Supreme Court of India
Gangula Ashok And Anr vs State Of Andhra Pradesh on 28 January, 2000
Bench: K.T. Thomas, M.B.Shah

CASE NO.:
Appeal (crl.) 94 of 2000

PETITIONER:
GANGULA ASHOK AND ANR.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 28/01/2000

BENCH:
K.T. THOMAS & M.B.SHAH

JUDGMENT:

JUDGMENT 2000 (1) SCR 468 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

Can a "special court" which is envisaged in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'the Act') take cognizance of any offence without the case being committed to that court? If it cannot, then appellants cannot raise any grievance at this stage regarding framing of a charge against them as they would get an opportunity for it later. First appellant is a practicing advocate and second appellant is his wife who was working as Matron of a Girls' Hostel run by the Social Welfare Department. One Kumari G. Swetha was a resident of the said hostel On 27.2.1996 the said Swetha lodged a complaint with the police alleging that on 61.1996 the first appellant outraged/tried to outrage her modesty. The police after investigation, filed a charge-sheet directly before the Sessions Court, Karim Nagar (Andhra Pradesh) which was designated as the special court for trial of offences under the Act committed within the territorial limits of the district concerned. In the charge-sheet, first appellant is alleged to have committed the offence under Section 3(1) (XI) of the Act and also Section 354 of the Indian Penal Code. Besides first appellant, the investigating officer arrayed his wife as the second appellant for the offence under Section 201 of the Indian Penal Code in relation to the offences put against her husband, on the allegation that when Kumari Swetha complained to the second appellant of the misdemeanor committed by the first accused, she tried to persuade the complainant not to divulge ft to anybody else. Subsequently the police dropped Section 354 of the IPC from the charge-sheet and filed a revised charge-sheet pursuant to a query put by the Special Judge concerned.

A charge was framed by the Special Judge against both the appel-lants for the aforesaid offences respectively. It was presumably at the said stage that the appellants moved the High Court for quashing the charge as well as the charge-sheet on various reasons. A Single Judge of the High Court of Andhra Pradesh found that the procedure adopted by the inves-tigating officer in filing the charge-sheet straight-away to the Special Court was not in accordance with law, and the Special Judge had no jurisdiction to take cognizance of any offence under the Act without the case having

been committed to that court. Accordingly the learned Single Judge set aside the proceedings of the Special Court and directed the charge-sheet and the connected papers to be returned to the police officer concerned who, in turn, was directed to present the same before a Judicial Magistrate of 1st Class "for the purpose of committal to the Special Court". Learned Single Judge further directed that "on such committal the special Court shall frame appropriate charges in the light of the observations in the order."

Appellants have filed this appeal by special leave in challenge of the aforesaid order of the learned Single Judge of the Andhra Pradesh High Court.

We have to consider whether the Special Judge could take cog-nizance of the offence straightway without the case being committed to him. If the Special Court is a Court of Session the interdict contained in Section 193 of the Code of criminal Procedure (for short 'the Code') would stand in the way. It reads thus :

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

So the first aspect to be considered is whether the Special Court is a Court of Session. Chapter II of the Code deals with "Constitution of Criminal Courts and Offices". Section 6, which falls thereunder says that "there shall be, in every State,the following classes of Criminal Courts, namely :

(i) Courts of session;" (The other classes of criminal courts enumerated thereunder are not relevant in this case and hence omitted.) Section 14 of the Act says that "for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act". So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is dearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(g) of the Code as. "every inquiry, other than trial, conducted under this Code by a magistrate or court". So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14", [vide S.2(l)(d)] Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "Trial before a Court of Session".

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

Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which magistrates have to do until the case is committed to the Court of session.

We have noticed from some of the decisions rendered by various High Courts that contentions were advanced based on Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments. Section 4 of the Code contains two sub-sections of which the first sub-section is of no relevance since it deals only with offences under the Indian Penal Code. However, sub-section (2) deals with offences under other laws and hence the same can be looked into. Sub- section (2) of Section 4 is extracted below :

"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 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 sub-section makes it clear that subject to the provisions in other enactments all offences under other Jaws shall also be investigated, inquired into, tried and otherwise dealt with under the provision of the Code, This means that if other enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code, If there is no such contrary provision in other laws, then provisions of the code would apply to the matters covered thereby. This aspect has been emphasised by a Constitution Bench of this Court in paragraph 16 of the decision in A.R. Antulay v. Ramdas Sriniwas Nayak and Anr., [1984] 2 SCC

500. It reads thus :

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

Nor can Section 5 of the Code be brought in aid for supporting the view that the Court of Session specified under the Act can obviate the interdict contained in Section 193 of the Code as long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction. Section 5 of the Code reads thus :

"5. Saving. - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

This Court, on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, has held that "it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2); In short, the provisions of this Code would be applicable to the extent, in the absence of any contrary provision in the special Act or any special provision including the jurisdiction or ap-plicability of the Code." (vide para 128 in Directorate of Enforcement v. Deepak Mahajon, [1994] 3 SCC 440.

Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge sheet cannot straightway be laid before the Special Court under the Act.

When this question was considered by various High Courts, the High Courts of Madhya Pradesh, Allahabad, Patna and Punjab & Haryana have adopted the view consistent with the view which we have stated above. (vide Meerabai v. Bhujbal Singh, (1995) Crl. L.J. 2376 MP; Papu Singh v. State of U.P., (1995) Crl LJ, 2803 Allahabad; Jhagurmahto v. State of Bihar, (1993) 1 Crimes 643 Patna; Jyoti Arora v. State of Haryana, (1998) 2 Crl. L.R. 73 P.& H. But it seems that the only High Court which took a contrary view is the High Court of Kerala, At first a Division Bench of that High Court took the view that the Special Court can straightway take cognizance of the offence under the Act and proceed with the trial unaffected by Section 193 of the Code. (vide In re: Director General of Prosecution, (1993) Crl. L.J. 760 - (1992) 2 Kerala Law Times 748. One of the Judges of the Division Bench sought support to it from the observations of this Court in A.R. Antulay's decision (supra) and then observed that "the same principle would apply because of the effect of the transmutation of the Session Court as a Special Court."

When the correctness of the above decision was later doubted by the same High Court the question was referred to a larger beach. In Hareendran v. Sarada, (1996) 1 ALT Crl, 162 = (1995) 1 KLT 23 a Full Beach of that High Court affirmed the view of the Division Bench aforesaid. The Full Bench put forward mainly two reasons for adoptbg the said interpretation. First is that Section 20 of the Act stipulated that provisions of the Act shall have effect notwithstanding anything inconsis-tent therewith contained in any other law for the time being in force. As the section gives overriding effect for the provisions of the Act and it was enacted with a view to prevent commission of offence of atrocities against the member of the Scheduled Castes and Scheduled Tribes, the Full Bench felt that "it is rather difficult for us to hold that the committal proceedings is indispensable as a prelude to the case being tried by the Special Court." Second is that, there is nothing in the Act to indicate that the Special Court would get jurisdiction only on a committal order made by the magistrate.

The very approach of the Full Bench of the Kerala High Court seems to be that there should be specific indication in the Act that the Special Court gets jurisdiction to try the offence only on a committal order, and in the absence of such specific indication the Special Court must have the right to take cognizance of the offence as though it is a court of original jurisdiction. We have pointed out above that unless there is express provision to the contrary in any other law the interdict contained in Section 193 of the Code cannot be circumvented. Hence the reasoning of the Full Bench in Hareendran v. Sarada (supra) is apparently fallacious.

In fact all the other High Courts which dealt with this question (the decisions of which were cited supra) have dissented from the aforesaid view of the Full Bench of the Kerala High Court, after adverting to the reasons advanced by the Full Bench. A Division Bench of the Andhra Pradesh High Court after referring to the Full bench decision in Hareendran v. Sarada (supra) made the following observations in Referring Officer rep. By State of A.P. v. Shekar Nair, (1999) 3 ALT 533 = (1999) Crl. L.J 4173 :

"We find it difficult to agree with the reasoning of the Kerala High Court in the two decisions referred to above. As already observed by us, in the absence of a particular procedure prescribed by the said Act as regards the mode of taking cognizance, enquiry or trial, the procedure under the Code will have to be applied by reason of Section 4(2) of the Code as clarified by the Supreme Court in the case of Directorate of Enforcement (AIR (1994) SC 1775). There is no provision in the Act which excludes the application of Section 193, Cr. P.C. The mere fact that no procedure is prescribed or specified under the Special Act does not mean that the Special Act dispenses with the procedure for committal in the Case triable by Court of Sessions and that the Special Court gets original jurisdiction in the matter of initiations, enquiry or trial. There is no good reason why the procedural provisions of Code relating to power and mode of taking cognizance including Section 193 should not be applied to the Special Court."

We are of the considered opinion that the Division Bench of the Andhra Pradesh High Court has stated the legal position correctly in the above decision.

It must be noted that the observations of this Court in (A.R. Antulay (supra) were made in connection with the establishment of a Special Court under Criminal Amendment Act of 1952. What

is to be pointed out is that a Special Judge appointed under the said Act was given the specific power to take cognizance of the offence without the case being committed to him. Hence the observations in A.R. Antuley's case cannot be profitably utilized to support the interpretation of another Act wherein there is no such specific provision.

It is contextually relavant to notice that Special Courts created under certain other enactments have been specially empowered to take cog-nizance of the offence without the accused being committed to it for trial, (e.g. Section 36-A(l)(d) of the Narcotics Drugs and Psychotropic Substan-ces Act). It is significant that there is no similar provision in the Scheduled Castes Scheduled Tribes (Prevntion of Atrocities) Act.

We therefore, hold that the legal postition stated in the decisions of the Kerala High Court in Re Director General prosecutions and Hareendran v. Sarada, is not in accordance with law. We approve the interpretation adopted by the other High Courts in the decisions referred to above as the correct legal position.

So the High Court of Andhra Pradesh has rightly set aside, as per the impugned order, the proceedings initiated by the special Court Specified under the Act. But we do not support the directions given by the learned Single Judge in his order that after committal of the case the special Court shall frame charge against the appellants. It is for the Special Court to decide regarding the action to be taken next, after hearing both sides as provided in Section 227 of the Code. No direction can be given to the Special Court at this premature stage as to what the court should adopt then. It is open to the appellants to raise all their contentions at that stage if they wish to make a plea for discharge. We make it clear that if any such plea is made the Judge of the Special Court shall pass appropriate orders untrammeled by the observations made in the impugned order.

With the said directions and observations we disposed of this appeal.