REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 967 OF 2021

Shantaben Bhurabhai Bhuriya …Appellant(s)

Versus

Anand Athabhai Chaudhari & Ors. …Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.05.2019 passed by the High Court of Gujarat passed in Special Criminal Application No.5670 of 2017, by which, the High Court has allowed the said Special Criminal Application and has quashed and set aside the FIR being M Case No.2 of 2013 for the offences punishable under Sections 452, 323, 325, 504, 506(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") and also quashing and setting aside the order of issuance of summons dated 15.02.2017 passed by the

learned JMFC, Jhalod in Criminal Inquiry No.108 of 2013 as well as all consequential proceedings arising therefrom, the original informant/ complainant has preferred present Appeal.

2.0. The facts leading to the present appeal in nutshell are as under:

2.1. That on 06.09.2013, one FIR being CR.No.I-104 of 2013 came to be registered against the husband of the original complainant- appellant herein for the offences punishable under Sections 323, 353, 362, 186 and 114 of the Indian Penal Code. That the said FIR was lodged / given at the instance of the respondent no.1 herein – original accused no.1 who was working as Police Sub Inspector alleging inter alia that the original accused persons named therein obstructed the public servants in performance of their duties and was beaten by them under the guise that they were not able to catch the thief and caused injuries to them.

2.2. As per the case of the complainant herein, in the village there were increasing incidents of theft and loot, due to which, the villagers were afraid. On 6.9.2013, at about 8 pm one thief came to the house of one Pravinbhai who lives in their society and thereafter, the police were called; that the Police Officers came to the Society and since the people from the society were not satisfied with the police, the accused persons who are Police Officers got excited and thereafter, staff from SP Office, Dahod was called and

thereafter the respondent no.1 – original accused no.1 went back to Limdi Police Station. As per the case of the complainant, at 10.30 pm on 06.09.2013, when the residents of the society were in their houses and at that time, the complainant was sitting outside her house, three Police Officers came in a car and original accused nos. 1 and 2 came to the society and all the original accused persons abused the complainant with regard to her caste and also caused injuries to her. As alleged in the FIR, the original accused persons also ransacked the house of complainant and also beat the son of the complainant and took away husband of the complainant and gave threats to them with dire consequences. As per the case of the complainant, she tried to lodge a formal complaint on 07.09.2013, but was unable to get the same lodged and therefore, she was constrained to file the complaint before the learned Magistrate on 13.09.2013. That learned Magistrate sent the complaint for investigation as per Section 156(3) of the Code of Criminal Procedure by observing that having heard the complainant and perused the documentary evidence and considering the seriousness of the case, the investigation is required. The learned Magistrate also directed the Investigating Officer to submit the report before 29.10.2013 and also directed that yadi in this regard should be sent to the Dy.Sp, Dahod. That the Investigating Officer submitted report on 29.05.2014 stating that the allegation in the FIR with regard to beating are not supported and as per the statement of Dy.Sp recorded on 27.5.2014, the accused no.2 was present with him in Limdi Police Station at the time of

alleged offence and had not gone outside the police station. In the report, it was also stated that statements of the witnesses are general and vague and after investigation, there is no evidence to proceed with the matter. Therefore, the Investigating Agency filed a summary report before the concerned Magistrate to that effect.

2.3. After filing of summary report, learned Judicial Magistrate First Class passed an order for further investigation under Section 173(8) of the Code of Criminal Procedure on 03.10.2015 by observing that summary report is not clear with regard to the involvement of the original accused no.3 and other Police Officers. That thereafter, the Deputy Superintendent of Police, SC/ST Cell, Dahod submitted its report to the learned Magistrate pointing out that the alleged offences are prima facie appear to have been committed by the accused persons. That thereafter, after considering the report submitted by the Deputy Superintendent of Police, SC/ST Cell, Dahod, the learned Magistrate vide order dated 15.02.2017 had taken cognizance of the alleged offences by issuance of the process under Section 204 of the Criminal Procedure Code.

2.4. Feeling aggrieved and dissatisfied with the order passed by the learned Magistrate summoning the accused/ issuing the process against the accused for the aforesaid offences, the accused preferred Special Criminal Application before the High Court under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure and prayed

to quash and set aside the FIR / complaint being M Case No. 2 of 2013 as well as order of issuance of summons dated 15.02.2017 passed in Criminal Case No.169 of 2017.

2.5. It was mainly contended on behalf of the accused that the learned Magistrate had no authority to take cognizance of the offences under the provisions of the Atrocities Act and only Special Court can take cognizance of the offences. It was submitted that the Court of learned Magistrate is not a Special Court under the provisions of the Atrocities Act. It was further submitted that the impugned FIR is nothing but a counterblast to the complaint filed against the husband of the complainant and others for the incident happened on 06.09.2013 wherein the police was assaulted. It was also submitted on behalf of the accused that there was a gross delay in lodging the FIR / complaint on 15.11.2013 for the offences alleged to have been committed on 06.09.2013 and the delay has not been explained. It was further submitted that at the relevant time Police Officers were discharging their official duties and therefore, before initiation of any proceedings, a sanction under Section 197 of the Code of Criminal Procedure was required and in absence of such sanction from the competent authority, no prosecution could have been launched / continued against them.

2.6. The prayer to quash the FIR and the order issuing the summons on the aforesaid ground was opposed by the learned counsel for the original complainant. Referring to Section 14 of the Atrocities Act, it was submitted that the

Special Court has power “only for trial” and the Special Court cannot take cognizance directly. It was further submitted that after filing of the summary report, the learned Magistrate directed further investigation, whereupon, Dy.Sp submitted summary report after investigation submitting that the offence has been made out.

2.7. In response, it was submitted on behalf of the accused that in view of the amended Section 14 of the Atrocities Act, the Special Court can take direct cognizance of the offence and therefore, now learned Magistrate is not empowered to take cognizance directly.

2.8. By impugned judgment and order, the High Court has allowed the Special Criminal Application and quashed and set aside the FIR as well as order passed by the learned Magistrate taking cognizance and issuing summons for the Indian Penal Code offences as well as offences under the Atrocities Act mainly on the ground that in view of the amendment to Section 14 of the Atrocities Act, the Special Court can take cognizance directly and the jurisdiction of the learned Magistrate can be said to be ousted and looking at the allegation in the FIR, in absence of sanction under Section 197 of the Code of Criminal Procedure from the State Government, the concerned Court ought not to have taken cognizance of the offences.

2.9. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Gujarat

quashing and setting aside the entire criminal proceedings / FIR and the order passed by the learned Magistrate taking cognizance and issuing the summons for the offences under the Indian Penal Code as well as under the provisions of Atrocities Act, the original complainant has preferred present appeal.

3.0. Shri Nikhil Goel, learned counsel for the appellant has vehemently submitted that High Court has misinterpreted and misconstrued the amendment to Section 14 of the Atrocities Act. It is submitted that as per the High Court, after amendment to Section 14 of the Atrocities Act, cognizance can only be taken by the learned Special Judge/Court and therefore, taking cognizance and issuance of summons by the learned Magistrate can be said to be prohibited by law and consequently quashing the criminal proceedings / FIR on the aforesaid ground is erroneous. It is submitted that apart from the fact that the amendment to Section 14 of the Atrocities Act was brought in the year 2016, second proviso to Section 14 (as amended) cannot be read as a standalone provision and must be read with the purpose it seeks to achieve. It is submitted that by inserting second proviso to Section 14, the purpose it seeks to achieve is providing for speedy trial. It is submitted that amendment does not exclude the provision of Code of Criminal Procedure but only clarify the position that the bar of Section 193 of the Code of Criminal Procedure would not be *ipso facto* applicable. It is submitted that it gives a choice to the Investigating Agency to file the report either before the Magistrate who will commit

the matter to the Court of Special Judge under Section 209 of the Code of Criminal Procedure or to file it directly before the Special Court. It is submitted that interpretation given by the High Court would add premium to the alleged criminal actions of an accused who would not even be tried for serious offences merely because a final report has been forwarded to a wrong forum.

3.1. It is submitted that unlike the old Code, Section 209 of the Code of Criminal Procedure, 1973 does not give any power of inquiry to the Magistrate and the Magistrate is duty bound to commit a matter for trial to the Court of Session once it is found triable by the Court of Session.

3.2 It is submitted that as such and it appears that amendment was required in view of the interpretation given to unamended Section 14 in the judgment of this Court in the case of ***Rattiram and Others vs. State of Madhya Pradesh*** reported in **(2012) 4 SCC 516**.

3.3. It is submitted that even otherwise the irregularity of sending a final report to a wrong Court can be said to be merely an irregularity which does not vitiate the proceedings considering Section 460(e) of the Code of Criminal Procedure. It is submitted that the rationale behind Section 460(e) is that the entry of an accused in our criminal jurisprudence only happen after a cognizance is taken and his first right of objection is contemplated only at the stage of framing of the charge (subject to the provisions of bail and

search and seizure). It is submitted that the accused is not affected by the forum which takes cognizance and issues summons to him so long as he gets to agitate his rights before the correct forum. It is submitted that therefore, the impugned judgment and order passed by the High Court overlooks Section 460(e) of the Code of Criminal Procedure.

3.4. It is submitted that the law laid down relating to cognizance must relate back to the date of commission of the offence which in this case is 06.09.2013. It is submitted that cognizance is to be taken of the “offence” and not the offender. It is submitted that therefore, any amendment which is in the nature of substantive right would only be prospective unless expressly stated to be retrospective. It is submitted that if Section 14 of the Atrocities Act is to be interpreted to give a substantive right to the accused, then the date of offence becomes relevant. It is submitted that however if Section 14 of the Atrocities Act is interpreted to be only procedural not affecting the right of an accused then the impugned judgment is *ipso facto* incorrect because it has scuttled the entire proceedings at the inception on the ground of violation of Section 14 of the Atrocities Act.

3.5. It is further submitted that even the finding recorded by the High Court that there was a delay of two months in lodging the FIR is contrary to the material on record. It is submitted that the alleged offence is committed on 06.09.2013 and in fact earlier an attempt was made in getting FIR registered on 07.09.2013 i.e. on the next day but the FIR was not lodged

as the accused were Police Officers and thereafter, the complainant was constrained to file complaint before the learned Magistrate which was filed on 13.09.2013 and only after an order dated 26.09.2013 of the learned Magistrate, an FIR was registered. It is submitted that therefore, as such there was no delay at all in lodging the FIR and therefore, the finding on delay is erroneous and without merit.

3.6. It is further submitted by Shri Nikhil Goel, learned counsel for the complainant that even bar under Section 197 of the Code of Criminal Procedure would not apply to the acts done which are not part of the official duty. It is submitted that this is a case of patent abuse of power. It is submitted that even the issue of sanction is subject to the test of prejudice and failure of justice. It is submitted that even assuming the provisions of Section 197 applies, the High Court ought to have directed the authorities to take sanction and then proceed instead of completely quashing the case. Making above submissions, it is prayed to quash and set aside the impugned judgment and order passed by the High Court and direct the learned Trial Court to dispose of the trial in time bound manner.

4.0. Shri Aniruddha P. Mayee, learned counsel appearing on behalf of the State has supported the appellant.

5.0. Though served, nobody appeared on behalf of the private respondent.

6.0. Heard learned counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the State.

7.0. By the impugned judgment and order, the High Court has quashed and set aside the entire criminal proceedings for the offences under Sections 452, 323, 325, 504, 506(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act on the ground that (1) in the present case cognizance of the charge-sheet has been taken by the learned Magistrate and thereafter the case was committed to the learned Court of Session / Special Court and therefore, in view of second proviso to Section 14 of the Atrocities Act, cognizance could not be taken by the learned Magistrate; (2) That there was a delay in lodging the complaint for which there is no explanation given for delay of such complaint; (3) before launching the prosecution, the sanction under Section 197 of the Code of Criminal Procedure has not been obtained of the competent authority.

8.0. Therefore, the issue/question posed for the consideration of this Court is, whether in a case where cognizance is taken by the learned Magistrate and thereafter the case is committed to the learned Special Court, whether entire criminal proceedings can be said to have been vitiated considering the second proviso to Section 14 of the Atrocities Act which was inserted by Act 1 of 2016 w.e.f. 26.1.2016?

8.1. While considering the aforesaid issue/question, legislative history of the relevant provisions of the Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act, 1989, more particularly, Section 14 pre-amendment and post amendment is required to be considered. Section 14 as stood pre-amendment and post amendment reads as under:

> "*Section 14. Special Court (**Pre amendment**): 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*"
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> *"Section 14. Special Court and Exclusive Special Court (**Post amendment**): (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:*
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> *Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act;*
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> *Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act."*

8.2. This Court had an occasion to consider Section 14 pre-amendment in the case of ***Rattiram and Ors (Supra)***. In the case before this Court which was pre-amendment, the learned Sessions Court straightway took the cognizance. This Court considered Section 193 of the Code of Criminal Procedure and formulated the questions whether the

Special Court as constituted under the Atrocities Act is a Court of Sessions; and whether there is a constitutional provision in the Act enabling the said Court to take cognizance. This Court after taking note of Section 193 of the Code of Criminal Procedure observed that on plain reading of Section 193 of the Code of Criminal Procedure, it is clear that no 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. At this stage, it is required to be noted that pre-amendment to Section 14 there was no provision permitting / authorizing the learned Court / Special Court to take cognizance of offences under the Atrocities Act. Therefore, this Court formulated the aforesaid questions. At this stage, it is required to be noted that perceiving divergent and contradictory views as regards the effect and impact of not committing an accused in terms of Section 193 the Code of Criminal Procedure in cases where charge-sheet is filed under Section 3(1)(x) of the Atrocities Act and cognizance is directly taken by the Special Judge under the Act, a two-Judge Bench thought it fit to refer the matter to a larger Bench and on the basis of the said reference, the matter was placed before the Bench consisting of three Hon'ble Judges. While referring the matter to the Larger Bench three conflicting decisions one in the case of ***State of MP vs. Bhooraji and Ors.*** *reported in* ***(2001) 7 SCC 679***, in the case of ***Moly and Anr. vs State of Kerala*** *reported in* ***(2004) 4 SCC 584*** and in the case of ***Vidyadharan vs. State of Kerala*** *reported in*

(2004) 1 SCC 215 were noted. In the case of ***Bhooraji (supra)***, it was held by this Court taking aid of Section 465(1) of the Code that when trial has been conducted by the Court of competent jurisdiction and a conviction has been recorded on proper appreciation of evidence, the same cannot be erased or effaced merely on the ground that there had been no committal proceeding and cognizance was taken by the Special Court, inasmuch as the same does not give rise to failure of justice. On the other hand, in the case of ***Moly (supra)***, it was held that conviction by the Special Court is not sustainable if it has suo motu entertained and taken cognizance of the complaint directly without the case being committed to it and, therefore, there should be retrial or total setting aside of the conviction, as the case may be. After considering the object and purpose of committal and after taking into consideration Section 207 (pre-amendment), 207-A (pre-amendment) and 209 of the old Code of Criminal Procedure, 1973, it is observed and held by this Court that while committing the case to the Court of Session under Section 209 of the Code of Criminal Procedure, in a case where the offence is triable exclusively by the Court of Session, the limited jurisdiction conferred on the Magistrate is only to verify the nature of the offence and thereafter if the learned Magistrate is satisfied that the offences are triable exclusively by the Court of Session, he shall commit the case to the Court of Sessions. While holding so, this Court considered the relevant provisions under the old Code- Code of Criminal Procedure, 1898 and the relevant

provisions of Code of Criminal Procedure, 1973 and after having noted that there is a sea of difference in the proceeding for commitment to the Court of Session under the old Code and under the existing Code, it is observed that there is nothing in Section 209 of the Code to even remotely suggest that any of the protections as provided under the old Code has been telescoped to the existing one. In paras 53 to 58, it is observed and held as under:

> *"53. On a bare perusal of the above quoted provisions, it is plain as day that an exhaustive procedure was enumerated prior to commitment of the case to the Court of Session. As is evincible, earlier if a case was instituted on a police report, the magistrate was required to hold enquiry, record satisfaction about various aspects, take evidence as regards the actual commission of the offence alleged and further was vested with the discretion to record evidence of one or more witnesses. Quite apart from the above, the accused was at liberty to cross-examine the witnesses and it was incumbent on the magistrate to consider the documents and, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him by the prosecution and afford the accused an opportunity of being heard and if there was no ground for committing the accused person for trial, record reasons and discharge him.*
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> *54. Thus, the accused enjoyed a substantial right prior to commitment of the case. It was indeed a vital stage. But, in the committal proceedings in praesenti, the magistrate is only required to see whether the offence is exclusively triable by the Court of Session. Mr. Fakhruddin, learned senior counsel, would submit that the use of the words "it appears to the magistrate" are of*

immense signification and the magistrate has the discretion to form an opinion about the case and not to accept the police report.

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

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

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

> *18.19. After a careful consideration we are of the unanimous opinion that committal proceedings are largely a waste of time and effort and do not contribute*

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

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

58. In our considered opinion, because of the restricted role assigned to the Magistrate at the stage of commitment under the new Code, the non-compliance of the same and raising of any objection in that regard after conviction attracts the applicability of the principle of `failure of justice' and the convict-appellant becomes obliged in law to satisfy the appellate court that he has been prejudiced and deprived of a fair trial or there has been miscarriage of justice. The concept of fair trial and the conception of miscarriage of justice

are not in the realm of abstraction. They do not operate in a vacuum. They are to be concretely established on the bedrock of facts and not to be deduced from procedural lapse or an interdict like commitment as enshrined under Section 193 of the Code for taking cognizance under the Act. It should be a manifestation of reflectible and visible reality but not a routine matter which has roots in appearance sans any reality. Tested on the aforesaid premised reasons, it is well nigh impossible to conceive of any failure of justice or causation of prejudice or miscarriage of justice on such non-compliance. It would be totally inapposite and inappropriate to hold that such non-compliance vitiates the trial."

That thereafter, after observing the above, this Court overruled the objection relating to non-compliance of Section 193 of the Code, which eventually has resulted in directly entertaining and taking cognizance by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and observed that it does not vitiate the trial and on the said ground alone, the conviction cannot be set aside or there cannot be a direction of retrial. That thereafter, this Court concluded that the decision rendered in **Moly (supra)** and **Vidyadharan (supra)** have not noted the decision in **Bhooraji (supra)**, a binding precedent, and hence they are per incuriam. At this stage, it is required to be noted that in the said decision this Court also considered in detail the concept of speedy trial vis-a-vis right of a victim and has observed in paras 59, 63, 64 and 65 as under:

"59. At this juncture, we would like to refer to two other concepts, namely, speedy trial and

treatment of a victim in criminal jurisprudence based on the constitutional paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasized by this Court. It has been recognised as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The whole purpose of speedy trial is intended to avoid oppression and prevent delay. It is a sacrosanct obligation of all concerned with the justice dispensation system to see that the administration of criminal justice becomes effective, vibrant and meaningful. The concept of speedy trial cannot be allowed to remain a mere formality (see Hussainara Khatoon and Ors. v. Home Secretary,State of Bihar28, Moti Lal Saraf v. State of Jammu & Kashmir29 and Raj Deo Sharma v. State of Bihar30).

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

64. Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal

jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice.

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

This Court authoritatively concluded that the delay in conclusion of the trial is direct nexus with the collective cry of the society and the anguish and agony of an accused (quaere a victim). It appears that observations made by this Court in the case of **Rattiram and Ors. (supra)** gave rise to amendment to Section 14 of the Act and it appears to avoid consumption of time on procedural aspect on committing of case by the Magisterial to Court of Session as per Section 209 of the Code of Criminal Procedure and to avoid any further delay and to have speedy trial for the offences under the Atrocities Act to prevent commission of offence of

Atrocities against the members of the Scheduled Castes and Scheduled Tribes, proviso to Section 14 came to be inserted by Act 1 of 2016, by which, it has been provided that after post amendment insertion of proviso to Section 14 the Special Court so established for the purpose of providing for speedy trial or specified shall (also) have power to directly take cognizance of the offences under the Atrocities Act, 1989. Therefore, the object and purpose of insertion of Section 14 is to provide speedy trial for the offences under the Atrocities Act, 1989 and as observed herein above, to avoid the delay which was taking place by the committal of the offence by the learned Magistrate to the learned Special Court / Sessions Court.

9. Considering the aforesaid legislative history which brought to insertion of proviso to Section 14 of the Atrocities Act, by which, even the Special Court so established or specified for the purpose of providing for speedy trial the power to directly to take cognizance of offences under the Atrocities Act, 1989, the issue / question posed whether in a case where for the offences under Atrocities Act, the cognizance is taken by the learned Magistrate and thereafter the case is committed to the Court of Sessions / Special Court and cognizance is not straightway taken up by the learned Special Court / Court of Session, whether entire criminal proceedings for the offences under the Atrocities Act, 1989 can be said to have been vitiated, as so observed by the High Court in the impugned judgment and order ?

9.1. On fair reading of Sections 207, 209 and 193 of the Code of Criminal Procedure and insertion of proviso to Section 14 of the Atrocities Act by Act No.1 of 2016 w.e.f. 26.1.2016, we are of the opinion that on the aforesaid ground the entire criminal proceedings cannot be said to have been vitiated. Second proviso to Section 14 of the Atrocities Act which has been inserted by Act 1 of 2016 w.e.f. 26.1.2016 confers power upon the Special Court so established or specified for the purpose of providing for speedy trial also shall have the power to directly take cognizance of the offences under the Atrocities Act. Considering the object and purpose of insertion of proviso to Section 14, it cannot be said that it is not in conflict with the Sections 193, 207 and 209 of the Code of Criminal Procedure, 1973. It cannot be said that it takes away jurisdiction of the Magistrate to take cognizance and thereafter to commit the case to the Special Court for trial for the offences under the Atrocities Act. Merely because, learned Magistrate has taken cognizance of the offences and thereafter the trial / case has been committed to Special Court established for the purpose of providing for speedy trial, it cannot be said that entire criminal proceedings including FIR and charge-sheet etc. are vitiated and on the aforesaid ground entire criminal proceedings for the offences under Sections 452, 323, 325, 504, 506(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act are to be quashed and set aside. It may be noted that in view of insertion of proviso to Section 14 of the Atrocities Act and considering the object and purpose, for which, the proviso to Section 14 of the Atrocities Act has been inserted

i.e. for the purpose of providing for speedy trial and the object and purpose stated herein above, it is advisable that the Court so established or specified in exercise of powers under Section14, for the purpose of providing for speedy trial directly take cognizance of the offences under the Atrocities Act. But at the same time, as observed herein above, merely on the ground that cognizance of the offences under the Atrocities Act is not taken directly by the Special Court constituted under Section 14 of the Atrocities Act, the entire criminal proceedings cannot be said to have been vitiated and cannot be quashed and set aside solely on the ground that cognizance has been taken by the learned Magistrate after insertion of second proviso to Section 14 which confers powers upon the Special Court also to directly take cognizance of the offences under the Atrocities Act and thereafter case is committed to the Special Court / Court of Session.

9.2. In support of the above conclusion, the words used in second proviso to Section 14 are required to be considered minutely. The words used are "**Court so established or specified shall have power to directly take cognizance of the offences under this Court**". The word "**only"** is conspicuously missing. If the intention of the legislature would have to confer the jurisdiction to take cognizance of the offences under the Atrocities Act exclusively with the Special Court, in that case, the wording should have been "**that the Court so established or specified *only* shall have power to directly take cognizance of offences under**

this Act". Therefore, merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the learned Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the learned Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside**.**

10. Even the aforesaid aspect is also required to be considered from another angle i.e. theory of prejudice to the accused. In the case of *Rattiram and Ors (supra)*, in which, this Court had an occasion to consider Section 14 of the Atrocities Act (pre amendment) has specifically observed and held that (1) under the Code of Criminal Procedure, 1973 in the committal proceedings, the Magistrate is only required to see whether offence is exclusive triable by the Court of Session; (2) the limited jurisdiction conferred on the Magistrate under Section 209 of the Code of Criminal Procedure is only to verify the nature of the offences ; (3) after having satisfied of verifying the nature of the offences that the offences triable exclusively by the Court of Sessions, he shall commit the case to the Court of Sessions; (4) because of restricted role assigned to the Magistrate at the stage of committal under the new Code, the non-compliance with the same and raising of objection in that regard after conviction attracts the applicability of the principles of "failure of justice" and the convict becomes obliged in law to satisfy the Appellate Court that he has been

prejudiced and deprived of a fair trial or there has been miscarriage of justice; (5) it would be a totally inapposite and inappropriate to hold that such non-compliance vitiates the trial.

11. The issue involved in the present appeal is also required to be considered from another angle. The accused is to be tried for the offences under the Atrocities Act by Special Court / Exclusive Special Court constituted under Section 14 of the Atrocities Act. Even those rights are also available to the victim for the offences under the Atrocities Act in which the trial is by the Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Therefore, unless and until those rights which flow from Section 14 of the Atrocities Act are affected, the accused cannot make any grievance and it cannot be said that taking cognizance by the learned Magistrate for the offences under the Atrocities Act and thereafter to commit the case to the Special Court, he is prejudiced.

12. Even considering Section 460 of the Code of Criminal Procedure, if any Magistrate not empowered by the law to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190, takes cognizance, such irregularities do not vitiate proceedings. At the most, it can be said to be irregular proceedings for which, it does not vitiate the proceedings. In view of the above and for the reasons stated above, the view taken by the High Court that as in the present case the learned Magistrate has taken cognizance

for the offences under the Atrocities Act and thereafter the case is committed to the learned Special Court and therefore, entire criminal proceedings are vitiated, cannot be accepted and is unsustainable. If on the aforesaid ground entire criminal proceedings are quashed, in that case, it will be given a premium to an accused who is alleged to have committed the offence under the Atrocities Act. Assuming for the sake of argument that the procedure adopted is irregular, in that case, why should victim who belonged to Scheduled Castes and Scheduled Tribes community be made to suffer.

13. Even the impugned judgment and order passed by the High Court quashing and setting aside the entire criminal proceedings is unsustainable. The allegation against the accused were for the offences under the Indian Penal Code also along with for the offences under the Atrocities Act. By the impugned judgment and order, the High Court has not only quashed and set aside the proceedings under the Atrocities Act but for the offences under the Indian Penal Code also, which is not permissible. We fail to appreciate how the criminal proceedings for the offences under the Indian Penal Code could have been set aside by the High Court while considering Section 14 of the Atrocities Act.

14. Now, so far as the observation made by the High Court while quashing and setting aside the entire criminal proceedings that there was delay of two months in lodging the complaint is concerned, it appears that while observing so, the High Court

has not at all adverted itself to the relevant pleadings and even the case on behalf of the victim / complainant. It is to be noted that date of alleged offence is 6.9.2013. It was the specific case on behalf of the victim that an attempt was made in getting FIR registered on 7.9.2013 i.e. on the very next day. But FIR was not registered, probably might be because the accused were Police Officers. Be that as it may, even the complaint before learned Magistrate was filed on 13.09.2013 and thereafter after an order was passed by the learned Magistrate on 26.09.2013 under Section 156(3) of the Code of Criminal Procedure, the police registered the FIR and started the investigation. Therefore, as such, it is not correct to say that the FIR was lodged after a period of two months and that too without any explanation.

Even otherwise, on the ground of delay in lodging FIR / complaint, the criminal proceedings cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure. The aspect of delay is required to be considered during the trial and during the trial when the complainant is examined on oath and a question is put to him/her on delay and he/she can very well explain the delay in his/her cross examination. But on the aforesaid ground, entire criminal proceeding cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure.

15. Now, so far as the observation made by the High Court that in view of bar under Section 197 of the Code of Criminal Procedure and no sanction was obtained is concerned, the

aforesaid also cannot be ground to quash criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure. Looking to serious allegations against the Police Officers of misuse of powers and it is alleged that innocent persons residing in the society were beaten and even in the earlier day the phone call was made by the complainant / victim informing that thieves have come in the society and complaint was made that nothing is being done despite repeated such incidents and the alleged incident in the present case is in the midnight when again Police Officers along with additional police staff went to the village and the allegation against the accused are with respect to second incident, it is very debatable whether power under Section 197 of the Code of Criminal Procedure would apply and the acts which are alleged to have been done by the accused / Police Officers can be said to be part of official duties. Therefore, at this stage, to quash the entire criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure is impermissible. Even assuming that the High Court was right that in absence of sanction under Section 197, the proceedings are vitiated, in that case, the High Court could have directed the authority to take sanction and then proceed, instead of completely quashing the entire criminal proceedings.

16. In view of the above and for the reasons stated above, the impugned judgment and order dated 09.05.2019 passed by the High Court of Gujarat passed in Special Criminal Application No.5670 of 2017 quashing and setting aside the

entire criminal proceedings for the offences punishable under Sections 452, 323, 325, 504(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act, in exercise of powers under Section 482 of the Code of Criminal Procedure r/w Article 226 of the Constitution of India is hereby quashed and set aside. Now, accused be tried by the learned Special Court having jurisdiction for the aforesaid offences. Present appeal is allowed to the aforesaid extent.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
OCTOBER 26, 2021. **[ANIRUDDHA BOSE]**