

(2012) 07 DEL CK 0065
In the Delhi High Court
Case No : Criminal M.C. No. 357 of 2011

State	Vs	APPELLANT
Lal Singh		RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 15(5), 16
Criminal Procedure Code, 1973 (CrPC) — Section 173, 438
Prevention of Corruption Act, 1988 — Section 17, 5(4)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(X)

Citation : (2012) 07 DEL CK 0065

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Pawan Sharma, Criminal with Mr. Harsh Prabhakar and Mr. Jaikush Hoon, Complainant in person, for the Appellant; Anirudh Yadav, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner has challenged the order dated 12.05.2011, whereby, the learned trial court has discharged the respondent on the ground that the investigating agency has not followed provisions contained in Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, which was the mandatory for them to follow and the cognizance taken by the trial court was bad in law. However, the learned Additional Sessions Judge kept open to the State to process the case as per law, afresh, after strictly observing Rule 7 of SC & ST (Prevention of Atrocities) Rules, 1995 and then proceed with the case.

2. It is pertinent to mention here that in paragraphs 5 and 6 of the impugned judgment, it has been recorded as under :-

At the very outset, it was conceded by the Ld. APP for State that Rule 7 of SC &

ST (POA) Rules 1995 has not been followed, in this case, with all intent, in as much as, the "report" mentioned in the sub rule has not been put up or forwarded, either to the officer of the level of Director General of Police of the State Government or to the Home Secretary and the Welfare Secretary to the State. Only intimation has been sent by the police that investigation was completed. Admittedly, the investigation in this case was not completed within the stipulated time by the Statute.

6. Rule 7 of the aforesaid Rules provides as under:

(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 investigate on top priority 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.

(3) The Home Secretary and the Social 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.

3. It is further recorded that Rule 7(2) clearly stipulates that the investigating officer shall submit a "report" to the Superintendent of Police, who in turn, will immediately forward the report to the Director General of Police of the State Government. The Home Secretary and Welfare Secretary along with Director of Prosecution and the Director General of Police shall review by the end of every quarter the position of all this appears to have an effective, fair and impartial investigation under strict supervision, control and knowledge of higher authorities.

4. In para 9 of the impugned judgment, it has been recorded that admittedly, after the investigation, the "report" u/s 173 Cr.P.C. was not put up by the Investigating Officer to the higher officers within the contemplation of Rule 7(2). It has not been shown that rule 7(3) was complied with. Even otherwise, unless the report is transmitted to the authorities in the manner stated in Rule 7(2), it is not possible to assume that Rule 7(3) was complied with.

5. Mr. Pawan Sharma, learned Standing counsel for the State submitted that in the present case, Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 has been fully complied with. However, the learned Additional Sessions Judge has discharged the respondent/accused without going through the material on record and without application of mind.

6. Learned Standing counsel has further submitted that the learned trial Judge namely Sh. N.K. Kaushik has been adopting the same practise formerly and acquitting the accuse person invariably. This Act is meant for the protection and welfare of the under privileged persons of the society, therefore, the learned trial Judge should not have rejected the case and act in an arbitrary manner.

7. Vide order dated 10.08.2011, the learned Standing Counsel for State for the state was directed to file the details of the case, in which the above named Judge has adopted this type of attitude. Accordingly, the same has been complied with and a Status report was filed on 12.09.2011, wherein, it is stated that there are three other such cases, in addition to the present case, wherein, the learned Additional Sessions Judge had passed similar orders and discharged the accused persons. The details of the same are as follows:-

A FIR No. 12/2009, U/s 3(1)(X) SC/ST(POA) Act, P.S. Domestic Airport, Delhi. In this case, the complainant, Sh. Meer Singh, s/o Late Sh. Kundan Lal, r/o A-11/176, Indian Airlines Colony, Vasant Vihar, New Delhi had alleged that Surender Kumar, Anand Prakash and JB Kardian had assaulted him and had spoken caste specific derogatory words against him with intent to humiliate him in public. The case was investigated and charge sheet filed against the accused person. The learned court of Sh. N.K. Kaushik, ASJ had vide order dated 21.12.2010, discharged the accused persons citing non compliance of the provisions of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995. It is pertinent to mention here that a Revision Petition vide number 200/2011 titled State V. JB Kadian is pending in this court.

B FIR 80/2009 u/S 3(1)(X) SC/ST(POA) Act, PS Chhawla, Delhi. In this case the complainant Sh. Sukhbir s/o Sh Bhartu r/o VPO Kanganheri, New Delhi had alleged that Dharamber and his sons Ajay and Vijay had dispossessed him of his land and had spoken caste specific derogatory words against him with intent to humiliate him in public. The case was investigated and charge were filed against the accused persons without arrest. The learned trial court of Sh. N.K. Kaushik, ASJ had vide order dated 21.12.2010 discharged the accused persons citing non compliance of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995.

C FIR No. 135/2009, u/S 3(1)(X) SC/ST(POA) Act, P.S. Chhawla, Delhi. In this case, the complainant Sh. Khem Chand s/o Sh. Chhiddi Singh, r/o H.NO. 764 Gali No. 6 Raj Nagar, Part II, Palam, New Delhi Delhi had alleged that Subhash Chand and his wife Babli had spoken caste specific derogatory words against him with intent to humiliate him in public. The case was investigated and charge sheet filed against the accused persons. The learned trial court of Sh. N.K. Kaushik, ASJ had vide order dated 30.01.2010 discharged the accused persons citing non compliance of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995. It is pertinent to mention here that a Revision Petition vide number 477/2010 titled State V. Subhash Chand and others is pending in this court.

8. It is further submitted that in all the above mentioned three case, the learned Judge had discharged the accused persons citing non compliance of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995. The instant case, vide FIR No. 1018/2006 of P.S. Najafgarh, South West District, Delhi is the fourth such case. In all the other three cases, Revision petitions are being preferred against the impugned orders and same are pending in this court.

9. Since, the other petitions are not before me, therefore, I am not recording any opinion thereto.

10. The facts in brief of this case are that on 08.10.2006 at about 11pm Mrs. Lal Singh (wife of respondent) along with three unknown persons entered into the house of Sh. Jawaharlal(complainant) and after assaulting his son threatened him that she would grab his land. He further alleged that on the next day i.e. on 09.10.2006, at about 12noon, Sh. Lal Singh (respondent) along with four unknown persons came and dropped mud on his plot in an effort to grab his property. When he resisted, respondent called him by caste specific names. On the basis of cross-complaints, one filed by Smt. Sharda, w/o Sh. Lal Singh and another by Sh. Jawahar Lal received by SHO PS Najafgarh on 09.10.2006, two cross case were registered vide FIR No. 966/2006 and 967/2006.

11. On 10.10.2006, another complaint dated 10.10.2006 was received by SHO P.S. Najafgarh from Sh. Jawahar Lal alleging that Sh. Lal Singh/respondent, along with his associates had come to his alleged Plot on 09.10.2006 and inter-alia abused Sh. Jawahar Lal using caste based words. As there were already two cross cases registered, a preliminary enquiry was conducted before registering an FIR. On 25.10.2006, on the basis of preliminary enquiry FIR No. 1018/2006, was registered at P.S. Najafgarh and investigation thereof was sent by ACP Najafgarh to the DCP South West. On 16.11.2006, the DCP South West sent a report dated 16.11.2006 to the Joint Commissioner of Police, Head Quarters. On 25.11.2006, on completion of 30 days from the registration of FIR, the ACP Najafgarh forwarded a detailed report dated 25.11.2006 to the DCP, South-West. On 01.12.2006, on the report of the ACP/IO, the DCP, South-West advised the ACP Najafgarh to expedite the investigation and submit charge-sheet at the earliest.

12. On 01.12.2006, the DCP : Police Headquarters sent reports to the following authorities :-

1 The Director, Directorate of Welfare of SC/ST, Delhi.

2 The Director (ICDS), GOI, Department of Women & Child Development, Ministry of HRS, Shastri Bhawan, New Delhi.

3 The Director (PCR) Ministry of Social Justice & Empowerment, Government of India, 6th Floor, Shastri Bhawan, New Delhi.

4 Deputy Secretary (Home), Government of NCT of Delhi, Delhi Sachivalya, Delhi.

5 Research Cell-PHQ.

13. On 15.12.2006, after all possible investigation of FIR No. 1018/2006, registered at P.S. Najafgarh, a draft Charge-sheet was prepared on 15.12.2006 and sent to chief Prosecution (South) for scrutiny by the Special Public Prosecutor. The Special Public Prosecutor vide Note dated 23.12.2006 sent back the case file for compliance to the ACP, Najafgarh, which was received back on 25.12.2006. On 27.12.2006, reports regarding investigations made in FIR 1018/2006 along with FIRs No. 966/2006 and 967/2006 were sent to DCP : South-West, who in turn forwarded the reports to the Joint Commissioner : Police Headquarters.

14. On 29.12.2006, the DCP(South-West) vide letter requested Joint Commissioner of Police to transfer the investigations of FIRs No. 966/2006 and 976/2006, 1018/2006 to Crime Branch in view of the grievances received from P.S. Najafgarh regarding difficult attitude of Sh. Jawahar Lal. After compliance of the Crl.Rev.P. 357/2011 Page 9 of 25 objections, the final Charge-sheet in FIR No. 1018/2006 was prepared by the ACP, Najafgarh. After compliance of the objections, the final Charge-sheet in FIR No. 1018/2006 was prepared by the ACP : Najafgarh on 01.01.2007 and was sent by the ACP, Najafgarh to Special Public Prosecutor. Thereafter, final Charge-sheet was filed in the Court of Sh.Sanjeev Kumar, Metropolitan Magistrate, Najafgarh. The Commissioner of Police(Delhi) vide order dated 11.01.2007 transferred the investigations of three FIR"s P.S. Najafgarh to Crime Branch, Delhi Police and thereupon Sh. K.S. Bhatnagar, the then ACP : Najafgarh was relieved was the IO from the FIR No. 1018/2006.

15. Report regarding the completion of investigation done by ACP : Najafgarh was sent to DCP :South-West on 12.01.2007. The learned MM vide order dated 07.01.2008 permitted further investigation in FIR No. 1018/2006, which was conducted by the then ACP, Crime Branch. The ACP, Crime Branch sought 60 days" time to conduct further investigation in the said FIR. Accordingly, the next date of hearing was fixed for 12.05.2008.

16. On 12.06.2008, the ACP : Crime Branch filed Supplementary Charge-sheet before the learned MM on the basis of the further investigation conducted by him. During investigation, it has been found that Sh. Jawahar Lal has never been dispossessed. The allegation that his land was grabbed and encroached upon by the accused could not proved, other than Sh. Lal Singh uttered caste specific names.

17. On 12.06.2008, an application filed by Sh. Jawahar Lal/complainant praying for action under rule 7 to be taken against the IOs in FIR No. 1018/2006, upon which the learned MM vide detailed order dated 12.06.2008 held that as far as the period of one month i.e. prescribed for the IO and DGP concerned for the purpose of the report of the investigation and the same has nothing to do with the filing of the Charge-sheet. Therefore, the contention regarding the violation

of Rule 7 had already been decided and clarified by the learned MM.

18. Learned APP for State has relied upon a case delivered by Double Bench of Bombay High Court, reported as 2003(109)CRLJ 790, wherein, it has been observed that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is a special Act enacted with an object to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for matters connected therewith or incidental thereto. A perusal of the provisions of the Act would show that the object of the Act is to uphold the dignity and respect of the members belonging to the Scheduled Castes and the Scheduled Tribes so that they need not suffer any ignominy or harassment or insults by virtue of belonging to the said castes or tribes. In order to ensure that in the course of investigation the members belonging to the said Castes or Tribes do not suffer any prejudice on account of their castes and tribes, therefore, is bar for the applicability of the provisions of Section 438 of the Code of Criminal Procedure under which the High Courts and the Sessions Courts are empowered to grant what is commonly known as anticipatory bail to the accused. The said rights are further sought to be protected inter alia, by Rule 7 of the Rules which were made by the Central Government in the year 1995 whereby the offence committed under the provisions of the act has to be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The wording of the said rule considered in the context of juxtaposition of the object of the Act would leave no doubt that the said provision was intended to be mandatory so that the investigation in the offences committed under the provisions of this Act, cannot be made by a police officer below the rank of a Deputy Superintendent.

19. The question, therefore, is whether non-compliance with such mandatory rule would result in an illegality which would render the prosecution itself invalid and, therefore, liable to be quashed. In this respect reference may be made to the judgments of the Apex Court which were rendered while interpreting more or less similar provision under the Prevention of Corruption Act. u/s 17 of the Prevention of Corruption Act, 1988, it is provided that the investigation in the offences under the said Act has to be made in the metropolitan areas by an Assistant Commissioner of Police and elsewhere by a Deputy Superintendent of Police or Police Officer of equivalent rank. Under the proviso the police officer not below the rank of an Inspector of Police authorized by the State Government by general or special order is also empowered to investigate such offence. Any officer below the rank of Inspector of Police can investigate the offences under the said Act only under the orders of a Metropolitan Magistrate or a Magistrate of the First Class. More or less similar provision was thereunder the Prevention of Corruption Act, 1947, with which the Supreme Court was concerned in the judgments which shall be presently discussed.

20. In the case of H.N. Rishbud V. Stat of Delhi reported in 1954 Indlaw SC 14, the Supreme Court had to consider whether the trial which took place, under the

provisions of the Prevention of Corruption Act, 1947, where the offence was investigated by the Police Officer below the rank of Deputy Superintendent could be quashed. Under the relevant provisions, the offences under the Prevention of Corruption act could not be investigated by an Officer below the rank of Deputy Superintendent except under the orders of a Magistrate. The Supreme Court in that case was considering following two questions as mentioned in para 4 of the judgment. Firstly, whether the provisions of the Prevention of Corruption Act, 1947, enacting that the investigation into the offences specified therein shall not be conducted by any police officer of a rank lower than a Deputy Superintendent of Police without the specific order of a Magistrate, is directory or mandatory. Secondly; whether the trial following upon an investigation in contravention of the said provision was illegal. At the end of para 8 of the judgment the first question was answered by the Supreme Court by observing as follows :

We are, therefore, clearly, also of the opinion that where the cognizance of Crl.Rev.P. 357/2011 Page 13 of 25 the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice, has been caused thereby

21. In para 10 of the judgment the Supreme Court has considered the situation, which obtains in the instant case, when breach of the mandatory provision is brought to the knowledge of the Court at a sufficiently early stage i.e. before the trial begins. It is answered as follows :-

(10) It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for

22 It was further observed at the end of para 10 of the said judgment as follows :

In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5A of the Act. It is the light of the above considerations that the validity or otherwise of the objection as to the violation of S. 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined.

23 Reference was also made to the decision of the Apex Court in the case of State of M.P. V. Mubarak Ali 1959 Indlaw SC 137, wherein, it was observed that view has been again reiterated by the Supreme Court in the case of State of Uttar Pradesh V. Bhagwant Kishore reported in 1963 Indlaw SC 268 : 1963 Indlaw SC 41 : then in the case of Khandu Sonu Dhobi V. State of Maharashtra reported in 1972 Indlaw SC 107 and in the case of A.C. Sharma V. Delhi

Administration reported in 1978 AIR (SC) 913.

24. The provisions under the Prevention of Corruption Act and the Scheduled Castes and Scheduled Tribes Act are not identical with regard to the power of investigation, it cannot be disputed that under both the enactments the law makers have mandated that the offence shall be investigated by an officer not below the rank of Deputy Superintendent unless authorized by the Magistrate or the state Government under the former Act and, therefore, the dicta of the Supreme Court in the aforesaid judgments will be squarely applicable to the mandatory provision under Rule 7 of the Rules of 1995 which were framed under the Prevention of Atrocities Act.

25. The object of such mandatory rule is not difficult to unravel, A higher officer of the rank of Deputy Superintendent is mandated to investigate the matter under this Act not only with a view to protect the accused from being prosecuted falsely or wrongly as may be argued, but the main object seems to be to protect and advance the rights given to the members of the Scheduled Castes and Scheduled Tribes under the provisions of the Act and the prosecution does not suffer for improper or faulty investigation likely to be made by the officer's of lower rank which would defeat the protection afforded to the members of the Scheduled Castes and the Scheduled Tribes under the Act.

26. If the prosecution is allowed to be quashed simply on the ground of the investigation being made by an officer of lower rank than prescribed under the rules even in the absence of any prejudice caused to the accused, it would be easier to defeat the object of provisions of the Act whenever inadvertently or otherwise the investigation is entrusted to or conducted by an officer lower in rank than the Deputy Superintendent of Police.

27. Initially, the view was taken as under :-

We are of the view that the learned Single Judge of this Court who decided Ramnath Koltharkar's case (1992(2) Mah LT 743) has missed the fact that in case of Munnalal, which was cited before him, the Supreme Court had made elaborate reference to its earlier judgments in Rishbud's case 1954 Indlaw SC 14) as well as in Mubarak Ali's case 1959 Indlaw SC 137. While in Rishbud's case the Supreme Court has observed that in case when the irregularity is pointed out at any early stage, reinvestigation by the competent officer. In view taken by Deshpande, J. In Koltharkar's case holding that when the objection is raised about the illegality in the investigation before framing of the charge, the prosecution has to be quashed for noncompliance with the mandatory rule, is not correct.

28. It is well settled, as is observed in a case of V.P. Kuppurao V. Director General of Police, Tamil Nadu 2010 INDLAW MAD 1890, as under :-

14. Pointing out the above said lacuna, the learned counsel for the petitioner also argued that the said lacuna was deliberately provided to help the accused to

ultimately escape from the punishment, at least by showing the technical flaw in the investigation of the case. This court is not in a position to reject the said contention of the learned counsel for the petitioner as untenable. For the reasons cited supra, the said contention of the learned counsel for the petitioner has got to be countenanced. On that ground alone there is scope for directing re-investigation of the case by an Investigating Officer properly appointed in accordance with Rule 7 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

21. It has been brought to the notice of the Court that the final report submitted by the then Deputy Superintendent of Police, Tindivanam Sub-Division was taken on file by the learned Judicial Magistrate No.II, Tindivanam as P.R.C.No.22 of 2007; that an order committing the case for trial to the Court of Session, Villupuram was passed CrI.Rev.P. 357/2011 Page 17 of 25 and that the case is now pending on the file of the Court of Session, Villupuram S.C.No.194 of 2010. In view of the fact that this Court has not only arrived at a conclusion that the investigation seems to be biased, but also has found that the investigation conducted by Mr.Kumar, the then Deputy Superintendent of Police, Tindivanam Sub-Division was not the one made by an officer appointed in accordance with Rule 7 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, to prevent miscarriage of justice it has become necessary to quash the final report, committed order of the Magistrate and the Sessions case now pending before the Sessions Court and direct a fresh investigation in the case to be made by an officer of the CBCID in the rank of a Deputy Superintendent of Police, who shall be appointed in the manner indicated supra.

22. In the result, this criminal original petition is allowed. A fresh investigation of the case registered in Cr.No.159 of 2007 on the file of Brammadesan Police Station shall be undertaken by an officer of CBCID, who shall be appointed by a written order to be issued by the Superintendent of Police, CBCID, Sub-urban, Chennai in accordance with Rule 7 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. To enable such fresh investigation, Crime No.159 of 2007 registered on the file of Brammadesam Police Station shall stand transferred to the file of CBCID, Chennai. Consequently, the committal order passed by the learned Judicial Magistrate No.II in P.R.C.No.22 of 2007 and the criminal proceedings presently pending on the file of Sessions Court, Villupuram in S.C.No.194 of 2010 are quashed. The Investigating Officer, who is to be appointed in accordance with this order, shall complete the investigation within the time specified in the rules from the date on which he receives the appointment order. The Superintendent Police, CBCID, Suburban, Chennai shall issue such an order within a week from the date of receipt of a copy of this order. By way of clarification, it is also added that the new Investigating Officer, who shall conduct fresh investigation, may make use of any of the materials available in the CD file maintained by the previous Investigating Officer subject to its relevancy and reliability.

29. Recently, the Apex Court has decided in a case of Kailas and Others Vs. State of Maharashtra T.R. Taluka P.S., wherein it has been observed as follows:-

10. We are surprised that the conviction of the accused under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical grounds that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done. These appear to be only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, we are now not going into it.

29. There are a large number of religions, castes, languages, ethnic groups, cultures etc. in our country, which is due to the fact that India is a country of immigrants. Somebody is tall, somebody is short, some are dark, some are fair complexioned, with all kinds of shades in between, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. There are differences in dress, food habits and various other matters.

30. We may compare India with China which is larger both in population and in land area than India. China has a population of about 1.3 billion whereas our population is roughly 1.1 billion. Also, China has more than twice our land area. However, all Chinese have Mongoloid features; they have a common written script (Mandarin Chinese) and 95% of them belong to one ethnic group, called the Han Chinese. Hence there is a broad (though not absolute) homogeneity in China.

31. On the other hand, as stated above, India has tremendous diversity and this is due to the large scale migrations and invasions into India over thousands of years. The various immigrants/invaders who came into India brought with them their different cultures, languages, religions, etc. which accounts for the tremendous diversity in India.

32. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.

33. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Articles 14 to 17), liberty (Article 21), etc.

34. However, giving formal equality to all groups or communities in India would not result in genuine equality. The historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status. It is for this reason that special provisions have been made

in our Constitution in Articles 15(4), 15(5), 16(4), 16(4A), 46, etc. for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalized in India are the Adivasis (S Ts), who, as already mentioned, are the descendants of the original inhabitants of India, and are the most marginalized and living in terrible poverty with high rates of illiteracy, disease, early mortality etc. Their plight has been described by this Court in *Samatha Vs. State of A.P. and Others*, Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimized for thousands of years by terrible oppression and atrocities. The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India.

35. The bravery of the Bhils was accepted by that great Indian warrior Rana Pratap, who held a high opinion of Bhils as part of his army.

36. The injustice done to the tribal people of India is a shameful chapter in our country's history. The tribals were called 'rakshas' (demons), 'asuras', and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc. And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive.

37. The well known example of the injustice to the tribals is the story of Eklavya in the Adiparva of the Mahabharat. Eklavya wanted to learn archery, but Dronacharya refused to teach him, regarding him as low born. Eklavya then built a statue of Dronacharya and practiced archery before the statue. He would have perhaps become a better archer than Arjun, but since Arjun was Dronacharya's favourite pupil Dronacharya told Eklavya to cut off his right thumb and give it to him as 'guru dakshina' (gift to the teacher given traditionally by the student after his study is complete). In his simplicity Eklavya did what he was told.

30. On the other hand, learned counsel appearing on behalf of respondent has submitted that the impugned judgment passed by the learned Additional Session Judge was on the submission of learned APP for State and that Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 has not been followed in this case will all intent in as much as report mentioned in such Rule has not been put up or forwarded either to the Officer of the police or Director General of Police or State Government or to the Home Secretary and the Welfare Secretary to the State.

31. Further submitted that the submission of learned APP itself was sufficient for the learned Judge to pass the impugned judgment, therefore, if the counsel for the State admits that there is fault in this case, it that was his utmost fairness,

thus, the instant petition be dismissed and this court should impose heavy costs upon the State.

32. After considering submissions and legal passion, I am of the considered view that the learned trial Judge has passed the impugned judgment without going through the material on record and passed the impugned judgment and only on the submissions made by learned APP for Stated as recorded in para 5 of the impugned judgment.

33. I have no hesitation to say here that in that eventuality, the learned Judge should have directed the ACP/DCP concerned so that the State would be able to apprise the trial court about whether they have complied with Rule 7 of the said Act.

34. Even otherwise, the learned Judge should not have rejected the case of the State on hyper technicalities as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Rules were meant for the welfare of such persons. The hyper technical error should not come in the way of protection of under-privileged people. The trial courts should ignore the hyper technicalities to protect the security and dignity of the persons belonging to the castes and tribes. Certainly, the benefit should not go in favour of the accused.

35. Even otherwise, on completion of 30days from the registration of FIR, the ACP, Najafgarh, forwarded the detailed report dated 25.11.2006 to DCP : South-West, Delhi, thereafter on the said report, the DCP advised the ACP to expedite the investigation and submit the Charge-sheet at the earliest vide its communication dated 01.12.2006. The DCP, Police Headquarters sent report to the Directorate of Welfare SC/ST, Delhi on 01.12.2006. The Director (ICDS), GOI, Department Crl.Rev.P. 357/2011 Page 24 of 25 of Women and Child Development, Ministry of HRS, 6th Floor, Shastri Bhawan, New Delhi was also sent report on the same day.

36. Moreover, when the case was transferred from ACP, Najafgarh to ACP, Crime Branch, he sought time from the court and thereafter submitted the Charge-sheet. Therefore, I find that there is no violation of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 and learned MM has rightly taken up the cognizance of the case,

37. The courts should not overlook the dictum of the Apex Court in case of Kailash and others (supra), wherein, their Lordships have observed that the State case may not be rejected by the courts on hyper-technicality such as Caste certificate was not produced and investigation was not done by the officer of the rank of Deputy Superintendent of police. The present case has been rejected on such technicality.

38. Therefore, the judgment dated 12.05.2011 is set aside with no order as to costs.

39. Consequently, the concerned court shall proceed further as per law.

40. Parties are directed to appear before learned trial court concerned on 09.07.2012 at 02:00PM for further proceedings.

41. Trial court record be sent back henceforth. Criminal Revision Petition 357/2011 is allowed and disposed of in the above terms.