

(2019) 07 JH CK 0200

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2668 Of 2013

Shankar Sharma And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 323, 341, 354, 452
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 2(d), 3, 4, 4(2), 14, 21
Code Of Criminal Procedure, 1973 — Section 4(1), 5, 190, 193
Prevention Of Corruption Act, 1988 — Section 5

Citation : (2019) 07 JH CK 0200

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Mahesh Tewari, Tejo Mistri, P.D. Agarwal

Final Decision : Dismissed

Judgement

1. Heard Mr. Mahesh Tewari, counsel appearing on behalf of the petitioners.
2. Heard Mr. P.D. Agarwal, counsel appearing on behalf of the State.
3. This criminal miscellaneous petition has been filed for quashing the protest-cum-complaint petition bearing C/1 Case No.2204/11 filed on behalf of the opposite party no.2 in connection with Jugsalai P.S. Case No.109 of 2010, corresponding to G.R. Case No.1238 of 2010, arising out of C/1 Case No.1249/2010 registered under Sections 147, 323, 341, 452 and 354/34 of the Indian Penal Code and under Sections 3, 4 and 21 of the S.C. & S.T. (Prevention of Atrocities) Act against the petitioners as well as also for quashing of the order taking cognizance dated 28.01.2013 passed by the learned Chief Judicial Magistrate, Jamshedpur for the aforesaid alleged offence.
4. The learned Senior Counsel for the petitioners submits that the solitary point, which is involved in this case is that the learned Magistrate, who has taken cognizance in the instant case, had no jurisdiction to take cognizance in view of

Section 14 of the S.C. and S.T. (Prevention of Atrocities), Act 1989. He submits that Section 2 (d) of the aforesaid Act of 1989, defines "Special Court," to mean, a Court of Sessions specified as Special Court in Section 14 of the aforesaid Act of 1989. The counsel submits that it has been specifically mentioned in section 14 of the said Act of 1989 by way of proviso i.e "Provided further that the Courts so established or specified shall have power to directly take cognizance of offence under this Act." Counsel submits that in view of the specific provision, special court has the exclusive jurisdiction to take cognizance of an offence under the provisions of the aforesaid Act of 1989. The cognizance having been taken by a court different from the special court is fit to be set-aside being wholly without jurisdiction.

5. The learned senior Counsel further refers to Section 4(1) of the Cr.P.C. to submit that it has been specifically provided that "All the offences under Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in Code of Criminal Procedure". subsection 2 of section 4 of the aforesaid Act of 1989 provides that "All offences under any other law shall be investigated, inquired into, tried, 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, inquiring into, trying or otherwise dealing with such offences."

He submits that there is specific provision under the aforesaid Act of 1989 that cognizance has to be taken exclusively by the Sessions Court therefore, the impugned order taking cognizance is wholly without jurisdiction and the entire criminal proceedings is fit to be set-aside.

The learned Senior Counsel has also referred to the provisions of Section 193 of the Code of Criminal Procedure and also to a judgment passed by Hon'ble Supreme Court reported in (2004) 4 SCC 584 (Moly and Another Vs. State of Kerela) to submit that it has been held in the said judgment at para - 14 that Section 5 of the Cr.P.C. cannot be brought in aid for supporting the view that the Court of Sessions specified under the Act would obviate the interdict contained in Section 193 of the Criminal Procedure Code so long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction.

6. The counsel submits that in the aforesaid view of the matter, the impugned order taking cognizance under the provisions of S.C. and S.T. (Prevention of Atrocities) Act, 1989 is fit to be set-aside.

7. Counsel appearing on behalf of the State on the other hand submits that the proviso in Section 14 of the aforesaid Act of 1989, which is being referred to by the counsel appearing on behalf of the petitioner, has been brought in by way of substitution of the entire Section 14, made effective from 26.01.2016. He further submits that the entire incident and the entire case involved in the present case relates to the period much prior to the amendment and accordingly, un-amended

provision of S.C. and S.T (Prevention of Atrocities) Act, 1989 will be applicable. By referring to the earlier provision, he submits that there was no such proviso to Section 14 as has been inserted by the aforesaid amendment in the provision.

8. The Counsel has referred to a judgment passed by Hon'ble Supreme Court reported in 2004 Cr.L.J. 1770 (M.A. Kuttappan Vs. E. Krishnnan Nayanar) and has submitted that the entire pre-amended provisions of the S.C. and S.T. (Prevention of Atrocities) Act, 1989 has been dealt with and he specifically refers to para - 10 of the said judgment.

9. After hearing the counsel for the parties and after considering the materials on record, this Court finds that admittedly the instant case relates to period prior to the amendment made in Section 14 of the S.C. and S.T. (Prevention of Atrocities) Act, 1989. The pre-amended Section 14 and post amendment Section 14 reads as under:

S.C. and S.T. (Prevention of Atrocities) Act

Pre - Amendment of Section 14

Post - Amendment of Section 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 for each district a Court of Session to be a Special Court to try the offences under this Act."

Special Court and Exclusive Special Court - (1) 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, establish and Exclusive Special Court for one or more Districts: Provided that

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2)

(3) In every trial

Provided

10. This Court finds that in the present case the cognizance was taken under the pre-amended Act of 1989. The proviso to section 14 of the aforesaid Act of 1989, which is being relied upon by the counsel for the petitioners, was introduced only vide the aforesaid amendment to empower the Special Court so established to directly take cognizance of the offence under the Act of 1989. Under the aforesaid facts and circumstances of this case, the petitioner cannot be permitted to resort to the amended provisions of the said Act of, 1989 to submit that the order taking cognizance is without jurisdiction having not been taken by the court of sessions.

11. So far as judgment, which has been relied upon by the petitioners reported in (2004) 4 SCC 584 is concerned, in the said judgment the Hon'ble Supreme Court by referring to the provisions of the Cr.P.C as well as the then unamended provision of the aforesaid Act of 1989 has held that the Court of Sessions cannot take cognizance of offence under the aforesaid Act of 1989 unless the case is committed by the Magistrate following the mandate of Section 193 of the Cr.P.C. This judgement does not help the petitioners in any manner as it does not say that cognizance of offence under the aforesaid Act of 1989 cannot be taken by the Magistrate, rather it says that the cognizance cannot be taken by the court of sessions unless it is committed by the magistrate as per section 193 of Cr.P.C.

12. It is also relevant to point out that the Hon'ble Supreme Court while dealing with provision of section 5 of Prevention of Corruption Act enabling the special court to take cognizance of offence without the accused being committed by the magistrate to the sessions court for trial held in judgement reported in (2016) 11 SCC 733 (State through CBI, Chennai Vs. V. Arul Kumar), that the Special Court as well as the Magistrate would have power to take cognizance of offence. In para 21 it has been held as under:

"21. Sub-section (1) of Section 5, while empowering a Special Judge to take cognizance of offence without the accused being committed to him for trial, only has the effect of waiving the otherwise mandatory requirement of Section 193 of the Code. Section 193 of the Code stipulates that the Court of Session cannot take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Thus, embargo of Section 193 of the Code has been lifted. It, however, nowhere provides that the cognizance cannot be taken by the Magistrate at all. There is, thus, an option given to the Special Judge to straightaway take cognizance of the offences and not to have the committal route through a Magistrate. However, normal procedure prescribed under Section 190 of the Code empowering the Magistrate to take cognizance of such offences, though triable by the Court of Session, is not given a go-by. Both the alternatives are available. In those cases where charge-sheet is filed before the Magistrate, he will have to commit it to the Special Judge."

13. This Court finds that the Hon'ble Supreme Court has clearly held in para - 21 that where the special court is empowered to take cognizance directly, the embargo of Section 193 of the Code of criminal procedure is lifted, but it does not provide that cognizance cannot be taken by the Magistrate at all. Thus, the petitioners cannot be permitted to rely upon amended provisions of section 14 of the aforesaid Act of 1989 to challenge the order taking cognizance, which was admittedly taken prior to the amendment of the said Act of 1989. Otherwise also, applying the ratio of the aforesaid judgement reported in (2016) 11 SCC 733 there is no illegality in the impugned order taking cognizance passed by the magistrate. Accordingly, the present petition is hereby dismissed.

14. This court further finds from the records of this case that the learned court

below has proceeded further in as much as the discharge petition has been rejected which has been challenged before this Court by filing of an amendment petition vide I.A No. 3395 of 2014. This court is not inclined to entertain the petition for amendment and accordingly the I.A No. 3395 of 2014 is rejected with a liberty to the petitioners to challenge the same in an appropriate proceeding, if so advised.