
(2002) 08 PAT CK 0061

In the Patna High Court

Case No : Criminal Miscellaneous No's. 24542, 25172 and 28134 of 2001

Sant Bilash Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 9

Citation : (2003) 51 BLJR 309 : (2002) 4 PLJR 464

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and Prabhat Kr. Singh, in 24542 and Umesh Pathak, in 25173, for the Appellant; Shiv Shankar Pd. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. This order shall dispose of Cr. Misc. No. 24542/2001 (Sant Bilash Singh and Ors. v. The State of Bihar and Anr.,) Cr. Misc. No. 25173/2001 (Rama Ashray Mauar@ Tuntun Mauar v. The State of Bihar,) and Cr. Misc. No. 28134/2001 (Rama Kant Sao and Ors. v. The State of Bihar and Anr).

3. Learned Counsel for the applicant submitted that in accordance with Rule 7 the investigation was to be made by an officer not below the rank of Dy. S.P. and as the investigation was made by an officer not authorised by the State Government u/s 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the Act), the investigation is ab-initio-void and the charge-sheet could not be submitted. It is contended that if no investigation could be made or the charge-sheet could not be submitted by the concerned police officer, the Court below could not take cognizance in the subject. Though the Counsel for the applicants made a submission that on the allegations contained in the private complaint or in the First Information Report an offence

punishable under the provisions of the Act are not made out but even at this stage 1 must reject that argument because the complainant in unequivocal terms in the complaint so also in the verification statements have alleged the commission of the offence punishable under the provisions of the Act.

4. The other side in Cr. Misc. No., 24542/2001 has submitted the counter annexed with a notification dated 2-6-2002 inter alia submitting that the State Government in exercise of its powers u/s 9 of the Act has authorised all the officers of the rank of Police Inspectors, Sub Inspector of Police and Assistant Sub-Inspector of Police to investigate the cases with effect from 31-3-1995, the date of coming into force of the Act, the applicants cannot now raise the argument that there was no proper authorization in favour of the investigation officer.

5. Placing reliance upon a judgment of this Court in the matter of Mohan Choudhary v. State of Bihar, 2000 (1) PUR 889, it is contended by the applicants that the offence cannot be investigated by any person below the rank of Dy, S.P. and unless there is a special authorization in favour of such an officer by the State Government u/s 9 of the Act neither the offence could be investigated nor the charge-sheet could be filed nor the cognizance could be taken.

6. For proper appreciation of this argument, it would be necessary to see Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Rules), 1995, which reads as under:--

"(7) Investigating 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 alongwith right lines within the shortest possible time.

(2) The investigating officer so appointed under Sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report of the Director General of Police of the State Government.

(3) The Home Secretary, Welfare Secretary to the State Government. Director of Prosecution, the officer incharge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

7. According to Rule 7, if it holds the field and there is nothing contrary to Rule 7, an offence committed under the Act shall be investigated by the Police Officer not below the rank of Deputy Superintendent of Police. Such investigating officer has to 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

alongwith right lines within the shortest possible time. Sub-rule (2) requires such an officer to complete the investigation within a period of 30 days and submit his report to the Superintendent of Police. Sub-rule (3) provides that the Home Secretary and the Social Welfare Secretary to the State Government and other officers of the police shall review by the end of every quarter the position of all investigations done by the investigating officers. The rules have been framed by the Central Government in exercise of powers conferred upon it by Sub-section (1) of Section 23 of the Act.

8. Section 23 of the Act says that the Central Government may by notification in the official Gazette, make rules for carrying out the purpose of the Act. Sub-section (2) provides that such rules shall be placed before each house of the Parliament and thereafter the rule shall be brought into force. At this stage it would also be necessary to refer to Section 9 of the Act. Section 9 reads as under:--

"(9) Conferment of Powers.--(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do.-

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or case or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in Sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under Sub-section (1).

9. Section 9 provides that notwithstanding anything contained in the Code (Code of Criminal Procedure) or any provisions of the Act (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989), the State Government may if it consider it necessary or expedient so to do for prevention of and for coping with an offence under the Act or for any case or class or group of cases under the Act, in any district or part thereof confer by notification in the official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code for such district or part thereof or as the case may be, for such case or class or group of cases, and in particular the powers of arrest, investigation and prosecution of persons before any special Court. Section 23 on one hand authorises the Central Government to frame the rules while Section 9 of the Act says that notwithstanding anything contained in the Code of

Criminal Procedure or in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the State Government can authorise a particular officer to exercise the powers for arrest, investigate and prosecute.

10. The rule making power conferred upon any Government does not give it powers to do something beyond what is to be done under the Act itself. After all the rules are to be made for carrying out the purpose of the Act. The purpose of the Act is to prevent the atrocities and commission of the offences of atrocities against the members of scheduled caste 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.

11. It can well be argued that if there is no conferral of powers u/s 9 or no notification or declaration has been made by the State Government u/s 9 then the rule framed by the Central government shall prevail. The rule would hold the field if nothing contrary to it has been done by any Government within its right and nothing further is done to suppress the rules.

12. True it is that the rule provides that the offence is to be investigated by an officer not below the rank of Deputy Superintendent of Police but the Act at the same time confers powers upon the State Government to authorise any officer of the State Government to exercise the power of arrest, investigation and prosecution of persons before any special Court.

13. Once the powers u/s 9 are exercised by the State Government then the rule providing something contrary to powers conferred u/s 9 of the Act would not hold the field.

14. A comparison of Section 9 with rule making powers contained u/s 23 would make it clear that the rules would hold the field if other powers have not been exercised under the Act. Section 9 itself starts with non-obstante clause, it says, "notwithstanding anything contained in the Code or in any other provisions of this Act (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act))" and, if Section 9 has the over-riding effect over Section 23 then by no stretch of imagination, it can be argued that the investigation cannot be conducted by any officer below the rank of Deputy Superintendent of Police.

15. the notification dated 2-6-2002 is sought to be condemned on the ground that the State Government has no powers to confer powers upon the particular police officer or other officers with retrospective effect. The submission is that any investigation conducted prior to 2-6-2002 or any charge-sheet filed before 2-6-2002 would be had because prior to 2-6-2002 officers below the rank of Deputy Superintendent of Police were not conferred with any powers by the State Government u/s 9 of the Act.

The notification reads as under:--

"In exercise of the powers conferred by Section 9(1) of the Scheduled Castes and

the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No. 33 of 1989) and having regard to the number of cases filed under this Act, the State Government authorises all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant sub-Inspector of Police to investigate the cases filed under this Act within the State of Bihar with effect from 31-3-1995, the date of coming into force of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 made under this Act."

16. The notification in clear terms says that the State Government authorises all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant Sub-Inspector of Police to investigate the cases filed under the Act within the State of Bihar with effect from 31-3-1995. Section 9 talks of the conferral of the powers. The notification confers the powers with retrospective effect. The question whether the State Government could or could not confer the powers with retrospective effect is raised before this Court in these proceedings then this Court would not answer the same in its jurisdiction u/s 482 Cr. P.C. because validity of a statutory notification will have to be challenged by the petitioners in a duly constituted writ application before the competent Court. This Court is simply required to see whether there was any authorization in favour of any officer below the rank of Deputy Superintendent of Police. The notification in fact would hold the field and unless it is quashed by a writ under Article 226 of the Constitution of India shall be binding on all concerned.

17. The judgment on which strong reliance has been placed, in the opinion of this Court would not apply to the facts of the present case. The learned single Judge, in the said matter was considering Rule 7 in comparison to Section 9 of the Act. The learned Judge was of the opinion that the State Government in terms of the rule was required to issue notification appointing a Deputy Superintendent of Police to investigate the offence and while appreciating Section 9 the Court was of the opinion that the State Government was required to issue a notification u/s 9 and as neither any authorization was issued under Rule 7 nor any power was conferred u/s 9 on a particular officer the investigation was bad. In the present case in view of the notification dated 2-6-2002 conferring powers on each of the Inspectors, Sub-Inspectors and Assistant Sub-Inspectors it cannot now be said that either Rule 7 has been violated or Section 9 of the Act has not been observed.

18. In the opinion of this Court the argument raised by the Counsel for the applicants must be rejected, those are accordingly rejected. The defences, which are available to each of the applicant on the factual foundation can certainly be raised by them before the trial Court to contend that even on the allegations if taken to be true on their face value, no offerees punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are made out. If the applicants are in a position to convince the said Court that no offence punishable under the said Act is made out then the Court concerned certainly would discharge the accused of the said offences and shall require

regular to Court to try the matter in accordance with law. On the merits each of the petition is dismissed with the liberty aforesaid.