

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**1. APPLICATION U/S 482 NO. -14443 of 2022**

**Decided on : October 17, 2022**

Naresh Kumar Valmiki .....Applicant

Vs.

State of U.P. and others .....Respondents

**WITH**

**2. Application U/S 482 NO.- 24984 of 2021**

Ramhinchh and others .....Applicants

Vs.

State of U.P. and another .....Respondents

**WITH**

**3. CRIMINAL APPEAL NO. - 426 of 2021**

Manoj Kumar and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**4. CRIMINAL APPEAL NO. -3100 of 2021**

Munni Lal and others .....Appellants

Vs.

State of U.P. and others .....Respondents

**WITH**

**5. CRIMINAL APPEAL NO. -3375 of 2021**

Shyam Sundar alias Shyam Sunder  
Mahto and another ..... Appellants

Vs.

State of U.P. and another ..... Respondents

**WITH**

**6. CRIMINAL APPEAL NO. -3841 of 2021**

Neeraj and others ..... Appellants

Vs.

State of U.P. and another ..... Respondents

**WITH**

**7. CRIMINAL APPEAL NO. -5968 of 2021**

Parmila Devi and others ..... Appellants

Vs.

State of U.P. and another ..... Respondents

**WITH**

**8. CRIMINAL APPEAL NO. -5974 of 2021**

Ram Jatam Rai and others ..... Appellants

Vs.

State of U.P. and another ..... Respondents

**WITH**

**9. CRIMINAL APPEAL DEFECTIVE NO. -9 of 2021**

Shobhnath and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**10. CRIMINAL APPEAL NO. -142 of 2022**

Gurucharan Das @ K.N. Pandey  
and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**11. CRIMINAL APPEAL NO. -205 of 2022**

Dayashankar Dubey and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**12. CRIMINAL APPEAL NO.-1225 of 2022**

Smt. Vandana ..... Appellant

Vs.

State of U.P. and others ..... Respondents

**WITH**

**13. CRIMINAL APPEAL NO. -1374 of 2022**

Harcharan and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**14. CRIMINAL APPEAL NO. -1482 of 2022**

Om Prakash Singh .....Appellant

Vs.

State of U.P. and others .....Respondents

**WITH**

**15. CRIMINAL APPEAL NO. -1739 of 2022**

Parvindra Pal Singh and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**16. CRIMINAL APPEAL NO. -2307 of 2022**

Chhatrapal Saini and another .....Appellants

Vs.

State of U.P. and others .....Respondents

**WITH**

**17. CRIMINAL APPEAL NO. -2481 of 2022**

Ram Siya Chaubey .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**

**18. CRIMINAL APPEAL NO. -2804 of 2022**

Shiv Sahai Tiwari and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**19. CRIMINAL APPEAL NO. -2902 of 2022**

Sudesh Kumar .....Appellant

Vs.

State of U.P. and others .....Respondents

**WITH**

**20. CRIMINAL APPEAL NO. -3005 of 2022**

Ajay Tiwari @ Lallu Tiwari  
and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**21. CRIMINAL APPEAL NO. -3181 of 2022**

Ranjeet Saroj .....Appellant

Vs.

State of U.P. and others .....Respondents

**WITH**

**22. CRIMINAL APPEAL NO.-3187 of 2022**

Churi and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**23. CRIMINAL APPEAL NO. -3480 of 2022**

Jeetu @ Jitendra .....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH****24. CRIMINAL APPEAL NO. -3512 of 2022**

Brijesen Yadav

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH****25. CRIMINAL APPEAL NO. - 3575 of 2022**

Vikas Yadav and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****26. CRIMINAL APPEAL NO. -3605 of 2022**

Waseem and others

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****27. CRIMINAL APPEAL NO. - 3697 of 2022**

Ravendra and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****28. CRIMINAL APPEAL NO. -3768 of 2022**

Jai Chandra Sonkar and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**29. CRIMINAL APPEAL NO. -3901 of 2022**

Punvasi and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**30. CRIMINAL APPEAL NO. -3958 of 2022**

Ram Samujh and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**31. CRIMINAL APPEAL NO. - 3973 of 2022**

Pramod Yadav and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**32. CRIMINAL APPEAL NO.- 4039 of 2022**

Shreshth and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**33. CRIMINAL APPEAL NO. -4102 of 2022**

Laxmi Narayan Dubey and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**34. CRIMINAL APPEAL NO. -4141 of 2022**

Sanjeev @ Sandeep Gupta and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**35. CRIMINAL APPEAL NO. -4470 of 2022**

Diwakar Mall@ C.P. N. Mall  
and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**36. CRIMINAL APPEAL NO. -4471 of 2022**

Rajesh Giri and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**37. CRIMINAL APPEAL NO. - 4592 of 2022**

Dinesh Kumar Patel .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**



**38. CRIMINAL APPEAL NO. - 4628 of 2022**

Vishnu Chandra Dubey @  
Vishnu Chandra Dwivedi

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**39. CRIMINAL APPEAL NO. - 4760 of 2022**

Ram Chhabila and others

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**40. CRIMINAL APPEAL NO. - 4768 of 2022**

Munni Lal Ram

.....Appellant

Vs.

State of U.P. and others

.....Respondents

**41. CRIMINAL APPEAL NO. -4823 of 2022**

Parag Tripathi

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**42. CRIMINAL APPEAL NO.- 4895 of 2022**

Karma and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**43. CRIMINAL APPEAL NO. - 4909 of 2022**

Krishna Kumar Yadav@  
Mulayam and others

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**44. CRIMINAL APPEAL NO. -4947 of 2022**

Sub Inspector Lal Bihari Nishad

....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**45. CRIMINAL APPEAL NO. - 4997 of 2022**

Golu Gupta and others

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**46. CRIMINAL APPEAL NO. -5049 of 2022**

Ramjeet Teli

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**47. CRIMINAL APPEAL NO. - 5077 of 2022**

Gaurav Setiya @Shanni

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**48. CRIMINAL APPEAL NO. -5110 of 2022**

Pawan@ Item and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**49. CRIMINAL APPEAL NO. - 5152 of 2022**

Hari Narayan Pandey and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**50. CRIMINAL APPEAL NO. -5266 of 2022**

Harish Chandra Pandey and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**51. CRIMINAL APPEAL NO. - 5285 of 2022**

Sunil Kumar and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**52. CRIMINAL APPEAL NO.- 5351 of 2022**

Thakur Das and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**53. CRIMINAL APPEAL NO. -5368 of 2022**

Ritu Jain and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**54. CRIMINAL APPEAL NO. - 5428 of 2022**

Lalji @ Lalji Kumar Gautam .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**

**55. CRIMINAL APPEAL NO. - 5552 of 2022**

Ashish Shukla and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**56. CRIMINAL APPEAL NO. - 5612 of 2022**

Pankaj Dubey .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**

**57. CRIMINAL APPEAL NO. - 5713 of 2022**

Nilesh Kumar .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**

**58. CRIMINAL APPEAL NO. - 5746 of 2022**

Anant Agrawal and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**59. CRIMINAL APPEAL NO. - 5984 of 2022**

Vineet Panwar and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH**

**60. CRIMINAL APPEAL NO. - 6044 of 2022**

Rama Shankar Tripathi and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**61. CRIMINAL APPEAL NO. -6050 of 2022**

Ram Lakhan .....Appellant

Vs.

State of U.P. and others .....Respondents

**WITH**

**62. CRIMINAL APPEAL NO.-6052 of 2022**

Ashish Kumar .....Appellant

Vs.

State of U.P. and others .....Respondents

**WITH**

**63. CRIMINAL APPEAL NO. - 6081 of 2022**

Dinesh and others .....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****64. CRIMINAL APPEAL NO. - 6099 of 2022**

Lekhpal Rajesh Kumar

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH****65. CRIMINAL APPEAL NO. - 6103 of 2022**

Kaka @ Devendra

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH****66. CRIMINAL APPEAL NO. - 6136 of 2022**

Sukhendra Singh and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****67. CRIMINAL APPEAL NO. - 6164 of 2022**

Farookh and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****68. CRIMINAL APPEAL NO. - 6194 of 2022**

Yash Mishra and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**69. CRIMINAL APPEAL NO. - 6210 of 2022**

Subhash Chandra Goswami  
and others

...Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**70. CRIMINAL APPEAL NO. - 6214 of 2022**

Rajni Goyal

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**71. CRIMINAL APPEAL NO. - 6246 of 2022**

Pintu Singh @ Akhilesh Kumar Singh  
and another

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH**

**72. CRIMINAL APPEAL NO.- 6248 of 2022**

U.N. Singh (Upendra Nath Singh)

.....Appellant

Vs.

State of U.P. and another

.....Respondents

**WITH**

**73. CRIMINAL APPEAL NO. - 6264 of 2022**

Attey @ Shafatullah and others

.....Appellants

Vs.

State of U.P. and another

.....Respondents

**WITH****74. CRIMINAL APPEAL NO. -6339 of 2022**

Shyam Singh @ Lalla and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH****75. CRIMINAL APPEAL NO. - 6351 of 2022**

Kuldeep Singh Thakur and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH****76. CRIMINAL APPEAL NO. - 6354 of 2022**

Subhash Yadav and another .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH****77. CRIMINAL APPEAL NO. - 6399 of 2022**

Manoj Pachauri and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**WITH****78. CRIMINAL APPEAL NO. - 6403 of 2022**

Praveen Kumar Pandir .....Appellant

Vs.

State of U.P. and another .....Respondents

**WITH**



**79. CRIMINAL APPEAL NO. -6405 of 2022**

Shailendra Yadav and others .....Appellants

Vs.

State of U.P. and another .....Respondents

WITH

**80. CRIMINAL APPEAL NO. - 6407 of 2022**

Kayyum and others .....Appellants

Vs.

State of U.P. and another .....Respondents

**81. CRIMINAL APPEAL NO. - 6532 of 2022**

Bhagirathi and others .....Appellants

Vs.

State of U.P. and another .....Respondents

WITH

**82. CRIMINAL APPEAL NO.- 6553 of 2022**

Sonu .....Appellant

Vs.

State of U.P. and another .....Respondents

AND

**83. CRIMINAL APPEAL DEFECTIVE NO.- 272 of 2022**

Ramhinchh and others .....Appellants

Vs.

State of U.P. and another .....Respondents

For the petitioners : Mr. Arvind Kumar Singh, Mohd Zaid, Mr. Prateek J. Nagar, Mr. Geetam Singh, Mr. Shree Prakash Giri and Mr. Anil Kumar, Advocates

For the respondents : Mr. Syed Ali Murtaza, Additional Government Advocate for State, Mr. Neeraj Kumar Srivastava, Mr. Shobhit Yadav, Mr. Ankit Srivastava and Mr. Kartikey Pandey, Advocates

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE  
HON'BLE SAMIT GOPAL, JUDGE**

**ORDER**

1. This is bunch of 83 cases with different reliefs. The matter has been placed before this Court on the reference made by the learned Single Judge disagreeing with the view taken by another learned Single Judge in the case of **Soni Devi vs. State of U.P.**<sup>1</sup> Alongwith the main petition, other petitions and appeals have been tagged with similar issues involved.

2. The question of difference between the two learned Judges is on the second question as framed in the case of **Soni Devi's case (supra)** which is in para-15 of the said judgment. It reads as under:

"15. The second question for consideration before this Court is as to whether Special Judge can treat the application under Section 156(3) Cr.P.C. as a complaint case or not."

3. The answer given to the second question is in para-18 of the said judgement which is as follows:

"18. .... Therefore answer to the second question that Special Judge can treat the application under Section 156 (3)Cr.P.C. as a complaint case or not ? Answer is "No" in view of Rule 5(1) of the Amended Act."

4. While giving reasons for differing with the said answer and making a reference, learned Single Judge has referred the question as follows:

"18. Thus, this Court differs with the view taken in the

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<sup>1</sup> 2022(5) ADJ 64.

case of Soni Devi (Supra) in its second question as decided as to whether it is correct ?”

5. The petitions are in which applications filed under Section 156 (3) Cr.P.C. have been treated as a complaint and the accused persons therein have been summoned to face trial. The accused persons thus are before this Court challenging the validity and legality of the orders passed against them.

6. Sri Arvind Kumar Singh, learned counsel appearing in the main petition has argued that as per the scheme of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act”) lodging of a first information report is mandatory if an act has been complained of, which is an offence. He argued that since the Act is a Special Act, the same overrides any other Act. The Special Court designated under the Act cannot take cognizance of an offence on itself by treating an application under Section 156 (3) Cr.P.C. as a complaint. Even Rule 12 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as “the Rules”) and Schedule (1) of the Rules provide for payment of compensation to the victim at different stages, starting from lodging of the first information report. It does not make any provision for payment of compensation in the event the offence as complained of is treated as a complaint case.

7. Sri Geetam Singh, learned counsel appearing in Criminal Appeal No. 4141 of 2022 while referring to Rule 7 of the Rules argued that the same only provides for investigation without any option of enquiry. He further places Rule 8 (via) and (vii) of the Rules and argues that the same also refers to the proceedings of investigation only. He also argued that if the court takes cognizance directly on an application moved under Section 156 (3) Cr.P.C., the benefit of Rule 12 and Schedule (1) of the Rules will not be extended to the victim unless appropriate compensation is directed to be given. It is argued that as such the scheme and the intention of the legislation is only for lodging of a first information report for offences under the Act and not any other remedy.

8. Sri Prateek J. Nagar, learned counsel appearing in Criminal Appeal No. 5974 of 2021 argued that the Act is silent with regards to process, procedure and filing of a complaint and refers to first information report only at every place. He states that as such lodging of the first information report is mandatory and complaint is not maintainable.

9. Per contra, Sri Syed Ali Murtaza and Sri Ankit Srivastava, learned counsels for the State appearing in all the matters argued that the inception of a criminal case is on the basis of a first information report or a complaint. It is argued that Section 4(2)(b) of the Act provides for duties of a public servant, which shall include to register a complaint or a first information report under this Act and other relevant provisions and to register it under appropriate Sections of this Act. It is argued that a public servant is defined under Section 2 (bg) of the Act, which includes persons as defined under Section 21 of the Indian Penal Code (45 of 1860) and thus as per third clause of Section 21 I.P.C. a Judge is a public servant. Thus looking at the provision of Section 4(2)(b) of the Act it is argued that a public servant is under a duty to take cognizance on a complaint or register a first information report under this Act and other relevant provisions as the case may be, thus filing of a complaint and/or treating an application under Section 156 (3) Cr.P.C. as a complaint is not barred. It is further argued that even the second proviso of Section 14 of the Act gives power to the Special Court or Exclusive Special Court so established or specified to directly take cognizance of offences under this Act and as such even taking cognizance under the Act is not prohibited but is expressly provided.

10. Heard Mr. Arvind Kumar Singh, Mohd Zaid, Mr. Prateek J. Nagar, Mr. Geetam Singh, Mr. Shree Prakash Giri, Mr. Anil Kumar, Advocates in their respective matters and Mr. Syed Ali Murtaza, Mr. Neeraj Kumar Srivastava, Mr. Shobhit Yadav, Mr. Ankit Srivastava, Mr. Kartikey Pandey, learned counsels for the State of U.P. and perused the records.

11. Section 14 of the Act reads as follows:-

**“14. Special Court and Exclusive Special Court.--(1) 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, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.”

12. The second proviso to Section 14 of the Act makes it clear that the Special Court so established or specified shall have powers to directly take cognizance of offence under this Act.

13. The Apex Court in the case of **Shantaben Bhurabhai Bhuriya**

**vs. Anand Athabhai Chaudhari and others<sup>2</sup>**, in para- 9.1 ruled that in view of insertion of proviso to Section 14 of the Act and considering the object and purpose for which the same has been inserted, it is advisable that the court so established or specified in exercise of powers under Section 14 of the Act for the purpose of providing speedy trial, directly take cognizance of offences under the Atrocities Act. The para 9.1 is quoted herein-below:-

“9.1. On fair reading of Sections 207, 209 and 193 of the Code of Criminal Procedure and insertion of proviso to Section 14 of the Atrocities Act by Act No.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. 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 proviso to Section 14, it cannot be said that it is not in conflict with the Sections 193, 207 and 209 of the Code of Criminal Procedure, 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, learned Magistrate has taken cognizance of the offences and thereafter the trial / case has been committed to 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(2) and 114

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2 AIR 2021 SC 5368

of the Indian Penal Code 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 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 herein above, 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 herein above, 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 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.” (emphasis supplied)

14. The same thus makes it clear that a special court or courts specified can take cognizance directly.

15. The said judgement has been relied upon by the Apex Court subsequently in the case of **Ramveer Upadhyay and another vs. State of U.P. and another**<sup>3</sup> and the argument of learned counsel in the said case was that the Additional District and Sessions Judge had no jurisdiction to take cognizance or issue summons or orders, has been held that it cannot be sustained. Paras- 21, 22 and 23 of the said judgement are quoted herein-

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<sup>3</sup> 2022 SCC OnLine SC 484

below:-

“21. Emphasizing Section 14 of the Atrocities Act, Mr. Ranjit Kumar argued that only the Special Judge under the Atrocities Act was competent to pass an order for issuance of summons. He argued that the order of the Additional District and Sessions Judge, Court No.2, Hathras being without jurisdiction the High Court should have quashed the same in exercise of its power under Section 482 of the Cr.P.C. Mr. Ranjt Kumar also argued that Complaint Case No.19/2018 patently a case of malicious prosecution which stemmed from political rivalry and was in gross abuse of the process of Court.

22. In *Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari and others*: 2021 SCC Online SC 974, cited by Mr. Siddharth Dave, learned senior counsel, appearing on behalf of the Respondent No.2, this Court rejected the contention that only Special Court could take cognizance of offences under the Atrocities Act and held:

23. Therefore, the issue/question posed for the consideration of this Court is, whether in a case where cognizance is taken by the learned Magistrate and thereafter the case is committed to the learned Special Court, whether entire criminal proceedings can be said to have been vitiated considering the second proviso to Section 14 of the Atrocities Act which was inserted by Act 1 of 2016 w.e.f. 26.1.2016?

24. While considering the aforesaid issue/question, legislative history of the relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, more particularly, Section



14 pre-amendment and post amendment is required to be considered. Section 14 as stood pre-amendment and post amendment reads as under:

.....

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act;

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.”

X X X X

28. Considering the aforesaid legislative history which brought to insertion of proviso to Section 14 of the Atrocities Act, by which, even the Special Court so established or specified for the purpose of providing for speedy trial the power to directly to take cognizance of offences under the Atrocities Act, 1989, the issue/question posed whether in a case where for the offences under Atrocities Act, the cognizance is taken by the learned Magistrate and thereafter the case is committed to the Court of Sessions/Special Court and cognizance is not straightway taken up by the learned Special Court/Court of Session, whether entire criminal proceedings for the offences under the Atrocities Act, 1989 can be said to have been vitiated, as so

observed by the High Court in the impugned judgment and order ?

29. On fair reading of Sections 207, 209, and 193 of the Code of Criminal Procedure and insertion of proviso to Section 14 of the Atrocities Act by Act No. 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. 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 proviso to Section 14, it cannot be said that it is not in conflict with the 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, learned Magistrate has taken cognizance of the offences and thereafter the trial/case has been committed to 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(2) 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 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 herein above, 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 herein above, 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 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.

30. In support of the above conclusion, the words used in 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 Court”. 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.”

23. In view of the judgment of this Court in Shantaben Bhurabhai Bhuriya (supra), the Argument of Mr. Ranjit Kumar that the Additional District Judge and Sessions Judge, Court No.4 Hathras had no jurisdiction to take cognizance or issue summons/orders cannot be sustained.”

16. As far as other argument of learned counsels with regard to Rule 12 and Schedule Annexure-I is concerned, merely non mentioning of stage for award of compensation in cases where the applications under Section 156(3) Cr.P.C. are treated as a complaint case and also in complaint cases, would not oust the jurisdiction of the courts concerned to award compensation to the victims at the appropriate stage as the case may be.

17. While further dilating the issue it is relevant to look into section 4 of the Act. The same reads as follows:-

**“4. Punishment for neglect of duties. –**

(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the

rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include—

- (a) to read out to an informant the information given orally, and reduced to writing by the officer in-charge of the police station, before taking the signature of the informant;
- (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
- (c) to furnish a copy of the information so recorded forthwith to the informant;
- (d) to record the statement of the victims or witnesses;
- (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay, if any, in writing;
- (f) to correctly prepare, frame and translate any document or electronic records;
- (g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall

give direction for penal proceedings against such public servant.

18. Public servant is defined in Section 2(bg) of the Act which reads as under:-

“**2(bg)** “public servant” means a public servant as defined under Section 21 of the Indian Penal Code (45 of 1860), as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;”

19. At this juncture it is relevant to refer to the definition of the word “public servant” as per Section 21 of the Indian Penal Code, 1860, which reads as under:-

“21. “Public servant”.- The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:-

First.- Omitted

Second.- Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in

the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth.- Every officer whose duty it is, as such officer,

to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.- Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.- Every person –

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

20. Section 4(2)(b) of the Act referred to the duty of a “public servant” referred to in sub-section (1) which provides for registration of a complaint or a First Information Report under this Act and other relevant provisions and to register it under the appropriate sections of this Act.

21. Third clause of Section 21 of IPC makes it clear that a Judge is also a “public servant”.

22. A conjoint reading of Section 4 of the Act, the definition of a ‘public servant’ as per the Act and also the Indian Penal Code, would leave no doubt that a complaint or a First Information Report, as given, has to be



registered. The Act thus draws a distinction in Section 4(2)(b) in the nature of information given by the concerned person, which can be through a complaint or a First Information Report and thus the court concerned has a discretion to look into it and proceed as per its wisdom.

23. In view of our aforesaid discussions, a Special Judge or court so established can treat an application under Section 156(3) Cr.P.C. as a complaint and proceed further in accordance with law.

24. This Court thus answers the reference as referred by learned Single Judge as follows:-

“The view taken in the case of **Soni Devi vs. State of U.P. and others: 2022(5)ADJ 64** that an application under Section 156(3) Cr.P.C. cannot be treated as a complaint case is incorrect. The court concerned while exercising its judicial discretion can treat the said application as a complaint case also.”

25. While answering the questions referred to by the learned Single Judge, let the present petitions and appeals be now placed before the appropriate Bench on October 20, 2022.

(Samit Gopal)  
Judge

(Rajesh Bindal)  
Chief Justice

Allahabad  
October 17, 2022  
Naresh

Whether the order is speaking : Yes/No  
Whether the order is reportable : Yes