ISSN - 2583-2344

Case Commentary - DR. SUBHASH KASHINATH MAHAJAN VS STATE OF MAHARASHTRA (AIR 2018 SC 1498)

Shraddha Sharma - Law graduate from Sardar Patel Subharti Institute of Law & Aadil Abbas - Law Graduate from SRM University

Best Citation - Shraddha Sharma & Aadil Abbas, Case Commentary - DR. SUBHASH KASHINATH MAHAJAN VS STATE OF MAHARASHTRA (AIR 2018 SC 1498), 2 (5) & 32 of 2022, IJLR.

I. ABSTRACT

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Act was enacted to safeguard the Scheduled Castes and Scheduled Tribes people from different types of discrimination and atrocities and other problems they are facing in the society.

Recently Supreme Court announced the judgement of Subhash Kashinath Mahajan V. State of Maharashtra to prevent the misuse of the Act by Dalits and other SC and ST people. This verdict led to protests in various states of country by Dalit groups who shows disregards about the said judgement. This judgement is a landmark judgement in the history of the era.

Keywords : Supreme Court, Scheduled Caste, atrocities , Arrest, Right to Life etc

Case Title	DR. SUBHASH KASHINATH MAHAJAN VS STATE OF MAHARASHTRA
Case No	CRIMINAL APPEAL NO.416 OF 2018
Date of the Order	20-03-2018
Citation	Criminal Appeal No.416 OF 2018 (Arising out of Special Leave Petition (Crl.)No.5661 of 2017).
Jursidiction	Supreme Court of India
Quorum	Hon'ble Mr. Justice Adarsh Kumar Goel Hon'ble Mr. Justice Uday Umesh Lalit
Author of the Judgement	Both Hon'ble Justices
Appellant	Dr. Subhash Kashinath Mahajan
Respondent	State of Maharashtra and Anr.
Counsel for Appellant	Advocate V.M Tarkunde
Counsel for Respondent	Advocate Amrendra Sharan
Acts and Section Involved	• The Constitution Of India 1950, Article 21 • Rules of the procedure of National Commission for Scheduled Castes, Section 3 • The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 18 • Code of Criminal Procedure, 1973, Section 41

II. INTRODUCTION

The decision in the case we're talking about today is a significant one in Indian legal history. The case of Dr. Subhash Kashinath Mahajan v. State of Maharashtra is significant because it clarified how the Schedule Tribes (Prevention of Atrocities Act), 1989 is being abused and the significance of dismissing complaints in cases when there is no actual proof of the wrongdoer's guilt. The Bench of Justices rendered its verdict on the review petitions filed in opposition to the ruling in Subhash Kashinath Mahajan on October 1st, 2019. (2018). The Court's instructions in Subhash Kashinath Mahajan on the regustration of FIRs and the arrest of individuals under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (the "Act"), were recalled by the Bench in the 51-page judgement written by Justice Mishra. These are the directives that the Bench has ruled are no longer valid: It is only possible to arrest a public employee with the appointing authority's consent.Arresting a non-public employee is only permitted with the Superintendent of Police's consent. The approving authority must document the justifications for such approvals. The Magistrate must carefully review these recorded grounds before approving additional detention.Before filing FIRs under the Act, Dy.S.P. level police officers must conduct an initial investigation to determine whether the claims are baseless or unfounded.

III. FACTS OF THE CASE

1. The accused in this case, the appellant, is charged with violating the Indian Penal Code of 1860, Sections 182, 192, 193, and 219 read with 34, as well as Sections 3(1)(ix), 3(2)(vi), and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (IPC). In the relevant period, he was the State of Maharashtra's Director of Technical Education.
2. The complaint, the second respondent, works for the department. He was assigned to the Pune-based Government Distance Education Institute. His seniors, Drs. Satish Bhase and Kishor Burade, who do not belong to the scheduled caste, wrote a negative entry in his annual confidential report regarding his honesty and character.
3. On January 4, 2006, he filed a formal complaint with the Karad Police Station under the Act against the two officers in question.
4. On December 21st, 2010, the concerned Investigating Officer submitted an application to the Director of Technical Education seeking sanctions against them under Section 197 Cr.P.C.
5. On January 20, 2011, the appellant rejected the punishment. As a result, a C Summary Report was submitted against Bhise and Burade, but the court rejected it. The current FIR was then filed by him against the appellant. The complainant argues that the Director of Technical Education lacked the authority to issue or withhold sanction because the two individuals in question are Class-I officers and only the State Government has the authority to do so.Thus, in his view, the appellant violated the charges made in the FIR dated March 28, 2016, by improperly handling the sanction issue.
6. The High Court rejected the appellant's request to have the aforementioned complaint quashed.

IV. ISSUES INVOLVED

1. Whether it is possible to prosecute officers who handled the situation in their official role based on a unilateral claim of mala fide intention and If so, what protections are available against such abuse?
2. Whether this is a fair and just process in accordance with Article 21 of the Indian Constitution and procedural safeguards could be put in place to prevent the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC & ST PA Act") from being exploited for extraneous considerations?

V. ARGUMENTS IN FAVOUR OF APPELLANT

The appellant stated that the complaint should have been dismissed by the HC since no offence was committed under sections 3(1)(ix), 3(2)(vi), or 3(2)(vii) of the Atrocities Act or under sections 182, 192, 193, 203, or 219 of the IPC. It was claimed that because the FIR was filed more than five years after the appellant's order was issued and the order itself was invalid, the proceedings could not have proceeded. The learned amicus argued that various crimes under the Atrocities Act could simply depend on the complainant's version, which might not be deemed to be accurate. There might not be any additional tangible items. Before a trial, a biassed version cannot override the presumption of innocence. Such a version might occasionally be self-serving and for unrelated reasons. A person's freedom cannot be infringed upon based on an untested unilateral version, without any kind of proof or physical evidence, and thus goes against the Constitution's guarantees of fundamental rights. There must be a fair, reasonable, and just procedure in place before a person's freedom is taken away.

Therefore, the authority to make an arrest should only be used once the protections outlined in Sections 41 and 41A of the Criminal Procedure Code have been met. It was argued that Section 41 of the Criminal Procedure Code should be interpreted in light of Section 26 of the IPC and cases interpreting the phrase "cause to believe." The aforementioned expression was not at all suspicious. Joti Prasad versus State of Haryana1, Badan Singh @ Baddo versus State of U.P. & Ors. 2, Adri Dharan Das versus State of West Bengal 3, Tata Chemicals Ltd. versus Commissioner of Customs 4, and Ganga Saran & Sons Pvt. Ltd. versus Income Tax Officer & Ors. have all been mentioned in this respect.

In light of the Standing Committee on Social Justice and Empowerment (2014–15)'s Sixth Report on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014, which rejected the Ministry's position that there was no need to provide for action against false or malafide implication under the Atrocities Act, it was necessary to establish safeguards to enforce the constitutional guarantee under Article 21. The following was noted there:

The Committee is hesitant to accept the Ministry's argument that anyone who are found to be abusing the Act's provisions can be tried under the relevant IPC sections in accordance with the general rule of law. The Committee firmly believes that because the PoA Act is a special legislation, it must be wholesome to the point where it includes a provision for gaining justice for individuals who are wrongly accused of wrongdoing under it.Even more so considering how thoughtfully legislators addressed these concerns when they included clause 14 to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Punishment for False or Malicious Complaint and False Evidence). According to information (Crime in India 2016 - Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs, under the headings "Police Disposal of Crime/Atrocities against SCs Cases (State/UT-wise)-2016" (Table 7A.4) and "Police Disposal of Crime/Atrocities against STs Cases (State/UT-wise)-2016," it is mentioned that in 2016, 5347 cases were found to be false cases .

It was noted that in 2015, out of 15638 cases decided by the courts, 495 cases were withdrawn, 4119 cases ended in conviction, and 11024 cases resulted in acquittal or discharge. (Reference: Annual Report 2016-2017 released by the Ministry of Social Justice and Empowerment, Government of India; Department of Social Justice & Empowerment). It was argued that the Atrocities Act's definition of an offence hinged entirely on the fact of the complaint, which may or may not be accurate, and that no supporting evidence could be provided. As a result of the person being held accountable without any solid evidence or verification, this imperils the fundamental right guaranteed by the constitution. It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a Bandhua Mukti Morcha vs. UOI [20] ,Vishakha versus

[20] (1984) 3 SCC 161, para 13

State of Rajasthan[21], Lakshmi Kant Pandey v. UOI[22] , Common Cause v. UOI[23] . It was suggested that there should be an exercise to stop the use of the arbitrary power of arrest if there is no proof for the existence of such material substance, provided that there is a preliminary investigation into the reason why such an arrest was made.

VI. ARGUMENTS IN FAVOUR OF RESPONDENT

It was contended that after a legislation is passed, the court does not need to establish recommendations as long as the Atrocities Act's provisions do not need to be upheld. It was suggested that anticipatory bail can be granted where there is no evidence of fabrication after drawing conclusions from various cases. The Government of India issued advises on 03.02.2005, 01.04.2010, and 23.05.2016. Additionally, the Atrocities Act was amended to include language clarifying that both special courts and exclusive special courts are permitted. The Act was designed to be a powerful defence against castes and tribes that have historically been oppressed and exploited. Other significant election promises made by many political parties to get support in the elections include the emancipation of the Dalits and tribal communities. Of the 1.3 billion people living in the country, about 200 million are Dalits, a significant portion of the population in various regions.

The upper castes and the privileged class do not resort to this, and there is no presumption that members of the Scheduled Castes and Scheduled Tribes may abuse the legal provisions collectively. It is impossible to attribute a person's fraudulent report to their caste. Not the caste factor, but human failings are to blame. Such such act cannot be attributed to caste.

Members of the Scheduled Castes and Scheduled Tribes, however, find it difficult to generate the bravery to file even a first information report, much less a fraudulent one, due to their social backwardness. Members of the Scheduled Castes and Scheduled Tribes have actually suffered for a very long time; therefore, if we cannot offer them protective discrimination that is advantageous to them, we cannot put them in any situation where they may suffer harm by increasing inequality and going against the very spirit of our Constitution. Treating everyone of them as a liar or a con artist and refusing to give each complaint made by one of these complainants a fair hearing would be against the fundamental dignity of all human beings.

VII. ORDER OF THE COURT

After carefully examining all of the arguments, submissions, and evidence presented by both parties, the court concluded that, absent another crime specifically designated as an arrestable offence in place of those listed under the Atrocities Act, no arrest of a member of the public may be made without the written consent of the hiring authority. It was further stated that if the individual being arrested is not a public employee, they cannot be detained without the Senior Superintendent of Police of the District authorising it in writing, as long as they are served with a copy of the written permission and the reasons why before court. It was said that the magistrate must consider the documented grounds when the arrested person is brought before him or her, and such detention should only be permitted if the accusations are determined to be valid. It was decided that in order to prevent bogus complaints and FIRs, a preliminary investigation may be conducted to determine whether the situation is covered by the Atrocities Act. The entire goal of this is to ensure that the complaint is not a fabrication or scam. Because there was no basis for such an accusation against the complainant, the court determined that the proceedings against the appellant needed to be invalidated. This decision made it obvious that the Atrocities Act cannot be used since lawsuits were being filed only under the pretence of caste prejudice.

VIII. CONCLUSION

The judgement makes the following conclusions: The current proceedings are invalidated since they clearly

[21] (1997) 6 SCC 241, para 16
[22] (1983) 2 SCC 244
[23] (1996) 1 SCC 753

ISSN - 2583-2344

violate the law and the court's rules of procedure. If no prima facie case is established or the complaint is determined to be prima facie mala fide upon judicial review, there is no absolute prohibition against the issue of anticipatory bail in cases under the Atrocities Act. A public servant may only be arrested with the appointment authority's approval, and a non-public servant may only be arrested with the S.S.P.'s approval, which may be granted in appropriate cases if considered necessary for reasons documented. This is due to the acknowledged abuse of the law of arrest in cases under the Atrocities Act. Before allowing for further detention, the Magistrate must carefully consider such justifications.

The DSP in question may conduct a preliminary investigation to determine if the allegations support a case under the Atrocities Act and that they are not baseless or motivated in order to prevent the erroneous involvement of an innocent party. Both disciplinary and contempt sanctions may be applied for any infringement of instructions (iii) and (iv). The aforementioned guidelines are hypothetical.

IX. RELATED CASE LAWS

1. Bandhua Mukti Morcha vs. UOI (1984) 3 SCC 161
2. Vishakha versus State of Rajasthan (1997) 6 SCC 241
3. Lakshmi Kant Pandey v. UOI (1983) 2 SCC 244
4. Common Cause v. UOI (1996) 1 SCC 753
5. M.C. Mehta v. State of T.N. (1996) 6 SCC 756 27
6. Supreme Court Bar Asson. V. UOI (1998) 4 SCC 409

X. REFERENCE

1. Sixth Report dated 19th December, 2014 of the Standing Committee on Social Justice and Empowerment (2014-15) on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014
2. Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).