

C. Sathiyathan Vs. Veeramuthu

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Court : Chennai

Decided On : Nov-14-2008

Reported in : 2009CriLJ1512

Judge : P.R. Shivakumar, J.

Acts : Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 - Sections 3(1), 7, 14, 18, 19, 20 and 23; [Prevention of Corruption Act, 1947](#); [Probation of Offenders Act, 1958](#); Code of Criminal Procedure (CrPC) - Sections 4, 4(2), 5(2), 26, 29, 154, 156(3), 174, 200, 200(1), 360, 438 and 482; Indian Penal Code (IPC) - Sections 463, 464, 465, 466 and 471; Foreign Exchange Regulation Act; Customs Act; Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995 - Rules 5 to 7

Appeal No. : Crl.O.P. No. 23515 of 2006

Appellant : C. Sathiyathan

Respondent : Veeramuthu

Advocate for Def. : S. Packiaraj, Adv.

Advocate for Pet/Ap. : M.V. Karunakaran, Adv.

Judgement :

ORDER

P.R. Shivakumar, J.

1. This criminal original petition has been filed invoking the inherent powers of the High Court under Section 482 of Criminal Procedure Code to quash the criminal proceedings initiated against the petitioner herein in PRC No. 14 of 2006 on the file of the learned Judicial Magistrate No. 2, Mettur based on a private complaint preferred by the respondent herein under Section 200 of the Code of Criminal Procedure.

2. The facts leading to the filing of the present criminal original petition can be stated thus:

a) The respondent herein preferred a private complaint against the petitioner herein alleging that the petitioner had committed offences punishable under Sections 464, 466 and 471 of the Indian Penal Code and an offence under the supposed Section 3(1)(viii)(ix)(x) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. The following are the allegations found in the complaint.

An extent of 0.86.0 hectares of land comprised in Survey No. 113/2 in Veerakkalputhur Village, Mettur Taluk, Salem District within the limits of Karumalaikoodal Police Station had been purchased by the mother of the respondent herein (complainant) in and by a sale deed dated 05.05.1959 and there after she was in possession and enjoyment of the same till she gave it to the respondent/complainant under a registered gift settlement deed dated 09.05.2003. While so, the petitioner herein/accused, the then Village Administrative Officer of Veerakkalputhur, illegally entered the name of Papa, the mother of the petitioner, as the owner of the said land in all the revenue records like Chitta, Adangal, etc. When the respondent herein/complainant came to know the said fact, he along with one Ganamurthy went to the residence of the petitioner herein/accused and met him on 30.04.2006 at about 7.00 a.m. During the said meeting, the respondent herein/complainant questioned the petitioner herein/accused as to the propriety of his act of making false entries in the revenue records in the name of his mother. The petitioner/accused who did not deny the said allegation, simply offered a sum of Rs. 1,00,000/- for the said land. As the respondent/complainant

declined the offer and demanded at least Rs. 15,00,000/- as consideration for the said land, the petitioner/accused humiliated and insulted the respondent herein/complainant referring to his caste in the presence of others.b) The above said complaint was taken on file by the learned Judicial Magistrate No. 2, Mettur and after recording sworn statements of the respondent herein/complainant, his son Ganamurthy and one Ayyadurai, summons were issued to the petitioner herein/accused. As the learned Judicial Magistrate No. 2, Mettur was of the opinion that one of the offences alleged, namely an offence punishable under the provisions of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, was triable exclusively by a Court of Sessions (Special Judge for trial of offences under the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, the complaint was taken on file as PRC No. 14 of 2006. The above said order of the learned Judicial Magistrate taking the complaint on file as PRC No. 14 of 2006 is sought to be quashed in this petition, invoking the inherent powers of this court under Section 482 of the Code of Criminal Procedure, on various grounds set out in the criminal original petition.

3. This court heard the submissions made by Mr. K.V. Karunakaran and that of Mr. S. Packiaraj, learned Counsel for the respondent. The materials available on records were also perused.

4. Mr. M.V. Karunakaran, learned Counsel for the petitioner advanced an argument to the effect that the criminal proceedings initiated against the petitioner herein/accused based on the private complaint of the respondent herein/complainant was unsustainable in law and the same was liable to be quashed for the following reasons:

i) there was total non-application of mind by the learned Judicial Magistrate in taking cognizance of the offences alleged in the complaint.

ii) the date, month and year of the commission of offences punishable under Indian Penal Code alleged in the complaint were not furnished by the respondent herein/complainant and hence the cognizance of the said offences was irregular;

iii) the offence punishable under the provisions of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 allegedly committed on 30.04.2006 should not have been clubbed with the offences punishable under the provisions of the Indian Penal Code, which according to the materials found in the complaint should have been committed, if at all they were true, between 09.05.2003 and 30.04.2006

iv) no private complaint could be entertained in respect of an offence punishable under the provisions of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

5. Per contra, Mr. S. Packiaraj, learned Counsel for the respondent contended that the entries made unlawfully in the revenue records by the petitioner herein/accused came to the knowledge of the respondent herein/complainant only prior to the occurrence dated 30.04.2006; that besides giving petitions to the Collector, Revenue Divisional Officer and Tahsildar, the respondent herein/complainant brought it to the notice of the petitioner herein/accused on 30.04.2006 and questioned him regarding the propriety of his act; that the act of effecting false entries in the revenue records relating to the property and the insult made by the petitioner herein/accused on 30.04.2006 constituting the offences alleged in the complaint were committed in the course of one and the same transaction and that hence there was no defect or infirmity in clubbing all the said offences in one and the same complaint. The learned Counsel for the respondent contended further that Rules 5 to 7 of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995 simply prescribed the procedure as to how the complaint is to be recorded by the police and the manner in which such a complaint regarding commission of offences under the provisions of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, should be investigated and that the same shall not be interpreted in such a way to rule out the application of the provisions of the Criminal Procedure Code relating to private complaint. It is the further contention of the learned Counsel for the respondent that since an offence punishable under Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 was exclusively triable by a special court designated under the Act which is essentially a Sessions Court, the only course

available to the learned Judicial Magistrate on receipt of a complaint alleging commission of offences including one punishable under the provisions of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 was to register the same as PRC, of course after being satisfied with the prima-facie nature of the case and after taking cognizance of such offence, the Magistrate could not have even directed an investigation to be made by a police officer.

6. This court gave its anxious considerations to the respective submissions made by the learned Counsel appearing on either side. The materials available on record were also perused.

8. The point that arises for consideration is

whether the order of the learned Judicial Magistrate No. 2, Mettur taking the private complaint of the respondent herein on file and registering it as a PRC has to be quashed exercising the inherent powers of this court under Section 482 of Criminal Procedure Code

9. The learned Counsel for the petitioner, in support of his contention that there was non-application of mind on the part of the learned Judicial Magistrate in taking cognizance of the offences alleged in the complaint and registering the same as a PRC, submitted that none of the provisions of the Indian Penal Code cited in the complaint and in the impugned order of the learned Judicial Magistrate taking cognizance of the offences would be attracted by the facts alleged in the complaint; that one of the provisions cited in the complaint as well as in the order of the learned Judicial Magistrate was only a provision explaining an offence and not a penal provision prescribing punishment and that hence the said singular fact alone would be enough to show that the learned Judicial Magistrate acted mechanically without application of mind. In the above submissions, the learned Counsel in the above said submissions referred to Section 464 Indian Penal Code cited in the complaint as well as the order of the learned Judicial Magistrate.

10. Section 463 of Indian Penal Code simply defines the offence of forgery. As per the said provision whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury to

the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, is said to commit forgery. Making a false document or electronics record is defined as forgery in Section 464. Neither Section 463 nor Section 464 of Indian Penal Code prescribes any penalty. A statutory provision defining a term or offence shall not be treated as the penal provision. On the other hand Section 465 alone is the penal provision making forgery a punishable offence. The learned Judicial Magistrate, in the order taking cognizance of the case, has stated that one of the offences alleged was punishable under Section 464 IPC. Therefore, to that effect, the contention of the learned Counsel for the petitioner that there was non-application of mind on the part of the learned Judicial Magistrate has got substance in it.

11. So far as the other two offences punishable under the Indian Penal Code, namely offences punishable under Sections 466 and 471 of IPC, are concerned, in fact there are allegations in the complaint to the effect that the petitioner accused had manipulated the revenue records and made entries therein showing the name of his mother as the owner of the property comprised in Survey No. 113/2 in Veerakkalputhur village. However, there is absence of clear cut averment in the complaint to the effect that the said forged documents were used as genuine documents. Though the allegations to the effect that the petitioner had made false entries in Chitta, Adangal and Patta would attract the penal provision found in Section 466 of IPC, averments to attract the penal provision of Section 471 IPC are lacking. Even regarding the offence under Section 466, there is lack of averment regarding the date on which the false entries were made in the records or the date on which the fact that such false entries had been made by the petitioner came to the knowledge of the respondent/complainant. Though the complainant has chosen to aver that he gave complaints to the revenue officials, namely District Collector, Revenue Divisional Officer and Tahsildar, for necessary relief, he has failed to state the date on which such petitions were submitted by him to the said revenue authorities. Under such circumstances, this court has to accept the contention of the learned Counsel for the petitioner that there was want of materials to make out a prima-facie case for the offence of forgery of public record and using such forged document as genuine and that there was non-

application of mind on the part of the learned Judicial Magistrate in this regard also.

12. The next question to be considered is whether order of the learned Judicial Magistrate taking cognizance of the case for an offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and registering the case as PRC can stand the scrutiny of this court. Of course it is true that the complaint contains necessary allegations to the effect that on a particular date, namely on 30.04.2006, at about 7.00 a.m the respondent met the petitioner in his residence and questioned him about the propriety of his act in changing the entries in the revenue records in the name of his mother; that at the moment he was insulted by the petitioner referring to his caste and that the petitioner being a member of a scheduled caste and the respondent not being a member of a scheduled caste his act of insulting the petitioner in the presence of others in the name of his caste capable of attracting provisions of Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. But it is pertinent to note that the provision of law has been incorrectly quoted in the complaint as 3(i)(viii)(ix)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. There is no provision in the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 as 3(i)(viii)(ix)(x). There are provisions as 3(i)(viii), 3(i)(ix) and 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. The allegations found in the complaint attract Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. But the allegations are not sufficient to attract Section 3(i)(viii) and 3(i)(ix). It is a well-known principle that the fact that the complainant has quoted a wrong provision or has not quoted any provision of law will not be enough to reject the complaint and the police or the Magistrate receiving the complaint shall take it on file referring to proper provisions of law. In this case, though the respondent complainant might have committed a mistake in quoting a wrong provision, in fact a non-existing provision, the learned Judicial Magistrate should have applied his mind and taken cognizance of the case under the correct provision of law. But unfortunately the very same mistake is found in the order of the learned Judicial Magistrate taking cognizance of the case also. The same will, as rightly pointed out by the learned

Counsel for the petitioner, show the non-application of mind on the part of the learned Judicial Magistrate in taking cognizance of the case. Hence the contention that the order of the learned Magistrate in taking cognizance of the case stands vitiated because of non-application of mind has got to be countenanced.

13. It is the further contention of the learned Counsel for the petitioner that the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989, being a special enactment, shall prevail over the general law, namely the Code of Criminal Procedure; that a special procedure has been described for receiving complaint in respect of offences punishable under the said Act and for the investigation of the same; that the said procedure is found in Rules 5 to 7 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Rules, 1995; that as per the procedure a complaint regarding commission of an offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 has to be lodged with the police where upon the same shall be investigated upon by an investigating officer appointed by the Government or Director General of Police or the Superintendent of Police as per Rule 7 of the above said Rules shall be a police officer not below the rank of a Deputy Superintendent of Police; that in view of the said procedure prescribed, the private complaint procedure found in the Code of Criminal Procedure is not available to the respondent/complainant in respect of an offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act and that hence the order of the learned Judicial Magistrate taking cognizance of the offence under the provisions of the said Act based on the private complaint of the respondent complainant is liable to be quashed.

14. The relevant provisions to be considered for a decision regarding applicability of the private complaint procedure found in the Code of Criminal Procedure are:

i) Section 4 of the Code of Criminal Procedure, ii) Section 20 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. And

iii) Rules 5, 6 and 7 of Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Rules, 1995. Section 4 of the Code of Criminal Procedure reads as follows:

4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Sub-clause (2) directs that

All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions (meaning provisions of the Code of Criminal Procedure) subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

A reading of the said provision will make it clear that the provisions of the Code of Criminal Procedure will apply to cases of special enactments, provided there is no provision excluding the application of the provisions of the code.

15. Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 provides for the designation of one of the sessions court in each district to be the special court to try offences under the act. The Act does not contain any provision regarding the manner in which an offence under the said Act has got to be taken cognizance of. But as per Section 23, the provision giving rule making power to the central government, the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Rules, 1995 have been framed. Rules 5 to 7 deal with the information to the police, spot inspection by officers and investigation by the investigating officer. Rule 5 is the reproduction of Section 154 of Criminal Procedure Code with a slight variation in clause 3. As per Clause 3 of Section 154 of Criminal Procedure Code, when the substance of the information given to the police officer in charge of a police station, is sent to the Superintendent of Police concerned by the person aggrieved by the refusal of the former (officer in charge of the police station) to record such information, the Superintendent of Police shall either investigate the case himself or direct investigation to be made by any police officer subordinate to him in the manner provided by the code under sub clause 3 of Rule 5 of Scheduled Castes and Scheduled Tribes (Prevention of atrocities)

Rules, 1995 under such circumstances, the Superintendent of Police shall after investigation by himself or by a police officer not below the rank of Deputy Superintendent of Police shall make an order in writing to the officer in charge of the police station concerned to enter the substance of that information to be entered in the book to be maintained by that police station. The investigation under Clause 3 of Rule 5 shall be a preliminary one resulting in the registering of the FIR. Thereafter investigation has to be done in accordance with Rule 7. Rule 6 of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Rules, 1995 is somewhat similar to Section 174 of the Code of Criminal Procedure dealing with inquest. Rule 7 of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Rules, 1995 says: 1) who shall investigate an offence committed under the Act, 2) the authorities competent to appoint the investigating officers and 3) the qualities and qualifications of the officer to be appointed as investigating officer. It also provides for the time limit within which the investigation of such offences should be completed. Rule 7 reads as follows:

An offence committed under the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989 shall be investigated by a police officer not below the rank of Deputy Superintendent of Police appointed by the State Government or Director General of Police or Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

Neither Rule 5 nor Rule 7, nor any other rule deals with the manner in which an offence under the provisions of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989 shall be taken cognizance of by the court. Rule 7 simply deals with the rank of the police officer and the qualities of the police officer to be appointed as investigating officer. There is nothing to indicate that the applications of the provisions of the Code of Criminal Procedure dealing with the cognizance of the offence is ruled out.

16. Previously there was a lot of controversy as to whether a special court designated under Section 7 of the Scheduled Castes and Scheduled Tribes

(prevention of atrocities) Act, 1989 could take cognizance of an offence punishable under the act without the case being committed to it by a Magistrate. The controversy was set at rest by the Hon'ble Apex court in Gangula Ashok v. State of Andhra Pradesh reported in . In the said case, it has been held that a special court designated under Section 14 of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989 is essentially a Sessions court and hence it cannot take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. The reason assigned is that neither in the Code of Criminal Procedure nor in the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989 there is any provision to the effect that the special court can take cognizance of the offence as a court of original jurisdiction. The said judgment is referred to show that the procedure found in the Code of Criminal Procedure shall be applicable when there is no special procedure prescribed in the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989. Similarly while interpreting Section 4(2) of the Code of Criminal Procedure with reference to a case registered on a private complaint for an offence under the Prevention of Corruption Act, the Hon'ble Supreme Court in A.R.Antulay v. Ramdas Srinivas Nayak and Anr. reported in : 1984 CriLJ647 has held that a reading of the concerned provision makes it clear that subject to the provisions in the other enactment, all offences under the said law shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code of Criminal Procedure. It has also been held that if the special enactment contains any provision contrary to the provisions of the Code, such other provision in the special enactment shall apply in the place of the particular provision of the Code and that if there is no such contrary provision in the other (special) enactment, then the provisions of the Code of Criminal Procedure shall apply.

17. In Directorate of Enforcement v. Deepak Mahajan and Anr. reported in the Supreme court while dealing with the power of the magistrate to remand an accused in a case under the FERA and Customs Act made the following observations:

Section 4(2) of the Code corresponds to Section 5(2) of the old Code. Section 26(b) of the Code corresponds to Section 29 of the old Code except for a slight change. Under the present Section 26(b) any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court and when no court is mentioned in this behalf, may be tried by the High Court or other court by which such offence is shown in the First Schedule to be triable. The combined operation of Section 4(2) and 26(b) of the Code is that the offence complained of should be investigated or inquired into or tried according to the provisions of the Code where the enactment which creates the offence indicates no special procedure.

When a question - whether an offence under the [Prevention of Corruption Act, 1947](#) could be taken cognizance of on a private complaint - arose in A.R. Antulay's, cited supra case cited supra, the Hon'ble Supreme Court answered in the affirmative.

18. None of the provisions found in the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 and not even a Rule found in the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Rules, 1995 deals with the question of inquiry which is to precede the trial. It has been authoritatively held in A.R. Antulay's case that the case has got to be committed by a Magistrate to the Special court for the latter to get jurisdiction to try the offence. Therefore, the committal magistrate has to necessarily conduct inquiry before committing the case. The Code of Criminal Procedure contains two methods for taking cognizance of an offence by a magistrate. The magistrate can take cognizance of an offence either on a police report or on a private complaint. None of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 and none of the rules framed there under, deals with the question of taking cognizance of the offence by the magistrate.

19. Of course, Section 20 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 says that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect

by virtue of any such law. The said provision itself is not enough to rule out the applicability of the provisions of the Code relating to the cognizance of the case on a private complaint. Not even a necessary implication is found in any one of the provisions of the Act or the Rules to the effect that private complaint procedure prescribed in the Code is not applicable to offences punishable under the Act. In addition to that, when a pertinent question was put to the learned Counsel for the petitioner as to whether a complainant aggrieved by the dropping of the case after investigation as mistake of fact would have a right to file a private complaint after receiving notice of referred charge-sheet, the answer of the learned Counsel was in the affirmative. As such the learned Counsel for the petitioner himself admits the applicability of the private complaint procedure in respect of offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 also.

20. It shall be of much help to understand the position by making reference to Sections 18 and 19 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 specifically rules out the application of Section 438 of the Code of Criminal Procedure to any case involving the arrest of any person on an accusation of having committed an offence under the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. That means application of the provision relating to anticipatory bail found in the Code of Criminal Procedure is specifically ruled out by Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. Similarly, Section 19 of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 specifically rules out Section 360 of the Code of Criminal Procedure relating to release of the accused on probation of good conduct or after admonition and the applicability of the provisions of the [Probation of Offenders Act, 1958](#).

21. When the legislature, in its wisdom, has chosen to specifically exclude certain provisions of the Code of Criminal Procedure from their application to an offence committed under the Act and failed to provide any such express provision barring the application of the provisions of the Code relating to private complaints, the application of the said provisions cannot be ruled out in the absence of any other

provision necessarily implying the exclusion of applicability of such provision. As pointed out supra, there is no provision not even a rule, which either expressly or by implication rules out the application of the provisions contained in Section 200 of the Code of Criminal Procedure. The contention of the learned Counsel for the petitioner that the order of the Magistrate taking cognizance of the case under Section 200 on a private complaint of the respondent is without jurisdiction, cannot be countenanced and hence the said argument advanced by the learned Counsel for the petitioner has got to be rejected as unsustainable. Accordingly, the said submission made by Mr. M.V. Karunakaran, learned Counsel for the petitioner is rejected.

22. This court has held that an offence committed under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 can very well be taken cognizance of by a Magistrate on a private complaint and that hence the challenge made to the order of the Magistrate on the ground that a private complaint alleging commission of offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 is incompetent, cannot be sustained. On the other hand, this court has also held supra, that there is total non-application of mind on the part of the learned Judicial Magistrate taking cognizance of the case. This court has clearly pointed out how the Magistrate has mechanically taken a case on file without even applying his mind to find out whether the allegations made in the complaint (of course without going into the question of the correctness or otherwise of the same) would attract any one of the penal provisions and if so, what exactly the penal provision or provisions under which the act or acts on the part of the petitioner herein would amount to an offence. This court has also pointed out that it is not obligatory on the part of the complainant to mention the penal provision and that even if the complainant has quoted a wrong penal provision, the Magistrate has to take cognizance of the offence citing the correct penal provision. In this case, it has also been pointed out that the provisions mistakenly quoted by the complainant been mechanically incorporated by the learned Judicial Magistrate in the order taking cognizance of the case. For that reason alone the order of the learned Judicial Magistrate dated 16.06.2006 has got to be quashed. However, this court has to consider whether complete justice can be rendered by simply quashing the

order without any further direction.

23. This court is satisfied that the averments made in the complaint of the respondent are enough to attract the penal provision of Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989. Therefore, while setting aside the order of the learned Judicial Magistrate dated 16.06.2006 taking cognizance of the offence and issuing process to the petitioner herein, either the Magistrate can be directed to take cognizance of the case citing the correct provision of law or to refer the complaint without taking cognizance to the police for registration (under Section 156(3) and investigation of the case. As an offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 is triable exclusively by the special court, which is essentially a court of Sessions, after taking cognizance of the offence, the learned Judicial Magistrate cannot direct an investigation to be conducted by a police. The power to direct investigation is available to the learned Judicial Magistrate only in the pre-cognizance stage. Proviso (a) to Sub-section (1) of Section 202 of Criminal Procedure Code says where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session no such direction for investigation shall be made and that the Judicial Magistrate himself shall inquire into the case. Therefore, this court comes to the conclusion that the order of the learned Judicial Magistrate dated 16.06.2006 taking cognizance of the case as P.R.C. No. 14 of 2006 has got to be set aside and the matter shall be remitted back to the Judicial Magistrate directing the Judicial Magistrate in her discretion either to take cognizance of the case citing correct penal provisions and proceed with the enquiry for committing the case to the Special Court or to refer the complaint to the police, without taking cognizance, under Section 156(3) of Criminal Procedure Code to register a case and for investigation. The learned Judicial Magistrate in her discretion shall decide which one of the two alternative courses is to be adopted.

24. In the result, this criminal original petition succeeds and the order of the learned Judicial Magistrate dated 16.06.2006 made in P.R.C. No. 14 of 2006 is hereby set aside. The private complaint of the respondent is remitted back to the learned Judicial Magistrate, Mettur for fresh consideration. The learned Judicial

Magistrate shall pass necessary order adopting any one of the alternate courses available to him as indicated above.

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