
(18) The result is, the appeal is allowed and both the accused are acquitted of the charge under Section 306 I.P.C. Their bail bonds shall stand cancelled.

R.N.R.

Before T.H.B. Chalapathi, J.

DARA SINGH @ DARBARA SINGH,—Petitioner

versus

TEJ KAUR,—Respondent

Criminal Misc. No. 18538-M of 1999 & CrI. M. 21482/M/99

26th October, 1999

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—Ss. 3(1), 6, 9 to 14 and 20—Code of Criminal Procedure, 1973—Ss. 190, 193 and 209—Offences not triable by the Court of Session under the Code are to be tried by the Special Court alone—Special Judge can take cognizance of the offences under the Act without an order of committal by the Magistrate.

(Jyoti Arora v. State of Haryana, 1998(I) RCR (CrI.) 234, Meera Bhai v. Bhujbal Singh and others, 1995 (3) RCR 125 and Mangli Prasad v. Additional Sessions Judge, 1996(3) RCR 768, do not represent the correct law)

Held that, a look at the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not show that the offences committed therein are triable only by a Court of Session. It envisages that the offences under the said Act are to be tried only by the Special Judge but not by the Court of Sessions. There is a difference between the Special Judge and Sessions Court. Simply because a Sessions Judge has to be appointed as a Special Judge, the latter cannot be treated as a Sessions Judge.

(Para 5)

Further held that, a close reading of the provisions of the Act makes it clear that the Special Court constituted under the Act is intended to be a Court of original jurisdiction for all intents and purposes including the powers under Section 190 of the Code of Criminal Procedure and it can take cognizance of the offences without an order of committal by the Magistrate.

(Para 17)

A.K. Khunger, Advocate, for the petitioner (in CrI. Misc. No. 18538-M of 99).

J.S. Sidhu, Advocate, for the petitioner (in CrI. Misc. No. 21482-M of 99).

ORDER

T.H.B. Chalapathi, J.

(1) In both these petitions the question of law is whether the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as the 'Act') can take cognizance of the offences under the Act without being committed by the Magistrate in view of Section 193, Criminal Procedure Code. There are conflicting decisions of this Court. Hon'ble Mr. Justice V.S. Aggarwal in *Devinder Singh Sarpanch and others vs. State of Punjab*(1) took the view that the Special Judge under the Act can directly take cognizance of the case without being committed by the Magistrate. Mr. Justice M.L. Koul in *Jyoti Arora vs. The State of Haryana* (2) has taken the view that the Special Judge under the Act has no original jurisdiction to try the offences unless the case is committed to it under Section 193 Cr. P.C. by a Magistrate. Mr. Justice N.K. Kapoor in *Phuman Singh vs. Kashmir Singh* (3) took the view that Special Judge can directly take cognizance of the complaint without being committed by the Magistrate. Hon'ble Mr. Justice K.S. Kumaran also took the similar view, but there was no discussion.

(2) A Division Bench of the Kerala High Court in *Re: Director General of Prosecution*(4) held that the Special Court is a Court of original jurisdiction with all the powers under Section 190 of the Code to take cognizance of offences without an order of committal by the Magistrate as set out in Section 193 of the Code. The Patna High Court in *Jhagru Mahto vs. State of Bihar* (5) took a contrary view. The High Court of Andhra Pradesh in *S. Damodar Reddy vs. State of Andhra Pradesh* (6) has taken the view that the provisions of Section 193 Cr. P.C. are not applicable and for the offences under the Act, the Special Court can take cognizance without an order of committal by the Magistrate as set out in Section 193 Cr. P.C.

(1) 1997(3) R.C.R. (CrI.) 575

(2) 1998(1) R.C.R. (CrI.) 234

(3) 1995(1) C.L.R. 371

(4) 1993 Cr. L.J. 760

(5) 1993(1) Crimes 643

(6) 1996 CrI. L.J. 3271

(3) It has been held by the Apex Court in *A.R. Antulay vs. Ramdas Srinivas Nayak and another* (7) that the Court of a Special Judge is a Court of original criminal jurisdiction and as a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied.

(4) Section 190 Cr. P.C. obligates on the Magistrate to take cognizance of the offences. Section 193 Cr. P.C. only prohibits the Court of Session from taking cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. Therefore Section 193 Cr. P.C. has to be read as a bar to the Court of Session to act as Court of original jurisdiction. Only the offences which are triable by the Sessions Court as such cannot be taken cognizance by the Sessions Court. It is, therefore, to be seen whether the offences under the Act are made triable by a Court of Session. It is no doubt true that the Code of Criminal Procedure under its First Schedule classifies the offences and the Court by which they are triable. Certain offences are triable by the Magistrate and certain offences are made triable only by the Court of Session. Therefore, under the Code only those cases which are made triable by a Court of Session have to be committed by the Committal Magistrate. If the offence is not triable by a Court of Session, There is no need to have any committal proceedings before the Magistrate. For an offence under other statute or enactment, the Code of Criminal Procedure must make the offence triable by a Sessions Judge in which only the cognizance of the same can be taken by a Magistrate and after satisfying himself and following the committal procedure, the Magistrate has to commit to the Court of Session and the Court of Session then can only try that offence. Further under Section 5 of the Code of Criminal Procedure in the absence of any specific provision to the contrary, nothing in the Code has to affect anything in the special law. Part-I of the 1st Schedule of the Code deals with offences under the Indian Penal Code while Part-II classifies the offences under other laws. Under the said classification, the offences punishable with death, imprisonment for life or imprisonment for more than 7 years, they are triable by a Court of Sessions while the offences punishable

with imprisonment for 3 years and upwards, but not more than 7 years are triable by a Magistrate of 1st Class and the offences punishable with imprisonment for less than 3 years or with fine can be tried by any Magistrate.

(5) The Criminal Procedure lays down only procedure for the trial of criminal offences and for the offences as otherwise covered by the special enactment, the Code of Criminal Procedure will apply subject to any provision in the special statute. Therefore one has to look to the provisions of special enactment. Whether the special enactment makes any offence therein triable by a Court of Session apart from Part-II of the Schedule-I of the Court. A look at the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not show that the offences committed therein are triable only by a Court of Session. It envisages that the offences under the said Act are to be tried only by the Special Judge, but not by the Court of Sessions. There is a difference between the Special Judge and Sessions Court. Simply because a Sessions judge has to be appointed as a Special Judge, the latter cannot be treated as a Sessions Judge.

(6) Under Section 6 of the Code of Criminal Procedure, hierarchy of the Courts has been enumerated. Section 6 of the Code reads as follows:—

“Besides the High Courts and the Courts constituted under any law other than this Code, there shall be in every State, the following classes of Criminal Courts namely:—

- (i) Court of Session;
- (ii) Judicial Magistrates of the first class and in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class and
- (iv) Executive Magistrates.

(7) The very opening word of Section 6 itself contemplates that there may be other Courts which may be constituted under any other Law. The Special Court has been constituted under the special enactment namely The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Therefore the Court of Special Judge is not a Court falling within Section 6 of the Code. Therefore the Court of Special Judge constituted under the Act cannot be described as a Court of Session. Therefore, there is no question of applying Section 193 Cr. P.C. since the Court of Special Judge

constituted under the special enactment cannot be termed or treated as a Court of Sessions.

(8) Further the 1st Schedule of Code of Criminal Procedure classifies the offence and column No. 6 provides by what Court the offence is triable. Part-II of the Table relates to the classification and offences against other laws. It is useful to extract the same.

II Classification of offences against other Laws.

If Punishable with death, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Sessions
If punishable with imprisonment for 3 years and upwards, but not more than 7 years.	-Ditto- -Ditto-	-Ditto- -Ditto-	Magistrate of 1st Class
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate

(9) Thus it is clear that Court of Sessions can try the offence if it is punishable with a sentence of more than 7 years. But the offences under Section 3(1) of the Act are punishable upto five years only. Can it be said that the Magistrate has to necessarily commit the case to the Special Judge under the Act even though it is not triable by the Court of Sessions. The answer must be in the negative since the offence is not triable by Court of Sessions, but it is triable only by a Magistrate. Therefore the offence punishable with imprisonment upto five years has to be necessarily tried by the Magistrate alone. But the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act 1989 takes away the Jurisdiction of the Magistrate to try the offences under Section 3(1) of the Act. The power to try those offences is vested in the Special Judge.

(10) Under Section 209 of the Code of Criminal Procedure, the Magistrate shall commit the case if it appears to him that the offence is triable exclusively by the Court of Sessions. If any offence which is not exclusively triable by the Sessions Court is disclosed, then the Magistrate may deal with it under other provisions of the Code. Reference may be made to the decision of the Supreme Court in *Rajender vs. State* (8). The offences under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act are punishable with a maximum sentence of 5 years with fine. They are not exclusively triable by the Court of Sessions as per classification of offences under Schedule-I of the Criminal Procedure Code. When the offence is not exclusively triable, then he cannot commit the case to the Court of Sessions in view of the provisions contained in Section 209 Cr. P.C. At the same time, the Magistrate cannot also try the offences under Section 3(1) of the Act since the offences under the Act are triable only by a Special Judge. In trying offences under Section 3(1), the Special Judge is not acting as Court of Sessions. He is empowered to try the offence not as a Sessions Judge, but as Special Judge, who is specially empowered in this behalf. Therefore the Special Judge must be deemed to be the Court of Special Judge as envisaged under Sections 6 and 9 of the Act.

(11) When two views are possible, the view which advances the object of the enactment must be preferred. I am therefore, of the view that a Special Court can take cognizance of the case.

(12) In this view of the matter, I am of the opinion that Section 193 Cr. P.C. has no application to the Special Courts constituted under the Act. In such a situation, one has to look to the provisions of the Act which has to be followed by the Special Court for trying the offences under the Act.

(13) The Act provides that the offences under the same shall be tried by a Special Court. Section 14 provides that for the purpose of providing speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court by a 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.

(14) Thus it is clear that the jurisdiction of the ordinary criminal Courts constituted under the Code of Criminal Procedure has been taken away and Special Courts have been constituted. Section 14 read with Section 2(d) makes it clear that the Special Court is to be manned by a Sessions Judge. Section 2(d) of the Act defines the Special Court as a Court of Session specified as a Special Court in Section 14. Every Sessions Court is not a Special Court, but every Special Court shall be a Court of Session by virtue of the notification issued by the State Government. Further it is clearly provided in Section 14 of the Act that the Special Courts are constituted for the purpose of speedy disposal of the cases. Therefore the intention of the Parliament is very clear that the Legislature in its wisdom does not want any delay in disposal of the cases and therefore the intention of the Legislature is very clear that they want to dispense with the

committal procedure. If the intention of the Legislature was to confer power on the Sessions Courts, there was no need to create the Special Courts for trial of the offences under the Act. Further the Special Court has been given the powers which a Sessions Court does not enjoy. Sections 10 to 13 in Chapter III of the Act clearly confer certain original powers on the Special Courts which are not enjoyed by the Session Courts. Further the powers of the High Court and the Sessions Judge to grant anticipatory bail under Section 438 Cr. P.C. is taken away under Section 18 of the said Act. Likewise the Special Court is also empowered for invoking the provisions of Section 360 of the Code of Criminal Procedure. Section 20 of the Act has overriding effect over any other law including the Code of Criminal Procedure. Simply because the Act provides that a Court of Session has to be designated as a Special Court, it cannot make Special Court a Court of Session. Following an earlier decision of this Court in *Phuman Singh Vs. Kashmir Singh* (supra) and after referring to the various provisions of the Act, Hon'ble Mr. Justice V.S. Aggarwal has taken the view in *Devinder Singh Sarpanch and others Vs. State of Punjab* (Supra) that the Special Court can directly entertain the complaint and take cognizance of the same. Unfortunately the above decisions of this Court have not been brought to the notice of Hon'ble Mr. Justice M.L. Koul in *Jyoti Arora vs. State of Haryana* (Supra). His Lordship after referring to the Special Enactments like Essential Commodities Act, Terrorist and Destructive Activities (Prevention) Act, 1987, Prevention of Corruption Act and Narcotic Drugs and Psychotropic Substances Act, 1985 opined that those Acts have special provisions enabling the District or the Designated Court to take cognizance without being committed the case for trial as Sessions Judge. He further held that there is no enabling special provisions under the present Act authorising the Special Court to take cognizance of the offences as described under the Act directly. His Lordship also held that the Special Court cannot take cognizance as like of original Court. His Lordship also relied upon Sections 4 and 5 of the Code of Criminal Procedure. Section 4(2) of the Code reads as follows:—

“All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment the manner or place of investigating inquiring into, trying or otherwise dealing with such offences.”

(15) It is no doubt true that from a reading of Section 4(2) of the Code it is clear that if the statute creates an offence, but does not

provide the procedure for trial, it has to be tried in accordance with the provisions of the Code of Criminal Procedure. But in the present case, a Special Court has been created for the purpose of the trial of the offences under the Act. As already noticed, the Act specifically provides that under the said Act, the offences shall be tried only by a Special Court which has to be specified by the State Government in consultation with the Chief Justice.

(16) Thus it is very clear that the intention of the Legislature was that the offences not triable by the Court of Session under the code of Criminal Procedure are to be tried by the Special Court to be a Court of Session as understood under the provisions of Code of Criminal Procedure. As observed by the Apex Court in *A.R. Antulay's case* (supra) the expression 'Special Judge' has to be read in place of Magistrate and if it so read, the whole thing becomes crystal clear.

(17) A close reading of the provisions of the Act makes it clear that the Special Court constituted under the Act is intended to be a Court of original jurisdiction for all intents and purposes including the powers under Section 190 of the Code of Criminal Procedure and it can take cognizance of the offences without an order of committal by the Magistrate. I do not find any lacuna in the Act as observed by the Patna High Court in *Jhagru Mahto Vs. State of Bihar* (Supra).

(18) For the foregoing reasons I am of the opinion that the decision of Hon'ble Mr. Justice M.L. Koul in *Jyoti Arora Versus State of Haryana* (Supra) is per incuriam. No reference was made to the earlier decisions of this Court which were binding on his Lordship. I am in agreement with the view of His Lordship Mr. Justice V.S. Aggarwal taken in *Devinder Singh Sarpanch and another vs. State of Punjab* (Supra).

(19) In this view of the matter, I am of the opinion that the Special Judge has got jurisdiction to try the offences under the Act without being committed to the Special Court and he can directly take cognizance of the same. The decisions of this Court in *Jyoti Arora Vs. State of Haryana* (Supra), the decision of the Madhya Pradesh High Court in *Meera Bhai Vs. Bhujbal Singh and others*(9) and the decision of the Allahabad High Court in *Mangli Prasad Vs. Additional Sessions Judge* (10) do not represent the correct law.

(20) In view of the foregoing discussion, I am of the view that the Special Judge can directly take cognizance of the offences under

(9) 1995(3) RCR 125

(10) 1996(3) RCR 768

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

(21) Accordingly, both the petitions are dismissed.

R.N.R.

Before Swatanter Kumar, J

PIARA SINGH & OTHERS,—Petitioners

versus

BHUPINDER KAUR & ANOTHER,—Respondents

C.R. No. 269 of 2000

2nd March, 2000

Code of Civil Procedure, 1908—0.14 Rl. 5—Trial Court dismissing the suit of the plaintiffs—Appeal before the Appellate Court pending—After 3/4 years, plaintiffs filing application under 0.14 Rl. 5 CPC for framing of an additional issue—Appellate Court dismissing the application—Plaintiffs faced the complete trial without prejudice & demur—No grievance made in memorandum of appeal—Plaintiffs not sincerely & seriously aggrieved—Additional issue cannot be framed.

Held that, a party when claims no issue before the Court and undertakes the entire trial on the basis of the issues framed, as a matter of course, cannot be permitted to claim framing of additional issues at the appellate stage as a matter of right. The objection with regard to non-framing of issues ought to be raised at the initial stage of the suit and in any case in the memorandum of appeal, if the party is sincerely and seriously aggrieved by non-framing of a particular issue on a fact.

S.N. Chopra, Advocate for the petitioner.

JUDGMENT

Swatanter Kumar, J.

(1) Challenge in this revision is to the order dated 29th November, 1999 passed by the learned Additional District Judge,—Fatehgarh Sahib. The facts relevant for the determination of the controversy in