

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.522 OF 2018

Prabhakar Ramchandra Desai
Sita, R.K. Vaidya Road,
Dadar (E), Mumbai 400 028.

2) Krishna P. Gurav
C-201, Ambaji Darshan CHSL,
Bhattipada Cross Road,
Bhandup (W), Mumbai-400 078.

3) A.P. Samant
19B, Mayur CHSL,
Ram Maruti Road,
Naupada, Thane (W)-400 602.

...Appellants

V/s.

The State of Maharashtra

2. Dr. Prof. Dilip Devidas Medhe,
B-8, Kalyan Dipti CHSL,
Near Hotel Paradise, Birla College Road,
Kalyan (W), Taluka- Kalyan,
Dist. Thane 421 301.

...Respondents

Mr. Sanjeev P. Kadam I/b. Anjali Purav Yajurvedi a/w. Prashant Raul for the
appellant.

Mr. R.G.Panchal a/w. S.L.Jadhav, Suresh Ghamre I/b. Rawat Mohan for
respondent no.2.

Mr. N.B. Patil, APP for State/respondent no.1.

CORAM: DAMA SESHADRI NAIDU,J

JUDGMENT RESERVED ON : 12th June 2019
JUDGMENT PRONOUNCED ON : 19th June 2019

JUDGMENT (PER DAMA SESHADRI NAIDU,J)

Introduction:

An employee, a professor in a private college, along with another colleague, faces allegations of misconduct. The Chairman of the Trust that runs the college initiates disciplinary proceedings against that employee and the other; appoints an inquiry officer and a presenting officer, both advocates by profession; and concludes the disciplinary proceedings. It results in the dismissal of both the employee and his colleague. The employee challenges his removal before a statutory Tribunal. And the Tribunal affirms it. Further aggrieved, the employee files a writ petition before this Court—now admitted and pending before a Division Bench.

2. Pending the appeal before the Tribunal, the employee files a private complaint before a Special Court. He contends that the disciplinary proceedings are false, malicious, and vexatious, attracting Section 3 (1) (p) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1980 (“Atrocities Act”). On the Special Court’s reference, the police investigate and file a final report: the case not established. So, the employee files a private complaint. The Special Court, then, takes cognisance and issues process.

3. Now, the accused have filed this appeal under Section 14A of the Atrocities Act.

Facts:

4. All the three appellants are the accused in crime No. I-439 of 2017 of Manpad PS., registered based on a complaint forwarded under Section 156 (3) of Cr.P.C by the special Judge, Kalyan, Mumbai. The appellants have been accused of the offences under sections 465, 467, 468, and 420 of I.P.C., read with Section 3 (1) (p) of the Atrocities Act. After a few statutory and investigative developments, the special Judge, Kalyan, issued process to the appellants under Section 204 of Cr P.C. Aggrieved, the appellants have come to this Court, invoking Section 14A of the Atrocities Act.

5. The First appellant claims to be the Chairman of an Educational Trust. He instituted disciplinary proceedings against the second respondent and another. Then, in August 2011, he appointed the second appellant, an advocate, the inquiry officer; in October 2011, he also appointed the third appellant, again an advocate, the presenting officer.

6. The second respondent (“employee”) in this appeal is the complainant; he was a lecturer in the college run by the Trust. Faced with the allegations of misconduct, the employee was suspended from duties on 15th July 2011. After a full-fledged inquiry, on 2nd August 2013, the college management dismissed him from service, mentioning that the allegations against him were proved in the departmental disciplinary proceedings.

7. Aggrieved, the employee filed before the University Tribunal a statutory appeal: Appeal No. 23/2013. The Tribunal dismissed the appeal on

27th January 2016—on merits. Further aggrieved, the employee filed WP No.7885 of 2016. A learned Division Bench of this Court admitted the appeal on 1st December 2016 but has not interfered with the Tribunal's order—as yet.

8. On 9th May 2017 the employee filed a private complaint before the Special Judge, Kalyan, alleging that the appellants have been guilty of the offences under sections 465, 467, 468, and 420, read with Section 34 of I.P.C., as well as Section 3 (1) (p) of the Atrocities Act. On 26th July 2017, the learned Special Judge referred the matter under Section 156 (3) of Cr.P.C to the Manpet Police Station, which in turn registered C.R. No. I-439 of 2017, for the same offences as alleged by the employee.

9. The Police investigated the crime and, on 8th November 2017, filed a final report: no offence was made out. As a matter of parallel development, pending the Police investigation into the crime, the appellants, as the accused, secured an anticipatory bail and remained free. In the wake of the Final Report, on 24th of the same month, the learned Special Judge notified the employee about that report. Then, in January 2018, assailing the Final Report, the employee filed a protest petition. Based on that protest petition, the learned Special Judge, in November 2018, issued process: the appellants had to face trial for the alleged offences under sections 465 and 471, read with Section 34 I.P.C., besides Section 3 (1) (p) of the Atrocities Act.

10. Eventually, the appellants invoked Section 14A of the Act and filed this appeal.

Submissions:

Appellants’:

11. Shri Sanjeev P. Kadam, the appellants’ counsel, to begin with, has contended that the employee’s complaint is vindictive, aimed at wreaking vengeance against the college and its management, only because they intended to maintain discipline and protect the academic atmosphere in the college. According to him, acting on the complaint the Special Court forwarded, the Police only investigated the crime. They examined various witnesses in the college, besides inspecting vital documents. Eventually, the Police have concluded, submits the learned counsel, that no offence is made out.

12. Shri Kadam has drawn my attention to the order based on which the Special Judge issued process to the appellants. That order, he maintains, is mechanical and betrays non-application of mind.

13. First, Shri Kadam addressed a technical issue, for the employee has raised a preliminary objection: under Section 14A of the Atrocities Act, no appeal lies against an interlocutory order; and process issuing is an interim step in the adjudicatory course of a criminal case. To overcome this objection, Shri Kadam has contended that process issuing is a substantial step in adjudication; it cannot be termed interlocutory—not even intermediate. To elaborate, he has submitted that “interlocutory order” has nowhere been specifically defined, statutorily or otherwise. Therefore, Shri Kadam contends that no order can be treated as interlocutory if its reversal would terminate the very proceedings. To have a precedential prop to his assertions, he has relied on

Rajendra Kumar Sitaram Pande v. Uttam^[1], *Om Kumar Dhankar v. State of*
¹[1] (1999) 3 SCC 134

Haryana^[2], *V. C. Shukla v. State Through C.B.I.*^[3], and *V.K. Jain v. Pratap Padode*^[4].

14. Then, Shri Kadam has addressed the issue on the merits. To underline the falsity of the employee's complaint, he insists on the legitimacy of the first appellant to act as the Chairman of the Trust. Though the employee has been relentlessly insistent that the first appellant was not the Chairman, the record, according to him, is otherwise. In that context, Shri Kadam submits that the police have examined many witnesses, sifted through abundant material, and concluded that the first appellant was the Chairman when he ordered inquiry and continues to be so even now. He further stresses that the employee took his dismissal to the University Tribunal, a statutory appellate forum. And there, too, he maintained that the first appellant was not the Chairman. Yet the Tribunal, on merits, has rejected the employee's plea; on the contrary, it has upheld, Shri Kadam reminds Court, the disciplinary authority's findings.

15. In the alternative, Shri Kadam maintains that the first appellant, even by the employee's assertions, was an office-bearer when he ordered the inquiry into the employee's conduct. Drawing my attention to Exhibit —, produced by the employee, Shri Kadam has contended that the Certificate issued by the authority under the Maharashtra Public Trusts Act reflected the position as was available in 2007—not after that period.

16. As a further alternative contention, Shri Kadam submits that any

² (2012) 11 SCC 252

³ AIR 1980 SC 962

⁴ 2005 (3) Mah LJ 778

change in the composition of the Trust or its office bearers should be informed to the authorities under the Public Trusts Act in 90 days. And beyond 90 days, the authorities need to condone the delay. In this regard, he has drawn my attention to the proceedings issued by the Assistant Charity Commissioner: his condoning the delay and acknowledging the changes in the Trust's composition. To add further strength to his submissions, Shri Kadam has also taken me to the findings of the Tribunal on the first appellant's entitlement to be the Chairman. To conclude, he has submitted that the very outgoing Chairman has attested to the fact, before the police, that the first appellant has succeeded him and continues to hold the post even now.

17. Eventually, Shri Kadam has referred to Section 3 (1) (p) of the Atrocities Act. According to him, disciplinary proceedings are not judicial proceedings; they are administrative proceedings. So Section 3(1) (p) of the Atrocities Act does not apply. Then, he underlined the semantic significance of the expressions "malicious, false, vexatious". According to him, mere illegality, if it were, of any departmental proceedings would render those proceedings neither malicious nor vexatious—not even false. Against the second appellant, Shri Kadam submits, there is no whisper of an allegation. And against the third appellant, the allegations are in passing and insignificant. In the end, he urges this Court to allow the appeal.

Complainant's:

18. Shri R. G. Panchal, the learned counsel for the complainant-employee, has, first, tried to sustain his preliminary objection that the appeal is not maintainable. That is, no appeal lies against the order of issuing process

—an interlocutory order. On the definitional dynamics of orders and interlocutory orders, Shri Panchal has made strenuous efforts to distinguish the judgments the appellants’ counsel cited. According to him, all those judgments were rendered in the context of Cr.P.C. Then, he points out that Section 14 of the Atrocities Act, in its proviso, reveals the statutory objective: speedy disposal. Shri Panchal has then further drawn my attention to Section 14A of the Act to stress that while providing higher adjudicatory remedies, this provision begins with a non-obstante clause. Therefore, nothing mentioned in Cr.P.C and, by that reckoning, the interpretative spin put on the provisions of Cr. PC., would affect those in the Atrocities Act.

19. Shri Panchal has laid much emphasis on *VC Shukla*. After reading extensively from that judgment of the Supreme Court, he reminds me that this decision has consistently been followed by all courts, including this Court. According to him, while interpreting an analogous provision, *VC Shukla* has laid down broad principles on how to interpret provisions in a special Act, keeping in view its objective.

20. Second, Shri Panchal has elaborated on the decisional bounds the Constitutional Court have imposed on themselves while interfering with the criminal investigation. Excessive interference, according to him, stifles and scuttles the legitimate legal remedies available to the victims. To buttress his contentions, Shri Panchal has relied on *V. C. Shukla, Lt. Col. Prasad Purohit v. National Investigation Agency*⁵¹, *Chembur Trombay Education Society v. D.*

⁵¹ Judgment, dt.05.03.2019

K. Marthey^[6], *State of Gujarat v. Afroz Mohammed Hasanfatta*^[7], *Londhoni Devi v. The State, through National Investigating Agency*^[8],

21. Third, Shri Panchal has addressed the issues on the merits. He frontally attacks the statements the police recorded and the documents the accused have relied on. In that context, he submits that those documents are false and fabricated, brought out *ex post facto*. According to Shri Panchal, only to unearth the truth has the learned Special Judge issued process. Thus, to refute the appellants counter-assertions, he has drawn my attention to the documents the employee secured under Right to Information Act, 2002.

22. Shri Panchal has taken me through each paragraph of the complaint, beginning from paragraph no.8. Then expatiating on the exhibits referred to in those paragraphs, he has made strenuous efforts to contend (i) that the first appellant became the Chairman of the Trust only on 1st November 2012; (ii) that the change report submitted on 25th June 2013 alone is genuine; (iii) that the police did not secure valid documents from the authorities under the Maharashtra Public Trust Act, but the petitioner did; (iv) that only in response to the employee's objection in Exhibit G, did the appellants create a false document as if the first appellant were the Chairman when the inquiry was initiated; (v) that a simple letter—not in format—allegedly addressed to the Dy. Commissioner informed about the change in the Trust's composition, but Section 22 of the Public Trust Act mandates otherwise; and (vi) that the final report the police filed has not referred to their communication with and the

⁶ 2002 BC R (3) 161

⁷ Judgment, dt.5th February 2019

⁸ 2013 (3) GLT 249

response from the Charity Commissioner.

23. Then, Shri Panchal has referred to the Presenting Officer's report and contended that it is entirely false. At any rate, he has drawn my further attention to the employee's frequent communication with the Charity Commissioner to maintain that the domestic inquiry is in gross violation of Statute 444 under Mumbai University Act and that barring Exhibit-C change report, no other document the appellant relied on is genuine.

24. Eventually, Shri Panchal has referred to a couple of provisions in Cr.P.C., and Section 4 of the Atrocities Act. It is to underline the statutory imperative of expedited and efficacious inquiry or investigation. In this context, he has also submitted that though the employee has gone on complaining to police about the appellants' committing acts of criminality, they have remained unmoved. Only under those circumstances was the employee compelled to file a private complaint.

25. To sum up, Shri Panchal has submitted that the Special Court has issued process under Section 204 of the Cr.P.C. having been satisfied with the *prima facie* case the employee has established, on the strength of cogent material evidence he placed on record. Thus, Shri Panchal urges this Court to dismiss the appeal.

Appellants' Reply:

26. Shri Kadam, for the appellants, has once again touched on the scope of the appeal under Section 14A of the Atrocities Act and elaborated on *Prasad Purohit's* case. After reading out a few paragraphs of the judgment, he has stressed that *V.C.Shukla* has been eminently distinguished in the judgment

and, therefore, it does not lie in the employee's mouth to term *Prasad Purohit per incurium*.

27. Shri Kadam has taken me to Sections 17, 22 and Section 2(8) of the Maharashtra Public Trust Act. Besides, referring to Rule-5 and Schedule I under that rule, he has contended that the Act, in its statutory context, requires a Trust to inform the authority concerned the changes in its composition, that is, trusteeship. The Trust's internal changes, such as the designations or redesignations of the office bearers are immaterial. Referring to Exhibit F, which the employee called fabricated, Shri Kadam asserts that it is not a change report; it is just a letter submitted to the Charity Commissioner only for the sake of information, though the law imposes no obligation to do so. After that, Shri Kadam has compared Resolution, dated 16th April 2011, with Exhibit B resolution, dated 23rd October 2012, to stress that both are genuine. According to him, the Statute enjoins the Trust to file change report before the Charity Commissioner every three years. Accordingly, as was revealed by the documents the employee secured from the Charity Commissioner, that report mentions the Trustees merely as members without referring to their designations. In other words, unless there is a change in the trusteeship, the Trust need not file the change report except at the end of the 3rd year from the previous change report.

28. Thus, Shri Kadam concludes his reply reiterating his submissions that the appellant should not be allowed to undergo the ignominy of another round of investigation, followed by excruciating trial, when *prima facie* the employee could not bring home the appellants' guilt, as concluded by the

police report and also the Tribunal's order in a statutory appeal taken by the employee.

29. Heard Shri Sanjeev P. Kadam with Ms. Anjali P. Yajurvedi, the learned counsel for the appellants, Shri R. G. Panchal with Rawat Mohan, the learned counsel for the second respondent, and Shri N. B. Patil, the learned Assistant Public Prosecutor.

Questions:

- (1) Is the appeal maintainable? In other words, can a process-issuing order be treated as "Order" under Section 14 A of the Atrocities Act?
- (2) To what extent can an Appellate or a Revisional Court interfere with the Trial Court's taking cognizance of a crime?
- (3) Are the Departmental Proceedings "other legal proceedings" under Section 14A of the Atrocities Act?
- (4) Has the Special Court applied its mind before issuing process to the appellants? In other words, does the order, dated 10.04.2018, suffer from non-application of mind?
- (5) Has the complainant made out a *prima facie* case, warranting process issuing?
- (6) Can the Special Court take cognisance and issue process requiring the accused to stand trial, when the very issue that lends legitimacy to the criminal proceedings is *sub judice* before a higher judicial forum?

Discussion:

Question No.1:

30. Is the appeal maintainable? In other words, can a process-issuing order be treated as “Order” under Section 14 A of the Atrocities Act?

31. Indeed, the employee has raised a preliminary objection about the maintainability of an appeal against the Special Court’s order of issuing process under Section 204 of Cr PC. According to him, it is an interlocutory order. And any affirmative judicial decision based on Cr PC does not enure to the appellants’ benefit because Section 14A of the Atrocities Act excludes Cr PC from affecting the proceedings under the Special Act. So let us examine Section 14A, inserted with effect from 26.01.2016, by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act:

14A. Appeals

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.*

(2) . . .

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal

within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(italics supplied)

32. Before we analyse Section 14A of the Atrocities Act, we may also peruse Section 397 of Cr PC, that confers revisional powers on the High Court and the Court of Sessions. Under sub-section (1) of Section 397, the High Court or any Sessions Court may call for and examine the record of any proceeding before any inferior criminal court within its local jurisdiction. It is to satisfy itself on the correctness, legality, or propriety of any finding, sentence, or order, recorded or passed, and on the regularity of any proceedings of such inferior court. Noteworthy is sub-section (2), which restricts the revisional court's powers: the powers of revision conferred by sub-section (1) shall not be exercised over any interlocutory order passed in any appeal, inquiry, trial or, other proceedings.

33. To contrast, Section 14A of the Atrocities Act deals with the High Court's appellate powers; Section 397 of Cr PC with the revisional powers of that Court and Court of Sessions, too. Though the adjudicatory ambit of these two provisions differs, both proscribe adjudication on an interlocutory order. I reckon the interpretative scope of an "interlocutory order" under these two

provisions cannot be different. Indeed, no statute has defined what an interlocutory order is, but judicial interpretations abound. We need not burden this judgment with any semantic exercises. Suffice it to say, in 2002 the Code of Civil Procedure underwent significant changes. Section 115, having shades of Section 397 of Cr PC., has redefined the revisional powers of the High Court on civil matters. The Proviso to sub-section (1) mandates that the High Court shall not vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, unless the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

34. Under sub-section (1) of Section 14A, an appeal lies to the High Court against any judgment, sentence, or order of a Special Court or an Exclusive Special Court. And that order should not be an interlocutory order. Further, the appeal lies both on facts and on the law.

(a) Non-obstante Clause:

35. First about the non-obstante clause. A non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment. That is to say, to avoid the operation and effect of all contrary provisions.^[9] Then, how does a non-obstante clause—a clause for legislative ostracization—affect a provision it has been embedded in? Long back in *The Dominion of India (Now the Union of India) v. Shribai A. Irani*^[10], the Supreme Court has observed that ordinarily there should be an

⁹Union of India v. G.M. Kokil (1984) 402 Suppl. SCR 196

¹⁰AIR 1954 S C. 596

approximation between the non-obstante clause and the operative part of the section. But the non-obstante clause need not necessarily and always be co-extensive with the operative part, to cut down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction, a non-obstante clause can neither cut down the construction nor restrict its operation. In such cases, the non-obstante clause must be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the operative part of the enactment.

36. Contrary to the complainant's contention, a non-obstante clause does not obliterate another statute or provision in the same statute out of existence. It only warns that should there be any irreconcilability, this provision will prevail. Here, the Atrocities Act is a special Act—and a cryptic one at that. It does not provide for procedural mechanism; instead, it relies on the Criminal Procedure Code—the processual leviathan—for its operation. What this non-obstante clause appended to Section 14A or that appended to Section 20 of the Atrocities Act does is this: to enforce or implement either provision, if we encounter any obstacle from the Cr PC, that obstacle stands removed. That is, that obstructive provision must yield. We need not invent an obstruction to make the non-obstante clause meaningful or operable, in the absence of ambiguity or conflict.

37. Constitutionally commendable as the Atrocities Act is, it has, justifiably, a few drastic provisions. Only to balance the interests of the accused

with those of the victim has the Legislature provided for an appeal against any judgment, sentence, or *order* of a Special Court. And the appeal can be both on facts and on the law. I may emphasize “any order” and “both on facts and law.” For the Legislature is conscious that a remedial provision like a revision has limited efficacy, and Cr PC has revisional remedies against most orders even if they are ‘final’ in the ordinary sense of that expression. Indeed, even Section 14A echoes Section 397 (2) of Cr PC., on the question of interlocutory orders.

(b) Is the Order issuing process an Interim Order?

38. So our next foray must be into whether the Special Court’s order of issuing process under Section 204 of Cr PC an order *per se* or an interim order. On this count, the Supreme Court has noticed semantic shades of an “Order” and has found a middle ground between interlocutory and final: intermediate.

39. In *K. M. Mathew v. State of Kerala*,^[11] a two-Judge Bench of the Supreme Court has held that when an accused is summoned, the Magistrate must proceed under Chapter XX of the Code. For the Magistrate to try the accused, the complaint must allege that the accused has committed the crime. If the complaint does not allege so, the Magistrate, it is implied, lacks jurisdiction to proceed against the accused. In that background, *K. M. Mathew* has held that it is open to the accused served with a summons to plead before the Magistrate that the process against him ought not to have been issued. And if the Magistrate is satisfied, he may reconsider the issue and drop the proceedings. In fact, *K. M. Mathew* has observed that the Magistrate’s power

¹¹ AIR 1992 SC 2206

to drop proceedings are discretionary and no specific provision need expressly empower the Magistrate to drop proceedings or rescind the process.

40. Later, another co-equal Bench doubted this proposition because what the Magistrate does amounts to reviewing her own order. So it referred the matter to a larger Bench. On reference, a three-Judge Bench in *Adalat Prasad vs. Rooplal Jindal*,^[12] has declared that *K. M. Mathew* “does not lay down the correct law.” According to *Adalat Prasad*, the condition precedent for issuing process under Section 204 is the Magistrate’s satisfaction either by examination of the complainant and the witnesses or by inquiry under Section 202 that there is sufficient ground for proceeding with the complaint. At neither stage has the Code provided for hearing the accused, for that is only a preliminary stage. It has also held that the dismissal of the complaint arises only under Section 203 of the Code—even at that stage the accused having no role to play.

41. In the end, *Adalat Prasad* has observed that *K. M. Mathew* runs counter to the scheme of the Code, which does not provide for review but prohibits interference at an interlocutory stage. Though it has observed in passing about the process issuing as an “interlocutory stage”, *Adalat Prasad* has found no need “to go into the question whether order issuing a process amounts to an interim order.”

42. Later, the same three-Judge Bench that decided *Adalat Prasad* has held in *Subramaniam Sethuraman v. State of Maharashtra*^[13] that the process issuing is “an order made at a preliminary stage”, and it is “an interlocutory

¹²(2004) 7 SCC 338

¹³(2004) 13 SCC 324

order,” not to be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same Court. *Adalat Prasad* leaves the issue open, and *Subramaniam Sethuraman* decides it. But the latter case does not elaborate on the issue

(c) Precedential Past Revisited:

43. If we go back in precedential terms, in 1977 a two-Judge Bench of the Supreme Court in *Amarnath v. State of Haryana*^[14] has considered whether issuing process is an interlocutory measure. First, it acknowledged that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under Sub-section (2) of Section 397 of the 1973 Code, the inherent powers in Section 482 would not be available to defeat the bar in Section 397(2). Then, it has held that issuing process is not an interlocutory order.

44. Later, in *Madhulimaye v. State of Maharashtra*,^[15] a three-Judge Bench has quoted *Amarnath* with approval. To begin with, *Madhulimaye* has appreciated the salutary purpose behind the remedial restrictions which certain orders in adjudication face. It has, thus, observed that the purpose of putting a bar on the power of revision over any interlocutory order passed in an appeal, inquiry, trial, or other proceeding is to bring about expeditious disposal of the cases. Often, the High Court’s revisional power was resorted to over interlocutory orders, thus delaying the disposal of the proceedings. The Legislature in its wisdom, *Madhulimaye* notes, decided to check this delay by

¹⁴ Crl Appeal No.124 of 1977, decided on 29th July 1977, as quoted in *Madhulimaye v. State of Maharashtra*

¹⁵ (1977) 4 SCC 551

introducing Sub-section (2), in Section 397.

45. Then, *Madhulimaye* acknowledges the inherent powers of a High Court, but, of course, cautions that those powers must be sparingly exercised. To illustrate what would be that spare exercise of inherent powers, *Madhulimaye* speaks of the desirability of quashing a criminal proceeding initiated illegally or vexatiously. It goes on to observe:

Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of *Autrefois Acquit*. *Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end?*

The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. *The label of the petition filed by an aggrieved party is immaterial.* The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

(italics supplied)

46. In this context, *Madhulimaye* observes that in most cases decided during several decades, the inherent power of the High Court has been invoked for quashing a criminal proceeding on one ground or another. “Sometimes the revisional jurisdiction of the High Court has also been resorted

to for the same kind of relief by challenging the order taking cognizance or issuing processes” or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that “the issuance of process was wholly illegal or void”, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court. In this context, *Madhulimaye* speaks of intermediate orders:

There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami's* case (supra), but, yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders.

47. And by implication, *Madhulimaye* treats the order issuing process as intermediate. Evidently, *Subramaniam Sethuraman* has not noticed *Madhulimaye*, a previous decision of a co-equal Bench. Going by the dictum of *Sundeep Kumar Bafna v. State of Maharashtra*,^[16] *Madhulimaye* shall prevail because “[a] decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench. And the “inviolable recourse is to apply the earliest view.”

(d) The Precedential Way Forward:

48. That apart, recently another three-Judge Bench in *Girish Kumar*
 16¹¹ AIR 2014 SC 1745

Suneja v. CBI^{17]}, has elaborated on the conceptual conundrums involving various types of orders. It notes that while the text of sub-section (1) of Section 397 of the Cr.P.C., appears to confer wide powers on the court in exercising its revisional jurisdiction, this power is equally severely curtailed by sub-section (2). There is a complete prohibition in a court's exercising its revisional jurisdiction regarding interlocutory orders. Therefore, what is the nature of orders regarding which a court can exercise its revisional jurisdiction?

49. Then, to answer that question, *Girish Kumar Suneja* observes that there are three categories of orders that a court can pass: final, intermediate, and interlocutory. Undoubtedly, regarding a final order, a court can exercise its revisional jurisdiction—that is, regarding a final order of acquittal or conviction. There is equally no doubt that regarding an interlocutory order, the court cannot exercise its revisional jurisdiction. As for an intermediate order, the court can exercise its revisional jurisdiction since it is not an interlocutory order.

50. Analysing *Madhulimaye*, *Girish Kumar Suneja* has observed that an intermediate order is interlocutory but when reversed, it terminates the proceedings and thereby resulting in a final order. Two such intermediate orders, according to *Girish Kumar Suneja*, are: an order taking cognizance of an offence and summoning an accused, and an order for framing charges. *Prima facie* these orders are interlocutory, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person, thus, resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has

¹⁷ [2018] 1 SCC(Cri) 202

the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which would have terminated the proceedings if it had been passed conversely.

51. Indeed, *Rajendra Kumar Sitaram Pande*, *Om Kumar Dhankar*, and *V.K. Jain*, all cited by the appellants, do hold that an order issuing process under Section 204 of Cr PC is not an interlocutory order. And it does not fall within the mischief of Section 397 of Cr PC.

52. Turning to the decisions the employee has relied on, I may note that in *Londhoni Devi*, a Division Bench decision of Gauhati High Court, the question was whether the order of framing charges under Sections 120B and 121A of IPC, read with Sections 17, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967, would amount to interlocutory order. True, *Londhoni Devi* held that in the affirmative. But we cannot liken framing of charges, truly a step in aid of the trial, with process issuing, a procedural step.

(e) Does *Prasad Purohit* conflict with *V. C. Shukla* and, thus, renders itself per incuriam?

53. In *V. C. Shukla* the matter relates to an appeal under Section 11(1) of the Special Courts Act, 1979, and the appeal concerns an order framing charges against the appellant. Indeed, Section 11 of the Special Courts Act prohibits appeal against an interim order. Then, the question before the Supreme Court was whether the order of framing charges is an interim order, in terms of Section 397 (2) of Cr. PC.

54. Indeed, *V. C. Shukla* has held that an order of framing charges is an interim order. First, I must note that *V. C. Shukla* has been considered and

analysed in many a later decision of both the Supreme Court and the High Courts. Second, in one of the latest judgments—that is, in *Prasad Purohit*—a Division Bench of this Court has subjected *V. C. Shukla* to a threadbare analysis. True, the employee is emphatic in his assertion that *Prasad Purohit*, a Division Bench decision, is *per incuriam*. I am afraid that decisional adventurism of declaring *Prasad Purohit*—with *stare decisis* staring—is unavailable to me.

55. In *V. C. Shukla* the issue, as I have observed, arises under the Special Courts Act, 1979; in *Prasad Purohit* under the NIA Act. The *Prasad Purohit* has noticed the anomalies between the two Acts—and also the unique features of 1979 Act. Besides that, it has acknowledged what is by now a settled proposition of law: if an order rejecting a particular plea of the accused on its reversal could conclude that particular proceeding, then that order is not surely an interlocutory order within the meaning of subsection (2) of section 397 of Cr PC. I therefore hold that *Prasad Purohit* does not conflict with *V. C. Shukla*. At any rate, any contrary declaration is not within my decisional province, either.

56. Thus, going by *Amarnath*, *Madhulimaye*, and *Girish Kumar Suneja*, as well as the other decisions I have referred to above, I ought to conclude an order taking cognisance and issuing process must be treated as an intermediate order amenable to either revision under Section 397 of Cr. PC if available or Section 14A of Atrocities Act, as is the case here.

Second Question:

To what extent can Appellate or Revisional Court interfere with the Trial Court's taking cognisance of a crime?

57. The employee has heavily relied on *Afroz Mohammed Hasanfatta* to assert that a revisional court—even an appellate court—should not interfere with the Trial Court's taking cognisance of a crime. According to him, the adjudicatory scope is minimal. So let us examine the decision.

58. A Chief Judicial Magistrate at Surat took cognizance of the offences punishable under Sections 420, 465, 467, 468, 471, 477A and 120-B IPC. It was based on a second supplementary charge sheet. The High Court of Gujarat, in a revision, set aside the CJM's order. So the appeal to the Supreme Court. In *Afroz Mohammed Hasanfatta*, the questions are these: While taking cognisance and issuing process to the accused in an offence based on a police report under Section 190(1)(b) Cr.P.C., is it mandatory for the court to record reasons that there are sufficient grounds for proceeding against the accused? And in the High Court's revisional jurisdiction under Section 397 Cr.P.C., was the learned Single Judge right in setting aside the order of the Magistrate in issuing summons to the accused?

59. In answer to the first question, *Afroz Mohammed Hasanfatta* holds that when issuing the summons, the Magistrate, as it is fairly settled, need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused.

60. About the High Court's revisional jurisdiction, *Afroz Mohammed Hasanfatta* refers to a profusion of precedents and holds that "the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons." It also holds that "in a catena of judgments, it has been held that the aggrieved party has the right to challenge the order of Magistrate directing issuance of summons."

61. Here, on facts, I may note, first, that sufficiency of reasoning to issue process does not affect the case. Second, the appellants have invoked the appellate remedy, instead of revisional remedy, for the Special Act expressly provides for such a remedy. And an appellate remedy, trite to note, has a larger adjudicatory canvass than a revisional remedy. In other words, the High Court in its appellate adjudication has more "free play at the joints", so to say, than what it has in its revisional adjudication.

62. Indeed, after laying down that a revision does lie, *Afroz Mohammed Hasanfatta* has examined the case on facts. It has felt that the learned Single Judge has proceeded to examine the case as if it were a simple case of forged Bills of Entry, but the prosecution case is a complex economic offence of sending foreign exchange to companies based in Dubai and Hong Kong through Hawala, by setting up a web of companies.

63. In that context, *Afroz Mohammed Hasanfatta* has observed that at the stage of issuing process, the Court does not have to weigh the evidentiary value of the material on record. The Court must apply its mind to the

allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty.

64. Finally come the observations in *Afroz Mohammed Hasanfatta* that while hearing revision under Section 397 Cr.P.C., “the High Court does not sit as an appellate court” and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity. Based on the charge sheet and the materials produced thereon when the Magistrate satisfied that there are sufficient grounds for proceeding, the learned Single Judge was not justified in examining the merits and demerits of the case and substitute its own view.

65. To conclude on this question, I hold that the adjudicatory parameters in revision are narrower than those in appeal. And that admits of no contradiction. That said, in interfering with the process issuing after the Trial Court’s taking cognisance, the revisional or even the appellate court, as is the case here too, cannot weigh the evidence and predetermine the merits of the matter.

Third Question:

66. Are the Departmental Proceedings “other legal proceedings” under Section 14A of the Atrocities Act?

Disciplinary Proceedings:

67. We will revisit Section 3 (1) (p) of the Atrocities Act:

Section 3 - Punishments for offences of atrocities:

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

(a) . . .

. . .

(p) (p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

. . .

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

. . .

68. If a person not belonging to Scheduled Caste or a Scheduled Tribe institutes a false, malicious, or vexatious suit, or criminal or other legal proceedings against a member of either community, he shall face imprisonment for not less than six months, extendable to five years and with fine. Indeed, the right to legal recourse is not only a facet of common law remedies but also a constitutional imperative. The concept of ‘access to justice’ as an invaluable human right, also recognized in most constitutional democracies as a fundamental right, has its origin in common law, as well as Article 8 of the Universal Declaration of Rights, 1948 and Article 2 of International Covenant on Civil and Political Rights, 1966. So holds the Supreme Court in *Anita Kushawa v. Pushap Sudan*^[18]. It has further held that

¹⁸ (2016) 8 SCC 509

the right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone denying it to its citizens. Then, when will that basic right—that of judicial recourse to legal remedies—become an offence?

69. If a person institutes a false, malicious, or vexatious suit or criminal or “other legal proceedings” against a member of a Scheduled Caste or a Scheduled Tribe, he commits an offence—an offence under Section 3 (1) (p) of the Atrocities Act. To categorise what a Civil or a Criminal proceeding is, we face no decisional problems. Then, to attract Section 3 (1) (p) of the Atrocities Act, all that we need to see is that a civil or a criminal proceeding must have been instituted “falsely, maliciously, or vexatiously”. Granted, falsity, maliciousness, and vexatiousness are matters of adjudication, depending on the facts and circumstances of each proceeding. That felicity of categorisation, however, is unavailable with “other legal proceedings.”

70. To know about “other legal proceedings”, first we should conceptually know what legal proceedings are. In Black’s Law Dictionary^[19] a “legal proceeding” is defined as any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy. Judicially interpreted, 'legal proceedings' means proceedings regulated or prescribed by law in which a judicial decision may be given. It means proceedings in a court of justice by which a party pursues a remedy which law provides. But those proceedings do not include administrative and departmental proceedings. So held the Supreme Court in *S.V. Kondaskar*,

¹⁹ 9th Ed.

Official Liquidator v. V.M. Deshpande, I.T.O.,^[20] as quoted in *General Officer Commanding v. CBI*. We will discuss this latter decision in a while.

71. An employee in the Archaeology Department of Gujarat State went on leave without prior sanction. That has led to the disciplinary authority's initiating disciplinary proceedings. Initially, he was suspended; later, suspension revoked, he was asked to discharge other functions than what he had already been discharging. In the disciplinary proceedings, he was charged with misconduct. Ultimately, the disciplinary proceedings resulted in a "warning" on the employee. In that background, the employee lodged a complaint against his superior officer, for offences under Sections 166 and 114 of IPC and Section 3(1) (p, q, r, u, zc) of the Atrocities Act. He contended that to harass him, the officer concerned made him face disciplinary proceedings on false, vexatious charges, supported by bogus witnesses. He also maintained that, even after revoking his suspension, the officer continued to harass him.

72. The Departmental Head wanted the High Court of Gujarat to quash the criminal proceedings against her. Then, a learned Single Judge of the Court, in *Madhulika Samanta v. State of Gujarat*,^[21] has held that "the institution of the disciplinary proceedings will definitely fall" under the expression "legal proceedings". The disciplinary proceedings though will fall under the expression "legal proceedings" the same do not attract the rigours of the "criminal proceedings" or "suit", but stand on a different pedestal, meant for the departmental concerns governed by the service rules. Then, on facts, *Madhulika Samanta* found no grounds to hold that the disciplinary

²⁰ AIR 1972 SC 878

²¹ MANU/GJ/0072/2019

proceedings were instituted for a false reason with vexatious intention to humiliate the first informant. Besides that, *Madhulika Samanta* has cautioned that “[i]f such allegations are allowed to be maintained then each and every misconduct committed by the member of the schedule caste and schedule tribe will be encompassed by the provisions of Section 3(1)(p) of the Atrocities Act.”

73. That said, I must note that *Madhulika Samanta*, with great respect, contains no elaboration on what “legal proceedings” are and how the disciplinary proceedings amount to legal proceedings. So let us examine other precedents. In *Assistant Collector of Central Excise, Guntur v. Ramdev Tobacco Company*,^[22] (“*Assistant Collector of Central Excise*”), fell for consideration the expression “other legal proceedings”. And that was in the context of Central Excise Act.

74. A proprietary concern, with a misnomer of a “Company”, dealt in tobacco, having a licenced warehouse at Guntur. It was liable to pay duty on the tobacco received at its warehouse and transported to another dealer. In course of time, after following the due process, the Assistant Collector of Central Excise demanded duty and penalty from the dealer. Then, the dealer filed a writ petition. It contended that the penalty proceedings were barred by time. In fact, the unamended Section 40(2) of the Central Excises and Salt Act lays down that “no suit, prosecution or other legal proceeding” could be instituted beyond six months from the date the cause of action arises.

75. Under these Circumstances, the Supreme Court in *Assistant*

²²AIR 1991 SC 506

Collector of Central Excise has interpreted “other legal proceedings.” The question, in that case, is whether issuing a show cause notice and initiating the consequential adjudication can be termed 'other legal proceedings' within the meaning of Sub-section (2) of Section 40 of the Act. *Assistant Collector of Central Excise*, to begin with, has acknowledged that there can be little doubt that the phrase 'other legal proceeding' is wide enough to include adjudication and penalty proceedings under the Act. But it has accepted the appellant's contention that “this wide expression is preceded by particular words of a certain genus; namely, words indicating reference to proceedings taken in Courts only. So, the wide words must be limited to things *ejusdem generis* and must take colour from the preceding words. They should, therefore, receive a limited meaning to exclude proceedings of the type in question: departmental proceedings. There can be no doubt that 'suit' or 'prosecution' are those judicial or legal proceedings which are lodged in a Court of law and not before any executive authority, even if a statutory one. The expression 'instituted' in Section 40(2), *Assistant Collector of Central Excise* felt, strengthens this belief.

76. A departmental proceeding like penalty proceedings, further holds *Assistant Collector of Central Excise*, are placed outside the scope of Section 40(2). According to that decision, calling upon the dealer to show cause why duty should not be demanded, why penalty should not be imposed, and also the “consequential adjudication proceedings by the appellate authority” would not be called "other legal proceedings", in the context of that statute.

77. Moving ahead, we may examine another decision: *General Officer*

Commanding v. CBI.^[23] In a village in Jammu & Kashmir, terrorists killed about two scores of people. In the combing operations that immediately followed, five persons, purported to be terrorists, were killed by Rashtriya Rifles (RR) personnel in an “encounter”. The earlier massacre was attributed to those five slain terrorists. Then the RR personnel came to face the charge of staging a fake encounter. The CBI investigated the crime and filed a chargesheet. The Army officers applied to the CJM, asserting that they could not be prosecuted except with the previous sanction of the Central Government because of Section 7 of the Armed Forces J & K (Special Powers) Act, 1990. On CJM’s rejecting to entertain that objection, the matter eventually reached the Supreme Court.

78. To begin with, Section 7 of the Act 1990 protects the persons acting in good faith under that Act: No prosecution, suit or “other legal proceeding” shall be instituted, except with the previous sanction of the Central Government, against any person regarding anything done or purported to be done in exercise of the powers conferred by this Act. In *General Officer Commanding*, the Supreme Court has exhaustively analysed the expression “other legal proceedings”. It has held that the phrase ‘legal proceeding’ connotes a term which means the proceedings in a court of justice to get a remedy which the law permits to the person aggrieved. It includes any formal steps or measures employed; it is not synonymous with the ‘judicial proceedings’. Every judicial proceeding is a legal proceeding but not vice-versa, because there may be a ‘legal proceeding’ which may not be judicial at

²³ AIR 2012 SC 1890

all. There are, as examples, the statutory remedies like assessment under Income Tax Act, Sales Tax Act, or arbitration proceedings. Thus, the ambit of expression 'legal proceedings' is much wider than 'judicial proceedings'.

79. The expression 'legal proceeding' is to be construed, according to *General Officer Commanding*, in its ordinary meaning. But it quite differs from the departmental and administrative proceedings; for example, proceedings for registration of trademarks, etc. The terms used in Section 7—that is, suit, prosecution, and legal proceedings—are neither inter-changeable nor do they convey the same meaning. The phrase 'legal proceedings' is to be understood in the context of the statutory provision applicable in a particular case, and considering the preceding words used. After referring to *Assistant Collector of Central Excise* with approval, *General Officer Commanding* has further held that 'Legal proceedings' do not include the administrative proceedings.

80. The combined holding of *Assistant Collector of Central Excise* and *General Officer Commanding* precedentially establish these aspects: (1) If particular words of a certain genus precede a wide expression, that wide expression must be limited to things *ejusdem generis*; that is, it takes colour from the preceding words. It must receive a limited meaning. (2) 'Suit' or 'prosecution' are those judicial or legal proceedings before a Court of law—but not before any executive authority, even if a statutory one. (3) The phrase 'legal proceedings' is to be understood in the context of the statutory provision applicable in a particular case, and by considering the preceding words if any. (4) A departmental proceeding stands outside the scope of "legal proceedings."

(5) In the departmental proceedings, the “consequential adjudication proceedings by the appellate authority” would not fall within the expression “other legal proceedings”. (6) The ‘legal proceedings’ are the proceedings in a court of justice to get a remedy which the law permits to the person aggrieved. (7) And the legal proceedings quite differ from the departmental and administrative proceedings.

81. Here, the employee is not a public servant; he has no protection of Article 311 of the Constitution of India. He does, however, have statutory protection under the Maharashtra University Act, 1994. Section 58 of that Act mandates that there shall be one or more university and college Tribunals to adjudicate the disputes between the employees and the employer university, and between the employees of the affiliated colleges or recognised institutions and their respective managements. The appeal must concern the matters specified in sub-section (1) of section 59.

82. Section 59 provides for the appellate remedy. Any employee, both teaching and non-teaching, in any university, college, or recognised institution can file an appeal before the University and Colleges Tribunal. As preconditions, first, the recognised institutions must not be under the management of the State Government, Central Government or local authority. Second, the aggrieved employee must have been dismissed, or removed, or reduced in rank, or had his or her services otherwise terminated.

83. Thus, once we hold that the departmental proceedings are not “other legal proceedings”, the “consequential adjudication proceedings by the appellate authority” would not fall within the expression “other legal

proceedings”, either.

Fourth & Fifth Questions:

Has the complainant made out a *prima facie* case, warranting process issuing?

Has the special Court in the Atrocities Act applied its mind before issuing process to the appellants? In other words, does the order, dated 10.04.2018, suffer from none application of mind?

84. Indeed, the appellants’ counsel has contended that the Special Court has issued process mechanically, and without application of mind. He contends so particularly in the face of the fact that earlier the police have filed a final report holding that no offence was made out. In *Bhushan Kumar v. State (NCT of Delhi)*^[24], the Supreme Court has answered the question whether the magistrate, while considering the question of summoning an accused, must assign reasons for the same. According to *Bhushan Kumar*, Section 204 of Cr PC., does not mandate the magistrate to state the reasons explicitly for issuing the summons. Instead, it mandates the Magistrate to form an opinion about whether there exists a sufficient ground for summoning the accused. Section 204 nowhere lays down that the explicit narration of the issuing process is mandatory. In other words, it is not a prerequisite for deciding validity of the summons issued.

85. In *Nagawwa v. Veeranna Shivalingappa Konjalgi*^[25], the Supreme

²⁴ (2012) 5 SCC 424

²⁵ (1976) 3 SCC 736

Court has reiterated that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It has further held that in deciding whether a process should be issued, the Magistrate can consider improbabilities appearing on the face of the complaint or in the evidence led by the complainant to support the allegations. The Magistrate has an undoubted discretion in the matter and that discretion has to be judicially exercised by him. *Nagawwa* has further held that once the Magistrate has exercised his discretion, it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits, to find out whether the allegations, if proved, ultimately end in the accused's conviction.

86. We need not pile up the precedents. We must, however, note that even though at this stage the Court is not to go behind the allegations in the complaint, the Court must be cautious enough to see that the process by the court becomes no engine of oppression and harassment. This judicial aphorism finds its echo in many a decision.

87. On facts, the Special Court's Order, dt.10.04.2018, records its *prima facie* satisfaction why the protest petition should be treated as a private complaint and why the process should be issued to the accused. Of course, this process issuing is post-cognizance. So the appellants' contention that the order issuing process contains no cogent reasons, I must hold, fails.

88. That said, I must note this case presents a different picture. It is not a simple case of the police filing a final report and the Special Court's taking

cognizance and issuing process, to the contrary. It is much more. Even if we ignore the findings of the domestic inquiry, what about the findings of the University and Colleges Tribunal—a statutory Appellate Tribunal?

89. After suffering adverse findings in the domestic inquiry and after having been removed from service, the employee filed a statutory appeal before a competent Tribunal and raised the same questions—the questions about the appellants’ competence to inquire into his conduct. Undoubtedly, all that he has raised in his protest petition stands answered in the Appellate Tribunal’s Order. And that order is a quasi-judicial one, in consequential proceedings to a departmental inquiry, though.

90. Now, the employee, under Section 3 (1) (p) of the Atrocities Act, wants to criminalise those inquiry proceedings already judicially upheld or affirmed. And this Court—a learned Division Bench, at that—has so far refused to interfere with those findings; it has only admitted the matter, without diluting the judicial findings or suspending the Tribunal’s order.

91. I reckon, under these circumstances, the Special Court ought not to have taken cognizance of the alleged crime for a competent Tribunal has found against the employee and his challenge is *sub judice* before a higher forum: a Division Bench of this Court. I am afraid launching criminal prosecution as a counter blast to other proceedings pending adjudication before a higher forum is an easy temptation. More particularly so if the issues that form the very basis of prosecution are *sub judice* in the other proceedings. Then what could have been a social-justice-restorative measure in Section 3 (1) (p) tends to become an oppressive tool or even an arm-twisting device in the

hands of a party who has already, for instance, suffered adverse legal findings.

92. True, Section 3(1)(p) employs the expression “institute”, which as a verb does not take into its sweep “conclude”. Yet, pitted against the right to legal remedies is this restriction—in fact, criminalisation—under Section 3(1)(p). So a court needs to balance the competing constitutional and statutory interests of the parties while deciding whether a case or other legal proceeding falls within the mischief of Section 3 (1)(p) of the Atrocities Act. The case must have the tell-tale signs of falsity, maliciousness, or vexatiousness writ large on its face. Lest any and every proceeding taken against a person protected under the Atrocities Act should be taken as false, malicious, or vexatious and prosecution launched on that self-declaration.

93. So I conclude that the Special Court ought not to have ignored the findings of a competent statutory Tribunal and the consequential *sub judice* proceedings before a Division Bench of this Court.

94. True, the parties on either side have advanced elaborately on the first appellant’s competence to act as the Trusts’ Chairman and the legitimacy of the departmental inquiry. Even the second and third appellants have contended that they have nothing to do with the whole dispute, except discharging the functions assigned to them. In fact, I had a document translated by Adv. Archana Sapkale because the employee’s counsel found the appellants’ translated version unacceptable. I place a word of appreciation on record for the services rendered by Adv. Archana Sapkale. But I do not intend to go into the merits of the rival contentions on first appellant’s Chairmanship, or on the genuineness of the change reports the Trust has allegedly submitted,

or on the alleged illegality of the Trust's not submitting the change reports to the authorities on time.

95. At any rate, to decide the merits of the case at this stage is to interfere with the Tribunal's findings collaterally and expressing a judicial opinion, again collaterally, in a matter pending before a Bench of larger composition—a Division Bench. Such a course of adjudication is improper, if not impermissible.

Sixth Question:

Can the Special Court take cognisance of the matter and issue process requiring the accused to stand trial, when the very issue that lends legitimacy to the criminal proceedings is *sub judice* before a higher judicial forum?

96. The departmental proceedings and criminal prosecution, if any, can go hand in hand; one does not impede the other. That is too well established to be caviled about. Here is another reason, too. The approach and the objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. But in the criminal proceedings, the question is whether the offences registered against an employee are established; if so, what sentence should be imposed on the employee? The standard of proof, the mode of inquiry, and the Rules governing the inquiry and trial in both the cases are entirely distinct and different. So holds the Supreme Court in *State of*

Rajasthan v. B.K. Meena.^[26]

97. That said, *B. M. Meena* serves a word of caution: if the case is grave or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the trial court's decision, so the employee's defence in the criminal case may not be prejudiced. It quotes with approval *Tata Oil Mills Co. Limited v. Workmen*^[27] to hold that if the incident giving rise to a charge against a workman in a domestic inquiry is being tried in a criminal court, the employer should stay the domestic inquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court.

98. Yet, here is a converse case. It is not the employer who has gone ahead with both the departmental inquiry and criminal prosecution; the honours are shared. The employer has inquired into the employee's misconduct; held it proved and removed him from service. Then, the employee took out the criminal proceedings. He has alleged that the inquiry is malicious, false, and vexatious, attracting the offence under Section 3 (1) (p) of the Atrocities Act. Incidentally, the employee's challenge to the findings in the domestic inquiry has failed before a quasi-judicial Appellate Tribunal. The very charge that the Chairman of the Trust has acted without any authority was negated. And that finding by a competent forum still stands undisturbed.

²⁶ AIR 1997 SC 13

²⁷ (1964) 11 LLJ 113 SC

99. Under similar, if not identical, circumstances, the Supreme Court has taken an equitable view. In *Tukaram Annaba Chavan v. Machindra Yeshwant Patil*^[28], the dispute concerns an Educational Trust. The first respondent files a private complaint, for the offences of furnishing information on oath, criminal breach of trust, forgery, conspiracy. He alleges that the accused persons have affixed fake signatures/thumb impressions of the members, for showing that there was a necessary quorum in the General Body Meeting. This complaint was filed when the dispute is pending before the Charity Commissioner.

100. The learned magistrate issued process. The appellants, first, filed revision petition before the Sessions Court, challenging the process. But they could not succeed. So was the case before the High Court; then, the appellants took the matter to the Supreme Court.

101. The Supreme Court has noticed that the controversy raised in the case related to the election of the Board of Directors of the Education Society, under the Bombay Public Trusts Act, 1950. The matter is, as the Supreme Court found, was pending before the Assistant Charity Commissioner, who was to determine the validity or otherwise of the change report the appellants submitted. The same contention as was raised in the in the private complaint was also raised before the Assistant Charity Commissioner: forgery and fabrication. That question, according to the Supreme Court, will also probably fall for the authority's consideration.

102. Under these circumstances, the Supreme Court has ordered that, "in the interest of justice and for a fair trial the proceedings in the criminal case should remain suspended till the proceeding pending before the Assistant

28¹¹ (2001) 3 SCC 33

Charity Commissioner, Singla is disposed of by him.”

103. So, here too, if the criminal proceedings are sustainable, they ought to have stayed until this Court decides the writ petition the employee filed against the University Tribunal’s order. But we have already held that the criminal proceedings are unsustainable for departmental proceedings are not “other legal proceedings.”

Questions & Answers:

- (1) Is the appeal maintainable? In other words, can a process-issuing order be treated as “Order” under Section 14 A of the Atrocities Act?

Answer: Maintainable.

- (2) To what extent can an Appellate or Revisional Court interfere with a Trial Court’s taking cognisance of a crime?

Answer: Only to a limited extent.

- (3) Are the Departmental Proceedings “other legal proceedings” under Section 14A of the Atrocities Act?

Answer: They are not.

- (4) Has the special Court in the Atrocities Act applied its mind before issuing process to the appellants? In other words, does the order, dated 10.04.2018, suffer from non-application of mind?

Answer: It has. But on the facts of the case and the law that applies to those facts, the Special Court’s taking cognisance and issuing process is unsustainable or, at least, premature.

- (5) Has the complainant made out a *prima facie* case, warranting process issuing?

Answer: Needs no answer.

- (6) Can the Special Court take cognisance of the matter and issue process requiring the accused to stand trial, when the very issue that lends legitimacy to the criminal proceedings is *sub judice* before a higher judicial forum?

Answer: No.

Result:

The appeal is allowed; the criminal proceedings in C.R. No.1-439 of 2017 pending before the Special Judge, Kalyan, are quashed.

(DAMA SESHADRI NAIDU, J)

L.S.Panjwani, P.S.