
(1993) 07 MP CK 0008
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 147 of 1992

Sukhlal Jatav

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 20

Citation : (1993) 2 MPJR 366 : (1993) 38 MPLJ 875 : (1993) MPLJ 875

Hon'ble Judges : K.M. Pandey, J

Bench : Single Bench

Advocate : S.S. Chauhan, B. Raj Sharma and A.K. Barwa, for the Appellant;
K.B. Chaturvedi, Government Advocate, for the Respondent

Judgement

K.M. Pandey, J.

This revision has been preferred against the order of the Sessions Judge/Special Judge, designated under Act No. 33 of 1989, called as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as Act No. 33 of 1989).

The brief facts are that the petitioner lodged a report to the police for taking action against the non-petitioners Nos. 2 to 6. The police refused to accept his report with the result that the petitioner sent the report to the high officials including the Superintendent of Police, Gwalior, but all in vain. Thereafter, the petitioner filed a private complaint in the Court of Sessions Judge/ Special Judge, Gwalior on 16-4-1992. The offences were exclusively triable by the Sessions Judge, designated as Special Judge under the Act No. 33 of 1989. The complaint was for offences punishable under Sections 3(10), (15) and u/s 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, u/s 4(2) of Civil Rights Protection Act, 1965 and under Sections 341 and 294 of the Indian Penal Code against the non-petitioners Nos. 2 to 6, filed with affidavit and

two documents in its support. Though, the learned Special Judge took the cognizance of the offences as the offences were exclusively triable by that Court as mentioned in the Atrocities Act itself and examined the complainant u/s 200, Criminal Procedure Code and further examined the complainant's witnesses u/s 202, Criminal Procedure Code and the case was adjourned from time to time for orders and for the registration of the case u/s 203 or 204, Criminal Procedure Code.

Meanwhile, the then Sessions Judge/Special Judge (Shri Karambelkar) was transferred and Smt. Sarojini Saxena, the present Sessions Judge and Special Judge took charge. The point of jurisdiction was raised before the present Sessions Judge/Special Judge. The learned Special Judge then passed the impugned order whereby the proceedings drawn by the then Special Judge (Shri Karambelkar) were quashed and the learned Court further held that her predecessor Judge, who had recorded the statements under Sections 200 and 202, Criminal Procedure Code was under impression that this Court is the only Court to take cognizance of the offences punishable under various sections of the Act and with this reason only he examined the complainant and the witnesses. The learned Special Judge vide order dated 5-6-1992 quashed the proceedings and directed the petitioner to appear before the Chief Judicial Magistrate, Gwalior and further directed the Chief Judicial Magistrate, Gwalior to take cognizance of the alleged offences on the basis of the complaint filed by the petitioner and complete the proceedings in respect of the commitment of the case. Aggrieved by the aforesaid order the present revision has been preferred.

The only point for consideration in this case is:--

Whether the offences covered in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were cognizable by the Special Judge or the general law prescribed under the Code of Criminal Procedure, for commitment of the case, triable by the Sessions Judge, will apply?

This special legislation has been enacted to prevent and check various offences, indignities, humiliations and harassment on Scheduled Castes and Scheduled Tribes, as the existing provisions of law like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate. Of late, there has been an increase of certain atrocities, like making them to eat inedible substances like human excreta and attacks on and mass killing of people, rape of women of these sections. This enactment provides for extra punishment for the crime of atrocity on Scheduled Castes and Scheduled Tribes as defined under the Act by the Special Courts by following the speedy special procedure under the Act.

Act No. 33 of 1989 is a special Act and contains both procedural and substantive part. Chapter IV of the Act, referred above, deals with the procedural part. Section 14 speaks about the speedy trial and the constitution of Special Courts to deal with the offences under this Act. It reads as below:--

"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."

It, therefore, prescribes the way in which the Special Courts are to be constituted and the purpose will be to try the offences under this Act speedily.

Section 18 of Act No. 33 of 1989 says that:--

"18. Section 438 of the Code not to apply to person committing an offence under the Act."

It may be pointed out that Section 438, Criminal Procedure Code deals with the anticipatory bail. Likewise, by virtue of Section 19 of this Act Section 360 of the Criminal Procedure Code or the provisions of the Probation of Offenders Act shall not apply to persons guilty of an offence under the Act.

Section 20 deals with the overriding provisions of this Act. It reads as below:--

"20. Act to override other laws. --Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

Thus, even if there is anything inconsistent with the provisions of this Act, then the provisions of this Act have an overriding effect and it shall apply. Thus, the provisions of Indian Penal Code, Code of Criminal Procedure and Evidence Act, so far as they are inconsistent with the provisions of this Act, shall not apply to the cases under this Act.

The impugned order, under attack in this revision, suffers from this defect that the overriding effect of this Act has not been understood properly and has not been applied. The learned Sessions Judge has relied heavily on the provisions of Sections 173, 193, 200 and 209 of the Code of Criminal Procedure. At page 4, para 6 of her order, the learned Judge has said:--

"To my mind, the argument has no force. u/s 200 of the Code of Criminal Procedure, a complaint is presented before a Magistrate, who on taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any. If the Magistrate is not competent to take cognizance of the offence, he shall return the complaint for presentation to the proper Court, if the complaint is in writing and if it is not in writing, the Magistrate shall direct the complainant to the proper Court. u/s 202 of the Code of Criminal Procedure, the Magistrate can postpone issue of process against the accused under the circumstances enumerated therein. If there is no sufficient ground for proceeding against the accused, the Magistrate is empowered to dismiss the complaint u/s 203, Criminal Procedure Code. But, if he is of the opinion that there is sufficient ground for proceeding, he shall issue process

against the accused persons. If in such a complaint-case, it appears to the Magistrate issuing process u/s 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay supply to the accused copies of the statement recorded u/s 200 or 202, copies of statements, if any, recorded under Sections 161 or 164 and of any documents produced before the Magistrate. Thereupon, u/s 209, Criminal Procedure Code the Magistrate shall commit the case to the Court of Session following the procedure laid down therein."

She has also quoted Section 192, Criminal Procedure Code to find support from the fact that the C.J.M., under the Code may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him. Section 193 of the Criminal Procedure Code has also been relied upon to show how the cognizance of offences is taken by the Court of Session. It reads as below:--

"193. Cognizance of offences by Courts of Session. -- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

The learned Sessions Judge, who is admittedly the notified Special Judge under the Act, has again felt difficulty on account of the lack of procedure given in the notification as to how the Special Court shall try the offences under the said Act. Para 10 of the impugned order of the Sessions Judge deserves notice. I may quote it as under:--

"From the provisions of the aforesaid Sections 18, 19 and 20 of the Act, it is evident that in this Act, the provisions of Code of Criminal Procedure (except Sections 438 and 360) are not made inapplicable for the trial of the offences under this Act."

I feel that the learned Sessions. Judge has allowed herself to fall in error at this stage. It is common knowledge that law is never negative. It is always positive. Whenever, any Act speaks of the application of certain provisions of another Act then it is specifically mentioned, but no negative mention is made in the Statute. If certain provisions of any Act are made applicable then it is specifically mentioned. If there is no mention regarding applicability of certain provisions of any Act then by no stretch of imagination, it can be said that simply because the provisions of any particular Act have not been made inapplicable, the provisions of that Act become applicable. The approach of the Judge is, therefore, erroneous.

The learned Judge has also relied on the Criminal Law Amendment Act, 1952. Therein also, Special Judges are appointed u/s 6 of the Act to try the offences under Sections 161 to 165-A, Indian Penal Code and u/s 5 of the Prevention of Corruption Act. Section 7 of the said Act lays down that notwithstanding anything

contained in the Code of Criminal Procedure or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by Special Judges only. Its Section 8 clearly provides that a Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, for the trial of warrant-cases by Magistrates. Assistance has been taken from the M. P. Daketi Or Vyapaharan Prabhavit Kshetra Adhiniyam, 1981 and also from Narcotic Drugs and Psychotropic Substances Act, 1985 wherein Special Courts have been constituted to try offences under that Act. Section 36-A(i)(b) of that Act provides that the Special Court may, upon a perusal of the police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial. In the M. P. Daketi and Vyapaharan Kshetra Adhiniyam, 1981 there is a provision that a Special Court shall, in trial of specified offences, follow the procedure provided by the Code, for trial of sessions cases.

Likewise, the learned Judge has derived strength from the Terrorists Effectuated Areas (Special Courts) Act, 1984. Its Section 10 provides that a Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of fact which constitutes such offence or upon the police report of such fact.

In all the Acts, referred above, a provision is made that a Special Court is competent to take cognizance of the said offences on a private complaint or on a police report about the commission of the said offences without the case being committed to the Special Court. The learned Judge has said that in the present Act No. 33 of 1989 there is no procedure laid down for the trial of the offences alleged to have been committed under the provisions of this Act and, therefore, the learned Judge has said that except the provisions of Sections 438 and 360, Criminal Procedure Code, all other provisions of the Criminal Procedure Code, 1973 are applicable when a private complaint or a police report is filed with regard to the offences committed under this Act. The learned Sessions Judge has, therefore, held that the procedure prescribed under Chapters XV and XVI of the Code of Criminal Procedure should have been followed and thereafter the case should have been committed to the Sessions Judge u/s 209 of the Code of Criminal Procedure.

The whole difficulty seems to be experienced on account of the fact that the Special Court has not been given any special power to take cognizance of the cases under the Act specifically. I have pondered over the matter and feel that the difficulty seems to be for lack of proper appreciation of certain provisions of Act No. 33 of 1989. Section 14 of the Act says:--

"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."

It is a common knowledge that Courts of lowest jurisdiction are asked to take cognizance or exercise jurisdiction in civil and criminal cases. Section 14 provides for the creation of Special Courts to try the offences under this Act. Here, the Legislature has conferred a jurisdiction on the Special Courts to try the offences under this Act.

In this connection, Section 20 of the Act is also very important and clinches the matter. This Act has made a special provision for the applicability of the provisions of this Act notwithstanding the fact that any other Act contains an inconsistent provision. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith, contained in any other law for the time being in force, or any custom or usage or any instrument having effect by virtue of such law. The Code of Criminal Procedure, thus, contained the provisions regarding taking cognizance and the way in which cases are to be committed to the Court of Session. It is a sheer coincidence that Sessions Judges in different districts have been conferred the powers of Special Court. When there is no provision in any other Act on any point then such provision becomes inconsistent with this Act for want of any provision and the provisions of this Special Act shall apply and the provision of any other Act having special provisions not provided in this Act will not be applicable for the purposes of this Act. The provisions of the Code of Criminal Procedure, as a whole will not become applicable simply because they will become inconsistent with the provisions of this Act. The simple logic is that the inconsistent provisions of any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law would give way to the provisions made under this Act. Thus, the provisions of Indian Penal Code, Code of Criminal Procedure and Evidence Act so far as they are inconsistent with the provisions of this Act, shall not apply to the cases under this Act.

If the Legislature has not made any provision for the commitment of the cases under this Act to the Special Court then this in itself will not affect the jurisdiction of the Special Courts in taking cognizance of the cases under this Act. I am, therefore, of the opinion that the provisions of the Code of Criminal Procedure regarding commitment of cases to the Special Court cannot be lifted from the said Code and made applicable in this Act simply because this Act has made no specific provision for commitment of such cases to the Special Court. The Special Court becomes the Court of original jurisdiction in this Act. In this connection, the word "try" used in Section 14 of the Act No. 33 of 1989 is of significance and suggests that the Special Court, not only got the power to try the offences but it has also got the powers to make every kind of inquiry as a Criminal Court of original jurisdiction.

I am supported in my view by a D. B. case of Kerala High Court reported in *In Re: Director General of Prosecution*, The Kerala High Court has held :--

Where a Special Court specified in Section 14 receives a final report disclosing offences punishable u/s 3 of the Act as well as offence u/s 376 of the Penal Code, the accused can be tried for both in the same proceedings. For that no order of commitment by Magistrate for offences punishable u/s 376, Penal Code is called for."

It was further held in the said case :--

"The power as a Special Court is conferred on a Court of Session which is one in the hierarchy of Courts envisaged by the Criminal Procedure Code. When such a Court is seized of the dispute in so far as actual trial is concerned, it should be governed by the ordinary rules of procedure applicable to it as provided in the Code. The procedure for trial to be followed can only be that prescribed in the Code where no special provision to that effect is made in the Act. In other words, so long as the Act does not make provision for the procedure to be followed by the Special Court, which is a Court of Session, its procedure regarding trial should be governed by the provisions contained in the Code. The Special Court is thus to take cognizance of the offence under the Act and proceed with the trial as provided under the Code. Section 193 of the Code will not apply to the Special Court."

Reliance was placed by the Kerala High Court on A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, The Honourable Supreme Court held:--

"A private complaint in respect of offences committed by public servants can be entertained by the Special Judge as enumerated in Section 5(1)(a) and (b) of the 1952 Act. Cognizance of the same by Special Judge is legal."

It was further held that the Court of a Special Judge is a Court of original jurisdiction. It has to function as a Court of original criminal jurisdiction not being bound by the terminological status, description of Magistrate or a Court of Session. Under the Code it will enjoy all powers as any Court of original criminal jurisdiction except those specifically excluded. The Kerala High Court further relied on The State of Bihar Vs. Ram Naresh Pandey,

In view of what has been discussed above, I am of the view that:--

(i) The Special Court, specified in Section 14 of Act No. 33 of 1989 becomes a Court of original jurisdiction, in terms of the provisions contained in the Code;

(ii) The Special Court is to take cognizance of the offence under the Act and proceed with the trial as provided under the Code. Section 193 of the Code of Criminal Procedure will not apply to the Special Court; and

(iii) The Special Court is not required to wait till the case is committed to it under the Code and need not wait for the compliance of Section 193 of the Code of Criminal Procedure for assuming jurisdiction.

The impugned order passed by the Sessions Judge/Special Judge, Gwalior dated 5-6-1992 is, therefore, set aside and the case is sent back to her for further

proceedings according to law.