S. Damodar Reddy Vs State of Andhra Pradesh and Others

Criminal Petition No. 3778 of 1994

Court: Andhra Pradesh High Court

Date of Decision: Feb. 26, 1996

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 193, 200, 202, 202(2)

Citation: (1996) 1 ALD(Cri) 645 : (1996) 2 APLJ 272 : (1996) 1 APLJ 272 : (1996) CriLJ 3271

Hon'ble Judges: V. Rajagopala Reddy, J

Bench: Single Bench

Advocate: M. Ratna Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner is the 2nd accused in C.C. No. 204 of 1994 pending on the file of the Court of Special Sessions Judge constituted under the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act") at Mahaboobnagar. Upon a complaint filed

u/S. 200 of the Code of Criminal Procedure, 1973 (for short, "the Code") by the complainant, who has been impleaded as 3rd respondent,

alleging commission of offences u/S. 3(1)(viii) and (ix) of the Act, the Special Judge has taken cognizance of the above offences in C.C. No.

204/94 and issued process against the petitioner. This petition is filed u/S. 482 of the Code seeking to quash the above proceedings.

2. The contentions of the learned counsel for the petitioner are two fold :

(i) The Special Court, being a Court of Session is not empowered to take cognizance of the offences complained of, in view of the prohibition

placed on the Sessions Court under S. 193 of the Code;

(ii) The mandate contained u/S. 200 of the Code to examine all the witnesses has not been followed for the reason that the learned Judge has not

examined any of the two witnesses shown in the complaint, before taking cognizance of the offence and issuing process.

3. The first contention appears formidable in view of Ss. 190 and 193 of the Code. Section 190 of the Code provides for a Magistrate of First

Class to take cognizance of any offence upon receiving a complaint, upon a police report or upon an information received from any person.

Section 193 of the Code expressly prohibits a Court of Session to take cognizance of any offence as Court of original jurisdiction, unless the case

has been committed to it by a Magistrate under the Code or expressly provided by this Code or by any other law. It is therefore clear that only a

Magistrate of First Class is clothed with the power to take cognizance of any offence. The Court of Session cannot act as a Court of original

jurisdiction and it is expressly prohibited from taking cognizance of any offence. However, as an exception, the Court of Session is empowered to

take cognizance of, if it is so provided under the Code or by any other law.

4. Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act empowers the State Government, by notification to

specify for each district, a Court of Sessions to be a Special Court, to try the offences under the Act. The object is to ensure speedy trial for the

offences under the Act which are offences against particular sections of society in particular, and the society in general. The Court of Session at

Mahaboobnagar in this case is notified by the Government as a Special Court u/S. 14 of the Act. There is no provision under the Act providing for

any special procedure to be adopted to try the offences by the Special Court, i.e. for the investigation, enquiry or for the trial of the offences arising

under the Act other than empowering the Special Court to try the offences under the Act. Section 4(2) of the Code states that in the absence of

any provision laying down the procedure for the investigation, inquiring into and trying the offences under the Act, the procedure laid down under

the Code has to be followed, for investigation, inquiring into and trying such offences. It therefore, appears that the Spl. Court is armed with all the

powers of a criminal court of original jurisdiction including the power to take cognizance for enquiry into and trial and otherwise to deal with all the

offences under the Act, in accordance with the provisions of the Code, subject only to the contrary provisions made under the Act for the trial of

such offences.

5. But then how to get over the embargo placed by Section 193 of the Code ? The Special Judge being a Sessions Judge is prohibited u/Section

193 of the Code to take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate

under the Code or authorised by any other law.

6. Two questions are required to be answered. One is whether Section 193 of the Code is applicable to the Special Court constituted under other

enactments ? The second is whether power to "try" includes the power of enquiry which precedes the actual trial of offences, i.e., pre-process

enquiry ?

7. To deal with the first question it is necessary to understand the status of a Special Court and the Special Judge over which he presides. This

aspect, fortunately for us, has been exhaustively dealt with by the Apex Court in A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, , where

the powers of a Special Court constituted under the Prevention of Corruption Act (Act 2 of 1947) were in question. Under the above Act a Spl.

Court was constituted to take cognizance and try the offences under the Act. The question there was whether the Special Court could take

cognizance of offences based upon private complaints and the nature of pre-process enquiry by the Special Court. Justice D. A. Desai, speaking

for the Court of 5 Judges, observed (Para 27) :

If a Special Judge is enjoined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide

whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections.

Each of the Sections 251-A to 257 of 1898 Code which are in pari materia with Sections 238 - 250 of 1973 Code refers to what the Magistrate

should do. Does the Special Judge therefore, become a Magistrate ? This is the fallacy of the whole approach. In fact, in order to give full effect to

Section 8(1), the only thing to do is to read Special judge in Ss. 238 - 250 wherever the expression ''Magistrate'' occurs. This is what is called

legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of

Section 190 which conferred power on the Magistrate to take cognizance of the offence, Special judge is a Magistrate ? What is to be done is that

one has to read the expression ''Special Judge'' in place of Magistrate, and the whole thing becomes crystal clear.

... ...

The net outcome of this position is that a new Court of original jurisdiction was set up and whenever a question arose as to what are its powers in

respect of specific question brought before it as Court of original criminal jurisdiction, it had to refer to the Criminal Procedure Code undaunted by

any designation claptrap. When taking cognizance, a Court of Special Judge enjoyed the powers u/s 190. When trying cases, it is obligatory to

follow the procedure for trial of warrant cases by a Magistrate, though as and by way of status it was equated with a Court of Sessions. ....

Shorn of all embellishment, the Court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in

order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and

specifically denied, it has to function as a Court of original criminal jurisdiction not being hide-bound by the terminological status description of

Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the

ones specifically denied.

The nature and powers of Special Court constituted under the very Act in question came to be considered by a Division Bench of Kerala High

Court and a Division Bench of Patna High Court. Relying upon the above ruling of Apex Court, the Kerala High Court in In Re : Director General

of Prosecution 1993 Cri LJ 60 held that the Special Court is a Court of original jurisdiction with all the powers u/s 190 of the Code to take

cognizance of offences without an order of committal by the Magistrate as set out in Section 193 of the Code. However, the Patna High Court in

Jhagru Mahto v. State of Bihar 1993 (1) Crimes 643 took a contrary view. It held that the Special Court under the Act is not empowered by the

legislature to take cognizance of the offences under the Act without there being the committal order by the Magistrate and that there was lacuna in

the Act in not providing any provision for taking cognizance of the offences under the Act. The decision of the Apex Court was not brought to the

notice of the learned Judges. The status a Special Court enjoys was not kept in view by the learned Judges in arriving at their decision. The view of

the Patna High Court cannot therefore be accepted.

8. To consider the second question it is necessary to notice that the Prevention of Corruption Act empowered the Special Court not only to try the

offences under that Act but it also specifically empowered it to take cognizance of the offences under that Act. It is therefore commented that the

decision of the Apex Court dealing with the nature and status of the Special Court and its powers must confine to a Special Court constituted

under the Prevention of Corruption Act and that it has no application for the Spl. Court constituted u/s 14 of the Act and Section 193 of the Code

is a bar to take cognizance of the offence in the absence of a provision enabling the Spl. Court to take cognizance of the offences under the Act.

This aspect is also considered in the decision of Kerala High Court In Re: Director General of Prosecution, The Apex Court in The State of Bihar

Vs. Ram Naresh Pandey, after noting the distinction between enquiry and trial in the scheme of the Code took the view that the word "try" in the

phrase ""offences for which he is tried"" in Section 321 of the Code is wide enough to cover enquiry and trial and that the word was not used in any

limited sense. The learned Judges of the Kerala High Court relying upon the interpretation of the word "try" given by the Apex Court, are also of

the view that the Special Court u/s 14 of the Act has got wide powers of not only trial but also enquiry into all the offences under the Act, as a

Court of original jurisdiction in terms of the Code. In my view the decision in A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, is a

complete answer to this question. We need not examine the meaning of the expression "try" used in Section 14 of the Act to find whether the

Special Court is empowered to take cognizance of the offences under the Act. Thus the matter is no longer res integra. The Court categorically

held that the Special Court is a Court of original criminal jurisdiction and has therefore, all the powers of the Magistrate u/S. 190 of the Code. The

Apex Court in A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, ruled, as extracted earlier.

..... When taking cognizance, a Court of Special Judge enjoyed the powers u/s 190. When trying cases, it is obligatory to follow the procedure for

trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session.

In view of the above statement of law holding that the Special Court is a Court of original criminal jurisdiction enjoying all the powers which a

Court of original jurisdiction enjoys and it follows that it is empowered to take cognizance of the cases under the Act. The Special Court has

therefore rightly taken cognizance of the offence against the petitioner. The 1st contention of the learned counsel for the petitioner is, therefore,

rejected.

9. Now coming to the second contention that the mandate containing u/Section 200 of the Code has not been followed since all the witnesses

shown in the complaint have not been examined by the learned Judge as required under the proviso of sub-section (2) of Section 202 of the Code,

it has to be seen whether the said provision is at all applicable to the trial of cases by Special Court. It is true that under the proviso of sub-section

(2) a Magistrate in a trial before the regular courts shall call upon the complainant to produce all his witnesses and examine them on oath, if it

appears to him that the offence is triable by the Court of Session. A similar contention was raised before the Apex Court in A.R. Antulay Vs.

Ramdas Sriniwas Nayak and Another, where it was held (Para 31) :

..... But it must be made distinctly clear that it is neither obligatory to hold the inquiry before issuing process or to direct the investigation of the

offence by police. The matter is in the judicial discretion of the Court and is judicially reviewable depending upon the material disclosed by the

complainant in his statement under oath u/s 200, called in the parlance of Criminal Courts, verification of the complaint and evidence of witnesses if

any .... Primarily, examination of witnesses even at a pre-process stage by Spl. Judge is not on the footing that the case is exclusively triable

by a Court of Session as contemplated by Section 202(2) proviso. There is no commitment and therefore, Section 202(2) proviso is not attracted.

.... It is not a condition precedent to the issue of process that the Court, of necessity must hold the inquiry as envisaged by Section 202 or

direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in S. 202

when it says that the Magistrate may "if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or

direct an investigation to be made by a police officer ..... for the purpose of deciding whether or not there is sufficient ground for proceeding."

Therefore, the matter is left to the judicial direction of the Court whether on examining the complainant and the witnesses if any as contemplated by

Section 200 to issue process or to postpone the issue of process. This discretion which the Court enjoys cannot be circumscribed or denied by

making it mandatory upon the Court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory

provision.

10. In view of the above statement of law, the decision cited by the learned counsel for the petitioner in Ramchander Rao and Others Vs. Boina

Ramchander and Another, has no application to the procedure adopted for trials before a Special Court. It is entirely left to the discretion of the

Special Judge, considering the sworn statement of the complainant, to examine the witnesses on oath under sub-section (2) of Section 202 of the

Code. It is not necessary to examine all the witnesses under the proviso. Proviso is not applicable since the Special Court is held to be a Court of

original criminal jurisdiction enjoying all powers which a criminal Court with original jurisdiction enjoys.

11. I do not, therefore, find any irregularity in the issue of process by the Special Court against the petitioner. The Criminal Petition is therefore

dismissed. The Special Judge is directed to proceed with the case expeditiously.

12. Petition dismissed.