High Court of Judicature at Allahabad
(Lucknow)

****

A.F.R.

Reserved

Judgment Reserved on 13.10.2022
Judgment Delivered on 02.02.2023

Case :- CRIMINAL MISC. WRIT PETITION No. - 7522 of 2022
Petitioner :- Gyanendra Maurya @ Gullu
Respondent :- Union of India Thru Secy Ministry Social Justice and Empowerment, New Delhi and Others
Counsel for Petitioner :- Gyanendra Singh
Counsel for Respondent :- A.S.G.I.

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Hon'ble Rajan Roy,J.
Hon'ble Sanjay Kumar Pachori,J.

(Per: Rajan Roy, J.)

1. Heard.

2. The petitioner has sought following reliefs in this petition filed under Article 226 of the Constitution of India:

> *"i). Issue a writ order or direction declaring the Section 4(2)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rule 7(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Rules) 1995, ultra- vires to Part III of the Constitution of India upto the extent they both necessarily directs for filing of 'charge sheet'.*
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> *ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 02.03.2022 (contained as annexure no. 3 to the writ petition), passed*

by the Exclusive Special Court, Pratapgarh, with all consequential proceedings, or,

iii). issue a writ, order or direction commanding the opposite parties no. 2 and 3 to delete the Section 376-D and 506 I.P.C. from the FIR No. 100 of 2022 registered at P.S. Maheshganj, District Pratapgarh, under Sections 376-D, 506 IPC and 3(2)(v) & 3(2)(va) of the Act 1989."

3. Vide Relief No. 1, he has sought a declaration that Section 4(2)(e) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (for short 'the Act 1989) and Rule 7(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Rules) 1995 (for short 'the Rules of 1995') be declared *ultra vires* Part III of the Constitution of India to the extent the said provisions necessarily direct for filing of charge sheet.

4. In order to consider this issue and relief prayed for, we need refer to Section 4 including sub-Section (2)(e) of the Act 1989 which reads as under:

*"**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; to correctly prepare, frame and translate any document or electronic record;

(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."

Rule 7 of the Rules of 1995 including sub-Rule (2) thereof, *vires* of which has been challenged, reads as under:

*"**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 past 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, submit the report to the Superintendent of Police, who in turn will immediately forward the report to the Director General of Police or the Commissioner of Police of the State Government, and the Officer incharge of the concerned police station shall file a charge sheet in the Special Court or the Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

(2-A) The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule (2) shall be explained in writing by the investigating officer.

(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union Territory Administration, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police or the Commissioner of Police incharge of the concerned State or Union Territory shall review by the end of every quarter the position of all investigations done by the investigating officer."

5. In this context, the contention of learned counsel for the petitioner was that the language used in the aforesaid two provisions leaves no scope for the Investigating Officer to file a final report in a case where no offence is made out under the Act 1989, meaning thereby he has necessarily and mandatorily to file a charge-sheet in every case in which an FIR is lodged alleging an offence under the Act. In this context, he further submitted that the word used in the aforesaid provisions is 'file

charge-sheet' and not 'file a police report'. Under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code 1973'), the term used is police report which may be in the form of a charge-sheet or a final report, the former to be filed in a case where the offence is made out based on the evidence collected and the latter in case where the offence is not made out, but, distinct from the language used in Section 173 of Code 1973, the provision contained in the Act 1989 and the Rules of 1995 mention the word 'charge-sheet'. He submitted that this makes the provision unreasonable and hit by Articles 14 and 21 of the Constitution of India.

6. The apprehension in the mind of the petitioner seems to have arisen on account of use of the word 'charge-sheet' instead of 'police report' in the above quoted provisions. The provisions have to be read and understood in a reasonable manner. What the aforesaid two provisions mean is that wherever the offence is made out as having been committed under the Act 1989 based on evidence collected during investigation, a charge-sheet is required to be filed as is mentioned therein. If the suggestion or argument of learned counsel for the petitioner is accepted that even if no offence is made out, the charge-sheet has necessarily to be filed or in every case where an FIR alleging the offence under the Act 1989 is lodged, the Investigating Officer is bound to file a charge-sheet with the Special Court or the Exclusive Special Court, it would be apparently unreasonable, absurd and hit by Articles 14 and 21 of the Constitution of India. Statutory provisions cannot be read,

understood and applied in an unreasonable manner so as to lead to absurdity and/or to violate fundamental rights of a citizen. Our understanding and interpretation of this provision as mentioned hereinabove is the correct understanding of law and the argument of learned counsel for the petitioner is misconceived.

7. In view of the above, it is held that the aforesaid provisions do not necessarily mandate the Investigating Officer to file a charge-sheet in each and every case where an FIR has been lodged alleging commission of offence under the Act 1989, but it only enjoins upon him to file such charge-sheet where, based on evidence collected during investigation, the offence is made out. Relief No. 1 is accordingly rejected.

8. Vide Relief No. 2, petitioner has challenged the order dated 02.03.2022 passed by the Special Court, Pratapgarh.

9. The impugned order dated 02.03.2022 has been passed by a Court of Sessions which has been specified as Special Judge (SC/ST Act), Pratapgarh.

10. The contention was that the Exclusive Special Court/Special Court, Pratapgarh does not have power to order lodging of FIR and investigation in respect thereof as is prescribed under Section 156 (3) of Code 1973 In this context reliance was placed upon the definition "Exclusive Special Court" contained in Section 2(bd) which has been been defined to mean the Exclusive Special Court established under sub-Section (1) of Section 14 of the Act 1989 to exclusively try the

offences under the Act 1989. It was submitted that such Court is established **to try the offences under the Act 1989.** Trial commences only after charge is framed and not prior to it. The process under Section 156(3) of Code 1973 is a pre-trial stage, therefore, in view of aforesaid provision the Exclusive Special Court does not have the power prescribed under Section 156(3) of Code 1973. The term Special Court is defined under Section 2(d) of the Act 1989 to mean a Court of Sessions specified as a Special Court in Section 14. As per the proviso to Section 14(1) Special Courts are also specified to try the offences under the Act 1989.

11. Section 14 of the Act 1989 reads as under:

> "***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:*
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> *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:*
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> *Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.*
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> *(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 submission based on the aforesaid provisions was, as already mentioned earlier, such Courts are only empowered to try the offences under the Act 1989 that is to hold trial in respect thereof, but not to exercise any other power.

13. Learned counsel for the petitioner also submitted that while the power to take cognizance of a case directly has been conferred upon the Exclusive Special Court/Special Court in the second proviso to Section 14(1), no such power as is prescribed in Section 156(3) of Code 1973 to order lodging of FIR and investigation has been conferred upon the said Courts. In this context, learned counsel for the petitioner invited our attention to Rule 5 of the Rules of 1995 to contend that Rule 5(3) of the Rules of 1995 is *pari materia* to Section 154(3) of Code 1973 and it provides a remedy/recourse to aggrieved person before the concerned official if FIR is not lodged by the officials of the concerned Police Station.

14. Rule 5 of the Rules of 1995 reads as under:

> "***5. INFORMATION TO POLICE OFFICER IN-CHARGE OF A POLICE STATION:-****(1) Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a police station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.*
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> *(2) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant.*
>
> *(3) Any person aggrieved by a refusal on the part of an officer incharge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that police station.*"

15. He further invited our attention to Section 4 of the Act 1989 pertaining to punishment for neglect of duties under which if the duties mentioned therein, which includes registration of a complaint or an FIR under the Act 1989 and other relevant provisions, are not performed by the concerned official, cognizance in respect of such dereliction of duty referred to in sub-Section 2 of Section 4 of the Act 1989 by a

public servant shall be taken by the Special Court or the Exclusive Special Court and it shall give direction for penal proceedings against such public servant.

16. He submitted that though power of taking cognizance of such dereliction of duty and also ordering penal proceedings have been conferred upon the Special Court, but no provision has been made empowering them to order lodging of an FIR and investigation in terms of Section 156(3) of Code 1973. The Legislator in its wisdom has stopped short of saying so and has stopped at the stage of Section 154(3) of Code 1973 by incorporating a similar provision in rule 5 of the Rules of 1995, but has not incorporated any such provision analogous to Section 156(3) of Code 1973 in the Act 1989 or the Rules of 1995. Based on it, he submitted that this itself makes the intention of the Legislator and the Rule making authority very clear that no such power has been vested with the Exclusive Special Court or the Special Court.

17. In this context, he also invited attention of the Court to Section 18A of the Act 1989 which has been inserted by Act No. 27 of 2018 w.e.f. 20.08.2018 by which preliminary inquiry is not required for registration of First Information Report against any person nor approval for arrest is required. The contention of learned counsel for the petitioner was that this provision makes registration of FIR mandatory without any preliminary inquiry.

18. It was also the contention of learned counsel for the petitioner that the word used in Section 156 is Magistrate,

which, the Exclusive Special Court or the Special Court is not. In the case at hand, the order has been passed by a Court of Sessions which is referred as Special Court and not by the Magistrate.

19. The argument of learned counsel for the petitioner as noticed earlier appeared quite attractive at first blush, however, we find that as far as the definition of Exclusive Special Court and Special Court under the Act 1989 read with Section 14 of the said Act are concerned, no doubt on a reading of it the said Courts had been established for trying the offences committed under the Act 1989, but, by the Act No. 1 of 2016, amendments have been made in Section 14, by which, *inter alia, a* second proviso to Section 14(1) has been added. Courts so established or so specified under Section 14(1) have been given the power to directly take cognizance of the offence under the Act 1989. Taking of cognizance is a pre-trial stage, therefore, the contention that such Courts are only empowered to try cases is incorrect.

20. Now, we may consider the applicability of Code of Criminal Procedure before the Exclusive/Special Court under the Act 1989.

21. In the Act 1989 or the Rules of 1995, the procedure to be followed by these Courts under the Act 1989 has not been prescribed. Such procedure has been prescribed in the Code 1973 which contains the general law relating to criminal procedure.

22. In this context it is relevant to refer to Section 4 of the Code 1973 which reads as under:

> "***4. Trial of offences under the Indian Penal Code and other laws.*** *(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> ***(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.***"

Section 5 of the Code 1973 reads as under:

> ***"5. Saving. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."***

23. As per Sections 4 and 5 of Code 1973 all offences under any other law (which shall include the Act 1989) shall be investigated, inquired, tried and otherwise dealt with according to the Code of Criminal Procedure subject to there being any enactment on the subject containing a specific provision to the contrary. We find that certain provisions of the Code 1973 have specifically been excluded from their application to the proceedings under the Act 1989. Section 18 of the Act 1989 excludes the application of Section 438 of Code 1973 regarding anticipatory bail. Sections 18 and 18A of the Act 1989 exclude

any preliminary inquiry before registration of a First Information Report contrary to the provisions contained in Sections 154 and 156 of Code 1973 Section 19 excludes applicability of Section 360 of the Code 1973. The applicability of other provisions of the Code 1973 have not been excluded specifically or generally, therefore, it leads us to reasonably infer that other provisions of the Code 1973 will apply to the Courts established and specified under the Act 1989, subject to Section 20 thereof.

Section 20 of the Act 1989 provides as under:

> "***20. Act to override other laws.—****Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.*"

24. As per Section 20 of the Act 1989 save as otherwise provided in the Act 1989, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law. Thus, subject to any inconsistency between the Act 1989 and the Code 1973, the said Code 1973 would apply unless it has been otherwise provided in the Act 1989 itself. This would obviously refer to the exclusion from applicability of Section 438 of Code 1973, etc. as referred in Sections 18, 18A and 19 of the Act 1989. Apart from these three provisions,

there is no other provision in the Act 1989 excluding the applicability of the Code 1973 to the proceedings under the Act 1989 which is also indicative of applicability of other provisions of the Code 1973 including Section 156(3) of Code 1973, to proceedings under the Act 1989. Sections 4(2) and 5 of the Code 1973 support this reasoning.

25. The provisions of Section 4 of the Act 1989 and Rule 5 of the Rules of 1995 do not persuade the Court to hold that as nothing has been said beyond the said provisions specially empowering the Courts under the Act 1989 to order lodging of FIR and investigation, this power cannot be exercised by such Courts. Section 4 of the Act 1989 or Rule 5 of the Rules of 1995 which are being relied by the petitioners' counsel, do not answer the situation where the concerned Police Officer does not register the FIR and the Superintendent of Police also after being informed in terms of Rule 5 of the Rules of 1995 does not take any action. It is here that the Courts come into picture as a victim cannot be left remediless. Section 4 of the Act 1989 does not answer or remedy this situation. The authority to lodge an FIR is distinct from the authority to take cognizance for dereliction of duty under Section 4 of the Act 1989. To say that the Exclusive Special Court or Special Court has the power to take cognizance of dereliction of duty in this regard under Section 4 and also to direct penal proceedings but not to order lodging of FIR and investigation appears unreasonable and incongruous and it defeats the very object of the Act 1989.

26. The question is what happens after non-compliance of Rule 5(3) of the Rules of 1995 i.e., if the Officer-in-Charge/SHO of PS concerned refuses to lodge the FIR and an application is submitted before the higher Officer that is Superintendent of Police, but he also does not take any action? of what use would be the proceedings under Section 4 of the Act 1989 which empowers the Exclusive Special Court or the Special Court to take cognizance of dereliction of duty on the part of the said Officers that is the Officer-in-Charge/SHO and Superintendent of Police in not lodging the FIR, if there is no power with the Exclusive Special Court or the Special Court to order lodging of such FIR? There is nothing in the Act 1989 or the Rules made thereunder to exclude the applicability of Section 156(3) of Code 1973 to investigation of offences under the Act 1989.

27. After all why the Legislator specifically excluded only few provisions of the Code 1973 from their application to proceedings under the Act 1989. The Act 1989 or the Rules of 1995 do not provide the procedure to be followed by such Courts under the Act 1989, therefore, such procedure has to be as per the Code 1973 which is the general law applicable relating to criminal procedure in all Courts exercising criminal jurisdiction. We may in this context again refer to Section 4(2) of the Code 1973 according to which all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions (Code of 1973), but subject to any enactment for the time being in force

regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. We have already noticed that there is nothing inconsistent in the Act 1989 or the Rules of 1995 viz-a-viz the provision contained in Section 156(3) of Code 1973 which obviously has to be applied after the contingencies mentioned in Rule 5 of the Rules of 1995 are satisfied. Rule 5 of course is analogous to Section 154 of Code 1973 Section 4 of the Act 1989 is an additional provision to fix accountability on the officials who are liable for dereliction of duties by not registering any case, but, this provision will not exclude the powers of the Exclusive Special Court/Special Court to order registering of FIR and its investigation in view of Sections 4 and 5 of the Code 1973 read with Section 20 of the Act 1989 according to which, as discussed, Section 156(3) of the Code 1973 will apply.

28. In view of the above discussions in the context of Sections 4 and 5 of the Code 1973 read with Section 20 of the Act 1989, in matters of investigation of an offence under the Act 1989, Section 156(3) of the Code 1973 shall apply.

29. We may now consider Sections 156(3) and 190 of the Code 1973.

Section 190 of the Code 1973 reads as under:

> "***190. Cognizance of offences by Magistrates.*** *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-*

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."

30. Considering the issue involved in this case, we may now refer Section 156 of the Code 1973 which reads as under:

"***156. Police officer's power to investigate cognizable case.*** *(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned."

31. Under Section 156(3) of the Code 1973, any Magistrate empowered under Section 190 may order such an investigation as is mentioned in Section 156 quoted hereinabove.

32. The second proviso to Section 14(1) of the Act 1989 provides that the Courts so established or specified shall have power to directly take cognizance of the offences under the Act 1989, meaning thereby such Courts can exercise powers of

taking cognizance of an offence under the Act 1989 which as per the Code of 1973 is a pre-trial stage and is referable to Section 190 thereof. The Code of 1973 is an Act to consolidate and amend the law relating to criminal procedure. Taking cognizance of an offence is dealt with under the said Code in Section 190. As per the said provision the power to take cognizance of any offence vests with the Magistrate. According to Section 193, except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless a case has been committed to it by the Magistrate under this Code. Special Court under Section 14 of the Act 1989 is a Court of Sessions. However, the second proviso to Section 14 (1) vests the power of taking cognizance of an offence under the Act 1989 upon an Exclusive Special Court or a Special Court (which is a Court of Sessions) directly without the case being required to be committed by the Magistrate concerned to it after its cognizance by the latter. Section 190 of Code 1973 has therefore to be applied to Exclusive Special Court/Special Court under the Act 1989 *mutatis mutandis*, meaning thereby, reference therein to Magistrate will have to be understood as a reference to these Courts under the Act 1989. Reading of Section 190 of Code 1973 conjointly with second proviso to Section 14(1) of the Act 1989 will make it clear that the Exclusive Special Court or the Special Court which is a Court of Sessions is empowered to directly take cognizance of an offence, thus, it exercises powers of a Court of original criminal jurisdiction and the exercise of

its jurisdiction in this regard is not fettered by the provisions of Section 193 of Code 1973. Thus, in view of second proviso to section 14 of the Act 1989 the power exercisable under Section 190 of Code 1973 by the Magistrate are exercisable by the Exclusive Special Court or Special Court as has already been discussed.

33. The fact that there is no specific provision in the Act 1989 empowering the Exclusive Special Court or the Special Court to order lodging of an FIR and to investigate the offence mentioned therein is irrelevant, as the second proviso to Section 14(1) of the Act 1989 leaves no doubt that such Courts exercise original criminal jurisdiction. All offences under the Act 1989 are to be tried by such Courts under the Act 1989 and no other Court has jurisdiction in this regard. They can also take cognizance of an offence directly. Now, such cognizance of an offence can be taken on a private complaint also in view of Section 190 of Code 1973, application of which is not excluded to the proceedings under the Act 1989.

34. We have already held that Section 156(3) of Code 1973 will apply to investigation of an offence under the Act 1989 and as per Section 156(3) of Code 1973 a Magistrate empowered under Section 190 of Code 1973 can order such investigation and as, in view of proviso to Section 14 of the Act 1989 read with Section 190 of Code 1973, it is the Courts established or specified under the Act 1989 which can take cognizance directly in respect of an offence under the Act 1989, therefore, the Magistrate can not and should not take

cognizance of an offence under the Act 1989 as such power when specifically vested with the Special Courts under the Act 1989 should be exercised by the latter as held in ***Shantaben Burabhai Bhuriya vs. Anand Athabhai Chaudhari***[1]***,*** therefore, this power under Section 156(3) of Code 1973 has to be exercised by such Exclusive or Special Courts and not the Magistrate.

35. It would have been better if the Legislator would have specifically provided for such powers to be exercised by the Exclusive Special Court or the Special Court, but the fact of the matter is that there is no specific exclusion of the power under Section 156(3) of Code 1973 from being exercised by the Courts established or specified under Section 14 of the Act 1989 and in view of the second proviso to Section 14 of the Act 1989 as these Courts have the power to take cognizance of an offence directly and also to entertain a complaint directly as per Section 190 of Code 1973, then, the Magistrate would not have the power to exercise jurisdiction under Section 190 in respect of an offence under the Act 1989 and this power should only be exercised by these Special Courts, although, if the Magistrate in a given case erroneously takes cognizance of an offence under the Act 1989 and then commits the case to the Special Court, this by itself will not vitiate the proceedings/trial as has been held by the Supreme Court in ***Shantaben Burabhai Bhuriya*** (supra) and ***Ramveer Upadhyay & Anr. Vs. State of U.P. & Anr.***[2]. In view of Section 156(3) of Code 1973 thy can also

1 **(2021) SCC OnLine SC 974**
2 **(2021) SCC OnLine SC 484**

order lodging of FIR and investigation where the offence alleged is under the Act 1989.

36. Even at the cost of repetition, there is no exclusion of the powers prescribed under Section 156(3) of Code 1973 for such Courts established under the Act 1989. Once such Courts have power to take cognizance of an offence which is referable to Section 190 of Code 1973, directly, then, in view of the language used in Section 156 of Code 1973 they can order lodging of FIR and investigation into an offence under the Act 1989 in exercise of powers under Section 156(3) of Code 1973

37. The word Magistrate under Section 156(3) of Code 1973 does not mean that the Exclusive Special Court or the Special Court which is a Court of Sessions will not have the power under the said provision, as, in the absence of any specific exclusion, the provision will apply *mutatis mutandis*.

38. In fact, exercise of such powers by the Exclusive Special Court or the Special Court is also necessary so as to achieve the object of the Act 1989 and ensure speedy justice to the victim as these are Courts exclusively established or specified to deal with offences under the Act 1989.

39. A Full Bench of this Court has recently held vide judgment and order dated 17.10.2022 in a bunch of Applications under Section 482 of Code 1973 leading case being ***Application under Section 482 No. 14443 of 2022; Naresh Kumar Valmiki vs. State of U.P. and others*** that the Exclusive Special Court or the Special Court under the Act 1989 can treat

the application under Section 156(3) of Code 1973 as a complaint and proceed with it accordingly.

40. In view of the above discussion, the order passed by the Special Court dated 02.03.2022 is not without jurisdiction. We are of the opinion that the Relief No. 2 is not liable to be granted.

41. As regards Relief No. 3, we find that the offences under the Act 1989 are such which are referred to as atrocity in Section 2(a) which has been defined to mean an offence punishable under Section 3. Now, in Section 3 of the Act 1989 various offences are mentioned. Section 3(2)(v) provides that whoever not being a Member of the Scheduled Caste or Scheduled Tribe commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. Now, the offence of gang-rape, as is alleged in the FIR, is referable to Section 376-D IPC and carries a sentence which shall not be less than 12 years, which may extend to life, which shall mean imprisonment for the remainder of that person's natural life and with fine, therefore, clearly an offence of gang-rape is referable to Section 3(2)(v) of the Act 1989. Section 506 IPC, as is alleged in the FIR, is referable to schedule read with 3(2)(v) of the Act 1989, therefore, both these offences are referable to the

Act 1989 and also amenable to the jurisdiction of the Exclusive Special Courts or the Special Courts under the said Act.

42. Section 3(2)(va) provides for punishment of an offence specified in the schedule to the Act 1989 subject to contingencies mentioned therein. The punishment shall be as specified in the Indian Penal Code for such offences and shall also be liable to fine. Thus, it is incorrect to say that the petitioner would be penalised under two provisions. It would not be so.

43. In any case grounds (gg) and (hh) in the writ petition can be raised/seen at the appropriate stage before the Court concerned and as of now it cannot be said that the petitioner would be punished for the same offence under two provisions.

44. In view of above discussion, we see no reason to grant Relief No. 3.

45. All this is of course without prejudice to the rights of the petitioner in the pending investigation or before the Trial Court, if the occasion so arises.

46. Subject to above, the petition is ***dismissed***.

[Sanjay Kumar Pachori, J.] **[Rajan Roy, J.]**

Order Date :- 02.02.2023
Santosh/-