

COMMON ORDER BELOW EXH. 4A AND 40.

The complainant has filed the present application below Exh. 4A for adding the section 3 (1) (f) Of the The scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter for short “Atrocity Act”). The application below Exh. 40 has filed by the complainant for direction to accused no. 3 for producing the caste certificate.

2] It is contended in the application below Exh. 4A filed on dated 16/02/2017 that the complainant belongs to the scheduled caste where accused no. 3 is from the non scheduled caste. Accused have indulged in grabbing of the land from the complainant's father. As per the complaint before the police and in the Court, said fact is mentioned. Hence, prayed for adding the above mentioned section 3 (1) (f) Of the Atrocity Act.

3] The application below Exh. 4A was put up for argument on the point that whether this Court is having jurisdiction to try the said application or not. But instead of arguing on the same, the Ld. advocate for the complainant filed another application below Exh. 40. By that application, the complainant prayed for direction to accused no. 3 for producing the caste certificate. Accused no. 3 objected the same and contended that as the said accused is belonging to Hindu Maratha, he is not having the caste certificate. Hence, both these applications were put

up for argument.

4] Heard both the sides and perused the record.

5] Originally, the complainant filed the Criminal Miscellaneous Application bearing no. 340/2016 with prayer of sending it for the investigation under section 156(3) of the Code of Criminal Procedure . But, the matter was put up for verification. After recording the verification, the process was issued against accused no. 1 to 4 under section 420, 467, 468, 471 r/w 34 of the Indian Penal Code. Latter on, the complainant has filed the application below Exh. 4A for adding section 3 (1) (f) of Atrocity Act.

6] During argument, the Ld. advocate for the complainant has argued that this Court has jurisdiction to decide the present application. If the Court comes to the conclusion of adding the section of the Atrocity act then the case will have to committed to the Special Court. Per contra the Ld. advocate for accused no. 3 argued that as per amendment in the Atrocity Act, the Special Courts are established. Hence, this Court has no jurisdiction to decide this application.

7] Following points arise for my determination. They are with reasoned findings as follows:

Sr. No.	Points	Findings
1	Whether this Court has jurisdiction to decide the application below Exh. 4A ?	No
2	What order ?	As per final order.

REASONS

As to point no. 1-

8] The complainant has filed vide list of document below Exh. 42, the photocopy of the Notification in the Atrocity Act. I have gone through the Amended Atrocity Act. It is necessary to note here the relevant section of amended Atrocity Act.

“14. **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 Ordinance 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 Ordinance:

Provided further that the Courts so established or specified shall

have power to directly take cognizance of offences under this Ordinance.”

9] The above section made clear that now, by the amendment in the Atrocity Act which came into force with effect from dated 01/01/2016, **Special Courts are established to take cognizance directly of offence under this Act.** Here, it is important to know what is the concept of taking cognizance. The word "cognizance" has not been defined in the Code of Criminal Procedure, though several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The dictionary meaning of the word "cognizance" is - 'judicial hearing of a matter'. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation.

10] Similar view was expressed in *Kishun Singh & Ors. v. State of Bihar (1993) 2 SCC 16* that “when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence”.

11] The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons." However, it should be noted that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made.

12] Hence, to decide the application below Exh. 4A on merits means taking cognizance of offence under the Atrocity Act which is power of the Special Court, so established and not of this Court.

13] The application below Exh. 40 is for direction to produce the caste certificate to accused no. 3. The same is objected by the accused no. 3. This application is inter related to the application below Exh. 4A. Hence, it is better to decide it with the application below Exh. 4A. Hence, I answered point no. 1 in negative.

As to point no. 2-

14] However, as per complainant, she has stated the fact that she is belonging to scheduled caste and accused no. 3 is belonging to non scheduled caste before the Court. Perused the record. In the original complaint and in verification, the same fact is not mentioned. As per the sec. 2 (d) of the Code of Criminal Procedure, application below Exh. 4A and 40 are treated as complaint. The section 201 of the Code of Criminal Procedure says that-

“Sec. 201- Procedure by Magistrate not competent to take cognizance of the case-

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, if the complaint is in writing , return it for presentation to the proper Court with an endorsement to that effect.”

15] The original complaint is section 420, 467,468,471 r/w 34 of the Indian Penal Code. It is triable by Magistrate. Hence, it will be proper to return the application below Exh. 4A and 40 to the complainant to represent it before the proper Court. Hence, I pass following order.

ORDER

- 1] For want of jurisdiction the applications below Exh. 4A and 40 can not be entertained in this Court.

- 2] Application below Exh. 4A and 40 are returned to the complainant for its presentation before the proper Court.
- 3] The complainant is directed to present the application below Exh. 4A and 40 before the proper Court within 30 days from the date of the order.

Date:- 03/03/2018

(R.R. Kulkarni)

Place: Vadgaon Maval

J.M.F.C. Vadgaon Maval

I affirm that the contents of this P.D.F. file Order/Judgment are same word for word as per original Order/Judgment.

Name of Steno : P.B.Jadhav
Court Name : Smt. R. R. Kulkarni, 3rd J.M.F.C.,
Vadgaon Maval, Pune
Order/Judgment date : 03/03/2018
Order/Judgment Signed by
P. O. on : 03/03/2018
Order/Judgment Uploaded on : 03/03/2018

