

**Hari Shankar and ors. Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Apr-18-1990

**Reported in :** 1990CriLJ1799

**Judge :** K.K. Varma, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 438 and 438(1); Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1), 14 and 18

**Appeal No. :** Criminal Misc. No 500 of 1990

**Appellant :** Hari Shankar and ors.

**Respondent :** State

**Advocate for Def. :** Arvind Dudawat, A.G.A.

**Advocate for Pet/Ap. :** V.S. Thakur, Adv.

**Judgement :**

ORDER

K.K. Varma, J.

1. Applicants by Shri V.S. Thakur, Advocate.

2. State by Shri Arvind Dudawat, Addl. Government Advocate.

3. They are heard.

4. The applicants -- concededly Brahmins by caste -- apprehend their arrest in Crime No. 61/90 P. S. Harijan Kalyan, Gwalior. The police was activated by a written report was addressed to the Town Inspector. P. S. Dabra. The report was lodged by Man Singh s/ o. Gandhiram Jatav, of village Chomo. Concededly a Jatav is a member of Scheduled Caste.

5. It is alleged that on 16-2-90, the applicants went to the mohalla of the complainant. They ordered the first-informant and others as follows:

^^rqe yksx ge dsg ogk ij dey ij ujkskefek dks oksV Mkyks ugha rks rqEgsa ekj MkysaxsA geus euk fd;k fd ge rks gekjhethZ gksxh mls oksV nsaxsA brus esa ;g yksx xkyh xyksp djus yxs vkSj ekj ihVdjus yxsA\*\*

6. In addition, it has been stated that co-accused Gopal fired a gun hitting the right arm of first-informant Man Singh.

7. Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No. 33 of 1989), which came into force on 30th January, 1990, runs as follows:

'18. Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.'

8. Section 3(1)(vii) in Chapter II (Offences of Atrocities) runs as follows:

'3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

(vii) Forces or intimidates a member of a Scheduled Caster or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law.'

9. It is, therefore, clear that one of the acts of the applicants was that of forcing or intimidating a member of a Scheduled Caste to vote to a particular candidate.

10. The case, therefore, becomes triable by a special Court as specified under Section 14 of the Act. The State of Madhya Pradesh has issued a notification in the Official Gazette under Section 14 of the Act specifying for each district in the State of M. P. the Court of Session to be the Special Court to try the offence under this Act vide notification F. No. 1-2-90-XXI-B(1), dated the 30th Jan., 1990 published in the M. P. Rajpatra (Ashadharan), dated 30-1-90, pages 145-46 and also another notification F. No. 1-2-90-XXI-B(II), dated 30-1-1990 specifying the Public Prosecutor or the Senior-most Additional Public Prosecutor, in his absence, in each district to be a Special Public Prosecutor for that Special Court for the purposes of conducting cases in that Court. (These notifications have also been published at pages 11 and 12 of the Madhya Pradesh Law Times (February 1990 Part 2).)

11. It is therefore, clear that the provision of Section 18 of the Act (No. 33 of 1989) is attracted to the facts of this case.

12. The present application under Section 438(1), Cr. P.C. is, therefore untenable in law.

13. passing, the investigating agency is either not aware of the provisions of the Act (No. 33 of 1989) or else it has been turning a Nelson's eye to the provisions of this Act.

14. Shri Arvind Dudawat prays that a copy of this order be furnishd to him for communicating the result and the observations of this Court to the appropriate higher authorities. Prayer granted.

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