alleged that the complainant was abused on her caste, her hand was caught with an intention to dishonour her. Since all these ingredients are disclosed in the complaint, the complaint cannot be quashed. The petition is, therefore, dismissed. The Magistrate shall now proceed to dispose of the complaint bearing in mind the above observations.