



2026:AHC:216799

AFR
Reserved on 13.10.2026
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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 722 of 2020

Ajai Yadav and 2 others

.....Appellant(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Appellant(s)	: Kameshwar Singh
Counsel for Respondent(s)	: Anand Kumar Pandey, G.A., Prabhat Kumar Singh, Rajat Singh

Court No. - 91

HON'BLE SANTOSH RAI, J.

1. Heard Shri Kameshwar Singh, learned counsel for the appellants, Shri Anand Kumar Pandey, learned counsel for O.P. No.2 and Shri S.N. Rai, learned AGA for the State.

2. The impugned order dated 22.05.2019, passed by the Additional Sessions Judge/Special Judge, SC/ST Act, Ballia, in Complaint Case No. 65 of 2017, arises out of a complaint instituted by Gulab Chandra Ram against Ajai Yadav and two others, namely, Shyam Sundar Yadav alias Chela Yadav and Harilal Yadav alias Samhut.

3. As stated in the complaint, the complainant belongs to the Dom community, which is a Scheduled Caste. The alleged incident

occurred on 11 June 2016, at about 5:00 p.m., when the accused persons, allegedly armed with lathis and sticks, came to the complainant's door over a dispute concerning a quarrel between children. They allegedly abused the complainant by using caste-indicative expressions and threatened that he would not be permitted to reside in the village. It was further alleged that Shyam Sundar Yadav alias Chela Yadav exhorted the others to kill the complainant, whereupon Ajai Yadav and Harilal Yadav alias Samhut allegedly assaulted him with lathis and sticks while hurling caste-related abuses. When the complainant's wife, Buchiya Devi, intervened to rescue him, she was also allegedly abused by reference to her caste and assaulted. The accused persons are further alleged to have threatened the complainant with death and threatened to parade his wife naked through the village. The complainant and his wife are stated to have sustained injuries, for which they were medically examined at the Primary Health Centre, Murli Chhapra. The incident was allegedly witnessed by Aliyar Ram and several other persons from the village, who intervened to save the complainant.

4. In support of the complaint, the complainant's statement was recorded under Section 200 Cr.P.C., while the statement of witness Buchiya Devi was recorded under Section 202 Cr.P.C. Upon consideration of the complaint, the statements of the complainant

and the witness, and the material available on record, the trial court formed a prima facie opinion that the allegations disclosed offences punishable under Sections 323, 504 and 506 IPC, besides Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Accordingly, by the impugned order dated 22.05.2019, the court summoned the accused persons to face trial for the aforesaid offences and directed them to appear before the court on 22.06.2019.

5. The principal contention advanced by learned counsel for the appellants is that the complaint was initially instituted before the Court of the Additional Chief Judicial Magistrate (ACJM), where cognizance was taken and the statements of the complainant and the witness under Sections 200 and 202 Cr.P.C. were recorded on 19.10.2016 and 14.12.2016, respectively. It is submitted that, in view of Sections 2(bd) and 14 of the SC/ST Act, the proceedings before the Magistrate were contrary to law and, consequently, the impugned summoning order passed by the Special Judge, SC/ST Act, cannot be sustained.

6. Section 2(bd) of the SC/ST Act defines an 'Exclusive Special Court' as a court established under Section 14(1) of the Act. Section 14 provides for the constitution or specification of Special Courts and Exclusive Special Courts for the expeditious trial of offences under the Act. Following the amendment introduced by Act No. 1 of

2016, the statutory provision expressly empowers such courts to take direct cognizance of offences under the Act, without the necessity of committal by a Magistrate. The object of the amendment is to facilitate speedy adjudication of offences under the SC/ST Act. However, the existence of such power in the Special Court does not, by itself, warrant the conclusion that every procedural step previously undertaken by a Magistrate renders all subsequent proceedings void. The nature of the alleged irregularity, the applicable provisions of the Code of Criminal Procedure and, particularly, the question of prejudice or failure of justice must also be considered.

7. In the present case, even if it is assumed, for the sake of argument, that the initial exercise of jurisdiction by the ACJM in taking cognizance and recording the statements under Sections 200 and 202 Cr.P.C. was procedurally irregular, such irregularity cannot, in the absence of demonstrated prejudice or failure of justice, be treated as an incurable illegality automatically vitiating the subsequent proceedings. The record further indicates that the complaint was transferred to the Court of the Special Judge, SC/ST Act, by the order of the District and Sessions Judge dated 26.09.2017. Thereafter, the Special Judge proceeded to consider the complaint and the material available on record and passed the impugned summoning order dated 22.05.2019. Thus, the order

under challenge was passed by the court statutorily empowered to take cognizance of offences under the SC/ST Act. The appellants have not demonstrated how the earlier proceedings before the Magistrate deprived them of any substantive right or occasioned a failure of justice.

8. In the case of **Shantaben Bhurabhai Bhuriya vs. Anand Athabhai Chaudhari and others**, (2022) 15SCC 228, the Apex held as under:

“25. This Court in Rattiram case vs. State of M.P., (2012) 4 SCC 516, authoritatively concluded that the delay in conclusion of the trial has a direct nexus with the collective cry of the society and the anguish and agony of an accused (quaere a victim). It appears that the observations made by this Court in Rattiram gave rise to amendment to Section 14 of the Act and it appears to avoid consumption of time on procedural aspect on committing of case by the Magistrate to the Court of Session as per Section 209 of the Code of Criminal Procedure and to avoid any further delay and to have speedy trial for the offences under the Atrocities Act to prevent commission of offence of atrocities against the members of the Scheduled Castes and Scheduled Tribes, proviso to Section 14 came to be inserted by Act 1 of 2016, by which, it has been provided that after post-amendment insertion of the proviso to Section 14 the Special Court so established for the purpose of providing for speedy trial or specified shall (also) have power to directly take cognizance of the offences under the Atrocities Act, 1989. Therefore, the object and purpose of insertion of Section 14 is to provide speedy trial for the offences under the Atrocities Act, 1989 and as observed hereinabove, to avoid the delay which was taking place by the committal of the offence by the learned Magistrate to the learned Special Court/Sessions Court.

27. On fair reading of Sections 207, 209 and 193 of the Code of Criminal Procedure and insertion of the proviso to Section 14 of the Atrocities Act by Act 1 of 2016 w.e.f. 26-

1-2016, we are of the opinion that on the aforesaid ground the entire criminal proceedings cannot be said to have been vitiated. The second proviso to Section 14 of the Atrocities Act which has been inserted by Act 1 of 2016 w.e.f. 26-1-2016 confers power upon the Special Court so established or specified for the purpose of providing for speedy trial also shall have the power to directly take cognizance of the offences under the Atrocities Act. Considering the object and purpose of insertion of the proviso to Section 14, it cannot be said that it is not in conflict with Sections 193, 207 and 209 of the Criminal Procedure Code, 1973. It cannot be said that it takes away jurisdiction of the Magistrate to take cognizance and thereafter to commit the case to the Special Court for trial for the offences under the Atrocities Act. Merely because, the learned Magistrate has taken cognizance of the offences and thereafter the trial/case has been committed to the Special Court established for the purpose of providing for speedy trial, it cannot be said that entire criminal proceedings including FIR and charge-sheet, etc. are vitiated and on the aforesaid ground entire criminal proceedings for the offences under Sections 452, 323, 325, 504, 506 Part II and 114 of the Penal Code, 1860 and under Section 3(1)(x) of the Atrocities Act are to be quashed and set aside. It may be noted that in view of insertion of the proviso to Section 14 of the Atrocities Act and considering the object and purpose, for which, the proviso to Section 14 of the Atrocities Act has been inserted i.e. for the purpose of providing for speedy trial and the object and purpose stated hereinabove, it is advisable that the court so established or specified in exercise of powers under Section 14, for the purpose of providing for speedy trial directly take cognizance of the offences under the Atrocities Act. But at the same time, as observed hereinabove, merely on the ground that cognizance of the offences under the Atrocities Act is not taken directly by the Special Court constituted under Section 14 of the Atrocities Act, the entire criminal proceedings cannot be said to have been vitiated and cannot be quashed and set aside solely on the ground that cognizance has been taken by the learned Magistrate after insertion of the second proviso to Section 14 which confers powers upon the Special Court also to directly take cognizance of the offences under the Atrocities Act and

thereafter case is committed to the Special Court/Court of Session.

*28. In support of the above conclusion, the words used in the second proviso to Section 14 are required to be considered minutely. The words used are "court so established or specified shall have power to directly take cognizance of the offences under this Act". The word "only" is conspicuously missing. If the intention of the legislature would have to confer the jurisdiction to take cognizance of the offences under the Atrocities Act exclusively with the Special Court, in that case, the wording should have been "that the court so established or specified **only** shall have power to directly take cognizance of offences under this Act". Therefore, merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the learned Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the learned Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside.*

30. The issue involved in the present appeal is also required to be considered from another angle. The accused is to be tried for the offences under the Atrocities Act by Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Even those rights are also available to the victim for the offences under the Atrocities Act in which the trial is by the Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Therefore, unless and until those rights which flow from Section 14 of the Atrocities Act are affected, the accused cannot make any grievance and it cannot be said that taking cognizance by the learned Magistrate for the offences under the Atrocities Act and thereafter to commit the case to the Special Court, he is prejudiced.

31. Even considering Section 460 of the Code of Criminal Procedure, if any Magistrate not empowered by the law to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190, takes cognizance, such irregularities do not vitiate proceedings. At the most, it can be said to be irregular proceedings for which, it does not vitiate the proceedings. In view of the above and for the

reasons stated above, the view taken by the High Court that as in the present case the learned Magistrate has taken cognizance for the offences under the Atrocities Act and thereafter the case is committed to the learned Special Court and therefore, entire criminal proceedings are vitiated, cannot be accepted and is unsustainable. If on the aforesaid ground entire criminal proceedings are quashed, in that case, it will be given a premium to an accused who is alleged to have committed the offence under the Atrocities Act. Assuming for the sake of argument that the procedure adopted is irregular, in that case, why should victim who belonged to Scheduled Castes and Scheduled Tribes community be made to suffer.

32. Even the impugned judgment (Anand Athabhai Chaudhari vs. State of Gujarat, 2019 SCC OnLine Guj 840) and order passed by the High Court quashing and setting aside the entire criminal proceedings is unsustainable. The allegation against the accused were for the offences under the Penal Code also along with for the offences under the Atrocities Act. By the impugned judgment and order, the High Court has not only quashed and set aside the proceedings under the Atrocities Act but for the offences under the Penal Code, 1860 also, which is not permissible. We fail to appreciate how the criminal proceedings for the offences under the Penal Code, 1860 could have been set aside by the High Court while considering Section 14 of the Atrocities Act.”

9. It is well settled that Sections 460 and 461 Cr.P.C. embody a distinction between irregularities which do not vitiate criminal proceedings and those which render the proceedings void. Section 460 enumerates certain acts performed by a Magistrate, erroneously but in good faith, which are not liable to be set aside merely on the ground of want of empowerment, whereas Section 461 specifies certain acts performed by a Magistrate without lawful authority, the proceedings in respect of which are expressly declared void. The

two provisions, therefore, operate within their respective statutory fields and do not permit every procedural irregularity to be equated with an incurable illegality. In the facts of the present case, the legality of the cognizance initially taken by the Magistrate and the subsequent proceedings before the Special Court under the SC/ST Act, must be examined in the light of the specific statutory provisions governing their respective jurisdictions. *Since the act of taking cognizance under Section 190(1)(a) or (b) Cr.P.C. is expressly contemplated by Section 460(e)*, the proceedings cannot be declared void merely on the ground of want of empowerment, provided the statutory conditions of that provision are satisfied. Conversely, Section 460 cannot be invoked mechanically to validate an act falling within Section 461. Accordingly, the objection regarding the initial cognizance must be determined in the light of the applicable statutory provision and the principle laid down by the Hon'ble Supreme Court in *Shantaben Bhurabhai Bhuriya (supra)*. The aforesaid conclusion also finds support from Section 460(e) Cr.P.C., which expressly provides that, where a Magistrate not empowered by law to take cognizance of an offence under Section 190(1)(a) or (b) erroneously but *in good faith takes such cognizance*, the proceedings shall not be set aside merely on that ground. In the present matter, the appellants cannot secure the setting aside of the impugned order merely by pointing out the

initial assumption of jurisdiction by the ACJM, without establishing that the alleged irregularity falls outside the protection of the law. The decision reinforces the proposition that proceedings ought not to be invalidated mechanically in the absence of a legally sustainable ground demonstrating prejudice or failure of justice. Applying the aforesaid principle to the facts of the present case, this Court finds that the appellants have failed to establish any such prejudice arising from the initial proceedings before the ACJM.

10. It is equally significant that the impugned order is not an order by which the ACJM has purported to exercise the special jurisdiction vested in the Special Court under Section 14 of the SC/ST Act. Rather, the Special Judge, after the transfer of the complaint, independently considered the allegations contained therein and the statements recorded during the ‘preliminary inquiry’. The mere fact that the complainant and a witness had earlier been examined by the Magistrate does not, in the circumstances of the present case, furnish a sufficient ground to nullify the subsequent summoning order. The appellants have not shown that the Special Judge lacked statutory competence to pass the impugned order or that the procedure adopted has resulted in any miscarriage of justice. Accordingly, the objection based upon Sections 2(bd) and 14 of the SC/ST Act, read with Section 460 Cr.P.C., is devoid of merit.

11. So far as the merits of the summoning order are concerned, a perusal of the complaint and the statements of the complainant recorded under Section 200 Cr.P.C. and the witness examined under Section 202 Cr.P.C. reveals that specific allegations have been made against the appellants regarding the alleged assault, caste-related abuses, threats and the conduct attributed to them during the incident. The complainant has asserted that he belongs to a Scheduled Caste and has described the circumstances in which the incident allegedly occurred. The preliminary statements, read along with the averments contained in the complaint, prima facie disclose material requiring the accused persons to face proceedings in accordance with law. At this stage, the Court is not required to record a definitive finding regarding the truthfulness of each allegation or the ultimate sufficiency of the evidence for conviction. The limited inquiry is whether the material placed before the Special Judge provides a legally sustainable basis for summoning the accused.

12. It is a settled principle of criminal jurisprudence that, while examining the legality of a summoning order, the Court must distinguish between the existence of a prima facie case and the proof of guilt beyond reasonable doubt. The power of summoning is to be exercised judicially, upon consideration of the complaint and the material placed on record; however, the court at this preliminary

stage is not expected to conduct a meticulous evaluation of evidence as would be undertaken at the conclusion of trial. Nor is it required to undertake a mini-trial by weighing the relative credibility of the complainant and the witnesses, resolving disputed factual questions or determining whether the evidence will ultimately result in conviction. Such matters are ordinarily to be examined at the appropriate stage of the proceedings, in accordance with law.

13. In view of the foregoing discussion, this Court is of the considered opinion that the initial proceedings before the ACJM, followed by the transfer of the complaint to the Special Judge, SC/ST Act, do not furnish a legally sufficient ground for setting aside the impugned summoning order. The objection raised by learned counsel for the appellants relates, in the facts and circumstances of the present case, to a procedural irregularity and not to an incurable illegality rendering the subsequent proceedings void.

14. For the reasons recorded above, this Court finds that the learned trial court has rightly summoned the accused-appellants under Sections 323, 504 and 506 IPC and Section 3(1)(r) of SC/ST Act. The impugned order is well reasoned and does not suffer from any illegality or infirmity warranting interference in appellate jurisdiction.

15. Accordingly, the appeal is **dismissed**.
16. If the appellants are not enlarged on bail, they are directed to appear before the court concerned and move application for regular bail, within two weeks from today. It is made clear that no application seeking extension of the aforesaid period shall be entertained by this court.
17. In case, the appellants move the application before the court concerned, the same shall be considered and decided by the trial court expeditiously and preferably on the same day, in light of principles laid down by the Supreme Court as well as this Court regarding surrender and bail.
18. In case, the appellants fail to appear before the court concerned within the stipulated period, the trial court will be at liberty to adopt appropriate coercive proceedings, in accordance with law, for securing the presence of the appellants.
19. Registrar (Compliance) is directed to communicate the instant order to the court concerned through District and Sessions Judge, Ballia by e-mail/FAX **within 48 hours**.

(Santosh Rai,J.)

October 15, 2026

Ankit.