



Crl. R.C. (MD) No.146/2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. R.C. (MD) NO. 146 OF 2024

Aravind Subramanyam

.. Petitioner

- Vs -

1. Rajkumar
2. Suresh Subramanian
3. Padmavathi
4. Kathirvel
5. Siva Subramanian
6. Aswini
7. Rasheda
8. Bala Subramanian

9. The Inspector of Police
Tirunelveli Junction Police Station
Tirunelveli.

.. Respondents

Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the record and set aside the order passed by the learned Judicial Magistrate No.IV, Tirunelveli, in Crl.M.P.No.27738 of 2023 dated 22.12.2023 and allow the Criminal Revision Case.

For Petitioner : Mr.Aayiram K.Selvakumar

For Respondents : Mr.B.Nambiselvan, APP for R-9



Crl. R.C. (MD) No.146/2024

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ORDER

Challenging the order passed by the learned Judicial Magistrate No.IV, Tirunelveli, made in Crl.M.P.No.27738 of 2023 dated 22.12.2023, the present Criminal Revision has been filed by the petitioner.

2. Though this case is listed for admission, however, in view of the issue involved, which is legal in nature, issue of notice on respondents 1 to 8 does not arise. Learned Addl. Public Prosecutor takes notice for the 9th respondent and submits that the case could be heard on merits, to which the learned counsel for the petitioner has also no objection. Accordingly, with the consent of counsel for the petitioner as also the 9th respondent, the main revision itself is taken up for disposal.

3. The case of the petitioner is that respondents 1 to 8 committed an offence under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, (for short 'SC/ST Act'), which led the petitioner to give a complaint before the law enforcing agency, which was refused to be taken on file, prompting the petitioner to prefer a complaint before the Magistrate under Section 156 (3)



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Cr.P.C. However, the trial Court rejected the petition on the ground that the Magistrate has no jurisdiction to entertain the private complaint filed u/s 156 (3) Cr.P.C. and that jurisdiction vests only with the Special Court and the complaint could be maintainable and taken cognizance of only by the Special Court constituted specifically to deal with cases arising under the SC/ST Act. Challenging the same, the petitioner has filed the present Criminal Revision Petition.

4. Learned counsel appearing for the petitioner submits that Section 156 (3) Cr.P.C. enjoins upon the Magistrate to entertain any complaint if the complaint discloses the commission of an offence. It is the further submission of the learned counsel that upon such complaint, it is duty of the Magistrate to take the case and commit the proceedings to the Court having jurisdiction. However, without following the procedure, relegating the petitioner to approach the Special Court by not entertaining the complaint is wholly unreasonable and unsustainable. It is the further submission of the learned counsel that without exercising the power available under Section 156 (3) Cr.P.C., the Magistrate has simply rejected the petition citing lack of jurisdiction, which is perverse and illegal and, accordingly, prays for allowing the present revision.



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5. Learned Additional Public Prosecutor appearing for the 9th respondent submits that the procedure contemplated under the Criminal Procedure Code is to be resorted to only in general cases and where the special enactment contains specific provisions for entertaining the complaint by the Special Court, the provisions in the Criminal Procedure Code cannot prevail over the provisions in the special enactment. It is the further submission of the learned Addl. Public Prosecutor that Section 14 of the SC/ST Act confers power on the Special Court to entertain a complaint by taking cognizance of the matter and, also proceeding further in the matter. Such being the case, the power under Section 156 (3) Cr.P.C., cannot be exercised by the Magistrate. It is the further submission of the learned Addl. Public Prosecutor that when there is an effective remedy available to the petitioner, without exhausting the remedy available under the SC/ST Act, the petitioner cannot impose upon the Magistrate to entertain the complaint by resorting to the mandate under Section 200 Cr.P.C., as such power cannot be exercised as the complaint filed before the learned Judicial Magistrate under Section 156 (3) Cr.P.C. itself is not maintainable. Hence, he prays for dismissal of the revision.

6. This Court gave its careful consideration to the submissions advanced by



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the learned counsel appearing for the revision petitioner as also the learned Addl.

Public Prosecutor appearing for the 9th respondent and perused the relevant provisions of law to which this Court's attention was drawn.

7. There could be no quarrel with the fact that the special enactment will have a march over the general enactment, as the Criminal Procedure Code is a compilation of procedures in general instances, whereas the SC/ST Act is a special enactment to deal with instances, as provided for under the SC/ST Act. As stated above, a special enactment prevails over the general enactment. The said ratio has been reiterated by the Apex Court in **Suresh Nanda – Vs – CBI (2008 (3) SCC 674)**, wherein the Apex Court held thus :-

"8. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C. authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special act, the rule that general provision should yield to the specific provision is to be applied. See : Damji Valaji Shah & another Vs. L.I.C. of India & others [AIR 1966 SC 135]; Gobind Sugar Mills Ltd. Vs. State of Bihar & others [1999(7) SCC 76]; and Belsund Sugar Co. Ltd. Vs. State of Bihar and others [AIR 1999 SC 3125].



9. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport."

8. Therefore, it is to be seen whether the special enactment contains the relevant power, which could be exercised by the Special Court to take cognizance of a complaint, which, otherwise, would be strictly within the domain of the Magistrate u/s 156 (3) Cr.P.C. to entertain a complaint u/s 156 (3) Cr.P.C. in respect of an offence under the provisions of the SC/ST Act. To answer the issue, the relevant provisions of law, which have a bearing on the issue requires to be looked into.

9. The Criminal Procedure Code prescribes the procedure to be followed by the respective authorities to entertain a complaint relating to criminal acts perpetrated by an individual, who is accused of an offence. Section 156 Cr.P.C. provides for the investigation into a cognizable offence by the police authorities. If the police officer fails to cause investigation into a complaint, then the



complainant could go before the Magistrate under sub-section (3) of Section 156 by filing a complaint and the Magistrate is empowered u/s 190 Cr.P.C. to order investigation on the said complaint. For better appreciation, the aforesaid provision is quoted hereunder :-

“156. Police Officer’s power to investigate cognizable case :-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

10. From sub-section (1) to Section 156 Cr.P.C., it is evident that where power is available with a Court having jurisdiction in a local area, the police officer could enquire, and investigate, without any order, into a cognizable case. However, where the police officer fails to carry out any investigation, the



complainant could file a complaint under sub-section (3) to Section 156 Cr.P.C. before a Magistrate and the Magistrate, so empowered under Section 190, may direct investigation, upon satisfying himself about the nature of offence.

11. From the above, the condition for the Magistrate to direct investigation flows from the empowerment provided for under Section 190, which reads as under :-

“190. Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”



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12. From the above, it is clear that sub-section (1) of Section 190 Cr.P.C. contemplates that a Magistrate, specially empowered may take cognizance of any offence upon receiving a complaint of facts, which constitute such offence or on a police report, or on his own, if it is upon information received from any other person other than a police officer or even upon his own knowledge. Therefore, in respect of any offence, the Magistrate is empowered to take cognizance of an offence as per the procedure prescribed in the Code.

13. Upon taking cognizance of an offence, comes into play Section 200 Cr.P.C. However, there could be no quarrel with regard to the power of the Magistrate to act on a private complaint u/s 156 (3) by invoking his power u/s 190 Cr.P.C. However, the whole genesis of the case lies in the rejection of the complaint by the Magistrate, on the ground that the special enactment, viz., the SC/ST Act vests the power of cognizance on the Special Court and, therefore, the Magistrate has no jurisdiction to entertain the complaint.

14. Constitution of Special Court for trying the cases arising under SC/ST Act is provided for u/s 14 of the SC/ST Act and for better clarity, the relevant provision is quoted hereunder :-



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Crl. R.C. (MD) No.146/2024

“14. Special Court :- For the purpose of providing for speedy trial, the State Government shall, Court. with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.”

15. While the Special Court is constituted u/s 14 of Chapter IV of the SC/ST Act, the conferment of powers on the authorities is provided for u/s 9, which is quoted hereunder :-

“9. Conferment of Powers :- (1) Notwithstanding anything contained in the Code or in any other pro- powers. vision of this Act, the State Government may, if it consider it necessary or expedient so to do, -

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officer of police and all other officers of Government



shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)."

16. From a careful perusal of the conferment of powers u/s 9, more particularly, sub-section (1) of Section 9, it prescribes that the State Government may clothe any of its officers to exercise the power of a police officer under the Code of Criminal Procedure and the provisions of the Code will be applicable to the said authority while exercising the said powers. The said powers include powers of arrest, investigate and prosecute the persons before any Special Court.

17. The constitution of Special Court u/s 14 of the SC/ST Act stipulates that the said courts are constituted for speedy trial of the cases and that the Courts, which are to be specifically designated as Special Court, which is in the cadre of Court of Session, shall be notified with the concurrence of the Chief Justice of the High Court. Therefore, Section 14 spells out that the constitution is for speedy trial of the cases. However, the conferment of power with regard to taking cognizance of a complaint is not spelt out in Section 14.



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18. Section 10 of the SC/ST Act deals with removal of person likely to commit offence. Sub-section (1) vests the Special Court, so constituted u/s 14, upon its satisfaction, to receive a complaint or a police report with regard to a person likely to commit an offence under Chapter II of the Act. Section 10, therefore, clearly spells out that a complaint shall be received by the Special Court for the purpose of giving direction to such person to move out of the area by passing an order. Therefore, from the above provision it is evident that the Special Court is not only empowered to pass an order for removal of a person, but for so doing, it is clothed with power to even receive a complaint or a police report, which could clearly imply that a complaint, even with regard to any act committed against a person belonging to Scheduled Casts/Scheduled Tribe, falling within the four contours of the Act, could be received by the Special Court. Equally under sub-section (3) of Section 10, the Special Court has been conferred with powers to modify the orders passed on the representation made by a person, against whom an order has been passed by the Court, which also goes to show that all the powers with regard to receipt of complaint, receipt of representation, taking cognizance of a case and speedy trial are vested with the Special Court.



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19. Therefore, a conjoint reading of Section 9, 10 and 14 of the SC/ST Act reveal the Special Court would enjoy the status of a Court of original jurisdiction, which is vested with jurisdiction to take cognizance on a complaint, and, thereafter, by exercising its jurisdiction for conduct of speedy trial as akin to a Sessions Court. It is therefore implicitly evident that what is conferred on the Magistrate u/s 156 (3) Cr.P.C. r/w/ 190 Cr.P.C. is vested on the Special Court, with regard to taking cognizance of an offence upon a complaint in writing or even on a police report and, therefore, the constitution of the Special Court is not only for speedy trial, but it is also coupled with taking cognizance of the offence, thereby, the Magistrate Court would stand divested of its powers to take cognizance on a complaint.

20. Once the power is conferred through the special enactment on the Special Court, the procedure contemplated under the Code of Criminal Procedure, merely being a procedure, cannot override the power vested on the Special Court, so as to denude the Special Court of its powers and in the aforesaid scenario, the Magistrate cannot exercise the powers vested, as a matter of procedure, by the Code, by subsuming the powers conferred on the Special Court by way of the special enactment.



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21. In fact, the police authorities, even if they entertain a complaint with regard to an offence or for that matter, any officer, who has been conferred with powers u/s 9 of the SC/ST Act, ought to file the report before the Special Court, as is also evidenced u/s 10 of the SC/ST Act and it would not be before the Magistrate Court, which effectively clarifies that the power of entertaining a complaint, as provided for u/s 156 (3) Cr.P.C., on a Magistrate, would stand transferred to the Special Court, on the enactment of the SC/ST Act, which alone could entertain the complaint and rightfully, the court below, appreciating the aforesaid legal position, had rejected the complaint filed by the petitioner herein and directed the petitioner to approach the Special Court and, therefore, the said order, by no stretch, could be termed to be perverse, arbitrary or unsustainable and the said order does not require any interference at the hands of this Court.

22. In fact, the remedy made available to the petitioner under the special enactment, viz., the SC/ST Act, is not an alternative, but an exhaustive and effective remedy aimed at speedy disposal of the case, which could be resorted to by the aggrieved party and the approach of the petitioner to the Magistrate court u/s 156 (3) Cr.P.C. is a nugatory act, which cannot be either in the interest of law and justice or in the interest of the petitioner.



Crl. R.C. (MD) No.146/2024

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23. For the reasons aforesaid, the criminal revision deserves to be dismissed and, accordingly, the same is dismissed. However, liberty is granted to the petitioner to file appropriate complaint before the Special Court in terms of the provisions under the SC/ST Act, if so advised and if such a complaint is filed, the Special Court is directed to entertain the complaint on its own merits and pass appropriate orders in accordance with law.

09.02.2024

Index : Yes / No

NCC : Yes / No

RM/GLN



Crl. R.C. (MD) No.146/2024

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To

1. The Judicial Magistrate No.IV
Tirunelveli.
2. The Inspector of Police
Tirunelveli Junction Police Station
Tirunelveli.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.



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Crl. R.C. (MD) No.146/2024

M.DHANDAPANI, J.

RM/GLN

CRL. R.C. (MD) NO.146 OF 2024

09.02.2024