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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc Petition No.173 of 2018

Order reserved on: 29-9-2020

Order delivered on:27-10-2020

1. Jaisingh Agrawal, S/o Late Shri Ram Kumar Agrawal, Aged 54 years, R/o Agrasen Marg, Korba, Tahsil and District Korba (C.G.)

2. Surendra Jaiswal, S/o Late Shri Krishna Lal Jaiswal, aged about 52 years, Caste Kalar, R/o Gandhi Chowk, Old Bus Stand, Korba, Tahsil and District Korba (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through Station House Officer, AJAK, Korba, District Korba (C.G.)

2. Dukhlal Kanwar, S/o Late Injor Singh, Aged 55 years, Caste Kanwar (Tribe), R/o Village Chuiya, Tahsil and District Korba (C.G.)

(Complainant)

---- Respondents

For Petitioners:
Dr. N.K. Shukla, Senior Advocate with Mr. Arijit Tiwari, Advocate.

For Respondent No.1 / State: -
Mr. Animesh Tiwari, Deputy Advocate General.

For Respondent No.2: -
Mr. Surfaraj Khan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.

2. In this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), the

following twin question arise for consideration:

1. Whether the Special Court constituted under Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989') has power and jurisdiction to invoke the provisions contained in Section 156(3) of the Code referring the complaint of the complainant/respondent No.2 herein to the Station House Officer, Police Station AJAK for registration of FIR and consequent investigation?

2. If yes, whether the Special Judge is justified in invoking power and jurisdiction under Section 156(3) of the Code in directing registration of FIR and investigation after finding compliance with the provisions contained in sub-sections

(1) and (3) of Section 154 of the Code?

3. The petitioners calls in question legality, validity and correctness of the impugned order dated 15-1-2018 passed by the learned Special Judge under the Act of 1989, Korba, exercising power under Section 156(3) of the Code by which the learned Special Judge has directed the Station House Officer, Police Station AJAK, Korba to register FIR against the petitioners and to investigate the matter and submit report and

to take further consequential action against them.

4. Respondent No.2 herein / complainant Dukhlal Kanwar made a complaint to the Collector, Korba on 27-3-2017, though the complaint was addressed to the Station House Officer, Police Station AJAK, Korba, stating that he is owner and title-holder of the land in dispute situated at Village Chuiya, Tahsil & Distt. Korba, bearing Khasra No.214/45 in which petitioner No.1 and other persons have started constructing boundary wall which was opposed by several persons and ultimately, the subject land was demarcated on 26-9-2012, but thereafter, on 28-9- 2012, petitioner No.2 Surendra Jaiswal and others came to the subject land and started working which was opposed by him, then they abused him and threatened him to kill. By the above-stated complaint, the complainant / respondent No.2 herein made request to the Collector, Korba to direct for handing over the possession of subject land to him and to register offences against the concerned persons. Over the complaint, the Collector in his own writing directed the Superintendent of Police, Korba to do the needful and further directed his Reader to enquire the case. It appears that pursuant to the said complaint, the complaint was registered as revenue case and ultimately, on 15-12-2017, the Collector, Korba directed that as per the report of

the Sub-Divisional Officer (Revenue), Korba, petitioner No.1 is in possession of Khasra No.214, area 0.182 hectare, and Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Land Revenue Code') is attracted and directed the Sub-Divisional Officer (Revenue), Korba to initiate proceeding under Section 170-B of the Land Revenue Code against the person concerned. Thereafter, it appears that on 7-4-2017, the land in dispute was again subjected to demarcation and on 7-4-2017, petitioner No.1 also filed a civil suit bearing Civil Suit No.3A/2017 before the Court of 2nd Additional District Judge, Korba. It appears that thereafter, on 12-4-2017, respondent No.2 along with two other persons namely, Pratap Singh Kanwar and Ghasiya Singh Kanwar, made a complaint to the Superintendent of Police, Korba stating therein that on 7-4-2017, some antisocial elements threatened them to withdraw the case relating to the subject land which was demarcated on 7-4-2017 and boundary wall already constructed is also being broken, and finally, they prayed that possession of land be handed-over to them and their life and property be protected. Similarly, on 4-9-2017 also, respondent No.2 made a complaint to the Superintendent of Police, Korba for registering offence against the petitioners herein, Bhola Soni, Vijay Singh and Darshan Manikpuri under the IPC and

the Act of 1989. It appears that finally, no offence was registered, then respondent No.2 on 8-11-2017 filed an application under Section 156(3) read with Section 193 of the Code further read with Section 14 of the Act of 1989 before the Court of the Special Judge under SC & ST Act, 1989, Korba, stating inter alia that he has made a complaint to the Station House Officer, Police Station AJAK, Korba on 27-3- 2017 and the subject land was demarcated on 26-9- 2012. Further, in para 9 of the said application, it has been stated by respondent No.2 that the accused persons have committed cognizable offences which has duly been informed to the Police Station AJAK, Korba on 27-3-2017 and on 12-4-2017, but no offence has been registered against the petitioners and other persons and therefore Police Station AJAK, Korba be directed to register offences punishable under Sections 294, 506B, 323 & 120B of the IPC and Sections 3(1)(g), 3(1)(s), 3(1)(d) & 3(2)(va) of the Act of 1989. The said application was supported by an affidavit.

5. The learned Special Judge on the said application filed, called for the police report, but the police report ultimately, could not be received as it was not submitted by the concerned Police Station and ultimately, by the impugned order, the learned Special Judge has held that though on 27-3-2017,

complaint was made to Police Station AJAK, Korba and on 12-4-2017, complaint was made to the Superintendent of Police, Korba and though both the complaints discloses commission of cognizable offences, yet FIR was not registered by police, therefore, in view of the principles of law laid down by the Supreme Court in the matter of **Lalita Kumari v. Government of Uttar Pradesh and others**[1], a direction is required to be issued to the Station House Officer, Police Station AJAK, Korba to register FIR and to investigate the matter and submit report to the concerned court. It was ordered accordingly and consequently, FIR for offences under Sections 294, 506B, 323 & 120B of the IPC and Sections 3(1) (g), 3(1)(s), 3(1)(d) & 3(2)(va) of the Act of 1989 was registered against the petitioners on 25-01-2018.

6. Feeling aggrieved against the said order directing registration of FIR and consequent investigation, this petition under Section 482 of the Code has been preferred questioning authority and jurisdiction of the learned Special Judge under SC & ST Act on the ground that the Special Judge constituted under Section 14 of the Act of 1989 has no power and jurisdiction to exercise the power under Section 156(3) of the Code, as under Section 156(3) of the Code, only the Magistrate can order for investigation

1 (2014) 2 SCC 1

to be made under Section 156(1) of the Code, therefore, the impugned order passed by the learned Special Judge is without jurisdiction and without authority of law. It has also been pleaded that the provisions of sub-sections (1) & (3) of Section 154 of the Code have not been complied with, therefore, even otherwise, the order passed invoking Section 156(3) of the Code is bad in law and it is liable to be quashed.

7. Return has been filed by respondent No.2 herein / complainant stating inter alia that in view of Section 14 of the Act of 1989 and in view of the decision rendered by this Court in the matter of **Smt. Achla D Sapre v. Smt. Asha Mahilkar (Rajput) and another**[2], petition under Section 482 of the Code deserves to be dismissed.

8. Dr. N.K. Shukla, learned Senior Counsel appearing on behalf of the petitioners, would make two fold submissions: -

1. Power and jurisdiction under Section 156(3) of the Code to direct for investigation of any cognizable offence can only be exercised by the Magistrate and the Special Judge constituted under Section 14 of the Act of 1989 has no power and jurisdiction to invoke power and jurisdiction under Section 156(3) of the Code,

2 2016(4) CGLJ 10

therefore, the order impugned is without jurisdiction and without authority of law.

2. In alternative, Dr. Shukla, learned Senior Counsel, would submit that even otherwise, the learned Special Judge is not justified in invoking power and jurisdiction under Section 156(3) of the Code, as neither Section 154(1) nor Section 154(3) of the Code have been complied with while making an application under Section 156(3) of the Code, since no document has been filed at any point of time and the complaint dated 27-3-2017 was made to the Station House Officer, Police Station AJAK, Korba though addressed to the SHO, but it has only been submitted to the Collector, Korba in which the Collector directed the Superintendent of Police, Korba to do the needful and further directed his Reader for making enquiry. It was also pointed out that there is no endorsement on the complaint having been served to the SHO, Police Station AJAK and further, except the self-serving statement, there is no document to show that on refusal to registration of offence, any complaint was made to the Superintendent of Police, Korba in compliance of Section 154(3) of the Code by registered post. Even the letter dated 12-4-2017, allegedly filed, is not against

petitioner No.1, but it is about some antisocial elements and the complaint dated 4-9-2017 available in the record is directly sent to the Superintendent of Police, Korba without complying with the provisions contained in Section 154(1) of the Code. Therefore, in view of the judgment rendered by the Supreme Court in the matter of **Priyanka Srivastava and another v. State of Uttar Pradesh and others**[3], application under Section 156(3) of the Code was not maintainable. As such, the impugned order deserves to be set aside and the present petition deserves to be allowed.

9. Mr. Surfaraj Khan, learned counsel appearing for respondent No.2 herein / complainant, would support the impugned order and submit that since the complaint made to the SHO did not yield any result, therefore, in compliance of Section 154(3) of the Code, ultimately, report was made to the Superintendent of Police and thereafter, application under Section 156(3) was filed which is strictly in accordance with law. He would further submit that in view of the provisions contained in Section 14 of the Act of 1989, after amendment with effect from 26-1- 2016, under Section 14 of the Act of 1989, the Special Court constituted under Section 14 shall have

3 (2015) 6 SCC 287

power and jurisdiction to directly take cognizance of the offences under the Act of 1989. Therefore, no fault can be found in the impugned order of the learned Special Judge under the Act of 1989 directing registration of FIR and consequent investigation against the petitioners. He would rely upon the decision of this Court in **Smt. Achla D Sapre** (supra). He would finally submit that the instant petition under Section 482 of the CrPC deserves to be dismissed.

10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Answer to Question No.1: -

11. In order to consider the plea raised at the Bar, it would be appropriate to consider the provisions contained in Section 156 of the Code which empowers the police officer to investigate the cognizable case. Sub-sections (1), (2) and (3) of Section 156 of the Code state 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."

12. A careful perusal of the aforesaid provisions would reveal that under sub-section (1) of Section 156 of the Code, 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 of the Code. By virtue of sub-section (3) of Section 156 of the Code, any Magistrate empowered under Section 190 of the Code may order such an investigation as above-mentioned.

13. At this stage, it would be appropriate to notice the provisions contained in Section 193 of the Code which reads as follows: -

"193. Cognizance of offences by Courts of Session.-Except as otherwise expressly provided by this Code or by any other law for the time being in force, 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 this Code."

14. On a careful reading of the aforesaid provision, it is quite vivid that the Court of Session can take

cognizance of any offence as a Court of original jurisdiction except as otherwise expressly provided by the Code or by any other law for the time being in force only if the case has been committed to it by a Magistrate.

15. In a decision in the matter of **Gangula Ashok and another v. State of A.P.**[4], their Lordships of the Supreme Court considered the question whether "a Special Court" under the Act of 1989 can take cognizance of any offence without the case being committed to that Court, and resolving the controversy, their Lordships held as under: -

> "16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act."

16. The principle of law laid down by their Lordships of the Supreme Court was followed subsequently by the Supreme court in the matters of **Vidyadharan v. State of Kerala**[5] and **M.A.Kuttappan v. E. Krishnan Nayanar and another**[6].

17. Finally, in the matter of **Rattiram & Others v. State of Madhya Pradesh through Incharge, Police Station**

4 (2000) 2 SCC504
5 (2004) 1 SCC215
6 (2004) 4 SCC231

Cantonment[7], three-Judges Bench of the Supreme Court reiterated the principle of law that a complaint or charge-sheet cannot straightaway be laid down before the Special Court under the Act, but their Lordships further held that cognizance taken by Sessions Judge directly without commitment of case by Magistrate in accordance with Section 193 CrPC, trial is not automatically vitiated unless failure of justice has occasioned and it is duly established.

18. At this stage, it would be appropriate to notice the provisions contained in the Act of 1989. The Act of 1989 has been constituted to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. The term "Special Court" is defined in Section 2 (d) of the Act of 1989 and Section 14 speaks about the constitution of Special Court which states as under: -

> "14. Special Court.-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, specify for each district a Court of Session to be a Special Court to try the offences under this Act."

19. The Scheduled Castes and the Scheduled Tribes

7 (2012) 4 SCC 516

(Prevention of Atrocities) Amendment Ordinance, 2014 was promulgated on 4-3-2014 to amend the Act of 1989, of which Section 14 provides as under: -

> "14. (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.
>
> (2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Ordinance 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 Ordinance, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet."

20. The above-stated Section 14 of the Ordinance of 2014 would show that by the aforesaid Ordinance, jurisdiction has been conferred to the Special Courts to directly take cognizance of offences under the Act of 1989 as amended by the Ordinance of 2014.

21. The life of the Ordinance was six months and thereafter, it expired. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 came into force with effect from 1-1-2016 of which Section 14 (1) provides 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:
>
> Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts the Court of Session to be a Special Court to try the offences under this Act:
>
> Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act."

22. The legislative change which has been noticed above- stated would clearly show that now, by the Amendment Act, 2015 only w.e.f. 1-1-2016, the Special Courts have been empowered to take cognizance directly, of the offences under the Act of 1989. It has been held

so because the Courts of Session are the Special Courts constituted under Section 14 of the Act of 1989.

23. In **Achla D Sapre** (supra), this Court considered the issue after taking in account the legislative amendment in Section 14 of the Act of 1989, whether the trial Magistrate can take cognizance of offence punishable under Section 3 (1) (x) of the Act of 1989 or only it is Special Court constituted under Section 14 of the Act of 1989 and it was held that the trial Magistrate is not a special court constituted under Section 14 of the Act, therefore, it has no jurisdiction to entertain complaint and take cognizance and Special Courts constituted under Section 14 of the Act of 1989 have been empowered to take cognizance of the offence under the Act of 1989 directly w.e.f. 1-1-2016.

24. The erstwhile State of Madhya Pradesh in exercise of power conferred under Section 14 of the Act of 1989 by notification dated 26-10-1995 notified the Sessions Judge of each of the districts to exercise power and jurisdiction under the Act of 1989. Thereafter, the State of Chhattisgarh by its notification dated 4-2-2015 in exercise of power conferred under Section 14 of the Act of 1989 with the concurrence of Hon'ble the Chief Justice of this Court, has established the Exclusive Special Courts

for trial of the offence under the Act of 1989.

25. Thus, the Special Court having established under Section 14 of the Act of 1989 by notification has power and jurisdiction to take cognizance of the offence under the provisions of the Act of 1989 directly without committal proceeding and the Magistrate is not a Special Court notified by the State Government within the meaning of Section 14 of the Act of 1989 read with Section 193 of the Code and therefore, the Magistrate is not empowered to entertain complaint under the Act of 1989.

26. The question as to whether the Court of Special Judge under the Prevention of Corruption Act, 1947 can have power and jurisdiction as a Court of original jurisdiction and can be treated as a Court of original criminal jurisdiction, came up for consideration before the Supreme Court in the matter of **A.R. Antulay v. Ramdas Sriniwas Nayak and another**[8] (Constitution Bench) and it was held by their Lordships that a private complaint can be entertained by the Special Judge in respect of the offences committed by public servants under the PC Act. It was further held that on accepting the principles of criminal jurisprudence anyone can set or put the criminal law into motion except where statute enacting or creating an offence indicates to the

8 AIR 1984 SC 718

contrary. Their Lordships clearly held that the provisions of the CrPC can be exercised by the Special Judge except the provisions which are clearly barred under the Act. It has also been held by their Lordships that the Court of a Special Judge is a Court of original criminal jurisdiction. It was further held that as a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied. Their Lordships observed as under: -

> "27. It is, however, necessary to decide with precision and accuracy the position of a Special Judge and the Court over which he presides styled as the Court of a special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court."

27. It was noticed by their Lordships of the Supreme Court in **A.R. Antulay** (supra) that experience of several years after the passing of the Prevention of Corruption Act, 1947 showed that a specific forum for

trial of such offences was necessary and this realisation led to the enactment of the Criminal Law Amendment Act, 1952. After referring to Section 6 of the Code according to which there are four types of Criminal Courts functioning under the High Court namely, Court of Session, Judicial Magistrates of the First Class, Judicial Magistrates of the Second Class and Executive Magistrates, the Supreme Court observed as under: -

> "As already pointed out, there were four types of Criminal Courts functioning under the High Court. To this list was added the Court of a special Judge."

The Court further observed as under: -

> "Now that a new Criminal Court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of Courts under Section 6, Cr. P.
> C. by bringing it on level more or less comparable to the Court of Session, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Sessions because it can take cognizance of offences without commitment as contemplated by Section 193, Cr. P. C.. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of sub-sections (1) and (2) of Section 8, the Court of special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra- distinction to the Sessions Court this new Court was to be a Court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new Court, shall follow for trial of offences

before it."

Dealing with the query whether the Special Judge becomes a Magistrate, their Lordships held as under :-

> "This is the fallacy of the whole approach. In fact, in order to give full effect to Section 8(1), the only thing to do is to read Special Judge in Sections 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of Section 190 which conferred power on the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression 'special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever it found the gray area clarified it by making specific provision such as the one in sub-section (2) of Section
> 8 and to leave no one in doubt further provided in sub-section (3) that all the provisions of the Criminal P.C. shall so far as they are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted, what was in operation was the Criminal P.C., 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new Criminal Court which was being set up. … The net outcome of this position is that a new Court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific question brought before it as Court of original criminal jurisdiction, it had to refer to the Criminal P.C. undaunted by any designation claptrap. When taking cognizance, a Court of special Judge enjoyed powers under Sec. 190. When

trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session. The entire argument inviting us to specifically decide whether a Court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Session revolves round a mistaken belief that a special Judge has to be one or the other and must fit in in the slot of a Magistrate or a Court of Session. Such an approach would strangulate the functioning of the Court and must be eschewed. Shorn of all embellishment, the Court of a special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented, some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Session. Under the Code, it will enjoy all powers which a Court of original criminal jurisdiction enjoys, save and except the ones specifically denied.

28. Section 9 of the 1952 Act would equally be helpful in this behalf. Once Court of a special Judge is a Court of original criminal jurisdiction, it became necessary to provide whether it is subordinate to the High Court, whether appeal and revision against its judgments and orders would lie to the High Court and whether the High Court would have general superintendence over a Court of special Judge as it has over all Criminal Courts as enumerated in S. 6 of the Code of Criminal P.C. The Court of a special Judge, once created by an independent statute, has been brought as a Court of original criminal jurisdiction under the High Court because Section 9 confers on the High Court all the powers conferred by Chapters XXXI and XXXIII of the Criminal P.C., 1898 on a High Court as

> if the court of special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that a new Criminal Court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The Court has to be treated as a Court of original criminal jurisdiction and shall have all the powers as any Court of original criminal jurisdiction has under the Criminal P.C., except those specifically excluded."

28. From the aforesaid pronouncement of law rendered by the Constitution Bench of the Supreme Court, it is quite vivid that under the provisions of the Prevention of Corruption Act, the Special Judge is not prohibited from exercising power and jurisdiction under Section 156(3) of the Code when there is no exclusion of power in respect of the point raised.

29. In the matter of **Raghunathan v. State of Kerala**[9], it has been held by the Kerala High Court that power under Section 156(3) of the Code can be invoked by the Special Judge, as the Special Judge under the Prevention of Corruption Act will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except these are specifically denied. Similar proposition has been laid down by the Karnataka High Court in the matter of **B.S.**

Yeddyurappa v. State of Karnataka and others[10] holding

9 2002 CriLJ 337
10 2012 CriLJ 1989

that the Special Judge under the Prevention of Corruption Act, 1988 can invoke power and jurisdiction under Section 156(3) of the Code in referring the complaint of the complainant to Special Karnataka Lokayukt for investigation and to report.

30. The Full Bench of the M.P. High Court in the matter of **Anand Swaroop Tiwari v. Ram Ratan Jatav and others**[11] relied upon the decision of the Supreme Court in **A.R. Antulay** (supra) and other decisions and in the result, clearly held as under: -

> "(a) Special Courts under the Act are not to function as Sessions Court, but as Courts ' of original jurisdiction'.
>
> (b) Proceedings of Special Court are governed by Section 190, Chapters XV, XVI (other than Section 209) as also Chapters XIX and XX as the case may be and such other provisions of the Code as are not inconsistent with the scheme and provisions of the Act, reading "Special Courts" wherever the expression "Magistrate" occurs.
>
> (c) Section 193 of the Code of Criminal Procedure does not apply to proceedings under the Act and committal orders are not required.
>
> (d) Special Court can take cognizance on private complaints after following the procedure provided in the Code in relation to private complaints.
>
> (e) Where cognizance has already been taken on the basis of committal orders in Police challan cases, it is not necessary for the Courts to retrace their steps or to take cognizance afresh.

11 1996 MPLJ 141

(f) Where cognizance has already been taken on the basis of committal orders in private complaint cases, the Special Courts may deal with the cases as if they are dealing with private complaints under Section 200 of the Code."

31. The decision rendered by the Full Bench of the M.P. High Court in **Anand Swaroop Tiwari** (supra) has further been followed by the M.P. High Court in the matter of **J.N. Fuloria v. Benibai and others**[12].

32. Thus, from the aforesaid proposition of law rendered by the Supreme Court in **A.R. Antulay** (supra) and the M.P. High Court in **Anand Swaroop Tiwari** (supra), it is quite vivid that the Special Court constituted under Section 14 of the Act of 1989 is the criminal court of original jurisdiction and is not governed by Section 193 of the Code, and the Special Court can take cognizance in any of the circumstances referred to in Section 190 of the Code and is governed by Chapters XV & XVI of the Code and such other provisions of the Code which are not inconsistent with the status and functions as Courts of original jurisdiction. Therefore, the Special Courts constituted under the Act of 1989 will also have power and jurisdiction to invoke Section 156(3) of the Code to direct investigation in exercise of power conferred, to the Station House Officer subject to fulfillment of making two prior applications under

12 2000(1) MPLJ 459

Section 154(1) and thereafter under Section 154(3) of the Code by the complainant. As such, I do not find any merit in the submission of learned Senior Counsel for the petitioners that the Special Judge under SC & ST Act has no power and jurisdiction to invoke Section 156(3) of the Code and to direct registration of FIR and investigation. Such a submission being merit-less and substance-less deserves to be and is accordingly rejected.

Answer to Question No.2: -

33. Having answered question No.1 against the petitioners and in favour of respondent No.2, reverting to the second question whether the learned Special Judge is justified in invoking power and jurisdiction under Section 156(3) of the Code after finding compliance with the provisions contained in sub-sections (1) &

(3) of Section 154 of the Code, it would be necessary to point out here that in order to make a duly constituted application for invoking the jurisdiction of the learned Special Judge under Section 156(3) of the Code, compliance of sub-sections (1) & (3) of Section 154 of the Code would be absolutely necessary rather it would be *sine-qua-non* for making the application under Section 156(1) of the Code maintainable.

34. In order to appreciate this point, it would be

appropriate to notice the provisions contained in Section 154(1), (2) and (3) of the Code which states as under:-

> "**154. Information in cognizable cases**.-(1) Every information relating to the commission of a cognizable offence, 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 person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
>
> Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer;
>
> Provided further that-
>
> (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section1 376AB, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-Section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. ”

35. From the focused perusal of Section 154(1) of the Code, it is quite vivid that every information relating to commission of cognizable offence, if given orally to 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 given in writing or reduced in writing as above-said shall be signed by person giving it and substance thereof shall be entered into book kept by such officer. Sub-section (3) of Section 154 of the Code provides the procedure to be followed by informant, if officer in charge of a police station refuses to record the information referred to Section

154(1) of the Code and mandates that substance of such information in writing may be sent by post, to the Superintendent of Police concerned, who if satisfied that such information discloses commission of cognizable offence either investigate himself or direct an officer sub-ordinate to him to investigate in the manner provided by the Code.

36. Their Lordships of the Supreme Court in the matter of **Priyanka Srivastava** (supra) laid down duty and approach of Magistrate while exercising power under Section 156(3) of the Code and highlighted preconditions to be satisfied to maintain the application under Section 156(3). It has also been held that power under Section 156(3) warrants application of judicial mind and there has to be prior application under Section 154(1) and 154(3) of the Code. It has been held as under: -

> "29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.
>
> 30 In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an

affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating

criminal prosecution, as are illustrated in *Lalita Kumari* (supra) are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR. "

37. The principle of law laid down by their Lordships of the Supreme Court in **Priyanka Srivastava** (supra) has been followed by this Court in the matter of **Sanjay Narang v. Rashmi Priyanka**[13].

38. Now, coming to the facts of the case, the question would be, whether Sections 154(1) and 154(3) of the Code have been complied with or not by respondent No.2 before making an application under Section 156(3) of the Code ?

39. Along with the present petition under Section 482 of the Code, copy of the application filed under Sections 154(1) and 154(3) of the Code have not been filed and it has been stated at the Bar by learned counsel for respondent No.2 that those documents are available in the original record. As stated in para 9 of the application under Section 156(3) read with Section 193 of the Code further read with Section 14 of the Act of 1989, on 27-3-2017, complaint was made to the Station House Officer, Police Station AJAK, Korba and on 12-4-2017, complaint was made to the Superintendent of Police, Korba. In view of those submissions, original records (scanned copy) containing application under Section 156(3) of the

13 ILR 2020 Chhattisgarh 1182

Code and documents were called and in the original record (scan copy), first complaint made by respondent No.2, that is available, was made on 27-3- 2017 (page 35). A careful perusal of the aforesaid letter / complaint dated 27-3-2017 would show that though the complaint is addressed to the Station House Officer, but tenor and texture of the complaint reveals that request was made to the Collector and the Collector appears to have directed the Superintendent of Police to do the needful and also directed the Reader to enquire into the matter and thereafter, it appears that on 12-4-2017, respondent No.2 and two other persons have made complaint to the Superintendent of Police, Korba which states as under: -

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fo"k;%& t;fl g vxoky] firk&Jh jkedqekj] fuoklh&vxlu ekxZ] dksjck l ejh xke&pbZ;k dh [kljk ua-&214 dh 45 fMlehy o [kljk ua-&216] 217 dy jdck 1-20 ,dM ,oa [kljk ua-&218 jdck 0-90 ,dM tehu eDr djkus o vijk/k ntZ djus ckcr~A

egksn;]

vkosndxrk xke pbZ;k ds vuqlfpr tutkfr dk fuoklh gA vkosndxrk ds uke ij xke&pbZ;k e iSrd Hkwfe [kljk ua-&214 dh 45 fMlehy o [kljk ua-&216] 217 dy jdck 1-20 ,dM ,oa [kljk ua-&218 jdck 0-90 ,dM fMlehy gj tks jktLo fjdkWM e ntZ gA o"kZ 2010 e t;fl vxzoky }kjk gekj xzke dh iV~Vs dh ?kkl o cM >kM ds taxy en~ dh 7 ,dM Hkwfe vCny x¶Qkj l [kjhnh xbZ] ftl ij o"kZ 2012 e muds }kjk ejh] n[kyky daoj] irki flx] ?klh;k flx dh cgu jkeckbZ o xko ds vU; yksxks dh tehu ij dCtk dj ckmUMhoky cuk;k x;kA ftldk eus] ejh ifRu dey doj] ejh csVh Ñ"rkk dekjh o ej csVs fryd

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egsn; n'kZu ekfudiqjh ts vius vki dks usrk crkrk g rFkk Hkksyk ▌kuh rFkk vU; ysxks ds ▌kFk xk¡o e vkdj ge Hk;Hkhr fd;k tk jgk gA nks fnu iwo ▌ t;f▌x vxoky }kjk dh xbZ ckmUMhoky dks jkr ds ▌e; e'khu ▌ mDr ckmUMhoky dks vKkr ysxks }kjk rksMk tk jgk gA ft▌▌ ge ▌c Hk;Hkhr gA vr% egsn; ▌ fuosnu g fd gekjh tehu dk fof/kor~ dCtk fnykrs g, gekj vkSj gekj ifjokj dh tku eky dh ▌j{kk iznku djA

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40. This complaint refers to some threatening given by some antisocial elements to respondent No.2 and two others on the date of demarcation of land of the complainants therein on 7-4-2017 to withdraw the case and dismantling the boundary wall. It is not in continuation of proceeding under Section 154(1) of the Code which has not been preferred any point of time. Similarly, there is one more complaint dated

2-9-2017 made by respondent No.2 which is available on record in which in the list of attachments / enclosures, complaint dated 27-3-2017 has been referred to. The said complaint dated 2-9-2017 has been presented to the Superintendent of Police, Korba on 4-9-2017. A careful perusal of the aforesaid three complaints which are available on record would show that though the letter / complaint dated 27-3- 2017 has been said to be made to the Station House Officer (already noticed hereinabove), but it has been addressed to the Collector and the Collector has passed necessary order on the said complaint. The Collector has also passed order on 15-12-2017 directing the case to be registered against the persons concerned under Section 170-B of the Chhattisgarh Land Revenue Code. Similarly, the second complaint made to the Superintendent of Police on 12-4-2017 is not a complaint either under Section 154(1) or 154(3) of the Code, it is altogether a different complaint as since the date of second demarcation of land on 7-4-2017, some antisocial elements are threatening respondent No.2 to withdraw the case and in respect of dismantling the boundary wall. Likewise, third complaint has been made to the Superintendent of Police on 4-7-2019 in which there is mention of complaint dated 27-3-2017 which is reproduced herein-below for sake of completeness: -

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fo"k;%& t;fl g vxoky] firk&Jh jkedqekj] fuoklh&vxlu ekxZ] dksjck l ejh xke&pbZ;k dh [kljk ua-&214 dh 45 fMlehy tehu eDr djkus o vijk/k ntZ djus ckcrA

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vkosnd xzke pbZ ;k dk vulfpr tutkfr dk fuoklh gA vkosnd ds uke ij xzke&pbZ;k e iSr`d Hkwfe [kljk ua-&214 dh 45 fMlehy g tks jktLo fjdkM _qk iqfLrdk ØesD&840250 e Hkwfe ntZ gksus ds lkFk gh dEl;Vj [kljk e Hkh ntZ g ftudh Nk;kifr lyXu gA o"kZ 2010 e t;fl x vxzoky }kjk gekj xzke dh iV~Vs dh ?kkl o cM >kM ds taxy en~ dh 7 ,dM Hkwfe vCnqy x¶Qkj l [kjhnh xbZ] ftl ij o"kZ 2012 e muds }kjk ejh] irki fl x] ?klh;k fl x dh cgu jkeckbZ o xk¡o ds vU; ysxks dh tehu ij dCtk dj ckmUMhoky cukuk 'kq: fd;k x;kA ftldk eus] ejh ifRu dey doj] ejh csVh Ñ"kdk dekjh o ej csVs fryd fl x ds lkFk ldMs xkeh=ks us fojks/k fd;kA

fojks/k ds ckn 26@09@2012 dks xzke e ifyl] iVokjh] vkj-vkbZ- vkfn ldMs xzkeh=ks o t;fl x vxoky ds izfrfuf/k ljUnz tk;loky] Hkksyk lsuh o fot; fl x o vU; ysxks ds lkeus tehu dh ukih dh xb ftle t;fl x vxzoky ds dCts e 9-46 ,dM Hkwfe ikbZ xb o ljdkj ds dgus ij dke jsd fn;kA fnuk¡d&28@09@2012 dks ljUnz tk;loky] Hkksyk lsuh o fot; fl x o vU; ysx vkdj iquh dke 'kq: djus dh dksf'k'k dh ftldk fojks/k djus ij bu ysxks us ge tkrh lpd] xanh&xanh xkyh&xyst fd;k] tku l ekjus dh /kedh nh] rqe lky vkfnoklh nk: ds u'ks e gs tcfd os nk: lkFk e ykdj db ysx xkMh e cSB dj yh jg FksA

Jheku~ fty k/;{k egsn;] ejh tehu e> okil fnykus o ej lkFk tkrh lpd] xkyh&xyst djus ij vijk/k nt djkus dh Ñik djA

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izfrfyfi%& Jheku~ fty k/;{k egsn;] dksjck] fty k&dksjckA

Jheku~ iqfyl v/kh{kd] dksjck] fty k&dksjckA

41. This complaint dated 27-3-2017 though was addressed to the SHO, Police Station AJAK, Korba, but it is a letter made to the Collector, Korba. Even the prayer made in the complaint dated 27-3-2017 is only to the Collector and the Collector has passed order therein also. In fact, though compliance of Section 154(1) of the Code to the SHO has been claimed to be made, but it is not born out from the record. There is no information about the commission of cognizable offence in writing made before the Station House Officer (AJAK) giving that the information relating to cognizable offences and further there is no evidence that said SHO police station has refused to register FIR and further refused to investigate the matter. There is no document or evidence on record that on refusal of SHO, respondent No.2 has sent the substance of information relating to commission of cognizable offence in writing to the SP, Korba for investigation. As such, it appears that in the instant case, there is total non-compliance of Sections 154(1) and 154(3) of the Code.

42. The Supreme Court in **Priyanka Srivastava** (supra) has clearly held that in order to file a duly competent application under Section 156(3) of the Code there has to be existence of prior applications under Sections 154(1) and 154(3) of the Code, both these aspects should be clearly spelt out in the

application under Section 156(3) of the Code and necessary documents to that effect has to be filed in order to make the application under Section 156(3) of the Code to be duly constituted. Even the record before the Special Judge which has been requisitioned and scanned, does not have any document that has been filed at any point of time to show that information referred to in Section 154(1) of the Code about the commission of cognizable offence was firstly given to the SHO and upon refusal by SHO, substance of information in writing about commission of cognizable offence was given to the Superintendent of Police, Korba under Section 154(3) of the Code on knowing the decision of the SHO in not registering the FIR giving reason to file application under Section 156(3) of the Code as mandated.

43. The entire effort appears to have been done by the complainant / respondent No.2 herein to get the possession of the subject land by making complaint to the Collector and other authorities, as on 27-3-2017, main prayer was made before the Collector for directing return of possession of the subject land. Even otherwise, on 12-4-2017 also, complaint was made relating to some dispute with regard to withdrawal of case and dismantling of boundary wall. On 4-9-2017, finally, the Superintendent of Police was informed, but again letter dated 27-3-2017 was enclosed as

having been informed to the SHO. As already noticed herein-above, the letter / complaint dated 27-3-2017 was addressed to the Collector, though it was formally addressed to the SHO, which had not been done, but it was mainly addressed / prayer was made to the Collector and the Collector has also passed order on that complaint / letter. As such, there is total non-compliance of the provisions contained in Section 154 of the Code and both the preconditions of making application under Sections 154(1) and 154(3) are absolutely missing, as the complainant has not sent the substance of information to the SHO (AJAK) under Section 154(1) of the Code.

44. Thus answering the question No.2, it is held that the impugned order passed by the learned Special Judge invoking power under Section 156(3) of the Code is totally without jurisdiction and without authority of law apart from being in teeth of the judgment rendered by the Supreme Court in **Priyanka Srivastava** (supra) followed by this Court in **Sanjay Narang** (supra).

45. As a fallout and consequence of the aforesaid discussion, the impugned order dated 15-1-2018 passed by the Special Judge, Korba in unregistered complaint case (Dukhlal Kanwar v. Jaisingh Agrawal and four others) is hereby quashed and the consequential action of registration of FIR in Crime No.5/2018 at

Police Station-AJAK, Korba for offences under Sections 294, 506B, 323 & 120B of the IPC and Sections 3(1)(g), 3(1)(s), 3(1)(d) & 3(2)(va) of the Act of 1989 is also hereby quashed.

46. The petition is allowed to the extent sketched herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Misc. Petition No.173 of 2018

Petitioners Jaisingh Agrawal and another

Versus

Respondents State of Chhattisgarh another

(Head-note)

(English)

Special Court constituted under Section 14 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has power and jurisdiction to invoke provisions contained in Section 156(3) of the CrPC and direct for registration of FIR and investigation.

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