
(2006) 07 PAT CK 0013

In the Patna High Court

Case No : Criminal Miscellaneous No. 29342 of 2004

Saryu Lall and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 3(1)(xi), 3(IV)

Citation : (2006) 4 PLJR 298

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioners and the counsel appearing for the O.P. No. 2. Petitioners are accused in complaint case No. 693/04 and cognizance has been taken against them for an offence u/s 3(IV) of Schedule Caste & Schedule Tribes (Prevention of Atrocities) Act, by the Judicial Magistrate.

2. This order has been challenged by the petitioners on the ground that the order taking cognizance is without jurisdiction in view of Section 14 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989. Counsel for the petitioner submits that only Special Court constituted u/s 14 of S.C. & S.T. (Prevention of Atrocities) Act is empowered to take cognizance of offences u/s S.C. & S.T. (Prevention of Atrocities) Act.

3. Section 14 of the S.C. & S.T Act defines: "Special Court, where it has been mentioned that for the purposes of speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district, a Court of Sessions to be a Special Court to try the offences under this Act". Under the Section the "order of cognizance" has not been mentioned only the Special Court has been authorised

to try the offences under this Section.

4. Counsel for the petitioner has placed reliance on the decision reported in AIR 2004 S.C. 536 and Gangula Ashok and Another Vs. State of A.P., . After going through these decisions, I find that finding recorded in these decisions are not supporting the submissions made by the petitioners" counsel.

5. In AIR, 2004 SC 536, it has been held, "The Special Judge cannot take cognizance of the offence punishable under S. 3(1)(xi) of Act straightway without the case being committed to him. The Special Court being a Court of Session, the interdict contained in S. 193 of the Code of Criminal Procedure, 1973 would stand in the way. The reason being as below:-

It is for the trial of the offences under the Act that the particular Court of Session in each district is sought to be specified as a Special Court under S. 14 of the Act. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. And inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. Thus the Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of 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 Chap. XVIII of the Code which contains fascicules of provisions of "trial before a Court of Session". Section 193 of the Code has to be understood in the aforesaid backdrop. 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. 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.

6. Similarly "In Gangula Ashok and Another Vs. State of A.P., , it has been held 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 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 Sessions is given a superior and special status. Hence we think that the Legislature would have thoughtfully relieved the Court of Sessions from the work of performing all the preliminary formalities which Magistrates have to do until the case committed to the Court of Session".

7. I find that the Supreme Court in the aforementioned decisions have negated the submissions made by the petitioner. There is no illegality in the order taking cognizance. I do not find any reason to interfere with the order taking cognizance. Accordingly, this application is dismissed.