CASE NO.:
Appeal (crl.) 730 of 1998

PETITIONER:
Moly and Anr.

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 23/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

[With Criminal Appeal No. 731 of 1998]

ARIJIT PASAYAT, J.

These appeals involve identical issues and are taken up for disposal together.

Appellants faced trial for alleged commission of offences punishable under Sections 3(1)(iii), 3(1)(v) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act'). The Trial Court found the appellants guilty and imposed sentences. Appeal before the High Court did not bring any relief to them.

The primary stand taken in this appeal is that the Trial Court could not have suo moto entertained and registered the complaint as a sessions case.

Learned counsel for the respondent-State supported the judgment of the courts below stating that this plea is taken for the first time in this Court and was not taken before the Courts below.

Pristine question to be considered is whether the Special Judge could take cognizance of the offence straight away without the case being committed to him. If the Special court is a Court of Session, the interdict contained in Section 193 of the Code of Criminal Procedure, 1973 (for short the 'Code') would stand in the way. It reads thus:

"193. Cognizance of offences by Courts of Session- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

So the first aspect to be considered is whether the Special Court is a Court of Session. Chapter II of the Code deals with "Constitution of Criminal Courts and Offices". Section which falls thereunder says that :

"there shall be, in every State, the following classes of criminal courts, namely:

(i) Courts of Sessions;"

The other classes of criminal courts enumerated thereunder are not relevant in this case and need not be extracted.

Section 14 of the Act Says that:

"for the purpose of providing for speedy trial, the State Government shall, 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."

So 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. The word 'inquiry' is defined in Section 2(g) of the Code as 'every inquiry, other than a trial, conducted under this Code by a Magistrate or court'. So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" (vide Section 2(1)(d).

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

Section 193 of the Code has to be understood in the aforesaid backdrop. The Section imposes an interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction. It can take cognizance only if 'the case has been committed to it by a Magistrate', as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word 'expressly' which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the Section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

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.

A reading of the concerned provisions makes it clear that subject to the provisions in other enactments all offences under other laws shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code. This means 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. This aspect has been emphasized by a Constitution Bench of this Court in para 16 of the decision in A.R. Antulay v. Ramdas Sriniwas Nayak (1984 (2) SCC 500). It reads thus"

"Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts or various designations."

Section 5 of the Code cannot be brought in aid for supporting the view that the Court of Session specified under the Act obviate the interdict contained in Section 193 of the Code so 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. Section 5 of the Code reads thus:

"5.- Saving- Nothing contained in this Code shall, in the absence of a special provision to the contrary, affect any special or local law for the time being in force, or

any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

This Court in Directorate of Enforcement v. Deepak Mahajan (1994 (3) SCC 440) on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, held as follows:

"It only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code".

Hence, we have no doubt that a Special Court under this 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 re-iterating the view taken by this Court in Gangula Ashok and Anr. v. State of A.P. (2000 (2) SCC 504) and in Vidyadharan v. State of Kerala (2004 (1) SCC 215) 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.

Though the plea relating to lack of jurisdiction was not raised before the lower Courts, in view of the undisputed position on facts and inasmuch as a pure question of law without any factual controversy is involved, we feel interference on the facts of the case is called for.

One more plea which was pressed by learned counsel for the appellants is that continuance of the proceedings before the appropriate Court in the manner prescribed in law would serve no useful purpose in view of the long passage of time. We do not find any substance in this plea. It is for the Competent Court to decide regarding the action to be taken next, after hearing both sides as provided in Section 227 of the Code. No direction can be given to the said Court at this premature stage as to what course the Court should adopt in dealing with the complaint. It is open to the appellants to raise all their contentions at that stage if they want to make a plea for discharge. We make it clear that as and when such plea is made to the Judge of the Competent Court, he shall pass appropriate orders in accordance with law.

With the aforesaid directions and observations the appeals are finally disposed of.