HIGH COURT OF DELHI

Bench: Justice Jasmeet Singh

Date of Decision: 08.02.2024

CRL. A. 292/2020

Bijender Singh …Appellant

Versus

State & Anr. …Respondent

Legislation:

Sections 4, 15A(11)(i), 15-A(9) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989

Section 482 of the Code of Criminal Procedure, 1973

Sections 3(1)(c), 3(1)(r), 217, 218, 506 of the Indian Penal Code, 1860

Section 217 and 218 of the Indian Penal Code, 1860

Rule 7(1) of SC/ST Rule 1995

Subject: Criminal appeal against the order for FIR registration against the appellant (a police officer) under SC/ST Act for alleged dereliction of duty during investigation of a case involving police personnel and a parking dispute.

Headnotes:

Appeal Against FIR Order Under SC/ST Act – Challenging order for FIR against ACP Bijender Singh under SC/ST Act for alleged misconduct during investigation of FIR No. 261/2019 – Original case involved parking dispute between complainant and police personnel, leading to allegations of atrocity under the SC/ST Act. [Paras 1, 2]

Investigation Conduct and Chargesheet Filing – Appellant, as Investigation Officer, filed chargesheet under SC/ST Act and IPC without arresting accused, citing Arnesh Kumar vs. State of Bihar – Complainant's application

against appellant for not supplying chargesheet copy and not arresting accused. [Paras 3-8, 18-20, 66-69]

Administrative Enquiry Requirement – Emphasis on necessity for administrative enquiry before initiating criminal proceedings against a public servant – Appellant exonerated in administrative enquiry. [Paras 11-15, 43-47, 57]

Natural Justice Principles – Allegations of violation of principles of natural justice due to absence of hearing opportunity for appellant. [Paras 13, 14, 57]

Court's Observation on Investigation Role – Court's analysis on limits of judicial interference in investigation process – Reinforcement that investigation is police’s domain, and court's role begins post chargesheet filing. [Paras 62-65]

Order – Impugned order for FIR against appellant set aside – Emphasis on appropriate use of SC/ST Act provisions and judicial prudence in handling disputes involving public servants. [Paras 76-80]

Referred Cases:

- Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273
- P. Sirajuddin vs. State of Madras, (1970) 1 SCC 595
- Lalita Kumari vs. Govt. of U.P., (2014) 2 SCC 1
- Charansingh vs. State of Maharashtra, (2021) 5 SCC 469
- Union of India vs. State of Maharashtra, (2020) 4 SCC 761
- Ashoo Surendranath Tewari vs. CBI, (2020) 9 SCC 636
- Prathvi Raj Chauhan vs. Union of India, (2020) 4 SCC 727
- State Bank of India vs. Rajesh Agarwal, (2023) 6 SCC 1
- M.C. Abraham vs. State of Maharashtra, (2003) 2 SCC 649
- Satender Kumar Antil vs. CBI, (2022) 10 SCC 51
- Court on its Own Motion vs. State, 2018 SCC OnLine Del 12306

Representing Advocates:

Mr. Vikas Pahwa for appellant
Mr. Harshit Gahlot, Mr. Dixit for respondents

J U D G M E N T

: **JASMEET SINGH, J**

1. This instant appeal is filed under section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (—*SC/ST Act*‖) read with Section 482 of Code of Criminal Procedure, 1973 (—*Cr.P.C.*‖*)* challenging the order dated 29.02.2020 (—*impugned order*‖*)* passed by the learned ASJ-02, Special Judge [SC/ST Act] (South-West) Dwarka Court, Delhi wherein application filed by the respondent no. 2/complainant under section 4 read with section 3(2) (vi) and (vii) of SC/ST Act and under section 217 and 218 of Indian Penal Code, 1860 (—*IPC*‖) against the appellant was allowed and the learned special court directed to lodge the first information report (—*FIR*‖) against the appellant.

BRIEF BACKGROUND

2. A complaint was made by the complainant against the Constable Rajini and her husband Constable Vikas Yadav over a dispute of parking when their scooty had blocked the way of the car belonging to the complainant. Complainant further made allegations of insult, humiliation and threat against the accused. On the basis of complaint, on 26.06.2019 an FIR No. 261/2019 under section 3(1)(c), 3(1)(r) of SC/ST Act read with section 506 of IPC at PS Baba Haridas Nagar, District Dwarka was registered.

3. The appellant was appointed as the Investigation Officer (—*IO*‖) and conducted a detailed investigation. After the investigation was completed, appellant submitted the chargesheet before the learned special court on 16.08.2019. The chargesheet was filed against the three persons namely Vikas Yadav, Rajini and Sundra Devi (“*accused persons*‖) for the commission of the offences under section 3(1)(r) of SC/ST Act read with section 506 and 34 of IPC without arresting them in view of ***Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273***.

4. On 20.08.2019, learned special court directed the appellant to appear in court to take cognizance on the chargesheet. Hence, summons were issued to the appellant. On 24.09.2019, appellant appeared before the learned special court and the matter was further adjourned to 16.11.2019. Afterwards, summons were again issued for ensuring the presence of the appellant for the next date of hearing.

5. On 16.11.2019, learned special court judge was on leave and the matter was adjourned to 24.12.2019.

6. Complainant filed an application on 24.12.2019 under section 4 read with section 3(2) (vi) and (vii) of SC/ST Act and under section 217 and 218 of IPC seeking a direction against the appellant to supply the copy of the chargesheet along with the documents to the complainant. Further, complainant also sought to take stern action against the appellant for wilfully, intentionally and deliberately violating the provisions of the SC/ST Act.

7. On 24.12.2019, appellant forwarded his request seeking personal exemption from appearance and the same was allowed. Notice was also issued to the appellant on the application and summons were issued to the appellant to appear on the next date of hearing. The matter was adjourned to 01.02.2020.

8. On 01.02.2020, the appellant was posted for special duty in relation to Anti CAA protest. The appellant sent SI Anoop Rana to convey his request and to seek exemption from his personal appearance before the court and the same was allowed vide order dated 01.02.2020 and the next date of hearing was 29.02.2020.

9. On 29.02.2020, the appellant didn't appear and the impugned order was passed directing the FIR to be registered against the appellant under section 4 of SC/ST Act. Hence the instant appeal.

10. *Vide* Order dated 15.04.2020, notice was issued in this petition to respondent nos. 1 and 2 and it was further ordered that the impugned order directing the registration of the FIR against the appellant shall remain stayed till further orders.

SUBMISSIONS

On behalf of the appellant

11. Mr. Pahwa, learned senior counsel appearing for the appellant has submitted that the learned special court has overlooked and ignored the proviso to Section 4 of the SC/ST Act which mandates that a public servant can be booked only on the recommendation of the administrative enquiry. Admittedly, when the impugned order was passed, there was no such report or called upon by the learned special court and the impugned order was passed in its absence.

12. He placed reliance on ***P. Sirajuddin vs. State of Madras, (1970) 1 SCC 595*** and ***Lalita Kumari vs. Govt. of U.P., (2014) 2 SCC 1***, wherein it was held that there needs to be a preliminary enquiry in a case where an FIR is directed to be registered against a public servant.

13. Learned senior counsel further argues that the impugned order is grossly violative of the principles of natural justice as the learned special court did not offer any opportunity of being heard to the appellant. More so, the appellant was neither served with the copy of the application on which the impugned order was passed nor served with the summons apprising him for the next date of hearing i.e. 29.02.2020.

14. He further submits that the learned special court made comments on the conduct of the appellant and the manner of investigation being carried out in the FIR No. 261/2019, without even affording an opportunity of tendering an explanation which is wholly unwarranted. It clearly amounts to encroaching upon the administrative function of the police administration.

15. Learned senior counsel relies upon the administrative enquiry conducted by the Addl. Dy. Commissioner of Police against the appellant in which the appellant has been completely exonerated on the *pari materia* charges vide enquiry report dated 09.05.2020. He draws my attention to the status report dated 16.05.2023 filed by the JCP, Western Range, Delhi and more particularly to para 7 and 8 which reads as under:-

—7. That an administrative enquiry has been conducted by Addl. DCP-I/ Dwarka who submitted his report on 09/05/2020 and found no wilful negligence on the part of IO/ACP Bijender Singh.

8. That the administrative enquiry concluded as under:-

a)That no lacuna was found in the investigation of the case including non-arrest of accused persons. The IO has followed all the procedures as required in the investigation of SC/ST Act cases. In fact, ACPSh. Bijender Singh, IO of FIR No. 261/19, dated 26.06.2019, u/s 3(1)(c)(r) of SC/ST Act (POA) & 506/34 IRC, PS Baba Haridas Nagar, Delhi had investigated the case in fair, impartial and in bonafide manner while discharging his official duty. He videographed examination of witnesses and the investigation of the case which further established his conduct of free, fair and impartial investigation. The investigation videography has also been filed in pen drive(32 GB) along with charge sheet of the case. The investigation was conducted in good faith and to the best of his knowledge, ability and wisdom. The IO has also mentioned in the charge sheet "Moreover, If any new facts come on record during further investigation about the above accused persons, the same will be filed through Supplementary Charge Sheet." This fact also reflects IO's unbiased attitude and conduct.

b) That during enquiry, the non-appearance of the IO/ACP Sh. Bijender Singh before the Ld. Court of Sh. Sonu Agnihotri, ASJ, Dwarka Courts, New Delhi has been scrutinized. It has been found that the trial of the case is at pre cognizance stage and only five hearings have taken place in the aforesaid case prior to order dated 29/02/2020.

c) That out of above five dates, on first date i.e. 20/08/2019, IO was summoned to appear in person for assistance in taking cognizance for 24/09/2019. Thereafter, on two hearings i.e. on 24/09/2019 and on 16/11/2019, the Ld. Judge was on leave whereas on two subsequent hearings i.e. on 24/12/2019 and 01/02/2020, the IO sent his requests for exemption to appear and on both the occasions, the request were perused and allowed in the interest of justice by the Ld. trial court. Thereafter, the IO neither received any Summon/Notice/Process from the Ld. trial court in the aforesaid matter for appearance on 29/02/2020 nor received the copy of application filed by the complainant on 24/12/2019, U/s 4 r/w section 3(2) (vi) and (vii) of SC/ST Act r/w 217 & 218 IRC which was to be replied.

d)That the Ld. court of Sh. Sonu Agnihotri, ASJ-02, (South-West) Dwarka courts New Delhi has passed the impugned order dated29/02/2020 in the absence of the IO of the case. A proposal to challenge the order dated 29/02/2020is under consideration with Law Department, GNCT of Delhi. Consequently, no FIR has been registered against the IO/ACP Bijender Singh.‖

16. In this backdrop, learned senior counsel submits that the initiation of the criminal proceedings on the same set of allegation for which the appellant has been exonerated would amount to abuse process of the law. Reliance is placed on ***Ashoo Surendranath Tewari v. CBI, (2020) 9 SCC 636***.

17. He further argues that the grievances raised by the complainant in the application are completely baseless and the same would not amount to any violation of the provision of the SC/ST Act. The grievance of the complainant that the copy of the chargesheet was not provided by the appellant to the complainant is baseless as non-supply of the chargesheet does not violate any provisions of the SC/ST Act alleged by the complainant.

18. Further learned senior counsel points out from the application that the appellant has deliberately and intentionally not charged the accused under appropriate section 4(2)(d) of the SC/ST Act. He argues that it is the discretion

of the appellant/IO to add and/or alter and/or subtract the provisions depending upon the outcome of the investigation. The appellant upon investigation being completed filed the chargesheet under section 3(1)(r) of SC/ST Act read with section 506 and 34 IPC against the accused persons.

19. Learned senior counsel further points out that the allegation levied by the complainant that the appellant has not arrested the accused persons is the discretion which the appellant exercised. He further argues that the punishment under section 3(1)(r) of SC/ST Act is 5 years and hence the action of the appellant is within the law laid down by the Hon'ble Supreme Court in ***Arnesh Kumar (supra)***.

20. He further points out that the complainant has alleged that the appellant has not recorded the statement of complainant and witnesses. In this context he argues that post registration of the FIR, the appellant proceeded to the spot and recorded the statements of eye witnesses present on the scene of occurrence. However, some of the witnesses refused to come forward to give their statements being scared of the complainant who is the practicing advocate. Despite that, some visuals of the investigation were recorded by the appellant in a video camera and the same formed the part of the chargesheet.

21. Therefore in view of the submissions made above, learned senior counsel contends that the impugned order needs to be set aside as it is ex-facie illegal, arbitrary and wholly impermissible in law.

22. Lastly, learned senior counsel points out the conduct of the complainant that he targets public servants not inclined to acede to his demands and the appellant is one such officer. Complainant also tried to do bench hunting by filing frivolous application as the earlier bench had made prima facie observation in the order dated 09.06.2020.

On behalf of the Complainant

23. *Per Contra,* Mr Pracha, learned counsel for the complainant strongly opposes the appeal and submissions of the learned senior counsel appearing for the appellant.

24. Mr. Pracha heavily relies upon the judgement passed by the Hon'ble Supreme Court in ***State Bank of India and Ors. vs. Rajesh Agarwal and Ors., (2023) 6 SCC 1*** in which it was held that at preinvestigation stage, a prospective accused has no locus standi before the court and has no right to be heard. He points out that in the present case, the appellant was given several notices to appear before the learned special court but the appellant

deliberately did not appear before the learned special court. Even on 24.12.2019, although the appellant was present in court but he filed exemption application, such conduct of the appellant clearly goes to show that he has no regard even to the orders of the Court.

25. On 01.02.2020, SI Anup Rana appeared on behalf of the appellant and filed exemption application on behalf of the appellant which was allowed by the learned special court. Further, the appellant has not taken a plea that he was not aware about the order dated 01.02.2020 till 29.02.2020 or that SI Anup Rana did not inform him about the proceedings of 01.02.2020. He further argues that it is very strange to note that the appellant was not aware about the order dated 01.02.2020 till 29.02.2020 although he deputed SI Anup Rana, working under him, for attending the court on his behalf. The appellant deliberately, intentionally and wilfully did not appear before the learned special court. Hence it cannot be said that there is any violation of principles of natural justice while passing the impugned order by the learned special court.

26. With regard to the proviso in Section 4(2) of the SC/ST Act, Mr Pracha submits that an administrative enquiry as a pre-requisite only pertains to the stage of framing of charges and not at the time of registration of FIR. Further Section 4 has to be read with Section 18A as well as overreaching object of the SC/ST Act. Therefore the impugned order of the learned special court cannot be assailed on the ground that it did not comply with the procedure laid down in Section 4 as the same was an order regarding registration of FIR and not of framing of charges.

27. Learned counsel further argues that the appellant did not arrest the accused persons as the law laid down in ***Arnesh Kumar (supra)*** but the appellant failed to consider the recent judgment passed by the Hon'ble Supreme Court in ***Union of India vs. State of Maharashtra, (2020) 4 SCC 761*** wherein it was held that where there is no provision of anticipatory bail then obviously arrest has to be made. Further the appellant has not complied the terms of the ***Arnesh Kumar (supra)***, wherein the appellant was required to give reasons for not arresting the accused persons which is mandatory.

28. He further submits that the appellant did not provide the copy of the chargesheet to the complainant which violates the provisions of the section 15-A(11)(i) of SC/ST Act. It was further argued that the appellant did not register the separate FIR against the accused persons on the complaint dated 31.07.2019 of the complainant although it was specifically provided under section 15-A (9) of the SC/ST Act.

29. Further the appellant did not record the statement of the complainant despite his request in his complaint dated 31.07.2019 and he even did not inform the complainant of the proceedings before the learned special court as provided under section 15-A (3) and (5) of the SC/ST Act.

30. In the above context, he argues that section 15-A(11)(i) is to be read with section 15-A (5) of SC/ST Act which makes the complainant's right to be heard at the stage of framing of charges. Therefore the complainant ought to have been provided with a copy of the chargesheet by the appellant. Reliance is placed on ***Hariram Bhambhi v. Satyanarayan, 2021 SCC OnLine SC 1010.***

31. Learned counsel further points out that sections 3(1)(q), 3(2)(va) of SC/ST Act and section 341 of IPC have been omitted in the chargesheet and the appellant himself has not carried out the investigation and has directed the SHO who thereafter directed Sub Inspector to carry out the investigation of the case which is clear violation of Rule 7(1) of SC/ST Rule 1995.

32. Lastly, he submits that learned Addl. PP appearing for the State has also supported the arguments of the complainant before the learned special court and the impugned order has categorically recorded that Addl. PP has seen the chargesheet and the appellant appears to acted partially to favour the accused persons.

ANALYSIS AND REASONING

33. I have heard the rival submissions of the learned counsel for the parties and perused the material on record. What emerges is that the appellant while investigating the FIR No. 261/2019 filed the chargesheet in the concerned court on 16.08.2019. Thereafter, the learned special court *vide* order dated 20.08.2019 issued summons to the appellant for appearance on 24.09.2019 for assistance to take cognizance. In the order dated 24.09.2019, it is mentioned that the appellant was present in court but due to learned judge being on leave, matter was adjourned to 16.11.2019.

34. On 16.11.2019, again learned judge was on leave and there was no mention whether the appellant was present or not and the matter was adjourned to 24.12.2019.Further on 24.12.2019, learned special court allowed the request of the appellant for his exemption and further issued notice on the application under section 4 read with section 3(2) (vi) and (vii) of SC/ST Act and under section 217 and 218 of IPC moved by the complainant.

35. On 01.02.2020, again request was made by the appellant for exemption and the same was allowed, further learned special court directed the appellant

to appear with the reply of the application moved by the complainant and adjourned the matter to 29.02.2020.

36. On 29.02.2020, the impugned order was passed and the learned special court held that the appellant should have conducted impartial inquiry into the matter and should have been taken statements of complainant and witnesses cited by the complainant. Learned special court was of the view that the decision arrived by the appellant after conducting investigation should have been based on the statements of both sides, appellant conducted one sided enquiry and failed to arrest that too in the background of the fact that anticipatory bail application of the accused Vikas and Rajneesh had already dismissed by this Court.

37. Further, learned special court noted that appellant has violated Section 15A(1) of SC/ST Act and liable to be proceeded for dereliction of duty as provided under section 4(2)(g) of the SC/ST Act. Also the appellant failed to appear and file reply to the application which prima facie showed that the appellant had nothing to say in reply. As a result, Joint CP, Western Range was directed to lodge the FIR against the appellant under section 4 of SC/ST Act.

38. It is relevant to note that SC/ST Act is a special statute. The object of the SC/ST Act is to protect the Schedule Castes and Schedule Tribes from the commission of offences of Atrocities from the society which is also their constitutional rights. From time to time, the Parliament has amended the provisions of the SC/ST Act to make it more stringent to meet the ends of justice and allowing the participation of the complainant at every stage. On the other hand, it cannot be disputed that sometimes these provisions are misused to settle personal scores. Therefore, the Court is required to keep the balance and to act more cautiously to uphold the objective of the SC/ST Act.

39. It is apposite to reproduce the relevant section under which the learned special court ordered the registration of FIR against the appellant.

Section 4 of the SC/ST Act reads as under:-

—4. Punishment for neglect of duties.—(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include—

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses; (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.‖

40. The above quoted section specifically deals with the neglect of duties by a public servant. It states that whenever a public servant wilfully neglects his duties as mentioned in sub section 2 or under this Act or rules made, shall be punishable. Further, sub section 2 deals with the duties which shall be performed and sub section 3 says that the cognizance shall be taken by a Special Court or the Exclusive Special Court.

41. Directing registration of FIR is a serious issue and that too against the police officer. The directions cannot be issued lightly. The law on registration of FIR against the public servant has been settled. In the present case, the appellant is a public servant and in this context, the Constitution Bench of the Hon'ble Supreme Court in ***Lalita Kumari (supra)*** has extensively dealt with the procedure for the registration of FIR. Relevant extract reads as under:-

*"**117.** In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.*

……..

***120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.‖

42. Further, the Hon'ble Supreme Court in ***Charansingh v. State of Maharashtra, (2021) 5 SCC 469*** and more particularly paras 15 and 15.1 has observed as under:-

—15. While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation of corruption, it is observed in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC
595 : 1970 SCC (Cri) 240] that : (SCC p. 601, para 17)

—before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and

the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this Department. It is further observed that : (P. Sirajuddin case [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] , SCC p. 601, para 17)

—when such an enquiry is to be held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a prima facie evidence of guilt of the officer, thereafter, the ordinary law of the land must take its course and further enquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.‖

15.1. Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.‖

(emphasis added) **43.** A perusal of the above mandates that whenever there are allegations of misconduct or corrupt practices against a public servant, the concerned department is required to hold preliminary enquiry before initiating the criminal proceedings or to put the criminal law in motion.

44. The proviso to Section 4(2) of SC/ST Act is very clear in this regard, it also says that the charges mentioned in sub-section 2 of Section 4 of SC/ST Act

against the public servant shall be booked on the recommendation of an administrative enquiry.

45. As in the present case at hand, learned special court passed the impugned order directing registration of FIR without calling the administrative enquiry report which the learned special court ought to have called. The report may or may not be binding on the court as it is left to the discretion of the court to apply its judicial mind and then to pass an order for registration of FIR.

46. The orders dated 24.12.2019, 01.02.2020 and 29.02.2020 do not reflect that the enquiry was conducted or such report was sought. Learned special court proceeded on the application moved by the complainant in hasty manner without calling the enquiry report.

47. As per the status report dated 16.05.2020 filed by Joint Commissioner of Police, Western Range, Delhi Police, it has been stated that an administrative enquiry was conducted by the Addl. DCP-I/Dwarka and found no wilful negligence on the part of the appellant. The operative paras of the report has already been reproduced above. Hence the administrative enquiry exonerates the appellant from the same charges.

The Hon'ble Supreme Court in ***Ashoo Surendranath Tiwari (supra)*** has observed as under:-

"13. *It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC*

581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)

—39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.‖‖

48. Hence, once the administrative enquiry has exonerated the appellant from the same charges then the continuation of the criminal prosecution would be an abuse of process of law.

49. The argument of the learned counsel for the complainant is that the word "charges" occurring in proviso to Section 4(2) of the SC/ST Act is to be interpreted that the enquiry report is to be sought before framing of charges and not before the registration of the FIR.

50. To my mind, the said argument is bereft of merit as the law laid down by the Hon'ble Supreme Court in ***Charansingh (supra)*** and as per the proviso noted

above, the enquiry report is to be sought before the criminal proceedings are initiated and not before the framing of charges.

51. Even for the sake of argument the view of the complainant is accepted, it will lead to the filing of FIR's which may be frivolous against the public servant and the public servant will not be able to discharge their duties properly. In addition, the department where the public servant is working will also suffer harm and loss of reputation.

52. Mr. Pracha has relied on Section 18A(1) of the SC/ST Act, which reads as under:-

—18A. No enquiry or approval required.—(1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or‖

53. The above mentioned Section 18A was challenged before the Hon'ble Supreme Court in ***Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727***wherein it was held as under:-

"9. *Concerning the provisions contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general Directions 79.3 and 79.4 issued in Subhash Kashinath case [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] . A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , shall hold good as explained in the order passed by this Court in the review petitions on 1-10-2019 [Union of India v. State of Maharashtra, (2020) 4 SCC 761] and the amended provisions of Section 18-A have to be interpreted accordingly.*

10 [Ed. : Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2020 dated 25-2-2020.] . *Section 18-A(i) was inserted owing to the decision of this Court in Subhash Kashinath [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] , which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019 [Union of India v. State of Maharashtra, (2020) 4 SCC 761] . Thus, the provisions which have been made in Section 18-A are rendered of*

academic use as they were enacted to take care of mandate issuedin Subhash Kashinath [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail.‖

(emphasis added)

54. In view of the above decision, Section 18A is now rendered for academic purpose which no more prevails. Further, it was held that for preliminary enquiry, the law settled in ***Lalita Kumari (supra)*** is to be followed and Section 18A is to be interpreted accordingly. Hence, reliance of learned counsel for the complainant on the above quoted section no longer survives.

55. Furthermore, the appellant in the present case is not guilty of offence of committing atrocities against the complainant but is alleged to be guilty of an offence for not conducting the investigation in the FIR No. 261/2019 in a fair and impartial manner. The committing atrocities against the Schedule Castes and Schedule Tribes persons and the offence of not conducting an investigation as per the mandate of the SC/ST Act are not comparable and are not offences of the same degree.

56. Mr. Pracha, learned counsel for the complainant further relied on ***State Bank of India (supra)*** to contend that the accused/appellant has no right to be heard before the registration of the FIR. Relevant paras read as under:-

—37. While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.

38. In Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , a two-Judge Bench of this Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them would

—frustrate the proceedings, obstruct the taking of prompt

action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating‖ *[Id, SCC p. 293, para 98.] . Again, a two-Judge Bench of this*

Court in Anju Chaudhary v. State of U.P. [Anju Chaudhary v. State of U.P., (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503] has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR.‖

57. It is true that the accused has no right to be heard before the registration of the FIR but the SC/ST Act is a special act and overrides the general provisions of Cr.P.C. As already noted above, proviso to section 4(2) clearly mandates that in case of public servants, the charges shall only be booked based upon the recommendations of the administrative enquiry.

58. Even though the appeal on this short ground needs to be allowed but I am also dealing with the merits of the impugned order.

59. Perusing the contents of the application moved by the complainant, the grievances of the complainant as stated in the application are as follows:-

a) Non supply of copy of the chargesheet to the complainant.

b) Not charged the accused persons under appropriate sections.

c) Not arrested the accused persons.

d) Not recorded the statement of the complainant and witnesses.

60. The first grievance is that the appellant has not provided the copy of the chargesheet. On perusing Section 15A(11)(i) of SC/ST Act, it mandates that it is the duty and responsibility of the State to specify the scheme to provide the copy of the chargesheet, free of cost. The said section does not cast any duty upon the appellant being the IO to provide the copy of the chargesheet to the complainant and the complainant has failed to show any Scheme made by the State.

61. Further the relevant section does not mention at what stage the copy of the chargesheet is to be provided. It is not the case of the complainant that the appellant has declined or refused to provide the copy of the chargesheet to the complainant. The only grievance of the complainant is that since the appellant had not provided the copy of chargesheet then his right to be heard at the stage of framing of charges would be adversely affected, that stage has yet not arrived. Hence, the appellant has not violated any provision of law in this regard.

62. With regard to the other three grievances mentioned above, it is pertinent to note the role of Magistrate or Special Court as in the present case during the investigation. The Hon'ble Supreme Court in ***Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195*** has observed as under:-

—13. The provisions referred to above occurring in Chapter XII of the Code show that detailed and elaborate provisions have been made for

securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage.

…….

14. The Magistrate is no doubt not bound to accept the final report (sometimes called as closer report) submitted by the police and if he feels that the evidence and material collected during investigation justify prosecution of the accused, he may not accept the final report and take cognizance of the offence and summon the accused but this does not mean that he would be interfering with the investigation as such. He would be doing so in exercise of powers conferred by Section 190 CrPC. The statutory provisions are, therefore, absolutely clear that the court cannot interfere with the investigation.‖

(emphasis added)

63. Further, the Hon'ble Supreme Court in ***M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649*** has held that investigation is the exclusive domain of the police officers and once the report is filed by the IO, its role comes to an end. Relevant extract reads as under:- —*13. This Court held in the case of J.A.C. Saldanha [(1980)*

1 SCC 554 : 1980 SCC (Cri) 272] that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the

court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.‖ ***(emphasis added)***

64. The Hon'ble Supreme Court in ***P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24*** has observed as under:- *—64. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep*

out all the areas of investigation. In State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , it was held that : (SCC p. 258, para 47)

—47. … The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. … Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation….‖

65. *In Dukhishyam Benupani v. Arun Kumar Bajoria [Dukhishyam Benupani v. Arun Kumar Bajoria, (1998) 1 SCC 52 : 1998 SCC (Cri) 261] , this Court held that : (SCC p. 55, para 7)*

—7. … It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual….‖

66. *As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency*

to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.‖

65. From the above quoted judgements, it is evident that the learned special court formed opinions with regard to the nature of investigation and the manner in which the investigation should have been done by the appellant. The remaining grievances (*b,c and d*) of the complainant as noted above are that the accused persons were not charged with the relevant provisions, appellant did not arrest the accused persons and the appellant has not recorded the statement of the complainant and witnesses.

66. The FIR No. 261/2019 was registered under section 3(1)(c), 3(1)(r) of SC/ST Act read with section 506 IPC and after the investigation was conducted by the appellant and the evidence collected, chargesheet was filed under section 3(1)(r) of SC/ST Act read with section 506 and 34 of IPC.

67. The complainant's grievance (b) is that the appellant has not charged the accused persons with relevant provisions. The above cited judgements clearly shows that the Magistrate cannot interfere during

the investigation except in rare cases or on the application filed by the complainant during the investigation. Once the chargesheet is filed before the Court, the Magistrate may or may not accept the report or order further investigation but the Magistrate cannot question the formation of opinion arrived by the appellant being the IO as held in ***Union of India (supra)***. Further, the Magistrate after taking cognizance can add, alter or subtract the offences as per the evidences collected by the IO during the stage of framing of charges.

68. On perusing the sections in which the chargesheet was filed, none of the offences are punishable for more than 7 years. The Hon'ble Supreme Court has time and again and more recently in ***Satender Kumar Antil v. CBI, (2022) 10 SCC 51*** has reiterated that if the offences are punishable less than 7 years then the IO is required to send notice under section 41-A of Cr.P.C. before arresting the accused persons. On perusing the chargesheet filed by the appellant, the appellant has sent notice under section 41-A of Cr.P.C. to the accused persons.

69. The argument of the complainant that the appellant did not arrest the accused persons despite their anticipatory bail were dismissed by this Court cannot be accepted. The Hon'ble Supreme Court in ***M.C. Abraham (supra)*** has held as under:-

—15. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the court on mere apprehension that he may be arrested. The court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations.‖ ***(emphasis added)***

70. Also the Division Bench of this court in ***Court on its Own Motion v. State, 2018 SCC OnLine Del 12306*** dealing with a reference has observed that dismissal of Anticipatory bail cannot be a ground for arrest. Relevant extract reads as under:-

—B) Whether this court needs to delve upon the reasons of non-arrest given by investigating agency after rejection of anticipatory bail of the accused by the Hon'ble High Court? 39. The aforesaid question of law has already been answered by this court in Court on its Own Motion (2) (supra). When the charge sheet is filed before the Court/Magistrate without arresting the accused, despite the rejection of his anticipatory bail application by the High Court, it is not open to the court to examine

whether the exercise of discretion by the Investigating Officer (IO) - not to arrest the accused despite rejection of his anticipatory bail application by this Court, has been properly exercised. The Magistrate/Court is only concerned with the final report/charge sheet, as filed. This Court in Court on its Own Motion (2) (supra) has observed as follows:

—8. The view taken by the learned Magistrate that in offences, whereof the sentence is beyond seven years, the investigating agency should necessarily arrest the accused and produce the accused in custody at the time of filing the charge-sheet under Section 173, Cr. P.C. before the Magistrate, has no basis and is contrary to the statutory scheme. In this regard, reference may be made to Sections 2(c), 41, 41(1)(b), 41(1)(b)(a), 157(1), 173(2)(e), 173(2)(f) & 173(2)(g) of the Code, which put the matter beyond any doubt that the investigating agency is not obliged to arrest the accused whenever a cognizable offence is registered. The discretion to arrest the accused has to be exercised by the investigating agency by applying the principles laid down in the Code itself.

9. The aforesaid position has been reiterated by this Court in Udit Raj Poonia v. State (Govt. of NCT of Delhi), (2017) 238 DLT 212; as also in Rajesh Dua v. State, Bail Application No. 778/2017 decided on 9.8.2017. Thus, the Metropolitan Magistrate cannot examine whether the discretion of the IO to arrest, or not to arrest the accused, has been properly exercised. He is only concerned with the chargesheet, as filed. He may return the charge-sheet if he finds that the investigation is not complete, or the charge is not borne out from the evidence collected and filed with the charge-sheet. But he cannot return the same merely because the accused has not been arrested and produced in custody at the time of filing the chargesheet. The reference stands answered, accordingly.‖

Question (B) stands answered accordingly.‖

71. The appellant being the IO vests with the discretion to arrest and not to arrest the accused persons on the basis of evidence collected and the gravity of the offences. Also, once the chargesheet is filed by the appellant being IO, the Magistrate cannot question the discretion of not to arrest the accused persons.

72. Dealing with the last grievance of the complainant that the appellant has not recorded the statement of the complainant and witnesses cited by him. As already noted above, the conclusion or formation of opinion arrived by the

appellant cannot be questioned. The appellant being the IO exercises the discretion to record the statement of witnesses or the complainant. On perusing the chargesheet, it is noted that when the appellant along with his team reached the spot, none of the witnesses present on the spot came forward to give statement due to fear as the complainant is a practicing Advocate but the appellant has recorded some videos of investigation and the same forms the part of the chargesheet. Further, there are 13 witnesses cited by the appellant including him. Also, the chargesheet filed by the appellant records that *—Moreover, if any new facts come on record during further investigation about the above accuser persons, the same will be filed through Supplementary Chargesheet.*‖ This shows that the appellant has conducted a fair investigation.

73. Even if the learned special court deems fit that the investigation done by the appellant is not fair, then the learned special court can order further investigation or issue necessary directions/orders at appropriate stage but cannot question the conclusion or opinions formed by the appellant being IO which the law does not permit.

Hence, according to me there is no wilful dereliction of duty on the part of the appellant or that he has been negligent or that he has violated any provisions of law.

74. Learned special court has further observed that the appellant has violated Rule 7(1) of SC/ST Rules, 1995. The said rule reads as under:-

—1. An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government / Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.‖

75. The above said rule mandates that if any offence is committed under this SC/ST Act then it shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. In the present case, the investigation of the FIR No. 261/2019 has been conducted by the appellant being the rank of ACP. When the complainant informed the appellant that the accused persons had sent their relatives to ancestral village of the complainant in Haryana to pressurize the complainant only then the appellant deputed the SHO to visit the ancestral village of the complainant in Haryana. Hence, no fault can be found with this decision either.

76. For the foregoing reasons, the impugned order cannot be sustained. Other issued raised by the parties in the instant appeal such as violation of principles of natural justice, the appellant not appearing before the learned special court, not filing reply to the application filed by the complainant, etc. do not require adjudication in view of my findings given on the core issues.

77. Having adjudicated on the merits of the appeal, it will be relevant to note the scale at which a car parking dispute has been escalated to. The complainant is a practicing Advocate and the accused persons being police personnel's are the law keepers of the society and are required to understand the importance of time of police and as well as the judicial time. I hope good sense prevails.

CONCLUSION

78. In view of the reasons noted above, the impugned order dated 29.02.2020 is set aside.

79. It is made clear that this judgement is only for deciding the appeal and will not come in way of learned special court dealing with the case of the complainant being the FIR No. 261/2019.

80. The instant appeal is allowed and pending application(s), if any are disposed of in the above terms.