
(13) For the foregoing reasons, we allow this writ petition and quash the order dated 25th May, 2000, copy annexure P6. Resultantly, the petitioner will be allowed to continue in service and the respondent State would be under obligation to give grant in-aid to the respondent School against the post on which the petitioner is working.

R.N.R.

Before V.M. Jain, J

PARKASH KAUR & OTHERS—Petitioners

versus

GURBACHAN KAUR & ANOTHER—Respondents

Criminal Misc. No. 25644/M OF 2000

30th August, 2000

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—S. 3—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995—Rls. 5, 6 & 7—Judicial Magistrate ordering the summoning of the accused u/ss 323/506 IPC and u/s 3 of the 1989 Act—Appellate Court upholding the summoning order—There is no bar to the filing of a criminal complaint under the provisions of the 1989 Act before a Magistrate—A Judicial Magistrate is competent to entertain a criminal complaint u/s 190 Cr. P.C.—A complaint cannot straightway be laid before the special Court under the 1989 Act—No illegality in passing the summoning order—Petition liable to be dismissed.

[Gangula Ashok and another v. State of A.P. 2000 S.C.C. (Cr.) 488, followed]

[Devinder Singh Sarpanch & others v. State of Punjab 1997(3) RCR (Cr.) 575 and Dara Singh @ Darbara Singh v. Tej Kaur, ILR 2000(2) Pb. & Hy. 211, do not represent correct law]

Held, that a Special Court under the SC/ST Act was essentially a Court of Session and it could take cognizance of the offence when the case was committed to it by the Magistrate in accordance with the provisions of the Cr. P.C. In other words, a complaint or chargesheet cannot straightway be laid before the

{Special Court under the SC/ST Act. Code of Criminal Procedure is applicable even to the cases under the SC/ST Act (Section 20 of the said Act would be no bar to the same). A Judicial Magistrate is competent to entertain a criminal complaint under Section 190 of the Cr. P.C. Even otherwise, in the SC/ST Act, there was no bar to the filing of a criminal complaint under the provisions of the said Act before the Magistrate. Rules 5, 6 and 7 of the SC/ST Rules, would not disentitle the Magistrate to entertain a criminal complaint and to take cognizance u/s 190 Cr. P.C.

(Para 9 & 10)

Further held, that on receipt of the criminal complaint, the learned Magistrate had recorded the preliminary evidence of the complainant. Thereafter, after hearing arguments and scrutinising the allegations made in the criminal complaint and the statements of the witnesses, the learned Magistrate found that there were sufficient grounds to proceed against the accused and it was thereupon that he ordered summoning of the accused u/ss 323/506 IPC and S. 3 of the SC/ST Act. At the time when this order of summoning was passed, the learned Magistrate also found that no offence under section 504 IPC (for which also the criminal complaint was filed) was made out and as such the accused were not summoned for the offence u/s 504 IPC. In these circumstances, it could not be said that the Magistrate had not applied his mind while passing the order of summoning the accused.

(Para 11)

Darling Behl, Advocate for the petitioners.

JUDGMENT

V.M. JAIN, J.

(1) This is a petition under Section 482, Cr. P.C. filed by the accused-petitioners, seeking quashment of the order, dated 1st September, 1998 passed by the Judicial Magistrate ordering the summoning of the accused under Section 323/506, IPC, and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act), in the criminal complaint filed by Smt. Gurbachan Kaur, complainant (respondent No. 1) and also against the order, dated 6th July, 2000 passed by the Additional Sessions Judge, dismissing the revision petition filed by the accused-petitioners against the said order, dated 1st September, 1998 passed by the Judicial Magistrate.

(2) I have heard learned counsel for the petitioners in the present petition and have gone through the record carefully.

(3) Annexure P2 is a copy of the criminal complaint dated 18th July, 1998 filed by Smt. Gurbachan Kaur against the accused-petitioners Parkash Kaur, etc. under Sections 323/504/506, IPC, and Section 3 of the SC/ST Act. In the said criminal complaint, it was alleged that the complainant belonged to Scheduled Caste and that on 19th July, 1998, when she was present in her house along with her husband, all the accused came there and caused injuries to the complainant and her husband and had also threatened to kill them and also used derogatory language towards them. After filing the criminal complaint, Smt. Gurbachan Kaur, complainant, herself appeared in the witness box as CW1 and she also examined CW2, Sat Pal, and CW3, Gurbachan Singh (eye witnesses) in support of her case. Thereafter, after hearing the counsel for the complainant and perusing the allegations made in the criminal complaint and the preliminary evidence lead by the complainant, the learned Magistrate was of the opinion that there were sufficient grounds to proceed against the accused and accordingly, he ordered summoning of all the accused to face trial under Sections 323/506, IPC, and Section 3 of the SC/ST Act—*vide* order dated 1st September, 1998. The said order passed by the Judicial Magistrate was upheld by the Additional Sessions Judge,—*vide* order dated 6th July, 2000.

(4) Learned counsel for the petitioners firstly submitted before me that the learned Magistrate had no jurisdiction to entertain the criminal complaint. It was submitted that the case was triable by the Special Court and as such, only the Special Court could take cognizance and not the Judicial Magistrate. Reliance was placed on *Devinder Singh Sarpanch and others v. Stae of Punjab (1)* and *Dara Singh @ Darbara Singh v. Tej Kaur (2)* by Hon'ble Mr. Justice THB Chalapathi (as his Lordship then was).

(5) Secondly, learned counsel for the accused-petitioners submitted that no criminal complaint under Section 3 of the SC/ST Act was maintainable, in view of Rules 5,6 and 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the SC/ST Rules).

(1) 1997 (3) RCR (Cr.) 575

(2) ILR 2000 (2) Pb & Hry 211

(6) Thirdly, it was submitted that the order of summoning passed by the learned Magistrate did not show any application of mind and as such was liable to be set aside on this ground as well.

(7) Reliance was placed on *M/s Pepsi Foods Ltd v. Special Judicial Magistrate* (3) and *Mukhtiar Singh v. Surjit Kaur* (4).

(8) However, I find no force in the various submissions made before me by learned counsel for the accused-petitioners.

(9) So far as the jurisdiction of the Judicial Magistrate to entertain the criminal complaint (instead of Special Court) is concerned, the matter stands settled by their Lordships of Supreme Court, in the case reported as *Gangula Ashok and another v. State of A.P.* (5). In the said authority, it was held by their Lordships of Supreme Court that it was clear from Sections 14 and 2(1) (d) of the SC/ST Act that it was for trial of the offences under the said Act that a particular Court of Session in each District was sought to be specified as a Special Court.....Thus, the Court of Session was specified to conduct a trial and no other Court could conduct the trial of offences under the said Act..... 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 could be conducted only in the manner provided in Chapter XVIII of the Code of Criminal Procedure, which contained a fasciculus of provisions for trial before a Court of Session. It was further held in the said authority that a Special Court under the SC/ST Act was essentially a Court of Session and it could take cognizance of the offence when the case was committed to it by the Magistrate in accordance with the provisions of the Cr. P.C. In other words, a complaint or charge-sheet cannot straightway be laid before the Special Court under the SC/ST Act. Their Lordships of the Supreme Court, in the said authority, had approved the law laid down by this Court, in the case reported as *Jyoti Arora v. State of Haryana* (6) In view of the law laid down by their Lordships of Supreme Court in *Gangula Ashok's* case (*supra*), the authorities

(3) 1997 (4) RCR 761 (SC)

(4) 1998 (3) RCR 308 (P&H)

(5) 2000 SCC (CrI) 488

(6) 1998 (2) CrI LR 73 (P&H)

Devinder Singh Sarpanch and others *v.* State of Punjab (*supra*) and *Dara Singh @ Darbara Singh v. Tej Kaur (supra)* would have no application to the facts and circumstances of the present case, as they do not hold good after the law laid down by their Lordships of Supreme Court.

(10) So far as the non-maintainability of the criminal complaint, in view of the provisions of Rules 5, 6 and 7 of the SC/ST Rules is concerned, in my opinion, there is no force in this submission as well raised before me by learned counsel for the petitioners. The Criminal Procedure Code is applicable even to the cases under the SC/ST Act (Section 20 of the said Act would be no bar to the same). A Judicial Magistrate is competent to entertain a criminal complaint under Section 190 of the Cr. P.C. Even their Lordships of Supreme Court, in Gangula Ashok's case (*supra*) had held that under section 4 (2), Cr.P.C, all offences under other laws shall be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code of Criminal Procedure, but subject to the provisions in other enactments. It was further held that this would mean that if another enactment contained any provision which was contrary to the provisions of the Cr. P.C. such other provisions would apply in place of the particular provision of the Cr. P.C. It was further held that if there was no such contrary provision in other laws, then provisions of the Cr. P.C would apply to the matters covered thereby. It was further held in the said authority that a Special Court under the SC/ST Act was essentially a Court of Session and it could take cognizance of the offence when the case was committed to it by the Magistrate in accordance with the provisions of the Cr. P.C and in other words, a complaint or charge-sheet cannot straightway be laid before the Special Court under the SC/ST Act. Thus, their Lordships of Supreme Court had contemplated a situation where either a criminal complaint was filed before the Judicial Magistrate by the complainant or a charge-sheet was submitted before the Magistrate by the Police. Even otherwise, in the SC/ST Act, there was no bar to the filing of a criminal complaint under the provisions of the said Act before the Magistrate. Rules 5, 6 and 7 of the SC/ST Rules, relied upon by learned counsel for the petitioners, in my opinion, would not disentitle the Magistrate to entertain a criminal complaint and to take cognizance under Section 190, Cr PC. These rules would apply only to the cases where an FIR is registered in the Police Station and the FIR is investigated by the police. However, where no FIR is registered by the police and the case has not been

investigated by the police, the provisions of Rules 5, 6 and 7 of the SC/ST Rules would have no application.

(11) So far as the third argument raised before me by learned counsel for the petitioners regarding non-application of mind by the Magistrate while passing the order of summoning is concerned, in my opinion, there is no force in this submission as well. As referred to above, on receipt of the criminal complaint, the learned Magistrate had recorded the preliminary evidence of the complainant, in the form of the statements of Smt. Gurbachan Kaur, complainant, appearing in the witness box as CW1 and Satpal and Gurbachan Singh, appearing as CW2 and CW3 respectively. Thereafter, after hearing arguments and scrutinising the allegations made in the criminal complaint and the statements of the witnesses, the learned Magistrate found that there were sufficient grounds to proceed against the accused and it was thereupon that he ordered summoning of the accused under Sections 323/506, IPC and Section 3 of the SC/ST Act. At the time when this order of summoning was passed, the learned Magistrate also found that no offence under Section 504, IPC (for which also the criminal complaint was filed) was made out and as such the accused were not summoned for the offence under Section 504, IPC. In these circumstances, in my opinion, it could not be said that the Magistrate had not applied his mind while passing the order of summoning the accused. Even otherwise, I have gone through the allegations made in the criminal complaint and on the basis of those allegations, it could not be said that the Magistrate has committed any illegality in passing the summoning order against the accused. The authority 1997(4) Recent Criminal Reports, 761 (*supra*) relied upon by learned counsel for the petitioners, in my opinion, would be of no help to the petitioners on the facts and circumstances of the present case. As referred to above, in the present case, the summoning order passed by the learned Magistrate clearly shows that he had applied his mind to the facts of the case and the law applicable thereto before passing the order of summoning. In the present case, it could not be said that there were no sufficient grounds to proceed against the accused. On the other hand, it was a fit case where the order of summoning could be passed against the accused and in my opinion, the learned Magistrate had rightly passed the summoning order. Similarly, the authority 1998(3) Recent Criminal Reports, 308 (*supra*) relied upon by learned counsel for the petitioners would be of no help to the petitioners, in view of the facts and circumstances of the present case.

(12) No other point has been raised before me in this petition.

(13) For the reasons recorded above, I find no merit in this petition. Dismissed.

R.N.R.

Before S.S. Sudhalkar & Mehtab S. Gill, JJ

HARMANDAR SINGH—*Petitioner*

versus

THE COOPERATION MINISTER, PUNJAB & OTHERS—*Respondents*

CWP NO. 9075 OF 2000

15th September, 2000

Constitution of India, 1950—Art. 226—Punjab Cooperative Societies Act, 1961—Ss. 13(8), 13(9), 57(3) & 58—Registrar, Cooperative Societies ordering amalgamation of the CONSTOFED with the MARKFED—Thereafter, Registrar ordering winding up the affairs of CONSTOFED and appointing a Liquidator—Registrar cancelling the order of winding up and allowing CONSTOFED to continue to exist after considering the report of the Liquidator—Whether an officer/authority under his own hand and seal can pass two contradictory orders—Held, no—Writ allowed, impugned orders/notices quashed with liberty to the Registrar to proceed afresh in accordance with the law.

Held, that the Registrar, Cooperative Societies, Punjab, passed an order dated 17th April, 2000, whereby the Liquidator was appointed. The Liquidator submitted his report on 1st June, 2000, whereby he recommended that the order of winding up of CONSTOFED should be reviewed and it should be allowed to function. On his recommendation, the Registrar allowed CONSTOFED to continue to exist. *Vide* order dated 27th April, 2000, notice of amalgamation of CONSTOFED with MAKFED was ordered by the same officer under his hand and the seal of Registrar, Cooperative Societies, Punjab, Chandigarh. Another order was passed dated 30th June, 2000 whereby he amalgamated CONSTOFED with MARKFED. On one hand, he passed the order that CONSTOFED should be allowed to exist on the report of Liquidator, while on the other hand, he passed order dated 30th June, 2000 for the amalgamation of CONSTOFED with MARKFED.