

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 514 of 2006

B.D. Bhoi, S/o Shri Vasudev Bhoi, aged about 47 years, R/o.
Saraipali, Police Station Saraipali, District Mahasamund, CG.

---- Applicant

Versus

- State of Chhattisgarh through : Police Station Saraipali, District Mahasamund, CG.

---- Respondent

For Applicant	: Shri Manoj Paranjpe, Advocate
For State/Respondent	: Shri Garry Mukhopadhyay, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

12 /12/2018

By the order under challenge in this revision petition which was passed on 13.06.2006 by learned Special Judge (Atrocities) Raipur, in criminal case No. 435/2006, warrant of arrest has been issued against the applicant without the case being committed to it by learned Judicial Magistrate First Class.

2. Brief sketch work of the facts leading to the disposal of present revision petition indicates that on 28.06.2004, complainant Shravan Kumar Sidar (soldier No. 131 of Home Guard) took one Sakiram to Government hospital Saraipali for being X-rayed where the applicant herein was working as radiographer. The applicant told the complainant that as the X-ray Machine was not functioning, it was not possible for him to take X-ray of Sakiram. It is alleged that when the complainant again contacted the applicant and insisted for radiological examination of Sakiram, the applicant hurled filthy abuses at him in the name of his caste. This made the complainant lodge FIR against the applicant on the basis of which offences under Section 3 (1) (x) of the Scheduled Caste and Scheduled

Tribes (Prevention of Atrocities) Act, (for brevity “the Special Act”) and 294 of the Indian Penal Code, were registered against him.

3. Since the investigating authority did not find anything incriminating against the accused/applicant, Khatma report was prepared by it. First on 29.09.2004 when the Khatma report was placed before learned Magistrate and inquiry was made from the complainant he declined for the same. However, when on 14.07.2005 the khatma report was again placed before the Magistrate for approval, after recording the statement of the complainant he approved the same.

4. What added to the agony of the applicant herein is that on 13.06.2006 learned Special Judge committed blatant legal error by turning down the request of the police in relation to khatma proceedings holding that in view of the material available on record, a clear-cut case under Section 3 (1) (x) of the Special Act, is made out against the applicant. Holding thus, learned Special Judge also hastened to directly issue an arrest warrant against the applicant being oblivious of the fact that the case was not committed to him by learned Magistrate after inquiry. Hence this revision.

5. Counsel for the applicant submits that learned Court below has committed a jurisdictional error in issuing the warrant of arrest against the applicant ignoring the fact that the case was not committed to him by learned Magistrate after inquiry. According to him, the order impugned being illegal, arbitrary and in contravention of the procedure laid down under Section 193 of the Code of Criminal Procedure, is liable to be set aside.

6. State counsel however, holds the impugned order to be just and proper calling for no interference in this revision.

7. After hearing counsel for the parties and going through the material on record it is apparent that while issuing the warrant of arrest learned

Special Judge has committed a procedural irregularity laid down under Section 193 of the Code of Criminal Procedure which specifically envisages that the special Court which is equivalent to the Court of Sessions can not commence the trial on its own unless and until the same is committed to it by the Judicial Magistrate First Class. Fortifying this aspect of the matter it has been held by the Apex Court in the matter of **Gangula Ashok and another Vs. State of A.P reported in 2000 (2) SCC 504 holding as under:-**

“Thus the Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for “trial before a Court of Session”.

“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 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”.

8. Thus, it is clear that learned Special Judge has erroneously passed the order impugned issuing an arrest warrant against the applicant even in the absence of the case being committed to it by learned Magistrate. At the same time, learned Special Court has also ignored the fact that the complainant himself has filed an application Ex. P-2 with a request to approve the khatma proceedings, and has stated the same thing in his court statement recorded on 13.06.2006. The order passed by learned Special Judge which is under challenge in this revision petition thus suffers from procedural irregularity and is also against the guidelines specified by Hon'ble the Apex Court in the matter of *Gangula Ashok (supra)* and therefore, it can not be made to stand.

9. In the result, the revision is allowed and the order impugned is hereby set aside.

Sd/-

(Vimla Singh Kapoor)

Judge