

Haresh Kumar Singh and ors. Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Oct-11-1996

Judge : Nagendra Rai and G.S. Chaube, JJ.

Appeal No. : Cr.W.J.C. Nos. 38, 60 and 636 of 1992, 7, 189, 458, 499, 503, 653, 679 and 826 of 1993 and 43, 295,

Appellant : Haresh Kumar Singh and ors.

Respondent : Union of India (Uoi) and ors.

Disposition : Application Dismissed

Prior history : Nagendra Rai, J. 1. In these twenty-two applications, the petitioners have challenged the vires of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) and have prayed for quashing their prosecutions under the aforesaid Act. 2. As the common questions of law are involved in all the cases they have been heard together and are being disposed of by this common judgment. 3. The allegations against the petitioners in a

Judgement :

Nagendra Rai, J.

1. In these twenty-two applications, the petitioners have challenged the vires of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) and have prayed for quashing their prosecutions under the aforesaid Act.

2. As the common questions of law are involved in all the cases they have been heard together and are being disposed of by this common judgment.

3. The allegations against the petitioners in all the cases are that they have committed offence under the Act and in some cases they are also alleged to have committed offences under the Penal Code. It is not necessary to state the facts of all of the cases as the submissions advanced by the counsels for the petitioners in all the cases are with regard to vires of the Act on different grounds which require no reference to the factual matters. In some case, the learned Counsels referred to the facts of the cases to show that even if the allegations are accepted on their face value no case under the said Act or IPC is made and in that view of matter the facts of those cases will be referred to while dealing with the said submission.

4. The petitioners have challenged the Act and its provisions on three grounds namely the Act itself is ultra vires Article 14 of the Constitution of India as it is arbitrary and discriminatory in the sense that it discriminates between Sch. Castes and Sch. Trib on the one hand and non-Sch. Castes and Tribes on the other hand in the matter fixing criminal liability. The atrocities committed by the persons not being member of the Scheduled Castes or Scheduled Tribes category is punishable under the Act whereas offences of atrocities committed by Scheduled Castes and Scheduled Tribes upon Scheduled Castes or Scheduled Tribes are not punishable under the Act. (ii) The Act itself is not workable as there is neither provision for institution and investigation of the case nor provision for trial or appeal against the judgment of the Special court (iii) The appointment of Additional District and Sessions Judges as a special court by the Government notification is in breach of provisions of Section 14 of the Act as only the court of session could be specified as special court. The counsels appearing for the respondents/opposite parties have combated all the submissions.

5. Before proceeding to consider the submissions advanced at the Bar it will be apt to state in brief the relevant provisions of the Act. The Act has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, to provide for special Courts for the trial of such offences and for giving relief and rehabilitation to the victim of such offences and for such matter connected therewith or incidental thereto.

6. Atrocity has been defined under Section 2(1)(a) of the Act which means an offence punishable under Section 3 of the Act. Section 3 of the Act provides for punishments for offences of atrocities detailed in the said section. Section 4 provides for punishment for neglect of duties by persons not being a member of the Scheduled Caste and Scheduled Tribe. Chapter III deals with the externment of a person likely to commit an offence of atrocity in any areas including in Scheduled Areas or Tribal Areas as referred to in Article 244 of the Constitution. Chapter IV contains provision for constitution of special court and appointment of Special Public Prosecutor. Section 18 falling under Chapter V excludes the application of Section 438, Cr. P.C. with regard to the offences under the Act and Section 19 under the said Chapter excludes the application of Section 360, Cr. P.C. and provisions of the Probation of Offenders Act with regard to the persons found guilty for the offences under the Act. Section 20 says that this Act shall have overriding effect over the other laws.

7. The statements of Objects and Reasons for enactment of the Act has been published in the Gazette of India Extraordinary Part II, dated 9th August, 1989, which is quoted below:

Statement of Object and Reasons:-(i) 'Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes they remain vulnerable. They are denied number of civil rights. They are subjected to various offences indignities, humiliations and harassment. They have, in several brutal incidents been deprived of their life, and property. Serious crimes are committed against them for various historical, social and economic reasons.

(ii) Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education etc. they are trying to assert their

rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substance like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled tribes, has, therefore, become necessary.

(iii) The term 'atrocities' has not been defined so far. It is considered necessary that not only the term atrocities should be defined but stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the State and the Union Territories to take specific preventive and punitive measures to protect the scheduled castes and scheduled tribes from being victimized and where atrocities are committed to provide adequate relief and assistance to rehabilitate them.

8. Thus, it is enacted to protect the Scheduled Caste and Scheduled Tribes from the atrocities committed upon them by the non-Scheduled Castes and nonScheduled Tribes persons. It is a historical fact that the Scheduled Castes and Scheduled Tribes, who belong to the weaker section of the society have been subjected to untouchability and they had to suffer miseries, humiliation and were subjected to atrocities by the traditional Hindus. To ameliorate their condition and to protect them from exploitation and sufferings, special provisions have been made in the Constitution of India. Article 17 of the Constitution has abolished

untouchability and has forbidden its practice. The enforcement of any disability arising out of untouchability has been made punishable. Special provisions were also made under Articles 15(4), 16(4) and 46 of the Constitution for the benefit and protection of the Scheduled Castes and Scheduled Tribes in the matter of their advancement. Article 17 empowered the Parliament to make a law for the offence arising out of the practice of untouchability and the Parliament enacted Untouchability (Offences) Act, 1955, the title of which was later on changed as the Protection of Civil Rights Act. The provision of the said Act and the Penal Code were not found adequate to check the atrocities committed on the Sch. Castes and Sch. Tribes, as a result of which the necessity of making a stringent Law was felt by the law makers and there after the present Act has been enacted to check and to deter the non-Scheduled Castes and non-Scheduled Tribes persons to commit crimes against the Scheduled castes and Scheduled tribes.

9. The petitioners have not challenged the legislative competence of the Parliament to enact the law in question. Their only grievance is that the provisions are discriminatory and arbitrary as the atrocity committed by the Scheduled Caste and Scheduled Tribe persons against the Scheduled castes and scheduled Tribes is not made punishable whereas the offence committed by nonScheduled Castes and non-Scheduled Tribes persons has been made punishable. The classification has no rasonable nexus with the objects sought to be achieved. It is also submitted that Section 4 of the Act which provides for punishment for neglect of duties by non-scheduled caste and non-scheduled tribe public servants punishable, keeping the Scheduled Caste and Scheduled Tribe public servants beyond the purview of the Act even if they commit neglect of duties required to be performed under the Act. The said classification has no nexus at all with the objects sought to be achieved by the Act.

10. Article 14 of the Constitution prohibits class legislation and not reasonable classifiation. It does not provide that uniform law should be made for all citizens in the Country. It only provides that amongst the equal, law should be equal. In other words, the like should be treated alike. If there is a well established class and there is reasonable ground to differentiate them from others then a law can be made only for that particular class and the same cannot be struck down on the

ground of violative of equality clause. The basis of classification may be historical, geographical or other relevant grounds depending upon the policy and object of the Act and evils sought to be remedied. It is well settled that when the law is challenged as offending the provisions of Article 14 of the Constitution of India, then it is the duty of the court to examine the purpose and policy of the Act and find out as to whether the classification made by the law makers has a reasonable relation to the objects sought to be achieved. Two conditions must be fulfilled before a classification can be held to be valid namely; (i) the classification must be founded on intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; (ii) that differentia has a rational relation to the objects sought to be achieved by the Act.

11. The preamble of the Act is said to be a key to open the mind of the legislators. The preamble of the Act already referred to above clearly shows that the Act has been enacted to prevent the commission of the offence and atrocities against members of the scheduled caste and scheduled tribe and to provide special courts for the trial etc. The statements of objects and reasons can be looked into for understanding the antecedent, state of affairs, surrounding circumstances in relation to the statute and the evils the statute sought to remedy. There is no dispute that the scheduled caste and scheduled tribe belong to weaker section. The historical fact prior to independence shows clearly that they were subjected to all types of atrocities and subjected to practice of untouchability. They form a well specified class and the Constitution has made many beneficial provisions as stated above to protect them from the evils. The non-Scheduled castes and tribes, inspite of many years of independence, continued to commit atrocities against them and to check them, the present law has been enacted by the Parliament. Thus, both the conditions of Classification are fulfilled. The objective of the Act is to prevent the atrocities upon the scheduled caste and scheduled tribe by non-scheduled caste and non-scheduled tribe. To achieve these objectives the Act has been enacted making the atrocities committed by the non-scheduled caste and non-scheduled tribe upon the scheduled caste and scheduled tribe punishable as an offence. Thus, there is a nexus between the basis of the classification and the object of the Act. As such, the Act or the Section 3 of the Act cannot be struck down as ultra vires the Article 14 of the Constitution.

12. The Apex Court in the case of State of M. P. v. Ram Krishna Balothia reported in : 1995 CriLJ2076 considered as whether Section 18 of the Act which excluded the application of the provision of the anticipatory bail with regard to the offences committed under the Act is violative of the Articles 14 and 21 of the Constitution and while taking note of the preamble and provisions, aims and objects of the Act the Apex Court has in paragraph 6 of the aforesaid case has held as follows:

6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall in to a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'Untouchability' and forbids its practice in any form. It also provides that enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law. The offences, therefore which are enumerated under Section 3(1) arise out of the practice of 'Untouchability'. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statements of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989 when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and point to the evil which the statute sought to remedy.

After referring to the statements of objects and reasons which have already been quoted above, it was held:

The above statements graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and

Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their right and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form distinct class by themselves and cannot be compared with other offences.

It was further held by the Apex Court in paragraphs 9 and 10 of the aforesaid judgment:

However, looking to the historical background relating to the practice to 'Untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Caste and Scheduled Tribe, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences.. There is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

This grievance also cannot be justified. The offences which are enumerated under Section 3 are offence, which to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect, such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

Thus, though the Apex Court was considering the scope of Section 18 of the Act, only, it has held that the offences under the Act form a distinct class by themselves and cannot be compared with other offences under the other Acts.

13. Relying upon the aforesaid decision, a Division Bench of this Court in the case of Kamal Nayan Narsaria v. State of Bihar reported in 1996 (1) PLJR 327 held that the provisions of Section 3 of the Act, which is the core of the Act, is not ultra vires

Article 14 of the Constitution of India. Thus, the first submission challenging the provision of the Act on the ground of violation of Article 14 has to be rejected.

14. With regard to the submission that the Act is not workable as it does not contain provisions with regard to the institution, investigation, enquiry and trial etc. it is to be stated that this submission has to be rejected for the reasons stated here-in-after.

15. Section 4(1), Cr. P.C. provides that all offences under Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. However, exception has been provided in Section 4(2) of the Code according to which if there is any enactment regulating the manner or place of investigation, enquiry, trial or otherwise dealing with such offences under the enactment in question, the same will prevail over the provisions of the Code. In other words if an act or omission is an offence punishable under any Act and no provision has been made regulating the manner etc. of investigation, enquiry or trial, then the provision of the Code will apply with regard to the investigation enquiry and trial of the said offence.

16. The Act in question defines atrocity and makes the atrocity punishable. The provision has been made for constitution for special court and appointment of special public Prosecutor. There is also provisions excluding the operation of the certain provisions of Cr. P.C. a detailed in Section 18 and 19 of the Act, Section 20 provides that the provisions of the Act shall have effect over the other laws. There is no provisions under the Act with regard to the institution, investigation, enquiry or trial, then the provision of the Code will apply with regard to the investigation, enquiry and trial of the case and remand of the accused. In that view of the matter, the provisions of Cr. P.C. will be applicable in view of the provisions contained under Section 4(2) of the Code. It is to be stated here that the court of session shall have to be designated or specified as a special court to try the offence under the Act. Thus offences under the Act have to be tried by a Court of Session. The Court of Session cannot take cognizance of an offence as a court of original jurisdiction under the Code unless the same has been committed to it by the Magistrate. Thus all the provisions of Cr. P.C. except with regard to the matte for

which specific provisions has been made under the Act or the provision of the Code which have been excluded from application shall be applicable with regard to the offences under the Act.

17. The State Government in consultation with the High Court by notification in the official Gazette published on 10.2.1995 has specified that for each district the court of Ist Additional Sessions Judge to be the special court to try the offence under the Act. It is submitted by the petitioner that according to Section 14 a court of session has to be specified as as special court and as the Court of Session is presided over by the Sessions Judge, he alone can be designated and specified as special court for the purposes of the Act and the Additional Sessions Judges cannot be specified as a special court to try the offences under the Act.

18. In the first instances the argument appeared to be attractive but on the deeper consideration the same appears to be devoid of any merit, Section 6 of the Code provides the classes of criminal courts and court of session is one of such courts. Section 9(1) of the Act provides that the State Government shall establish a court of session for every sessions division. Section 9(2) provides that every court of Session shall be presided over by a Judge to be appointed by the High Court and Section 9(3) provides that the High Court may also appoint Additional Sessions Judge and Assistant Sessions Judge to exercise jurisdiction in a court of session. Reading the aforesaid provisions, it is clear that the court of session is one but it is presided by a Judge who is known as sessions Judge and also by the Additional Sessions Judge and the Assistant Sessions Judge in terms of provision of Section 9(3) of the Code. The court presided over by the Additional Sessions Judge is also a Court of Session and the Additional Sessions Judge is a part of the Court of session as there can be more than one court of session in a sessions division.

19. Referring to Section 9(3) Cr. P.C. the Apex Court in the case of Abdul Munnan and Ors. v. State of West Bengal 1996 SC 905 has held that singular includes plural. Sessions Judge would include Additional Sessions Judge under the Code. He gets all the power and the jurisdiction of the Sessions Judge to try the offence enumerated under the Code thus, in my view the notification notifying the Additional Sessions Judge as special court is in conformity with the requirement of

the Section 14 of the Act.

20. It is to be stated that the learned Counsel appearing for the petitioner in some cases challenge the vires of Section 4 of the Act on the grounds stated above. But have not decided the said point for the reasons that none of the petitioners is the public servant, as such Section 4 is not attracted in their cases. Thus, the question raised an academic one and it requires no determination in this case.

21. The counsel appearing in C.W.J. C. Nos. 39/92, 653/93, 7/93, 826/93, 60/92 and Cr. Misc. No. 7729/93 have submitted that their prosecution is an abuse of the process of the court as the allegations do not constitute an offence under Section 3 of the Act and in some cases, they submitted, that the prosecution launched against them is actuated by mala fide. In that view of the matter, it is necessary to state in brief the facts of the aforesaid cases to appreciate the points raised on behalf of the petitioners.

22. Before proceeding to consider the submissions advanced by the counsel for the petitioners, it will be useful here to state briefly the power of this Court to quash the FIR or the complaint at the initial stage.

The trial is the normal rule in the criminal jurisprudence and quashing is an exception. The prosecution can be quashed by the High Court in exercise of inherent power under Section 482, Cr P.C. or in exercise of its extraordinary power under Article 226 of the Constitution in exceptional cases. Prosecution at the initial stage can be quashed only if it is necessary to do so to secure the ends of justice and the power has to be exercised sparingly and with circumspection with a view to prevent injustice. The power cannot be resorted to as an appeal. The Apex Court has held in catena of cases that the High Court at the initial stage should exercise the power to quash the prosecution in rarest of rare cases and has also laid down certain guide lines which are only illustrative in nature. In the case of *State of Haryana and Ors. v. Bhajan Lal and Ors.* reported in : 1992 CriLJ527 , after taking into consideration a series of earlier decisions it laid down guidelines by way of illustration where the court should exercise its power of quashing in Paragraph 108 of the judgment which runs as follows:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court is a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 82 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide line or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegation made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the

institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a Criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with a ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

However, in paragraph 109 of the judgment the Apex Court gave a note a caution and said that the power should be exercised in rarest of rare cases and the Court will not embark upon the enquiry as to the reliability or genuineness of otherwise of the allegation made in the FIR and the complaint. The paragraph 109 runs as follows:

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest or rare cases that the; Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

The same view has been reiterated by the Supreme Court in the cases of *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* : 1996 CriLJ381 and the case of *State of HP. v. Pirthi Chand and Ors.* : 1996 CriLJ1354 . It is useful to quote paragraphs 12 and 13 of judgment rendered in *Pirthi Chand* (supra).

12. it is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/Chargesheet/Complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses

recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet. But only in exceptional case, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence--the court may embark upon the consideration thereof and exercise the power.

13. When the remedy under Section 482 is available. The High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrust the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert greater circumspection and caution should be borne in mind by the High Court when it exercises its inherent power otherwise the social order and security would be put in

jeopardy and to grave rise. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions.

In the light of the well settled law on the point the submission advanced by the learned Counsels have been considered.

Cr. W.J.C. No. 38 of 1992

23. In this case the FIR was lodged against the petitioners on the report of the Anchal Adhikari of Haspura on 2.11.1991 wherein he alleged that plot No. 126 under khata No. 220 in village Khulan was given to a scheduled caste member by Bhudan Committee and he was put in possession over the same by him and the accused petitioners forcibly dispossessed him from the said land. The Counsel for the petitioners submitted that the land was never given to the aforesaid person by Bhudan Samiti. This is not a stage to scrutinise the documents to decide the rival claim. The allegations as stand make out a case under Section 3(1) (iv) and (v) of the Act and in this view of the matter no case for interference is made out.

Cr. W.J.C. 60 of 1992

24. Bagaha P. S. Case No. 24/92 was registered under Section 3(1)(x) of the Act and under Section 353, 332 and 504, IPC against the petitioners on the basis of the written report of Dr. Munshi Das, Anchal Adhikari, Bagha-I dated 28.1.1992. According to the allegations, he was holding Janata Darbar to look into grievance of the public on 28.1.1992 in village-Nadda in pursuance of the direction of the District Magistrate. While he was disposing of the Complaints the accused persons armed with deadly weapons came there and abused him and called him Chamar and threatened him to cut into places and they also proceeded to set on fire the Government jeep. The villagers present there saved him as well as the Government jeep. According to him the reason for such crime by the petitioners was that he has distributed a land declared as surplus land under ceiling Act in a proceeding initiated against Smt. Krishnawati Kuer on the orders of the Sub-Divisional Officer on 17.1.1991. It is submitted that the petitioners are son-in-law of the late kamla Pandey who died leaving behind his widow Smt. Krishnawati Kuer and daughters. A land ceiling proceeding was initiated against Krishnawati Kunwar

and the order passed in the Ceiling proceeding was challenged in CWJC No. 397/92 before the High Court and stay was granted on 16.1.1992 even then the informant distributed the land on 28.1.1992 after being informed about the order of the High Court. The said Krishnawati Kunwar has filed a contempt proceeding which is pending. The informant with a view to save him has filed the case. So far the allegation are concerned prima facie they make out an offence under the Act. The prayer for quashing the prosecution has been made only on the basis of the mala fide against the informant. The question of mala fide cannot be decided on the basis of assertion made by the petitioners at this stage. The petitioner should bring the relevant materials during the investigation or at the subsequent stages of proceeding where the investigating Officer or the court as the case may be will consider the same may proceed according to law. In my view, it is not a fit case where the prosecution can be quashed on the ground alleged by the petitioners.

Cr. W.J.C. No. 679 of 1993

25. Dr. Sesh Muni Ram, Regional Director Animal Husbandary Department, Santhal pargana Range, Dumka, lodged a written report before the officer Incharge Dumka P. S. on 23.6.1993 alleging inter alia that one Kamlesh Sah was appointed as Class IV staff in his office. He left the office without information. Thereafter information was sent to him under registered cover to join duty but when he did not join the steps were taken to terminate his employment. In the meantime petitioner No. 6 Awadh Sah Claiming himself to be the elder brother of Kamlesh Sah met him and said that his brother had gone to Bombay to take a chance in the film and in his place his younger brother should be employed and in case his younger brother is employed he will marry with the wife of Kamlesh Sah. The informant did not accede to the request of the accused petitioner No. 6, Awadh Sah. After some time accused petitioner and Nayana Devi, wife of Kamlesh Sah, filed a police case against him in connivance with non-gazetted employees of his office that kamlesh Sah has been murdered by the informant. In the meantime Kamlesh Sah appeared and he was produced by the informant before the S.P. Dumka Kamlesh Sah has also filed an affidavit that he gone to Allahabad for medical treatment. On examination his mental condition was found to be correct. Thus, the petitioner and others committed offence under the Act.

The counsel for the petitioners submitted that they have been implicated because they have raised voice with regard to the illegal appointment made by the informant. The allegations against the petitioners is that they get a false case filed against the informant who is a scheduled caste.

Prima facie case is made out to proceed with the investigation and only on the basis of the assertion made on behalf of the petitioner that they have been falsely implicated for the aforesaid reasons, the prosecution can not be quashed at this stage.

Cr. W.J.C. No. 826 of 1993

26. In this case Bhagwanpur P. S. Case no. 100/93 was registered on the statement of Ramjee Paswan, a member of the scheduled caste wherein he has alleged that without taking permission his son was sent by the petitioner who was at the relevant time posted as constable at the Bhagawanpur P. S. to his village for doing domestic works. When the informant enquired about the said fact the petitioner admitted the fact and told that he would pay Rs. 50 per month as salary to which he agreed and after sometime the informant asked the petitioner to call back his son from his village home as the informant's wife is weeping for his son. The petitioner gave Rs. 400 as salary for 8 months and assure the informant that his son will be brought back. However, the petitioner did not bring his son. After great pursuation the petitioner wrote a letter addressed to his parent asking them to return back the son of the informant. The father-in-law of the informant went with the said letter to the parents of the petitioner to bring back the son of the informant. But the parents of the petitioner informed that the boy is not at the village. Again the informant requested the petitioner to return his son but he did not produce the boy. Thereafter he filed the present case.

The allegations on the face of it make out an offence under the provisions of the Act as the son of the informant was enticed away to work as bonded labourer. The allegations make out a case under Section 3 of the Act and no case for quashing is made out.

Cr. W.J.C. No. 7 of 1993

27. in this case a case under the provisions of the Act and under Section 309 and other section of IPC was registered on the statement of the Babhan Ram a member of the Scheduled Caste. According to the allegations, the land in question was given to the informant and other under the provisions of the Ceiling Act, after the same was declared as surplus on the occurrence the accused persons came forcibly started ploughing the land. On protest by the members of the prosecution party the accused persons indulged in indiscriminate firing resulting into the death of one person. As there is allegation of forceful cultivation of land allotted to the members of the prosecution party, a case under Section 3(1)(iv) of the Act is made out. Thus no case for quashing is made out.

The learned Counsel for the petitioner has raised an additional point in course of argument the offence under Section 302 and other sections of the Penal Code cannot be tried by the special court constituted under Section 14 of the Act.

As stated above the Session Court has been notified as a special court under the Act. The same court is competent to try the offences under the Penal Code. The offences under the Act and the Penal Code form the part of the same transaction and as such they can be tried together by the Session Court specified as court under the Act.

Cr. W.J.C. No. 636 of 1992

28. Sukurmani Paharin filed a petition of Complaint against the petitioner before A.C.J.M. which was sent by him to police to register a case and on the basis of which officer-In charge Pakur (T) P. S. registered Pakur P. S. Case No 231/92 under Section 3 of the Act as well as under Sections 379, 144 and 472, IPC.

According to the allegations the informant who is a scheduled tribe member was residing in the house of Dasrath Mishra situate over the plot No. 162, Mauza Khaprajhola on a nominal rent since last 35 years and on the date of occurrence the accused petitioner in daylight entered into the house and demolished the house and looted articles.

The counsel for the petitioner submitted that the house never belonged to Dasrath Mishra on the other hand it belonged to the owner of the company M/s. G.C. Pandey & Co. They are in possession over the same and in support of the said fact he has referred to some documents annexed to the writ application.

The allegation as stands make out a case under the Act and as already stated above the prosecution at this state cannot be quashed by relying upon the documents filed by the accused. The court at this stage has to look into the allegation made in the FRR to find out as to whether a prima facie case is made out or not and as such no case for quashing is made out.

29. In the result, there is no merit in these applications and the same are dismissed. Before parting with these cases. I may mention that no doubt the Act has been enacted primarily to protect the scheduled cast and scheduled tribe members from atrocities committed by the persons who are nonscheduled caste and non-scheduled tribe but it does not mean that the prosecution under the Act should be launched by the police in a casual manner. Unless a prima facie case is made out under the provisions of the Act, the cases should not be registered under the Act.

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