CASE NO.:
Appeal (crl.) 450 of 1997

PETITIONER:
M.A. Kuttappan

RESPONDENT:
E. Krishnan Nayanar and another

DATE OF JUDGMENT: 26/02/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T

B.P. Singh, J.

The appellant in this appeal by special leave is aggrieved by the order of the High Court of Kerala at Ernakulam in Crl. M.C. No. 2192 of 1996 dated 21st February, 1997 whereby a learned Judge of the High Court while allowing the application filed under Section 482 of the Code of Criminal Procedure quashed the order of the Special Judge, Thalassery whereby he had taken congnizance of the offences under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the '1989 Act' and Section 7 (1)(d) of the Protection of Civil Rights Act, 1955. The High Court held that none of the offences above mentioned were made out on the basis of the complaint and the material placed before the learned Special Judge.

In view of the order, which we propose to make, it is neither necessary nor advisable to refer to the facts of the case in detail lest it may prejudice the case of the parties in any proceedings in future. However it is necessary to briefly recapitulate the broad facts which give rise to the instant appeal.

The appellant herein, the complainant, claiming to be a Member of the Kerala Legislative Assembly and belonging to a Scheduled Caste known as 'Pathiyan' and practicing as a doctor by profession owing allegiance to the Indian National Congress (I) filed a complaint in the Court of the Special Judge for the trial of offences under Act 33 of 1989 at Thalassery. In his complaint he alleged that respondent No.1 belongs to Nair community, which is not a scheduled caste, was a prominent leader of the Communist Party of India (Marxists). He at the relevant time held the office of Chief Minister of the State of Kerala and was contesting bye-election to the Kerala Legislative Assembly from the Thalassery Assembly Constituency. A Convention of the Left Democratic Front was convened on September 20, 1996 in the evening at the Town Bank Auditorium, Thalassery in which respondent No.1 made a speech wherein he made certain disparaging observations wilfully and deliberately emphasizing the fact that the complainant belongs to a lower and inferior category of MLA being a member of a scheduled caste. Respondent No.1 emphasised the fact that the appellant was a Harijan and made derogatory remarks about the complainant. This was done in full view of the public assembled in the Auditorium. Respondent No.1 is alleged to have stated as follows :-

"There is an MLA. Kuttappan, that Harijan MLA, he climbed over the table and was dancing. Is this the democratic manners of Antony? "

This was the statement attributed to respondent No.1 by witness No.1 examined on behalf of the appellant. According to the complainant respondent No.1 stated :-
"the other thing, that Harijan, one Kuttappan, he was dancing on the table".
Though there is a slight variance about the exact words used by respondent No.1, the statement was to this effect.

The learned Special Judge on a consideration of the statement of the complainant on oath and the statements of two other witnesses examined before it, came to the conclusion that in the facts and circumstances of the case, the commission of an offence under Section 3(1)(x) of the 1989 Act and under Section 7(1)(d) of the Protection of Civil Rights Act was made out. He, therefore, took cognizance of the aforesaid offences and issued process summoning respondent No.1 to stand trial.

The order of the Special Judge Thalassery was challenged by respondent No.1 before the High Court which by its impugned order quashed the order of the Special Judge taking cognizance, finding that no offence was made out under either of the two Acts. Aggrieved by the judgment and order of the High Court the appellant has preferred this appeal by special leave. At the threshold counsel for respondent No.1 submitted that the Court of Special Judge constituted under the 1989 Act had no jurisdiction to entertain the complaint, take cognizance and issue process against respondent No.1. Relying upon the decisions of this Court it was submitted that the Special Judge constituted for the trial of offences under the aforesaid 1989 Act could only exercise the powers of a Session Court in accordance with the procedures laid down under the Code of Criminal Procedure. It was submitted that unless an order of committal was made by a competent Magistrate committing the accused to stand trial before the Court of Session, the Session Judge had no jurisdiction to try an offence under the aforesaid Act. He had no jurisdiction even to entertain a complaint made before it under the aforesaid Act. Reliance was placed on two decisions of this Court in Gangula Ashok and another vs. State of Andhra Pradesh : (2000) 2 SCC 504 and Vidyadharan vs. State of Kerala : JT 2003 (9) SC 89. Counsel for the appellant did not dispute the factual position that the case had not been committed to the Special Judge for trial of respondent No.1 and that the Special Judge entertained the complaint filed before it and issued process against respondent No.1.

In Gangula Ashok and another (supra) a complaint had been lodged against the appellants before the police and after investigation the police filed a charge-sheet before the Special Judge which was designated as Special Court for trial of offences under the aforesaid Act. The Special Judge proceeded to frame a charge against the appellants which was challenged before the High Court by them. A learned Judge of the High Court found that the procedure adopted by the Investigating Officer in filing the charge sheet before the Special Court was not in accordance with law and the Special Judge had no jurisdiction to take cognizance of any offence under the Act without the case having been committed to that Court. In this view of the matter the learned Judge set aside the proceedings of the Special Court and directed the charge sheet and the connected papers to be returned to the police officer concerned

to present the same before a Judicial Magistrate of the First Class for the purpose of committal to the Special Court. The judgment of the learned Judge was challenged before this Court and after an exhaustive consideration of the authorities on the subject and the statutory provisions, this Court upheld the order of the High Court setting aside the proceeding initiated by the Special Court, though it did not approve of the directions given by the High Court that after committal of the case, the Special Court shall frame charge against the appellant. Obviously so, because it is for the Special Court to decide regarding the action to be taken next after hearing the parties as provided under Section 227 of the Code of Criminal Procedure. Noticing the provisions of Section 193 of the Code of Criminal Procedure and Section 14 of the 1989 Act this Court observed that the Act contemplated only the trial to be conducted by Special Court. The added reasons for specifying a Court of Session as a Special Court is to ensure speed for such 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. The legislative intent was to ensure that the offences under the Act were tried by Special Court and Court of Session was specified as a Special Court under Section 14 of the 1989 Act. Even after being so specified as a Special Court the Court of Session continues to be essentially a Court of Session and its designation as a Special Court did 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 of Criminal Procedure which contains a fasciculus of provisions for trial before a Court of Session. This Court then observed :-

"10. 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.

11. 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. If that be so, there is no reason to think that the charge-sheet or a complaint can 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 we think that 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."

The same view was reiterated in Vidyadharan (supra). This Court concluded by observing :-

"20. Hence, we have no doubt that a special court under the Act is essentially a court of session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the special court under the Act. We are reiterating the view taken by this Court in Gangula Ashok and another vs. State of A.P. : (2000) 2 SCC 504 in above terms with which we are in respectful agreement. The sessions court in the case at hand, undisputedly has acted as one of original jurisdiction, and the requirements of section 193 of the Code were not met."

In view of the aforesaid decisions of this Court it could not be contended before us that the Special Judge had jurisdiction to entertain the complaint directly and to issue process after taking cognizance without the case being committed to it by a competent Magistrate. The question is no longer res integra and, therefore, it must he held that the learned Special Judge in the instant case erred in entertaining a complaint filed before it and in issuing process after taking cognizance without the case being committed to it for trial by a competent Magistrate. Though the High Court has quashed the proceeding on a different ground altogether, we are satisfied that the impugned order of the Special Judge deserves to be set aside so far as it related to its taking cognizance of an offence under the 1989 Act, and issuing process on the basis of the complaint directly made before it by the complainant.

The next question which survives consideration is whether the learned Special Judge was justified in taking cognizance under Section 7(1)(d) of the Protection of Civil Rights Act. The High Court held that the utterance imputed to respondent No.1 did not attract the provisions of Section 7(1)(d) of the Protection of Civil Rights Act. To attract the said provision it had to be shown that the words so uttered had the effect of insulting the appellant on the ground of "untouchability" which is not the case. There was no justification for the submission that the words allegedly uttered by respondent No.1 encouraged his audience to practise untouchability or that respondent No.1 practised untouchability. The appellant was neither insulted nor attempted to be insulted on the ground of untouchability. Therefore, the provisions of Section 7(1)(d) of the Protection of Civil Rights Act were not attracted.

Learned counsel for the appellant did not advance any argument challenging the above finding of the High Court. We

have also seriously considered the matter and we are satisfied that the High Court was right in coming to the conclusion that Section 7(1)(d) of the Protection of Civil Rights Act is not attracted in the facts and circumstances of this case. Assuming, respondent No.1 uttered the words imputed to him, by no stretch of imagination it can be concluded that by uttering those words he either insulted or attempted to insult the appellant on the ground of untouchability.

In the result this appeal is dismissed. However, it will be open to the appellant, if so advised, to file a complaint before a competent Magistrate who shall consider the complaint on its merit and then proceed in accordance with law. The learned Special Court as well as the High Court have made certain observations touching on the merit of the controversy. We make it clear that in case a complaint is filed by the appellant before a competent Magistrate, he shall proceed to consider the matter in accordance with law uninfluenced by any observation made either by the learned Special Judge or by the High Court. Nothing said in this judgment also shall be construed as expression of opinion on the merit of the case.