

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5103 of 2014

*Muddada Daleya @ M. Dalayya  
& another*

....

*Petitioners*

-versus-

*State of Odisha & another*

....

*Opposite Parties*

CORAM: JUSTICE S.PUJAHARI

**ORDER**

**27.06.2022**

**Order  
No.**

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1. This matter is taken up by Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioners for quashment of the order dated 14.07.2014 passed by the learned S.D.J.M., Paralakhemundi in G.R. Case No.547 of 2013 wherein the learned S.D.J.M. has taken cognizance under Sections 341/323/34 IPC and Section 3(1)(x) of the SC & ST (PA) Act against them.
3. Learned counsel for the Petitioners submits that the cognizance has been taken by the learned Magistrate though the case is triable by the Court of Session. Therefore, the impugned order is liable to be quashed.
4. Needless to say that though the aforesaid case is triable by the Court of Session but the same is subject to committal proceeding in view of the law laid down by the apex Court in the case of **Gangula Ashok and another vrs. State of Andhra Pradesh**, reported in (2000) 2 SCC 504, wherein the apex

Court while dealing with Sections 14 and 2(1)(d) of the Act, have held as follows:-

“It is clear from Sections 14 and 2(1)(d) of the Act that it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word “trial” is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. 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”. (Paras 8 and 9)

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.

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. As such the charge-sheet or complaint cannot 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 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. (Paras 10 and 11)

Contentions based on Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments cannot be accepted. Section 4(2) CrPC makes it clear that if another enactment contains any provision which is contrary to the provisions of the Code, such other provision would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby. Section 5 of the Code cannot also be brought in aid for supporting the view that the Court of Session specified under the Act can obviate the interdict contained in Section 193 of the Code as long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction.

(Paras 12 to 14)

[Quoted from Placitum]"

5. In view of the aforesaid position of law as it then was even though subsequently an amendment has been brought which does not provide for commitment of the case, as the Special Court under the Act has been vested with the power under the SC & ST (PA) Act, to entertain the case directly, this Court finds no illegality or infirmity in the impugned order.

6. Accordingly, this CRLMC filed by the Petitioners being devoid of merits stands dismissed.

**(S. Pujahari)**  
**Judge**

*PKS*

