

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Criminal Case No.2821 of 1992

Reference under Section 395 of CrPC for decision and instructions of Hon'ble the High Court

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

ORDER

18/03/2015

T.P. Sharma, J.

1. This is reference under Section 395 of the CrPC at the instance of the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Durg, after formulating the following questions for answer: -

1. (A) Whether a Special Court constituted under Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is competent to try the cases under IPC which are exclusively triable by Court of Session?

(B) If so whether such cases of IPC can be tried by Special Court without committal under Section 209 CrPC?

2. What procedure is to be adopted by Special Court in respect of those cases in which charge sheet with regard to the offences under the provisions of the Special Act including the offences under IPC which are exclusively triable by Court of Session have been filed?

2. After verifying the existing provisions relating to trial of offence punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Special Act') and realizing the difficulty, learned Special Judge has made the aforesaid reference.

3. Ambiguity in the procedure adopted by different Courts in India has been finally settled after the dictum of the Supreme Court in the matter of **Gangula Ashok and another v. State of A.P.**¹ which has been further reiterated in detail after considering

¹ (2000) 2 SCC 504

the judgment decided per incuriam in the matter of **Rattiram and others v. State of Madhya Pradesh Through Inspector of Police**².

4. While dealing with the mode of taking cognizance of the offence committed under the Special Act, the Supreme Court in **Gangula Ashok** (supra) has held that Special Court being a Sessions Court is only competent to take cognizance after committal of case by the Magistrate i.e. the case is required to be committed before the Special Court by the concerned Magistrate for taking cognizance. As held by the Supreme Court in **Gangula Ashok** (supra) and **Rattiram** (supra), especially in the matter of **State of M.P. v. Bhooraji**³, if cognizance is taken by the Special Court without committal of case by the Magistrate in accordance with Section 193 of the CrPC then even, trial would not be vitiated automatically, trial would only be vitiated if failure of justice has in fact been occasioned thereby or if it is established by the accused that he has been prejudiced thereby.
5. While dealing with aforesaid question, the Supreme Court in **Rattiram** (supra) and **Bhooraji's** case (supra) has held that as per scheme of the Special Act and Section 14 of the Special Act, the Special Court shall be the Court of Sessions.
6. Undisputedly, as per the Code of Criminal Procedure, 1973, the Court of Sessions is competent to take cognizance of the offence punishable under the provisions of the IPC and the Special Court being the Court of Sessions is also competent to take cognizance of the offence punishable under the provisions of the Special Act. Therefore, the Special Court being a Sessions Court is competent to take cognizance of the offence punishable under the provisions of the IPC as well as also punishable under the provisions of the Special Act. However, if offence punishable under the provisions of the IPC is committed before the Special Court then trial by such Court would be as in the capacity of Sessions Judge or Additional Sessions Judge instead of Special Judge. It must be remembered that Sessions Court being a Special Court does not lose its character of Court of Sessions and is competent to take cognizance and try the case independently of the jurisdiction exercisable by the Special Court.

² (2012) 4 SCC 516

³ (2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372

7. The reference is answered accordingly.

JUDGE

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