

SUPREME COURT OF INDIA

State of M.P.

Vs.

Chunnilal @ Chunni Singh

Crl.A.No.943 of 2003

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

15.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. In this appeal, an interesting point has been raised. A learned Single Judge of the Madhya Pradesh High Court allowed the revision application filed by the respondent (hereinafter referred to as the 'accused') quashing the order framing charge.

2. Background facts in a nutshell are as follows:

“On 6.3.2001 a complaint was made to the Police Station, Rampur Gurra by the victim stating that the accused promised her that he will marry her and committed sexual intercourse with her due to which she was carrying a pregnancy of 7 months. But he refused to marry her because she belongs to a lower caste. A criminal case was registered for alleged commission of offence punishable under Sections 376 and 506 of the *Indian Penal Code, 1860* (in short the 'IPC') and Section 3(1)(xii) of *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (in short the 'Act'). A First Information Report was registered.

According to the appellant, since at that time nobody had joined the post of Deputy Superintendent of Police, Hoshangabad Additional Superintendent of Police authorized S.I. B.S. Parihar to investigate into the case who undertook inspection and recorded the statement of the witnesses. After due verification of the case by the Additional Superintendent of Police challan was submitted to the Chief Judicial Magistrate, Hoshangabad. The accused filed objections and written reply was filed by the investigating officer. The basic grievance was that the investigating officer was not authorized to make investigation in the absence of any authorization by the competent authority.

The stand taken before the High Court by the investigating officer was that he had been authorized by the competent authority i.e. Additional Superintendent of Police.

The learned Chief Judicial Magistrate committed the case to the Court of Sessions. Here again, the only objection of the accused was that the investigation was carried out by an officer who was not competent to do so.

Learned Special Judge, (Scheduled Caste and Scheduled Tribes) Hoshangabad passed an order framing the charges against the accused who filed a revision petition under Sections 397 and 401 of the *Code of Criminal Procedure, 1973* (in short the `Code') for quashing the entire criminal proceedings by revision of the order of learned special judge. A reply was filed by the prosecuting agency contending that the investigation was carried out under the supervision of Additional Superintendent of Police since the post of Deputy Superintendent of Police was lying vacant for about 4 months. After verification of the statements of the prosecution witnesses and on being satisfied with the materials collected during investigation the Additional Superintendent of Police prepared the challan and filed the same before the High Court. No prejudice was caused to the accused. The High Court quashed the entire proceedings.”

3. Mr. C.D. Singh, learned counsel for the appellant submitted that the approach of the High Court was clearly erroneous. The offence related to both under the IPC and the Act. Therefore, the High Court was not justified in quashing the entire proceedings.

4. Learned counsel for the respondent on the other hand supported the judgment.

5. For appreciating the rival submissions, reference needs to be made to Section 9 of the Act and Rule 7 of *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995* (hereinafter referred to as the `Rules').

“Section 9 of the act and Rule 7 of the Rules read as follows:

"Section 9-Conferment of powers.-- (1) Notwithstanding anything contained in the code or in any other provision of this Act, the State Government may, if it considers it necessary or .

expedient so to so,- (a) for the prevention of coping with any offence under this act, or (b) for any case of class of group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particulars, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in Sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under Sub-section (1).

Rule 7-Investigating Officer,--

(1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director-General of Police Superintendent of Police after taking into account his post experience sense of ability and justice to perceive the implications: of the case and investigate it along with right lines within the shortest possible time.

(2) The Investigating Officer so appointed under Sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the Officer-in- charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigation done by the Investigating Officer.”

6. By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.

7. In the present case there is no denial of the fact that the accusations related to offences under both the Act and the I.P.C. The High Court was therefore not justified in quashing the entire proceedings. The order shall be restricted to the offence under Section 3 of the Act and not in respect of offences punishable under the IPC.

8. The appeal is allowed to the aforesaid extent.