

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.131 of 2016

1. Govind Prashad Mishra, S/o Late Shri Damodar Prashad Mishra, aged about 65 years,
2. Smt. Rukhmani, W/o Govind Prashad Mishra, aged about 61 years,
3. Sudhir Kumar Mishra, S/o Govind Prashad Mishra, aged about 33 years,
4. Shushil Kumar Mishra, S/o Govind Prashad Mishra, aged about 30 years,

All R/o Village Devbhog, Police Station Devbhog, District Gariyaband (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. State of Chhattisgarh, Through the Superintendent of Police, District Gariyaband (C.G.)
3. The Station House Officer, Police Station Devbhog, District Gariyaband (C.G.)
4. Tushendra Singh Sandilya, S/o Sundar, aged about 52 years, R/o Village Nayakpara, Police Station Devbhog, District Gariyaband (C.G.)

---- Respondents

For Petitioners:	Mr. Pawan Kesharwani, Advocate.
For Respondents No.1 to 3 / State: -	Mr. Gary Mukhopadhyay, Dy. Govt. Adv.
For Respondent No.4:	Mr. J.K. Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/04/2017

1. Complainant Tushendra Singh Shandilya made a complaint to the Station House Officer, Police Station Devbhog, Distt. Gariyaband that offence under Sections 3 (1) (v) and (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989') has been committed by the present petitioners / accused persons. The Station House Officer who is happened to be the Deputy Superintendent of Police got the enquiry done on the said application / complaint by his Assistant Sub Inspector S.K. Vishwakarma and thereafter, he himself (Deputy Superintendent of Police) registered FIR on 12-1-2016 being FIR No.11/2016 and thereafter, investigated the matter, arrested the accused persons (present petitioners) and also seized property under his own handwriting and signature and he himself has submitted the charge-sheet.
2. This writ petition has been filed by the petitioners principally on the ground that the offence under the Act of 1989 is required to be investigated by an officer not below the rank of Deputy Superintendent of Police, whereas it has preliminarily been enquired into by the Assistant Sub Inspector S.K. Vishwakarma and, therefore, it is hit by Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short, 'the Rules of 1995').
3. Mr. Pawan Kesharwani, learned counsel appearing for the petitioners, would submit that in this case, the opening words of

the FIR clearly state that the offence under the Act of 1989 has been investigated by the officer not below the rank of Deputy Superintendent of Police and in view of Rule 7 of the Rules of 1995, which is mandatory in nature and which clearly provides that an offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and 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, the impugned prosecution is required to be quashed.

4. On the other hand, Mr. Gary Mukhopadhyay, learned State counsel, would submit that first information report has been lodged by the officer who was in-charge of the police station holding the post of Deputy Superintendent of Police and subsequent investigation, arrest, seizure, recording of statements under Section 161 of the CrPC and filing of charge-sheet itself, all have been submitted by the officer not below the rank of Deputy Superintendent of Police and therefore Rule 7 of the Rules of 1995 has been duly complied with and followed in its letter and spirit. Therefore, the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties and also gone

through the record with utmost circumspection.

6. In order to resolve the dispute raised between the parties, it would be appropriate to notice Rule 7 of the Rules of 1995, which states as under: -

“7. Investigating Officer.—(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 investigation 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 in-charge 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.”

7. Rule 7 of the Rules of 1995 clearly provides that investigation qua the offence under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police and the investigating officer shall be appointed by the State Government or the Director-General of Police.
8. The Supreme Court in the matter of **State of Andhra Pradesh v. Viswanadula Chetti Babu**¹ has held that Rule 7 of the Rules

¹ (2010) 15 SCC 103

of 1995 has only specified a Deputy Superintendent of Police who could investigate an offence under the Act, any officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. Paragraphs 3 and 4 of the report state as under: -

“3. A bare perusal of the Rule would reveal that the State Government/the Director General of Police/Superintendent of Police after taking into account the experience, etc. of a Deputy Superintendent of Police shall appoint him as the investigating officer in cases under the above Act. Sub-rule (3) further provides that the Home Secretary and the Social Welfare Secretary to the Government and other officers-in-charge shall review the working of the Deputy Superintendent of Police and the investigations done by him at the end of every quarter. It is therefore apparent that authority to investigate has to be conferred on a specified officer not below the rank of Deputy Superintendent of Police.

4. We are, therefore, of the opinion that in view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. In the present matter the investigation has been made by an officer of the rank of an Assistant Sub-Inspector of Police. This was not permissible. We endorse the judgment of the High Court in this respect.”

9. It is pertinent to mention here that in the matter of **State of Bihar and others etc. v. Anil Kumar and others etc.**², the Supreme Court has held that under Section 9 of the Act of 1989, a valid and legitimate investigation can “now” be carried out, even by a police officer below the rank of a Deputy

Superintendent of Police, if it is notified by the State Government in exercise of power conferred to it under Section 9 of the Act of 1989.

10. The word “investigation” has not been defined in the Act of 1989. However, clause (f) of sub-section (1) of Section 2 of the Act of 1989, states that “words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code”. The word “investigation” has been defined in the CrPC. Section 2 (h) of the CrPC defines “investigation” and states as under: -

“investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf:

11. Section 154 of the CrPC provides for information into cognizable offences. Procedure for investigation has been prescribed in Section 157 of the CrPC. Thereafter, investigation report has to be submitted under Section 173 of the CrPC. Same procedure is applicable in case of investigation of an offence under the Act of 1989.

12. In the instant case, FIR has been registered by the Deputy Superintendent of Police and thereafter, statements of witnesses have been recorded by the same police officer not

below the rank of Deputy Superintendent of Police and even arrest has been made by the officer not below the rank of Deputy Superintendent of Police i.e. the Sub Divisional Officer (Police) and seizure memo has been made by the Deputy Superintendent of Police or an officer holding the substantive post and charge-sheet has been filed by the Deputy Superintendent of Police. Thus, the requirement of investigation by an officer not below the rank of a Deputy Superintendent of Police has duly been complied. It is in accordance with Rule 7 of the Rules of 1995 which is mandatory in nature. Therefore, it cannot be held that merely because some preliminary enquiry has been made on the complaint filed by the complainant, the investigation has been conducted by the officer not below the rank of a Deputy Superintendent of Police.

13.As a fallout and consequence of aforesaid discussion, the writ petition challenging the investigation by an incompetent officer deserves to be and is accordingly dismissed leaving the parties to bear their own costs. However, it is made clear that this Court has not expressed any opinion on the merits of the matter and the Special Court is free to decide the case of the accused persons strictly in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.131 of 2016

Govind Prashad Mishra and others

Versus

State of Chhattisgarh and others

HEAD NOTE

Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, is mandatory in nature.

अनुसूचित जाति एवं जन जाति (अत्याचार निवारण) नियम, 1995 का नियम 7 आज्ञापक प्रकृति का है।