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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.112 of 2015

Smt. Achla D Sapre, aged about 54 years, widow of Late Dilip Sapre, R/o Rajkumar College Campus, G.E. Road, Raipur (C.G.)

----- Petitioner

Versus

1. Smt. Asha Mahilkar (Rajput), aged about 40 years, wife of Shri Akash Rajput, R/o Rajkumar College Campus, G.E. Road, Raipur (C.G.)
2. The State of Chhattisgarh, through the Station House Officer, Police Station Azad Chouk, Raipur (C.G.)

----- Respondents

For Petitioner: Mr. Kishore Bhaduri and Mr. Pawan Kesharwani, Advocates.

For Respondent No.1: -
Mr. Ankit Singhal, Advocate.

For State/Respondent No.2: -
Mr. Dheeraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/02/2016

1. The splendid question of law that emanates for consideration in this writ petition is whether the trial Magistrate can directly take cognizance of the offence punishable under the provisions of Section 3 (1) (x) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or only it is the Special Court constituted under Section 14 of the Act of 1989.

2. Invoking the writ jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioner herein seeks to challenge legality, propriety and correctness of the order dated 15-4-2015 passed in Criminal Revision No.227/2014 by which learned Special Judge, Raipur has affirmed the order passed by the trial Magistrate dated 3-5-2014 in Criminal Complaint Case No.7859/2014, whereby and whereunder learned Judicial Magistrate First Class, Raipur has taken cognizance against the petitioner for offence punishable under Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').
3. Respondent No.1 herein preferred a complaint under Section 200 of the CrPC for offence under Section 3 (1) (x) of the Act of 1989 against the petitioner herein stating inter alia that the petitioner, on the date of incident, has intentionally insulted / intimidated respondent No.1 with intent to humiliate knowing fully well that respondent No.1 is a member of Scheduled Caste and thereby committed the

offence under the Act of 1989. Learned trial Magistrate by its order dated 3-5-2014 after recording the evidence of respondent No.1 / complainant and his witnesses, took cognizance of offence under Section 3 (1) (x) of the Act of 1989 against the petitioner and directed for issuance of summon to the petitioner. Feeling aggrieved against the order passed by the trial Magistrate, the petitioner herein preferred a criminal revision bearing Cr.Rev.No.227/2014 before the Court of Session.

4. The Court of Session by the impugned order dated 15-4-2015 dismissed the revision petition holding that by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 (for short 'the Ordinance of 2014'), which came into force with effect from 4-3-2014, the jurisdiction to take direct cognizance was conferred to the Special Judge/Special Court, but the jurisdiction of the trial Magistrate to directly entertain complaint was not specifically barred, therefore, learned trial Magistrate was fully justified in entertaining and taking cognizance of offence under Section 3 (1) (x) of the Act of 1989.

5. Impugning legality, correctness and otherwise of the order passed by learned trial Magistrate duly affirmed by the Court of Session, the petitioner herein/accused has preferred this writ petition under Article 226/227 of the Constitution of India stating inter alia that under the Act of 1989, by virtue of Section 14 of the Act of 1989, jurisdiction and power to take cognizance has been specifically conferred to the Special Court as defined in Section 2 (d) of the Act of 1989 which states that Special Court means a Court of Session specified as a Special Court in Section 14 of the Act of 1989, and learned trial Magistrate is not empowered to take cognizance and therefore learned trial Magistrate has no power and jurisdiction to take cognizance of offence under Section 3 (1) (x) of the Act of 1989 and learned Sessions Judge has also perpetuated the illegality by overlooking the fact that no such power has even been conferred by the Ordinance of 2014 to the trial Magistrate and it has only been conferred to the Special Court by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into force with effect from 1-1-2016 and therefore, the impugned order deserves to be set aside.

6. Return has been filed on behalf of respondent No.1 opposing the writ petition and stating inter alia that the order passed by learned trial Magistrate taking cognizance of the offence which was affirmed by the Court of Session is a well merited order and no interference is called for in exercise of jurisdiction under Article 227 of the Constitution of India.
7. Mr. Kishore Bhaduri, learned counsel appearing for the petitioner, while making scathing attack on the order of learned Magistrate affirmed by the Court of Session, would submit that the Special Court as envisaged under Section 14 of the Act of 1989 has been defined in Section 2 (d) which means a Court of Session specified as a Special Court in Section 14, by a notification in the Official Gazette issued by the State Government with the concurrence of the Chief Justice of the High Court for each district. He would further submit that the State Government in exercise of power conferred under Section 14 of the Act of 1989, specified for each of the districts a Court of Session to be the Special Court to try the offence under this Act. He would also submit that the order dated 3-5-2014 has been passed by learned trial Magistrate which is not the Court specified by

the State Government in exercise of power conferred under Section 14 of the Act of 1989, as the State Government has only notified the Court of Session to be a Special Court to try the offence under the Act of 1989 and therefore the impugned order passed by learned Sessions Judge affirming the order passed by the Magistrate deserves to be set aside.

8. Mr. Ankit Singhal, learned counsel appearing for respondent No.1 / complainant, would submit that learned Magistrate is absolutely justified in entertaining the complaint and taking cognizance of offence under Section 3 (1) (x) of the Act of 1989 and learned Sessions Judge is justified in dismissing the revision finding no merit.
9. I have heard learned counsel for the parties and bestowed my thoughtful considerations to the submissions made by the other side herein-above and also gone through the record with utmost circumspection.
10. The Act of 1989 has been constituted 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 the relief and rehabilitation of the victims of such

offences. The term “Special Court” is defined in Section 2 (d) of the Act of 1989 and Section 14 speaks about the constitution of Special Court which states as under: -

“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.”

11.The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 was promulgated on 4-3-2014 to amend the Act of 1989, of which Section 14 provides as under: -

“14. (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 an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Ordinance is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session

to be a Special Court to try the offences under this Ordinance:

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

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Ordinance are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Ordinance, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.”

12.The above-stated Section 14 of the Ordinance of 2014 would show that by the aforesaid Ordinance, jurisdiction has

been conferred to the Special Courts to directly take cognizance of offences under the Act of 1989 as amended by the Ordinance of 2014.

13.The life of the Ordinance was six months and thereafter, it expired. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 came into force with effect from 1-1-2016 of which Section 14 (1) provides as under: -

“14. 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 an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to

directly take cognizance of offences under this Act.”

14.By the aforesaid Amendment, again it has been reiterated that the Special Courts shall have power to directly take cognizance of offences under this Act. Keeping in view the legislative changes brought in and incorporated in the Act of 1989, it is appropriate to take note of Section 193 of the CrPC. Section 193 of the CrPC reads as follows: -

“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.”

15.On a careful reading of the aforesaid provision, it is quite vivid that the Court of Session can take cognizance of any offence as a Court of original jurisdiction except as otherwise expressly provided by the Code or by any other law for the time being in force only if the case has been committed to it by a Magistrate.

16.In a decision in **Gangula Ashok and another v. State of**

A.P.¹, Their Lordships of the Supreme Court considered the question whether “a Special Court” under the Act of 1989 can take cognizance of any offence without the case being committed to that Court, and resolving the controversy, Their Lordships held as under: -

“10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if “the case has been committed to it by a Magistrate”, as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word “expressly” which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In

1 (2000) 2 SCC 504

other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the

Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act.”

17. Same proposition has been reiterated by the Supreme Court in **State of M.P. v. Bhooraji**² and **Rattiram and others v. State of Madhya Pradesh Through Inspector of Police**³ that Special Court can take cognizance of the offence under the Act of 1989 when it is committed to that Court.
18. The legislative change which has been noticed in the earlier part of the judgment would clearly show that now, by the Amendment Act, 2015 only, the Special Courts have been empowered to take cognizance directly, of the offences under the Act of 1989. It has been held so because the Courts of Session are the Special Courts constituted under Section 14 of the Act of 1989.
19. The erstwhile State of Madhya Pradesh in exercise of power conferred under Section 14 of the Act of 1989 by notification dated 26-10-1995 notified the Sessions Judge of each of the districts to exercise power and jurisdiction under the Act of 1989. Thereafter, the State of Chhattisgarh by its

² (2001) 7 SCC 679

³ (2012) 4 SCC 516

notification dated 4-2-2015 in exercise of power conferred under Section 14 of the Act of 1989 with the concurrence of Hon'ble the Chief Justice of this Court has established the Exclusive Special Court at Raipur for trial of the offence under the said Act for Raipur District.

20. Thus, the trial Magistrate was not a Special Court notified by the State Government within the meaning of Section 14 of the Act of 1989 read with Section 193 of the CrPC. Therefore, learned Judicial / trial Magistrate had absolutely no jurisdiction to entertain and take cognizance of the offence under Section 3 (1) (x) of the Act of 1989. Even otherwise, the Special Courts constituted under Section 14 of the Act of 1989 have been empowered to take cognizance of the offence directly under this Act with effect from 1-1-2016 and learned Magistrate took cognizance of the offences under the Act of 1989 on 3-5-2014. Therefore, by no stretch of imagination, the impugned order directly taking cognizance of the offence under Section 3 (1) (x) of the Act of 1989, can be held to be the valid exercise of jurisdiction by learned trial Court, rather it is a case of exercise of jurisdiction by learned Magistrate not vested in it by law and it is held to be without jurisdiction and without

authority of law.

21. Accordingly, it is held that the order dated 3-5-2014 passed by the trial Magistrate directly taking cognizance of the offence under Section 3 (1) (x) of the Act of 1989 is without jurisdiction and without authority of law and runs contrary to Section 14 of the Act of 1989 read with Section 193 of the CrPC and it is accordingly quashed. Resultantly, the order dated 15-4-2015 passed by the Court of Session affirming the order of learned Magistrate also stands quashed. However, respondent No.1 is at liberty to proceed in accordance with law, if so advised.

22. The writ petition is allowed to the extent indicated herein-above, but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.112 of 2015

Smt. Achla D Sapre

Versus

Smt. Asha Mahilkar (Rajput) and another

HEAD NOTE

The trial Magistrate / Judicial Magistrate has no jurisdiction to directly take cognizance of the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is the Special Court under Section 14 of the Act of 1989 who has jurisdiction under the Act of 1989.

विचारण करने वाले दण्डाधिकारी / न्यायिक दण्डाधिकारी को अनुसूचित जातियों और अनुसूचित जन जातियों (अत्याचार निवारण) अधिनियम, 1989 के प्रावधानों के अंतर्गत अपराधों के लिए सीधे संज्ञान लेने की अधिकारिता नहीं है जबकि 1989 के अधिनियम की धारा 14 के अंतर्गत गठित विशेष न्यायालय को अधिकारिता है।