A.F.R.

Judgment reserved on 23.01.2020

Judgment delivered on 05.03.2020

Court No. - 69

Case :- APPLICATION U/S 482 No. - 491 of 2020
Applicant :- Sumit
Opposite Party :- State Of U.P.And Another
Counsel for Applicant :- Mohd. Rashid Siddiqui,Abhinav Gaur,Sri Anoop Trivedi Senior Adv
Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh-I,J.

1. Heard Sri Anoop Trivedi learned Senior Advocate assisted by Sri Abhinav Gaur, learned counsel for the applicant, Sri B.A. Khan, learned A.G.A. appearing for the State and perused the record.

2. This application under Section 482 Cr.P.C has been moved with a prayer to quash the orders dated 05.09.2017 and 17.08.2019 passed by the Special Sessions Judge, SC/ST Act, Meerut in S.S.T. No. 5031 of 2016 (State vs. Sanjay and others) arising out of Case Crime No. 192 of 2016 under sections 147, 148, 149, 302 IPC and 3 (2) (V) of SC/ST Act as well as charge-sheets dated 02.10.2016 and 30.11.2016 and also a prayer is made to stay the proceedings in this case till the disposal of this application.

3. In order to understand and appreciate the argument of the learned counsel for the applicant, it would be appropriate to give in brief the facts of this case as they emerged from the FIR.

4. The opposite party no. 2 Mitan Kumar has lodged an FIR dated 13.7.2016 stating therein that about 1 ½ months ago a quarrel had happened between him and co-villagers accused-applicant Sumit and co-accused Sujeet and because of that the accused-applicant and other co-accused were having enmity

towards elder brother of the applicant Chetan. On 13.7.2016 when his elder brother Chetan was returning home with his mother Savitri Devi and when all of them reached near the sugarcane field of Vedpal, one motorcycle came from behind, on which the accused-applicant along with co-accused Sujeet, Sumit and Sanjai came there, while another accused Ashok who was already hiding in the sugarcane field also came out on the road and started saying *'Aaj Is Chamte ke Bhure Ko Dekh Lo'* and they all gheraoved his elder brother Chetan and opened fire upon him and when his mother came to save him, these people also pointed out their weapon towards her and told her to remain quiet otherwise she would also be shot dead. His brother after receiving injuries of bullet, fell down and died on the spot while all the five accused including the applicant fled from there threatening that whoever would incur their enmity would have to face the same consequence. The informant did not chase them because of fear and after the accused fled from there, on the alarm being raised by the informant and also hearing the sound of gun fire, no one came because of fear.

5. On the basis of the written report, a case was registered as Case Crime No. 192 of 2016 under sections 147, 148, 149, 302 IPC and section 3 (2) (v) of SC/ST Act against the accused-applicant and four other accused named in the FIR. After investigation, charge-sheet against the accused-applicant has been filed on 2.10.2016 under the above-mentioned sections and on the basis of evidence on record against the accused-applicant, charges under the above-mentioned sections were framed on 5.9.2017.

6. An application 93-Kha was moved thereafter from the side of the applicant and two other co-accused namely, Ashok and Sanjay stating therein that cognizance of the offence under sections 302, 147, 148, 149 IPC has been taken directly by the court below

by-passing the provision of section 193 Cr.P.C. Cognizance of the offence under SC/ST Act is taken under proviso to section 14 (1) of the said Act. The proviso to Section 14 (1) of the SC/ST Act provides that "the courts so established or specified, shall have power to directly take cognizance of offences under this Act". Further it is mentioned that section 6 of this Act provides that "Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V-A section 149, and Chapter XXIII of IPC, shall, so far as may be, apply for the purposes of this Act as they apply for the purpose of IPC. Further, It is mentioned that section 6 of the Act, makes it clear that other offences either in IPC or any other Act never have their application under this Act. Further it is mentioned that SC/ST Act nowhere provides that all other cases which can be jointly charged with, under the Code of Criminal Procedure, be charged at the same trial, and as such offences under section 302 IPC can never be tried by the Special Court established under section 14 of the SC/ST Act. Further it is mentioned that all other special Acts categorically make provision for those cases under such special Act, can jointly be tried along with other offences under other Acts, which can be jointly tried under Cr.P.C. Further, it is mentioned that the Special Act under Prevention of Corruption Act specifically provides section 4(3) "that a Special Judge under Prevention of Corruption Act, may also try an offence other than an offence specified in section 3 with which the accused may under Cr.P.C. be charged at the same trial. Similarly, the U.P. Gangster Act also provides under section 8 of the Act, the procedure for joint trial of cases under section 2/3 of U.P. Gangster Act along with offences under IPC or other Act, but no such provision exists under SC/ST Act 1988. Further it is mentioned that section 3(2)(v) of SC/ST Act clearly provides punishments for those offences under IPC punishable

with imprisonment for a term of 10 years or more against a person or property of any member belonging to Scheduled Castes and Scheduled Tribes. As such it is clear that offences under section 302 IPC can never be tried by Special Court established under SC/ST Act. It is further pointed out that one of the accused in the present case namely, Prakash belongs to Scheduled Caste. Further, it is mentioned that the offence under section 3(2)(v) of SC/ST Act in the present case, could be tried along with sections 147, 148, 149 IPC but it cannot jointly be tried along with section 302 IPC. Further, it is mentioned that the cognizance of offence under section 302/147/149 IPC could not be taken under section 14 of the SC/ST Act and provisions of sections 207 to 209 and section 193 Cr.P.C. should have been followed. Further it is mentioned that it is expedient in the interest of justice that the charges under section 302/147/148/149 IPC be dropped against the applicant and prosecution should be directed to file a report under section 173 (8) Cr.P.C. before the Court having jurisdiction.

7. Upon consideration of this application, the trial court has passed the impugned order which shows that in the present case entire evidence of prosecution has been recorded and the case is at the stage of recording the statement of accused under section 313 Cr.P.C. and further the case has to be decided expeditiously as per direction of High Court. Further, it is mentioned that in the present matter after taking cognizance against the accused applicant Sumit, charge was framed on 05.09.2017, although against other accused, charges were framed on separate date after having taken into consideration the prosecution documents. The said order has not been challenged at any stage by the accused till the conclusion of the prosecution evidence. Therefore, the objections which have been raised at this stage, they would be disposed of, in the interest of justice, at the time of final delivery of judgment and hence there

was no justifiable reason to pass order on the said application at this stage and the direction is given that the accused shall appear on 21.8.2019 for getting his statement recorded under section 313 Cr.P.C. for which he should appear in person.

8. The submission which has been advanced by the learned counsel for the applicant is that the trial court could not have taken cognizance under section 302 IPC because the same would require committal of the case by the court of Magistrate to the Court of Sessions as has been provided under section 193 Cr.P.C. which provide that no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code of Criminal Procedure. Although he did admit that w. e. f. 26.1.2016, by way of new amendment in section 14 of the SC/ST Act, a proviso has been added which shows that special court established under this Act shall have power to directly take cognizance of offence under this Act. However, he has relied upon a judgment of Hon'ble Apex Court decided on 17.2.2012 i.e. **Rati Ram and others vs. State of Madhya Pradesh, Criminal Appeal No. 223 of 2008 along with connected appeal [(2012) 4 SCC 516],** which is of earlier date i.e. prior to the amendment in the said Act. In this judgment, the matter was referred to Larger Bench in order to deal with the contradictory views as regards the effect and impact of not committing an accused in terms of section 193 Cr.P.C. in cases where charge sheet is filed under section 3 (1) (x) of SC/ST Act and cognizance is directly taken by the Special Judge under the Act. **In Moly vs. State of Kerala, (2004) 4 SCC 584, Vidya dharan vs. State of Kerala, (2004) 1 SCC 215**, on the one hand wherein it has been held that the conviction by Special Court is not sustainable if Investigating Officer has suo motu entertained and taken cognizance of the complaint directly without the case being

committed to it, and therefore there should be retrial or total setting aside of the conviction as the case may be, and on the other hand, in **State of M.P. Vs. Bhooraji, (2001) 7 SCC 679,** wherein taking aid under section 465 (1) of the code, it has been opined that when a trial has been conducted by the Court of competent jurisdiction and a conviction has been recorded on proper appreciation of evidence, the same cannot be erased or effaced merely on the ground that there had been no committal proceedings and cognizance was taken by the Special Court, inasmuch as the same does not give rise to failure of justice.

9. It is further mentioned in this judgment that the facts were that the appellants were charge-sheeted under section 3 (1) (x) of the Act but eventually the charges were framed under sections 147, 148 and 302 read with section 149 of IPC. The trial court vide judgment and order dated 31.8.1996 convicted all the accused persons barring Mohan for offences under section 302 read with 149 IPC and sentenced them to imprisonment for life with a fine of Rs.one thousand and in default of payment of fine, to suffer further R.I. for three months and sentenced to one month's R.I. under section 147 IPC. The accused Mohan was convicted for the offences under section 148 and 302 IPC and was sentenced to undergo one month's R.I. on the first score and to further life imprisonment and to pay a fine of Rs.one thousand , in default of payment of fine, to suffer further R.I. for three months on the second count.

10. Being dissatisfied with the judgment of conviction and the order of sentence, the appellant along with others preferred Criminal Appeal No. 1568 of 1996 before the High Court of Judicature of Madhya Pradesh at Jabalpur. Apart from raising various contentions on merits, it was pressed that the entire trial was vitiated as it had commenced and concluded without

committal of the case to the Court of Sessions as provided under section 193 of the Code. In this judgment very deep comparison is made of the committal procedure as provided under unamended Cr.P.C. as well as the procedure which has been laid in the amended Cr.P.C and it would be relevant to record here-in-below the relevant paragraphs from the judgment in order to understand the reasoning given by Hon'ble Apex Court as to why it found that in the present case there occurred no failure of justice and did not hold the proceedings vitiated only on account of non-committal of proceedings under section 193 Cr.P.C. Paragraph nos. 51 to 68 of the judgment are quoted as under:

> ***"51.*** *Section 209 of the Code deals with the commitment of case to the Court of Session when an offence is triable exclusively by it. The said provision reads as follows:*
>
> > *"**209.Commitment of case to Court of Session when offence is triable exclusively by it**.—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—*
> >
> > *(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;*
> >
> > *(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
> >
> > *(c) send to that court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
> >
> > *(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."*
>
> ***52.*** *Prior to coming into force of the present Code, Section 207 of the Code of Criminal Procedure, 1898 dealt with committal proceedings. By the Criminal Law Amendment Act, 1955, Section 207 of the principal Act was substituted by Sections 207 and 207-A. To appreciate the inherent aspects and the conceptual*

differences in the previous provisions and the present one, it is imperative to reproduce Sections 207 and 207-A of the old Code. They read as under:

> *"**207.Procedure in inquiries preparatory to commitment**.— In every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such court, the Magistrate shall—*
>
> *(a) In any proceeding instituted on a police report, follow the procedure specified in Section 207-A; and*
>
> *(b) In any other proceeding, follow the procedure specified in the other provisions of this Chapter.*
>
> ***207-A.Procedure to be adopted in proceedings instituted on police report**.—(1) When, in any proceeding instituted on a police report, the Magistrate receives the report forwarded under Section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.*
>
> *(2) If, at any time before such date, the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.*
>
> *(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in Section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.*
>
> *(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.*
>
> *(5) The accused shall be at liberty to cross-examine the*

witnesses examined under sub-section (4), and in such case, the prosecutor may re-examine them.

(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred to in Section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(8) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

(9) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the Magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

(11) When the accused has given in any list of witnesses under

sub-section (9) and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the clerk of the State and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation of delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

(12) Witnesses for the prosecution, whose attendance before the Court of Session or the High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or the High Court to give evidence.

(13) If any witness refuses to attend before the Court of Session or the High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or the High Court is required, when the Magistrate shall send him in custody to the Court of Session or the High Court as the case may be.

(14) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the State Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the clerk of the State or other officer appointed in this behalf by the High Court.

(15) When the commitment is made to the High Court and any part of the record is not in English, an English translation of

such part shall be forwarded with the record.

(16) Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody."

53. *On a bare perusal of the abovequoted provisions, it is plain as day that an exhaustive procedure was enumerated prior to commitment of the case to the Court of Session. As is evincible, earlier if a case was instituted on a police report, the Magistrate was required to hold enquiry, record satisfaction about various aspects, take evidence as regards the actual commission of the offence alleged and further was vested with the discretion to record evidence of one or more witnesses. Quite apart from the above, the accused was at liberty to cross-examine the witnesses and it was incumbent on the Magistrate to consider the documents and, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him by the prosecution and afford the accused an opportunity of being heard and if there was no ground for committing the accused person for trial, record reasons and discharge him.*

54. *Thus, the accused enjoyed a substantial right prior to commitment of the case. It was indeed a vital stage. But, in the committal proceedings in praesenti, the Magistrate is only required to see whether the offence is exclusively triable by the Court of Session. Mr Fakhruddin, learned Senior Counsel, would submit that the use of the words "it appears to the Magistrate" are of immense signification and the Magistrate has the discretion to form an opinion about the case and not to accept the police report.*

55. *To appreciate the said submission, it is apposite to refer to Section 207 of the 1973 Code which lays down for furnishing of certain documents to the accused free of cost. Section 209(a) clearly stipulates that providing of the documents as per Section 207 or Section 208 is the only condition precedent for commitment. It is noteworthy that after the words, namely, "it appears to the Magistrate", the words that follow are "that the offence is triable exclusively by the Court of Session". The limited jurisdiction conferred on the Magistrate is only to verify the nature of the offence. It is also worth noting that thereafter, a mandate is cast that he "shall commit".*

56. *Evidently, there is a sea of difference in the proceeding for commitment to the Court of Session under the old Code and under the existing Code. There is nothing in Section 209 of the Code to even remotely suggest that any of the protections as provided under the old Code has been telescoped to the existing one.*

57. *It is worth noting that under the Code of Criminal Procedure,*

1898, a full-fledged Magisterial enquiry was postulated in the committal proceeding and the prosecution was then required to examine all the witnesses at this stage itself. In 1955, Parliament by Act 26 of 1955 curtailed the said procedure and brought in Section 207-A to the old Code. Later on, the Law Commission of India in its 41st Report, recommended thus:

> *"**18.19.Abolition of committal proceedings recommended**.— After a careful consideration we are of the unanimous opinion that committal proceedings are largely a waste of time and effort and do not contribute appreciably to the efficiency of the trial before the Court of Session. While they are obviously time-consuming, they do not serve any essential purpose. There can be no doubt or dispute as to the desirability of every trial, and more particularly of the trial for a grave offence, beginning as soon as practicable after the completion of investigation. Committal proceedings which only serve to delay this step, do not advance the cause of justice. The primary object of protecting the innocent accused from the ordeal of a sessions trial has not been achieved in practice; and the other main object of apprising the accused in sufficient detail of the case he has to meet at the trial could be achieved by other methods without going through a very partial and ineffective trial rehearsal before a Magistrate. We recommend that committal proceedings should be abolished."*

We have reproduced the same to accentuate the change that has taken place in the existing Code. True it is, the committal proceedings have not been totally abolished but in the present incarnation, it has really been metamorphosed and the role of the Magistrate has been absolutely constricted.

***58.** In our considered opinion, because of the restricted role assigned to the Magistrate at the stage of commitment under the new Code, the non-compliance with the same and raising of any objection in that regard after conviction attracts the applicability of the principle of "failure of justice" and the convict appellant becomes obliged in law to satisfy the appellate court that he has been prejudiced and deprived of a fair trial or there has been miscarriage of justice. The concept of fair trial and the conception of miscarriage of justice are not in the realm of abstraction. They do not operate in a vacuum. They are to be concretely established on the bedrock of facts and not to be deduced from procedural lapse or an interdict like commitment as enshrined under Section 193 of the Code for taking cognizance under the Act. It should be a manifestation of reflectible and visible reality but not a routine matter which has roots in appearance sans any reality. Tested on the*

aforesaid premised reasons, it is well-nigh impossible to conceive of any failure of justice or causation of prejudice or miscarriage of justice on such non-compliance. It would be totally inapposite and inappropriate to hold that such non-compliance vitiates the trial.

59. *At this juncture, we would like to refer to two other concepts, namely, speedy trial and treatment of a victim in criminal jurisprudence based on the constitutional paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasised by this Court. It has been recognized as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The whole purpose of speedy trial is intended to avoid oppression and prevent delay. It is a sacrosanct obligation of all concerned with the justice dispensation system to see that the administration of criminal justice becomes effective, vibrant and meaningful. The concept of speedy trial cannot be allowed to remain a mere formality [see Hussainara Khatoon (1) v. State of Bihar [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] ,Moti Lal Saraf v. State of J&K [(2006) 10 SCC 560 : (2007) 1 SCC (Cri) 180 : AIR 2007 SC 56] and Raj Deo Sharma v. State of Bihar [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692 : AIR 1998 SC 3281]].*

60. *While delineating on the facets of speedy trial, it cannot be regarded as an exclusive right of the accused. The right of a victim has been given recognition in Mangal Singh v. Kishan Singh[(2009) 17 SCC 303 : (2011) 1 SCC (Cri) 1019 : AIR 2009 SC 1535] wherein it has been observed thus: (SCC p. 307, para 14)*

> *"14. … Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence."*
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> *(emphasis supplied)*

61. *It is worth noting that the Constitution Bench in Iqbal Singh Marwah v. Meenakshi Marwah[(2005) 4 SCC 370 : 2005 SCC (Cri) 1101 : AIR 2005 SC 2119] (SCC p. 387, para 24) though in a different context, had also observed that delay in the prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.*

62. *We have referred to the aforesaid authorities to illumine and elucidate that the delay in conclusion of trial has a direct nexus with the collective cry of the society and the anguish and agony of an*

accused (quaere a victim). Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing.

63. *In the case at hand, as is perceivable, no objection was raised at the time of framing of charge or any other relevant time but only propounded after conviction. Under these circumstances, the right of the collective as well as the right of the victim springs to the forefront and then it becomes obligatory on the part of the accused to satisfy the court that there has been failure of justice or prejudice has been caused to him. Unless the same is established, setting aside of conviction as a natural corollary or direction for retrial as the third step of the syllogism solely on the said foundation would be an anathema to justice.*

64. *Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice.*

65. *We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial.*

66. *Judged from these spectrums and analysed on the aforesaid*

premises, we come to the irresistible conclusion that the objection relating to non-compliance with Section 193 of the Code, which eventually has resulted in directly entertaining and taking cognizance by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not vitiate the trial and on the said ground alone, the conviction cannot be set aside or there cannot be a direction of retrial and, therefore, the decision rendered in Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372] lays down the correct law inasmuch as there is no failure of justice or no prejudice is caused to the accused.

67. *The decisions rendered in Moly [(2004) 4 SCC 584 : 2004 SCC (Cri) 1348 : AIR 2004 SC 1890] and Vidyadharan [(2004) 1 SCC 215 : 2004 SCC (Cri) 260] have not noted the decision in Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372] , a binding precedent, and hence they are per incuriam and further, the law laid down therein, whereby the conviction is set aside or the matter is remanded after setting aside the conviction for fresh trial, does not expound the correct proposition of law and, accordingly, they are hereby, to that extent, overruled.*

68. *The appeals be placed before the appropriate Bench for hearing on merits."*

11. It is apparent from the above judgment that the principle of failure of justice has been stuck in the above mentioned case by Hon'ble Supreme Court and it has also held that the procedure of commitment of case in amended Cr.P.C. has been made of very superficial nature as the Magistrate committing the case, does not enjoy any power to make deeper analysis of the evidence which he was supposed to collect under unamended Cr.P.C. and now he has simply to commit the case irrespective of what were the facts and evidence on record. Therefore, no deeper scrutiny is required to be made of the evidence gathered by the Investigating Officer under the provision of 193 Cr.P.C. nor does he have any discretion to commit the case to the Court of Sessions as he is bound to commit the case. Therefore, it is held that merely because in this case commitment was not made, all the proceedings would not vitiate the trial on that ground alone as it was necessary to show

that by non-compliance, failure of justice had occurred or any deep prejudice was caused to the accused, though I am of the view that this judgment would not apply in the present case because this judgment belongs to a period prior to amendment in section 14 of SC/ST Act which provides for the power to the Special Court to directly take cognizance. But even if, what has been mentioned in this ruling as I have discussed above, i.e principle of prejudice or failure of justice be taken into consideration, in the light of the facts of present case I find that the entire evidence has already been collected in this case and it is thereafter that the accused has resorted to this objection that the case was not committed to the Special Court, hence it did not have power to try this case, I do not see any prejudice to have been caused to the accused nor do I see that failure of justice would occur in this case because the Special Court created under section 14 of the SC/ST Act is also conferred with the power of Sessions Judge. In the present case, the offence under section 3(2) (V) of the SC/ST Act is alleged to have been committed along with offence under section 302 IPC, therefore, it would result in failure of justice if a separate Sessions Court be asked to decide the offence under section 302 IPC while the Special Court be allowed to hold trial for offence under section 3 (2) (V) of SC/ST Act. That would seem to be anomalous situation.

12. In order to gather the objective of the amendment in the SC/ST Act, it would be pertinent to take into consideration the Annual Report of the Government of India under section 21 (4) of the SC/ST Act for the year 2016, which speaks that ---

> "*1.1* ***THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 AND THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995.***
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> *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No.33 of 1989) (hereinafter referred as ' PoA ' Act) came into force with effect from 30.01.1990. This legislation aims at*

preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against members of Scheduled Castes (SCs) and Scheduled Tribes (STs) to provide for Special Courts for trial of such offences and for relief and rehabilitation of the victims of such offences. The PoA Act extends to whole of India except the State of Jammu and Kashmir. With an objective to deliver members of SCs and STs, a greater justice, the PoA Act has been amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (No.1 of 2016), notified in the Gazette of India Extraordinary on 01.01.2016 and enforced with effect from 26.01.2016. The amendments broadly relate to rephrasing and expansion of some of earlier offences and addition of several new offences, addition of certain IPC offences attracting less than ten years of imprisonment committed against members of SCs and STs, as offences punishable under the PoA Act, establishment of Exclusive Special Courts and specification of Exclusive Special Public Prosecutors to exclusively try the offences under the PoA Act to enable expeditious disposal of cases, power of Special Courts and Exclusive Special Courts to take direct cognizance of offence and as far as possible, completion of trial of the case within two months from the date of filing of the charge sheet, addition of chapter on the 'Rights of Victims and Witnesses' and wilful negligence of a public servant in discharging duties for registration of complaints, recording statement of witnesses, conducting investigation and filing charges and any other duties specified in the Act and Rules. The PoA Act is implemented by the respective State Governments and Union Territory Administrations, which are provided admissible Central assistance under the Centrally Sponsored Scheme for effective implementation of the provisions of the Act. Main provisions of the PoA Act are as under: -

(i) Defines offences of atrocities and prescribes punishment therefor, (Section 3).

(ii) Punishment for wilful neglect of duties by non-SC/ST public servants (Section 4).

(iii) Establishing an Exclusive Special Court for one or more districts, specifying Court of Session to be a Special Court for speedy trial of offences under the Act. Powers of these Courts to take direct cognizance of offences under the Act, duty of the State Government to establish adequate number of Courts to ensure that cases under the Act are disposed of within a period of two months as far as possible (Section 14).

(iv) An appeal against judgment of Special Court or an Exclusive Special Court to the High Court (Section 14A).

(v) Appointment of Exclusive Special Public Prosecutors and Special Public Prosecutors for conducting cases in Exclusive Special Courts and Special Courts (Section 15).

(vi) Rights of Victims and Witnesses (Section 15A).

(vii) Preventive action to be taken by the law and order machinery (Section 17).

(viii) Measures to be taken by State Governments for effective implementation of the Act, including: -

a. Adequate facilities including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

b. Economic and social rehabilitation of victims of the atrocities;

c. Appointment of officers for initiating or exercising supervision over prosecution for contravention of the provisions of the Act; and

d. Setting up of Committees at appropriate levels to assist the Government in implementation of the Act;

e. Delineation of "Identified Areas"(commonly known as "Atrocity Prone Areas") where members of SC/ST are vulnerable to being subjected to atrocities and adoption of necessary measures to ensure their safety. {Section 21 (2)}.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules,1995 under the PoA Act were notified on 31.03.1995, which, among other things, prescribed minimum scale of relief and rehabilitation for the affected persons. The prescribed minimum scale of relief and rehabilitation under the Rules has been amended from time to time.

Consequent upon amendments done in the PoA Act, certain amendments had been necessitated in the PoA Rules. Accordingly necessary amendments have been done in the PoA Rules by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, notified in the Gazette of India on 14.04.2016, which broadly relate to provision of relief amount for 47 offences of atrocity, rationalization of the phasing of payment of relief amount to victims for various offences of atrocities, enhancement of relief amount to Rs. 85000/- to Rs. 8,25,000/-, depending upon the nature of the offences, payable of admissible relief amount within seven days, completion of investigation and filing of charge sheet in court within sixty days, to enable timely commencement of prosecution and periodic review of the Scheme for the rights and entitlements of victims and witnesses in accessing justice, by the State, District and Sub-Division Level Vigilance and Monitoring Committees in their respective meetings.

Salient provisions of the PoA Rules notified under the PoA Act are as under: -

(i) Precautionary and Preventive Measures to be taken by the State Governments regarding offences of atrocities (Rule 3).

(ii) Investigation of offences under the Act to be done by not below

the rank of a DSP level Officer {Rule 7 (1)}.

(iii) Completion of investigation and filing of charge sheet in court within sixty days and report forwarded to Director General of Police or Commissioner of Police of the State {Rule 7 (2)}.

(iv) Setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell at State headquarters under the charge of Director General of Police/IG Police (Rule 8).

(v) Nomination of (a) a Nodal Officer at the State level (not below the rank of a Secretary to the State Government), and (b) a Special Officer at the district level (not below the rank of an Additional District Magistrate) for districts with identified atrocity prone areas to co-ordinate the functioning of DMs, SPs and other concerned officers, at the State and District levels, respectively. (Rule 9 and 10).

(vi) Provision of relief in cash or kind or both to victims of atrocities as per prescribed norms within seven days. (Rule 12 (4) and Schedule).

(vii) State Government/Union Territory Administration to provide necessary authorization and powers to the District Magistrate for immediate withdrawal of money from treasury so as to timely provide the relief amount to atrocity victims (Rule 12(4A).

(viii) State Level Vigilance and Monitoring Committee under the Chief Minister to meet at least twice a year (Rule 16).

(ix) District Level Vigilance and Monitoring Committees under the District Magistrate to meet at least once every quarter (Rule 17).

(x) Sub-Divisional Level Vigilance and Monitoring under the Sub-Divisional Magistrate to meet at least once every quarter (Rule 17 A).”

13. It is apparent from the said report that the main aim for introducing the amendment was to ensure expeditious disposal of offences pertaining to this Act, hence keeping in mind the said aim, the amendment has been incorporated in the said Act conferring upon Special Judge power to directly try the case and not wait for the commitment of the case to it because that would result in delay. A deeper scrutiny of entire report which is too long, would indicate that whatever data has been collected with respect to pendency and disposal of cases pertaining to SC/ST Act, also

included the cases under SC/ST Act coupled with the offence falling under IPC, therefore, it appears that the intention of the legislature would have been, while passing the Act, to ensure that even if an offence is found to have been committed under IPC as well as under SC/ST Act, the same should be tried by one court only i.e. Special Court which has been conferred the power of taking cognizance directly to minimize the delay in disposal of the case, therefore, I am of the view that in the present case the cognizance which has been taken by the trial court directly under the above-mentioned sections, does not suffer from any infirmity and the objection raised by the learned counsel for the applicant is not found to have any force.

14. In view of the aforesaid, the application deserves to be dismissed and is accordingly dismissed.

Order Dated: 05.03.2020

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