
Prem Das Vs State of U.P. and Another

Criminal Revision No. 2066 of 2010

Court: Allahabad High Court

Date of Decision: Sept. 21, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 193, 209, 26, 323#Penal Code, 1860 (IPC) â€” Section 308, 323, 325, 452, 504#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 14, 3(1)(X)

Citation: (2013) ACR 62 : (2012) 10 ADJ 250

Hon'ble Judges: Het Singh Yadav, J

Bench: Single Bench

Advocate: Gaurav Kakkar, for the Appellant;

Judgement

Hon"ble Het Singh Yadav, J.

This Criminal Revision u/s 397/ 401 Cr.P.C. has been preferred against order dated 21.4.2010 passed by

learned Additional Chief Judicial Magistrate, Court No. 7, Ghaziabad in Case Crime No. 422/1998 of Police Station Sahibabad, District

Ghaziabad under Sections 323, 452, 504 and 506 I.P.C., allowing application of the complainant purported to be u/s 323 Cr.P.C. and thereby

committing the case to the Court of Special Judge, under the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989

(hereinafter referred to "the SC/ST Act"). The factual matrix of the case is that on 24.4.1998 at about 18.30 O'clock, there was a clash between

the complainant"s side and the revisionist"s side over an issue of throwing debris of complainant"s house on the public lane. It is said to be a case

of free-fight, wherein both the sides received injuries. The Police registered F.I.Rs. on the basis of cross version and after concluding investigation,

the Investigating Officer submitted charge-sheet in both the cases one under Sections 323, 452, 504 and 506 I.P.C. in the case Crime No.

422/1998 registered on the basis of F.I.R. lodged by the complainant Shri Kishan Ram and second under Sections 323, 325, 308, 504 and 506

I.P.C. in the cross version Case Crime No. 422-A/1998.

2. Since, the cross-case also involved offence u/s 308 I.P.C. exclusively triable by a Court of Session, therefore, the learned Magistrate committed

it to that Court as provided in Section 209 Cr.P.C. However, the case of the complainant (Non-revisionist) did not involve any offence exclusively

triable by the Court of Session, was not committed.

3. PW-1 Kishan Ram on 27.4.2007 very first time during his depositions, inter alia, stated that he is a scheduled caste and in this regard he had

handed over his caste certificate and school leaving certificate clearly showing his caste to the police, soon after lodging the F.I.R. The accused

persons had enmity with him because he is a lower caste. The Complainant on 6.10.2009, moved application disclosing therein that the accused

persons had committed offences under IPC on the basis that he is a schedule caste. Thus, they have also committed offence under the

S.C./S.T.Act, triable by Special Court under the said Act. The learned Magistrate has allowed complainant's application and passed the impugned

order to commit the case to the Special Judge under SC/ST Act for trial invoking jurisdiction u/s 323 Cr.P.C. The learned Magistrate was of the

view that since the complainant is a scheduled caste and ""caste specific"" words were uttered during the occurrence, therefore, the case is

exclusively triable by the Special Court under the SC/ST Act.

Feeling aggrieved, the revisionist, who is one of the accused persons has preferred this revision.

Heard learned counsel for the revisionist, learned A.G.A. and also perused the record.

4. Learned counsel for revisionist Sri Gaurav Kakar has assailed the impugned order mainly on the ground that there is no allegation of uttering any

caste specific"" words by the accused persons either in the FIR or in the statements of first informant and other prosecution witnesses recorded u/s

161 Cr.P.C. by the Investigating Officer. The first informant PW-1, Kishan Ram in his Examination-In-Chief during the trial has only stated that since

he is a person of lower caste, it is with this reason that the accused persons had enmity with him. He also stated that he is a scheduled caste and in

this regard he had produced certificate before the Police Inspector on 1.5.1998. P.W.-1, Kishan Ram (the first informant) has not stated during his

depositions that any ""caste specific"" word was uttered by any of the accused persons, at the time of alleged occurrence with intention to insult or

intimidate or humiliate him in any manner. Thus, the observation of the learned trial Court that from the depositions of P.W.-1 Kishan Ram (the first

informant), it reveals that ""caste specific"" words were uttered by the accused persons is not based on evidence on record but appears to be based

on presumptions and assumptions of the learned Magistrate. Even the entire evidence adduced by the PW-1 and other prosecution witnesses is

deemed to be correct on its face value then also, no offence under the S.C./S.T. Act appears to have been committed by the accused persons.

Thus, there was no occasion for the learned Magistrate at the stage of evidence in the trial to arrive at a conclusion on the application of the

complainant that the case is one which ought to be tried by the Court of Special Judge SC/S.T. Act and to commit the same in the exercise of its

discretionary powers u/s 323 Cr.P.C. The trial of the cross-case was culminated into conviction of Kishan Ram (First Informant of this case) and

others co-accused persons vide judgment dated 19.1.2006. It appears that after his conviction, the first informant Krishan Ram under some legal

advice during his depositions on 27.4.2007, very first time had disclosed that he is a scheduled caste. The first informant on the basis of his

improved version had moved application u/s 323, Cr.P.C. in the trial Court on 6.10.2009 at a belated stage. The learned Magistrate ignoring

sound legal principles and without any material on record to establish that any offence under S.C./S.T. Act has also been committed, ordered

committal of the case exercising extra ordinary discretionary powers u/s 323 Cr.P.C. Thus, the impugned order is illegal and deserves to be set

aside.

5. Learned AGA on the other hand, submitted that the issue whether the complainant belongs either to Scheduled Caste or to Scheduled Tribe and

the accused persons are non-scheduled Caste can be raised during investigation or at the time of framing of charge or at the time of trial. It is well-

settled law that an F.I.R. is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. It has come in the

depositions of PW-1 Kishan Ram (the first informant) that he belongs to Scheduled Caste. In this regard, he has already submitted his caste

certificate and school leaving certificate to the Investigating Officer, in which his caste has been mentioned. Undisputedly, the accused persons are

non Scheduled Caste/Scheduled tribes had voluntarily caused hurt to the complainant and his family members, who are Scheduled Caste with in

public view. Thus, apart from offences punishable under IPC the accused persons have also committed offence u/s 3(1)(X) of the SC.ST Act. The

offences under the SC/ST Act are exclusively triable by the Special Court constituted under the said Act and, therefore, the Magistrate has no

jurisdiction to try the case. The Magistrate thus, has rightly exercised discretionary powers vested in her u/s 323 Cr.P.C. The Scope of Section

323 Cr.P.C. to commit the case to the Special Judge S.C./S.T. is very wide and has overriding effect. This Section confers discretionary powers

upon the Magistrate, which can be exercised suo moto or on application of any of the parties.

6. Learned A.G.A. further contended that where the Statute has conferred discretionary powers upon the Court and the Court in the exercise of its

discretionary authority passes any order, such order is not liable to be disturbed under the Revisional jurisdiction, until and unless the order besides

being illegal is also perverse. The impugned order is within four corners of law and as such not liable to be interfered with. The Revision is without

merits, deserves to be dismissed.

7. The pivotal question involved in this revision is whether the learned Magistrate had any occasion to exercise power u/s 323 Cr.P.C. to commit

the case to the Court of Session only on the basis of the depositions of the complainant at the trial ?

8. Prior to discuss the controversy involved in this Revision, it would be expedient to have a look on the relevant provisions of the Cr.P.C. relating

to power of the Court and committal proceedings.

9. Chapter-III of the Cr.P.C. relates to the power of Criminal Courts. Section 26 reads as under:

Section 26. Courts by which offences are triable.--Subject to the other provisions of this Code--

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by-

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court which such offence is shown in the First Schedule to be triable;

(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 so

mentioned, may be tried by-

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

State Amendment

[Uttar Pradesh]-In its application to the State of Uttar Pradesh, in Section 26, for clause (b) substitute the following clause, namely :

(b) any offence under any other law may be tried--

(i) when any Court is mentioned in this behalf in such law, by such Court, or by any Court superior in rank to such Court, and

(ii) when no Court is so mentioned, by any Court by which such offence is shown in the First Schedule to be triable, or by any Court superior in

rank to such Court.""-Uttar Pradesh Act 1 of 1984, Section 6 (w.e.f. 1.5.1984)

Part (a) of aforesaid Section clearly means that the Court of Session may try any offence under the IPC. It is not necessary for the Sessions Court

that the offence should be one exclusively triable by a Court of Session.

10. The Apex Court in Sudhir and Others etc. Vs. State of M.P. etc., , also held as under:

A Sessions Judge has the power to try any offence under IPC. It is not necessary for the Sessions Court that the offence should be one exclusively

triable by a Court of Session. This power of the Sessions Court can be discerned from a reading of Section 26 Cr.P.C.

11. However, the Court of Session is not a Court of original jurisdiction. Section 193 Cr.P.C. imposes a legislative bar upon the Court of Session

to take cognizance of any offence as a Court of Original jurisdiction, unless the case has been committed to it by a Magistrate. Thus, Section 193

Cr.P.C., reproduced below confers powers of committal upon the Magistrate:

Section 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.

12. Section 209 Cr.P.C. imposes a legislative compulsion upon the Magistrate to commit the case involves offence/s exclusively triable by a Court

of Session to that Court. The Magistrate has no escape from committing the Session triable case as provided u/s 209 Cr.P.C. The Magistrate has,

nevertheless, power to commit a case to the Court of Session, even it is not exclusively triable by that Court. Section 323 Cr.P.C. however, with

over riding effect on all previous provisions relating the committal, enacts that the Magistrate, if it appears to him at any stage of the proceedings

before him in any inquiry into an offence or during trial that the case is one which ought to be tried by the Court of Session, he shall commit the

case to that Court and the proceedings before him is terminated. The Section 323 Cr.P.C. reads thus:

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.--If, in any inquiry into an offence or a trial

before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the

Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII

shall apply to the commitment so made.]

13. In Gopal Das and others v. State of U.P. and another, 1991 (Suppl.) ACC 141, this Court held:

Words....."in any enquiry into an offence or trial before a Magistrate.....at any stage of the proceeding before signing the judgment" occurring in

Section 323, are very wide. They have overriding effect on all previous provisions. Power of the Magistrate u/s 323, Cr.P.C. is no doubt

discretionary but he has to exercise jurisdiction judicially. He can exercise his discretion suo-moto or on an application of any of the parties. If he

exercise power u/s 323 Cr.P.C. and commits the case to Sessions" proceeding before him is terminated.

14. In Acchey Lal v. State of U.R., (1983) 9 ALR 13, a Division Bench of this Court observed as under:

Sections 209 and 323 Cr.P.C. operate in different fields. Section 209 Cr.P.C. relates to commitment of only those cases to the Court of Session,

which are exclusively triable by that Court. Section 323 Cr.P.C., on the other hand, relates to the commitment of those cases to the Court of

Session, which to start with, are triable by the Magistrate concerned but during the inquiry or trial thereof the Magistrate comes to the conclusion

that on account of peculiar features and circumstances of the case, the same ought to be tried by the Court of Session.

15. The Apex Court in case of Sudhir and others (supra) held :

12.....Where one of the two cases relating to the same incident is charge-sheeted or complained of, involves offences or offence exclusively

triable by a Court of Session, but none of the offences involved in the other case is exclusively triable by the Sessions Court, the Magistrate has no

escape from committing the former case to the Sessions Court as provided in Section 209 Cr.P.C. Though, the next case cannot be committed in

accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session, albeit none of the

offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in Cr.P.C. to meet similar cases also.....

13. The above Section does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not

apply when a Magistrate has committed a case on account of the legislative compulsion by Section 209, its cross-case, having no offence

exclusively triable by the Sessions Court, must appear to the Magistrate as one which ought to be tried by the same Court of Session. Commitment

under Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the

stream channelised by the provisions contained in Chapter XVIII.

16. I have gone through Section 323 Cr.P.C; case laws cited as above and also considered the rival contentions of both the sides. I am of the view

that Section 323 Cr.P.C. confers wide powers upon the Magistrate to commit any case to the Court of Session, even it is not exclusively triable by

that Court. The provision is independent and does not make an inroad into Section 209 Cr.P.C. The Provisions of this Section can be invoked by

the Magistrate suo moto or on an application of any of the parties. Power of the Magistrate u/s 323 Cr.P.C. is discretionary, but has to be

exercised judicially and not arbitrarily.

17. Section 26 as reproduced earlier (as it applicable to Uttar Pradesh) enacts that any offence under any other law (not under IPC) may be tried

by such Court or any Superior Court to such Court as is mentioned in this behalf in such law. Section 14 of the S.C./S.T. Act enacts that for each

respect the Court of Session is a Special Court to try the offence under this Act. Thus, a Special Court under the S.C./S.T. Act is essentially a

Court of Session and therefore, it cannot take direct cognizance of the offence unless it is committed to it by the Magistrate in accordance with the

provisions of Cr.P.C. Interdict imposed by Section 193 Cr.P.C. come into the way in taking the direct cognizance of an offence under the

S.C./S.T. Act by the Special Court.

18. In Moly and Another Vs. State of Kerala, , the Apex Court held thus:

A Special Court under 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 straight way be laid down before

the Special Court under the Act.

The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a 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". Thus the

Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. In view of Section 193 of the

Code of Criminal Procedure, unless it is positively and specifically provided differently 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 is there any provision whatsoever, not given by

implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act 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 straight

way be filed before such Special Court for offences under the Act.

19. The complainant Kishan Ram lodged F.I.R. on 24.4.1998 at Police Station Sahibabad, District Ghaziabad, which reads as under:

20. The Investigating Officer after concluding the investigation has submitted charge-sheet in the Magistrate Court under Sections 323, 504 and

506 I.P.C. The learned Magistrate after having considered material on record framed charges against the accused persons under Sections 323,

504 and 506 I.P.C. In his deposition, PW-1 Kishan Ram, inter alia stated that he is a schedule caste, the accused persons had enmity with him as

he is lower caste. The evidence of the informant Kishan Ram was recorded after about 9 years of the occurrence. Thus, in the deposition of PW-1

Kishan Ram that he is a scheduled caste and the accused persons bore enmity with him being lower caste, very first time, came up in his evidence.

There is nothing about it in the F.I.R. and his statement recorded u/s 161 Cr.P.C. Thus certainly, the statement of PW-1 Kishan Ram during his

deposition that he is schedule caste and the accused persons had enmity with him of his being a lower caste is in the category of ""improved

version"". The learned Magistrate vide the impugned order has committed the case to the Special Court under the S.C./S.T. Act invoking

provisions of Section 323 Cr.P.C. with an observation that PW-1 Kishan Ram during his depositions had stated that ""caste specific"" words were

used against him at the time of occurrence by the accused persons. Thus, the accused persons have also appears to have committed offence u/s

3(1)(X) of the S.C./S.T. Act. The offence under the said Act are exclusively triable by the Special Court under the said Act and the Magistrate

Court has no jurisdiction to try the case.

21. Section 3(1)(X) of the S.C./S.T. Act reads thus:

3. Punishments for offences of atrocities.--(1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (IX)

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

22. To constitute an offence under the aforesaid section. It has to be alleged that the accused is not a member of a scheduled caste or scheduled

tribes. The complainant is a member of a scheduled caste or scheduled tribes has been insulted or intimidated by the accused intentionally because

of reason that he is a scheduled caste/Scheduled tribes.

23. In *Gorige Pentaiah Vs. State of A.P. and Others*, , the Apex Court held as under:

In the instant case, the allegation of respondent No. 3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their

caste. According to the basic ingredients of Section 3(1)(X) of the Act, the complainant ought to have alleged that the appellant-accused was not a

member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with

intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of

the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within

public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the

appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

24. In *Swaran Singh and Others Vs. State through Standing Counsel and Another*, , the Apex Court held as under:

Thus, calling a member of the Scheduled Caste ""chamar"" with intent to insult or humiliate him in a place within public view is certainly an offence u/s

3(1)(X) of the Act concerned. Whether there was intent to insult or humiliate by using the word ""chamar"" will depend on the context in which it

was used.

25. Having considered the provisions of Section 3(1)(X) of the S.C./S.T. Act and the case laws cited as above, I am of the firm view that

following are the essential ingredients to constitute the offence u/s 3(1)(X) of the S.C./S.T. :

(1) accused is not a member of the Scheduled Caste or Scheduled Tribes;

(2) the complainant is a member of Scheduled Caste or a Scheduled Tribes.

(3) the complainant was intentionally insulted or intimidated by the accused with intent to humiliate him in a place within a public view. The

intentionally act of insult or intimidation must be by uttering ""caste specific"" words against the complainant.

26. In the present case, the complainant no-where disclosed in his F.I.R. that the accused persons are not the member of Scheduled Caste or

Scheduled tribe. The complainant has disclosed in the F.I.R. that he is ""Badayee"" by caste but no-where disclosed that he is a member of

scheduled caste or scheduled tribe. The complainant and his witnesses in their respective statements recorded by the Investigating Officer u/s 161

Cr.P.C. have only supported F.I.R. version and no-where disclosed anything about their caste or that they are the members of scheduled caste or

scheduled tribe. They have also not disclosed that the accused persons are not scheduled caste and scheduled tribes. The complainant and his

witnesses have also not disclosed that the accused persons had intentionally insulted or intimidated them or intentionally humiliated the complainant

being a member of scheduled caste or schedule tribe. PW-1 Kishan Ram during his depositions no-where stated that caste specific words were

uttered by any of the accused persons at the time of occurrence. The reason behind the occurrence as appears from the factual matrix of the case

was that the complainant was throwing debris of his house on the public lane adjoining to the house of the accused persons, which caused clash

between them. Therefore, from the entire prosecution version, it does not appear that the accused persons had committed "marpit" with the

complainant and his family member with intention to insult or humiliate him in public view, being a member of scheduled caste or scheduled tribes.

Thus the essential ingredients constituting offence u/s 3(1)(X) of the S.C./S.T. are absolutely lacking. The ratio laid down in Gorige Pentaiah case

(supra) is fully applicable to the facts and circumstances of the case. In this case, the Apex Court has clearly held that when the basic ingredients of

the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the

criminal trial would be totally unjustified leading to abuse of process of law.

27. To sum-up, on careful consideration of rival contentions of both the sides, the provisions u/s 323 Cr.P.C. and Section 3(1)(X) S.C/S.T. Act,

and the relevant case laws cited above, the legal position emerges that Section 323 Cr.P.C. though empowers to the Magistrate to commit the

case to the Court of Session at any stage of inquiry into or trial, even it is not exclusively triable by the Court of Session, if he is of the view that the

case ought to be tried by the Court of session. The power u/s 323 Cr.P.C. is discretionary, but the discretion has to be exercised in the judicious

manner not arbitrarily. The Magistrate has to explain as to how it appears to him that the case is one which ought to be tried by the Court of

Session. The reasoning must be based on material on record, not whimsical.

28. In the instant case as discussed above, the learned Magistrate has ordered to commit the case as the Magistrate was of the view that the

accused persons had also committed an offence u/s 3(1)(X) of the S.C./S.T. Act and the case is one which ought to be tried to the Court of

Session. However, as stated earlier, the essential ingredients constituting offence u/s 3(1)(X) of the S.C./S.T. Act are absolutely lacking, even there

is not a whisper in the F.I.R., statement u/s 161 Cr.P.C. and the deposition of the PW-1 Kishan Ram that any ""caste specific"" word was uttered.

The learned Magistrate thus, mislead evidence of PW-1 and arrived at a wrong conclusion that ""caste specific"" words were uttered during the

occurrence and thereby committed the case to the Court of Session by the impugned order.

29. The impugned order, therefore, untenable, as has been passed under misconception by the Magistrate and as such deserves to be set aside.

30. The revision is allowed. The impugned order dated 21.4.2010 passed by the learned Additional Chief Judicial Magistrate, Court No. 7

Ghaziabad is quashed. Since, it is the old case, therefore, the learned Magistrate is directed to dispose of the same expeditiously preferably within

six months from the date of production of certified copy of this order.