

**(1992) 08 AP CK 0034**

**In the Andhra Pradesh High Court**

**Case No :** Tr. Criminal Miscellaneous Petition No. 1825 of 1992

Talari Mala Obulesu and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 03-08-1992

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 407  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 14, 2(1), 3(2)

**Citation :** (1992) 3 ALT 509 : (1992) 2 APLJ 244

**Hon'ble Judges :** Iyyapu Panduranga Rao, J

**Bench :** Single Bench

**Advocate :** T. Balireddy, for the Appellant; Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Iyyapu Panduranga Rao, J.—This application is directed to withdraw S.C. No...../92 from the file of the Court of Special Judge for trial of offences under the S.Cs. and S.Ts. (Prevention of Atrocities) Act, Chittoor arising out of SC No. 211 /90 on the file of the Addl. Sessions Judge, Anantapur and to retransfer the same to the Court of the Addl. Sessions Judge, Anantapur for disposal, according to law.

2. S.C. No. 211 /90 on the file of the Court of the Addl. Sessions Judge, Anantapur is a case arising under Cr. No. 44/89 of P.S. Kuderu under Sees. 147, 148, 302 r/w Section 149 I.P.C. While the case was pending on the file of the Addl. Sessions Judge, Anantapur, a Circular in Roc. No. 2582/50/91 dated 12-2-1992 was issued by the High Court in exercise of the powers u/s 407 of the Code of Criminal Procedure permitting all the Sessions Judges, Addl. Sessions Judges and Assistant Sessions Judges of the concerned district to transfer the cases filed under the S.Cs. and S.Ts. (Prevention of Atrocities) Act, 1989 (in brief "the Act") to the concerned Special Courts for trial according to law. Under the

said Circular, SC No. 211 /90 on the file of the Addl. Sessions Judge, Anantapur was transferred to the Special Court constituted under the Act at Chittoor. Aggrieved by the same the present transfer Crl.M.P. is directed.

3. Sri Bali Reddy, the learned counsel appearing for the petitioners submits that this is not a case triable by the Special Court, the transfer is not warranted and the case be retransferred to the file of the Addl. Sessions Judge, Anantapur. As a matter of fact before approaching this Court, an application was made before the learned Sessions Judge, Anantapur to recall the case from the file of the Special Court and since the said application was dismissed as per the order dated June 19,1992 the present petition is filed.

4. The "Act" was passed with the avowed object to prevent the commission of offences of atrocities on the members of the Scheduled Castes and Scheduled Tribes to provide for special courts for the trial of such offences and for the relief of rehabilitation of the victims of such offences and for matters connected there with or incidental thereto. This Act is a special legislation in the field of criminal law intended to prevent the commission of "atrocities" against the members of the Scheduled Castes or Scheduled Tribes. The statement of objects and reasons appended to the bill while making the same in the Parliament reads thus:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Tribe and Scheduled Castes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has

therefore, become necessary..."

The term "atrocities" is defined in Section 2(1)(a) of the "Act" as an offence punishable u/s 3 of the Act and Section 3 of the Act speaks of the punishments for offences of atrocities. Section 3(2)(v) which is the relevant provision reads as follows:-

"(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

"commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

It is the case of the learned Public Prosecutor that the offence in question is an "atrocities" within the meaning of Section 3(2)(v) of the Act, the same is triable only by a special court constituted u/s 14 of the Act, accordingly a Special Court for Chittoor, Cuddapah, Anantapur and Kurnool sessions divisions was constituted at Chittoor by the High Court of Andhra Pradesh as per Notification issued by the Registrar (Administration), High Court of Andhra Pradesh, the High Court of Andhra Pradesh as per the proceedings in Roc. No. 2582/SO/91 dated 12-2-1992 issued a circular to transfer the cases filed under the Act including those cases filed under IPC which are punishable with imprisonment for ten years or more in which Scheduled Castes and Scheduled Tribes are complainants and the accused do not belong to Scheduled Castes or Scheduled Tribes, to the concerned Special Court for trial of offences under the Act and consequently the case in question was transferred to the Special Court at Chittoor since a Special Court was constituted having jurisdiction over the Revenue Session Division of Chittoor, Cuddapah, Kurnool and Anantapur. Sri Bali Reddy, the learned counsel for the petitioners submit that the offence in question is not one within the four corners of Section 3(2)(v) of the Act and the provisions of the Act cannot be invoked in the present case and hence the case be heard by the regular court but not by the Special Court constituted u/s 14 of the Act. The learned counsel for the petitioners further submits that the offences in question are not atrocities within the meaning of Section 2 read with Section 3 of the Act, they are pure and simple offences under the Indian Penal Code, triable by the regular courts alone under the provisions of the Criminal Procedure Code.

5. The provisions of Section 3(2)(v) of the Act will be attracted where any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more committed against a person or property on the ground that such a person is a member of Scheduled Castes or Scheduled Tribes or such property belongs to such member by a person who is not a member of such Castes or Tribes. It is also to be seen that while for a particular offence under the Penal Code imprisonment prescribed is for a term of ten years or more, u/s 3(2)(v) of the Act the punishment that can be awarded for the same offence is,

imprisonment for life and with fine. Thus for the same offence, when it is committed under the circumstances mentioned in Section 3(2)(v) of the Act, enhanced punishment is provided for under the Act. Consequently it is incumbent upon the Presiding Officers of the Court to frame the charge invoking the relevant provisions of the Act. Thus u/s 3 of the Act, enhanced punishment is provided for under the Act compared to the one that can be awarded under the Indian Penal Code. Thus in the event of invoking the provisions of the Act, it is incumbent upon prosecution to make mention of the relevant provision of the Act also in the charge.

6. It is to be seen that the petitioners herein are charged under Sees. 147,148, 302 read with 149 IPC. It is no where on record to show that the offence was committed on the ground that the deceased or injured were members of Schedule Castes or Scheduled Tribes which is an essential ingredient of Section 3(2)(v) of the Act, while the assailants are not from Scheduled Castes or Scheduled Tribes. What I mean to say is that to invoke the provisions of Section 3(2)(v) it is incumbent upon the prosecution to show that the offence was committed by non-S.Cs. and S.Ts. on the ground that the deceased or injured are members of Scheduled Castes or Scheduled Tribes. To drive home the point, I would like to give an illustration. A and B were travelling by a train sitting side by side and without being known to each other. On the way, altercation arose between them, A stabbed B resulting in the instantaneous death of B and on trial it was held that the offence was u/s 304 Part II of the Indian Penal Code where the maximum punishment is 10 years or fine or both. Since A and B were strangers they never knew the caste of each other. Can it be said that Section 3(2)(v) of the Act be invoked in this case because the deceased was a member from Scheduled Caste while the assailant was not a member of either Scheduled Castes or Scheduled Tribes. The answer is an emphatic "No" because the offence was not committed on the ground that the deceased was a member of Scheduled Castes or Scheduled Tribes. So unless the offence is committed on the ground that the injured or the deceased was a member of the Scheduled Castes or Scheduled Tribes or in a case relating to property, the property belongs to a member of S.Ts., or S.Cs. the provisions of the Act cannot be invoked though the other conditions are satisfied, namely, the assailant was not from S.Cs. or S.Ts. while the injured/deceased is from S.Cs. or S.Ts.

7. In view of the said circumstances since it is not a case coming within the four corners of Section 3(2)(v) of the Act, the transfer of the case in question is not valid.

8. Consequently S.C. No. 211/90 on the file of the Court of Addl. Sessions Judge, Anantapur which was transferred to the file of Special Judge for trial of offences under the S.Cs. and S.Ts. (Prevention of Atrocities) Act, Chittoor is retransferred to the file of the Addl. Sessions Judge, Anantapur and the same shall be disposed of in accordance with law.

9. Accordingly the petition is allowed.