

# Investigation under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989): Judicial Trends

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**Abstract – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 is to protect the people from the weaker section of society. This special law is to protect the people from the atrocities. But this special law cannot be used for setting settling and scoring personal vendetta or by way some counter blasts against opponents some public servants. Court cannot deny the right of anticipatory bail on merely technical grounds.**

**Key words: Atrocities, Schedule Caste, Schedule Tribes**

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## 1. INTRODUCTION

The word investigation has been defined in the Code of Criminal Procedure which means and includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a magistrate<sup>1</sup>. The Hon'ble Supreme Court has held in the case of *H.N. Rishbud and Inder Singh v. The State of Delhi*<sup>2</sup> that investigation of an offence means:

- (a) Proceeding to the spot,
- (b) Ascertainment of the facts and circumstances of the case,
- (c) Discovery and arrest of the suspected offender,
- (d) Collection of evidence relating to the commission of the offence which may consist of the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and

- (e) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

Investigations is true ascertainment of facts to arrive at a correct conclusion concerning the commission of crime, identify criminal and his accomplice if any, to arrest and apprehends the criminal, to secure, preserve and evaluate evidence and to put the evidence in Court in a legal and presentable form. The purpose of investigation is to separate chaff from grain, elucidating the truth from misconception of facts, errors and garbled versions. It is to isolate from fairy tales. An investigator is, therefore, required to secure all facts, trivial and important, based upon oral or documentary evidence<sup>3</sup>.

## 2. INVESTIGATION UNDER SCHEDULE CASTE AND SCHEDULE TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

Investigation under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 here in after called 'SC/ST Act' for 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

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<sup>1</sup> Section 2(h), Code of Criminal Procedure, 1973

<sup>2</sup> AIR 1955 SC 196

<sup>3</sup> Sukhdev Kohli, Crime, Prosecution and Defence Investigator Guide, 10<sup>th</sup> Edition 2008, Pg 78.

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. The investigating officer so appointed above shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government. The Home Secretary and the Social Welfare Secretary to the State Government Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.<sup>4</sup>

A person with a biased mind is not expected to conduct fair investigation and unfair investigation may eventually lead to conviction of the accused, which would be in violation of Article 21 of the Constitution of India. Therefore, to protect the guaranteed fundamental right of a person of life and personal liberty, it is most essential that the investigation officer should be free from bias. A person, who is facing accusation of commission of an offence, is entitled to demand a fair investigation, which is a sine qua non for proper administration of criminal justice system<sup>5</sup>. "If, therefore, cognizance is in fact taken on a police report vitiated by a breach of a mandatory provision relating to investigation there can be no doubt that the result of the trial which follows, it cannot be set aside unless the illegality in investigation can be shown to have brought about a miscarriage of justice. We are therefore clearly also of the opinion that where the cognizance of the case has in fact been taken and the case as proceeded to terminate, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."<sup>6</sup>

Investigation can only be done by a police officer not below the rank of a Deputy Superintendent of Police specially appointed by the State Government/Director General of police/Superintendent of Police, in terms of the statutory provision<sup>7</sup>.

In *Dasarathi Sahukar's case*<sup>8</sup> investigation was conducted by inspector of police and the accused was convicted under section 376 of Indian Penal Code read with section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for imprisonment for life. In this case the offence under section 376 of Indian Penal Code was proved but the claim of victim that she belonged to

Scheduled Caste not proved. Held mandatory provisions of Rule 7 not attracted.

### 3. MANDATORY PROVISIONS UNDER THE ACT

Investigation was conducted by an Inspector of Police for the offences under Protection of Civil Rights Act. At the time of filing of charge-sheet, it was found that the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are committed and charge sheet was filed by the Assistant Commissioner of Police. Before the learned Special Judge, objection was raised which was rejected on the ground that there was no illegality in investigation as it did not result in the miscarriage of justice. In revision, the High Court observed that the fact that there is no miscarriage of justice will not cure the defect. The mandatory provisions of Rule 7 should be complied with. If the investigation is not made by the authorized officer and if it is done by some other person, such investigation cannot be relied upon to lay charge sheet, under Section 3(i) (x) of the S.C. and S.T. (Prevention of Atrocities) Act. Therefore, the whole process done in this case is misconceived and unauthorized. Accordingly, the charge sheet filed on the investigation done by the Circle Inspector of Police was quashed<sup>9</sup>.

In *Ramalinga Reddy's Case*<sup>10</sup> the appellant was convicted for the offences under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 341, I.P.C. In appeal to the High Court, it was urged that since the prosecution was initiated under the provisions of S.C. and S.T. (Prevention of Atrocities) Act, the investigation should have been conducted by an officer not below the rank of Deputy Superintendent of Police and the investigation having not been conducted by such an officer, the trial is vitiated. Considering the provisions of Rule 7 of the S.C. and S.T. (Prevention of Atrocities) Rules the Court held that since the investigation has been conducted by an officer who was not authorized in law to conduct the investigation, the trial is vitiated. Therefore, the conviction of the appellant for the offence under Section 3(1) (x) of the S.C. and S.T. (Prevention of Atrocities) Act was set aside and the appellant was acquitted of that charge.

After discussing the different decisions relied upon, held, in view of principle laid down by Apex Court and the provisions of Rule, which is mandatory in nature, the investigation made into the case by the OIC is quashed as the investigation was not as per rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The offence

<sup>4</sup> Rule 7, Scheduled Caste and Schedule Tribes(Prevention of Atrocities) Rules, 1995

<sup>5</sup>Shaik Abdullah Shareef and Others v. The Government of Andhra Pradesh represented by its Principal Secretary and others MANU/AP/0275/2010, 2010(2) ALD (Cri) 789

<sup>6</sup> H.N. Rishbud and Inder Singh v. State of Delhi 1955 Cr.L.J. 526, MANU/SC/049/1954

<sup>7</sup> Sessions Judge cum Special Judge and Others v. State of Orissa 2002(I) OLR 252

<sup>8</sup> Dasarathi Sahukar v. State 2007 Cr.L.J. 3445 (Ori.)

<sup>9</sup> M.Niranjan Reddy v. State of Andhra Pradesh MANU/AP/1029/2000

<sup>10</sup> Ramalinga Reddy alias D. Babu v. State of Andhra Pradesh MANU/AP/260/1999 (A.P.)

was committed under section 452, 294, 325, 427, 354, 506 read with section 34 and section 3 of SC/ST, Act, 1989<sup>11</sup>.

In *Ashok Tshering Bhutia case*<sup>12</sup> it was held that a defect or irregularity in investigation, however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial, where cognizance of a case had been taken and the case had proceeded to termination.

The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence<sup>13</sup>.

*The accused shall be released if investigation is conducted not as per Rule 7.* Since investigation itself had been conducted by an officer who was not authorized in law to conduct investigation, which was in flagrant violation of legal provision. Under Rule 7 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, it was only Deputy Superintendent of Police who can investigate the matter<sup>14</sup>.

A bare perusal of the Rule transpires that the State Government/the Director General of Police/Superintendent of Police after taking into account the experience etc. of a Deputy Superintendent of Police shall appoint him as the Investigating Officer in cases under the above Act. Sub-rule (3) further provides that the Home Secretary and the Social Welfare Secretary to the Government and other officers in charge shall review the working of the Deputy Superintendent of Police and the investigations done by him at the end of every quarter. It is therefore apparent that authority to investigate has to be conferred on a specified

officer not below the rank of Deputy Superintendent of Police<sup>15</sup>.

Deputy Superintendent of Police (DSP) who was competent under Rule 7 to enquire on complaint with regard to Act of 1989 deleted said offence and directed inspector of police to proceed with other charges alone. Subsequently matter transferred from Special Court under Act of 1989 to Judicial Magistrate's Court. Competency of DSP limited to enquire and report to Special Court. Direction given by DSP to delete offence is illegal. Judicial Magistrate ought to have given opportunity to complainant before abstaining from taking cognizance of offence under Act of 1989. State Government directed to appoint officer to conduct enquiry under Rule 7 afresh<sup>16</sup>.

The case was investigated and charged by a Circle Inspector of Police. The accused filed the petition to quash the entire proceedings on the ground that it was the C.I. of Police who had investigated the case and had preferred the charge-sheet and that as per Rule 7 of the S.C. and S.T. (Prevention of Atrocities) Rules, 1995, only a police officer not below the rank of a Dy. S.P., can investigate an offence under the Act and therefore the whole proceedings are liable to be quashed. Upholding the contention of the Petitioner and quashing the proceedings, and directing reinvestigation of the offence by an authorized officer. Held, as the charge had been laid by an incompetent person, it is liable to be quashed<sup>17</sup>.

Combined reading of Sec. 3, Sec. 9 of the Act and Rule 7 clarifies that in case an investigation is conducted by an officer below the rank of D.S.P., then on submission of charge-sheet Magistrate shall not take cognizance under Sec. 3 of the Act. But the Magistrate may take cognizance of the offences under Indian Penal Code, 1860, if such offences are included in the charge-sheet. Subsequently, Magistrate may consider the application for investigation to be conducted by proper officer. Petitioners claiming to be Scheduled Castes and investigation conducted by A.S.I. of Police. Investigating agencies to take steps with the permission of the Court regarding investigation of the case by competent police officer under Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 is mandatory<sup>18</sup>.

Offences coming under the Act can be investigated only by a police officer not below the rank of a Deputy Superintendent of Police appointed by the

<sup>11</sup> Tutu alias Bhratendu Bal and Others v. State of Orissa 2003 Cr.L.J. 722

<sup>12</sup> Ashok Tshering Bhutia v. State of Sikkim (2011) 4SCC 402

<sup>13</sup> State of Madhya Pradesh v. Chunnial @ Chunni Singh (2010) 1 SCC (Cri.) 683

<sup>14</sup> Hori Lal and Another v. State of M.P. 2011(4) CGLJ 51

<sup>15</sup> State of A.P. v. Mekala Kupamma and Another AIR 2011 SCW 12; See also Kailas Govind Wadekar v. State of Maharashtra 2010 Cr.L.J. 2752

<sup>16</sup> P. Alagarsamy v. State of Tamil Nadu 1999 (3) CTC 464

<sup>17</sup> K. Muhammed v. K. Sukumaran 2001 Cr.L.J. 1664

<sup>18</sup> Prasanna Kumar Sahoo alias Banka and Another v. State of Orissa and Another 2002(II) 706

State Government/Director General of Police/Superintendent of Police. An officer so named cannot delegate his functions or appoint another officer in his place<sup>19</sup>.

In view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. In the present matter the investigation has been made by an officer of the rank of an Assistant Sub Inspector of Police. This was not permissible<sup>20</sup>.

Combined reading of Section 3, Section 9 and Rule 7 transpires that in case an investigation is conducted by an Officer below the rank of D.S.P., then on submission of charge-sheet, Magistrate shall not take cognizance under Sec. 3 of the Act. But the Magistrate may take cognizance of the offences under Indian Penal Code, 1860, if such offences are included in the charge-sheet. Subsequently, Magistrate may consider the application for investigation to be conducted by proper Officer<sup>21</sup>.

Violation of said Rule 7(2) cannot be simply ignored. A prosecution based on violation of Rule 7(2) is vitiated<sup>22</sup>. Conviction of the Appellant for offence punishable under Section 3(1) (xi) of said Act could not be sustained because the investigation was carried out by Police Sub Inspector when under the Rules framed; it was supposed to have carried out by officer not below the rank of Deputy Superintendent of Police. Therefore, on count also conviction of Appellant for the offence punishable under Section 3(1)(xi) of the said Act, would be unsustainable<sup>23</sup>.

The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995, under Section 23 of the said Act. There was a delay of about six years in framing the Rules. It has to be considered why the Government framed this Rule. According to our logic, the Government experienced that the Act is being misused and therefore, felt that under such Acts, the investigation has to be done by a responsible Senior Officer and therefore, they chose Dy. S.P. to make an investigation. This Rule does not provide that all Dy. S.Ps. can investigate into the matter but provides that the Dy. S.P., named by the State Government or Director General of Police or Superintendent of Police has to nominate and select a Dy. S.P., with integrity and experience to investigate into such offences, which will prevent the misuse of the Act, and therefore, the provision contained in Rule 7 of the said Rules has to be interpreted as mandatory. In some of the rulings

cited, their Lordships held if there were procedural defects, the trial would not vitiate. The procedure means a procedure, which is adopted by the Court. When the investigation has to be done by a Police Officer not below the rank of Dy. S.P. under Rule 7 of the said Rules framed under Section 23 of the said Act, it has some meaning. It is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial<sup>24</sup>.

#### 4. NO RETROSPECTIVE OPERATION OF RULE 7

In *T.Hanmanthu*<sup>25</sup> case, it was held that it is not in controversy that the date of offence is 27.4.1996. The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 came into force from 1.4.1995. An Assistant Sub Inspector had investigated the offences wherein the accused was charged with and recorded the statements of witnesses. It is no doubt true that Rule 7 has no retrospective operation. Investigation prior to there to in relation to offences under the SC & ST (POA) Act also was being conducted by regular investigating agency but, however, specific rule i.e. Rule 7 was introduced by which the specified officer has to conduct investigation. This check was introduced by putting a specific bar in conduct of investigation by other investigating officers to be investigated with better care and caution, more concerned with social compulsions, order and disorder and hence, if investigation is entrusted to a higher officer, the same may be proceeded with on sound lines. Investigation can only be done by a police officer not below the rank of a Deputy Superintendent of Police specially appointed by the State Government/Director General of Police/Superintendent of Police, in terms of the statutory provision<sup>26</sup>.

In *Dasarathi Sahukar's case*<sup>27</sup> investigation was conducted by inspector of police and the accused was convicted under section 376 of Indian Penal Code read with section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for imprisonment for life. In this case the offence under section 376 of Indian Penal Code was proved but the claim of victim that she belonged to Scheduled Caste not proved. Held mandatory provisions of Rule 7 not attracted.

#### 5. MISCARRIAGE OF JUSTICE

If cognizance is, in fact, taken, on a police report vitiated by a breach of a Mandatory provision is relating to investigation, the result of the trial which follows cannot be set aside unless the illegality in investigation can be shown to have brought about

<sup>19</sup> Sukumaran v. State 2014 Cr.L.J. 1954

<sup>20</sup> State of Andhra Pradesh v. Viswandula Chetti Babu (2010) 15 SCC 103

<sup>21</sup> Hrusikesh Mishra v. State of Orissa 2002 (1) OLR 52

<sup>22</sup> Manimeglai and Others v. State MANU/TN/2976/2016

<sup>23</sup> Mansingh Baburao Garud v. The State of Maharashtra MANU/MH/290/2011

<sup>24</sup> Viswanadhula Chittibabu v. State of A.P. 2002 (4) ALTR 456

<sup>25</sup> T. Hanmanthu v. State of A.P.

<sup>26</sup> Sessions Judge cum Special Judge and Others v. State of Orissa 2002(I) OLR 252

<sup>27</sup> Dasarathi Sahukar v. State 2007 Cr.L.J. 3445 (Ori.)

miscarriage of justice<sup>28</sup>. The appellant raised the contention first time before the High Court and further, appellant failed to establish that there has been miscarriage of justice in this case because of the non compliance of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

It is well established that where cognizance of a case has in fact been taken by the Court on a police report following investigation conducted in breach of provisions of Section 5-A of Prevention of Corruption Act, the result of the trial cannot be set aside unless the illegality of the investigation can be shown to have brought about a mis-carriage of justice. The underlying reason for the above dictum is that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the Court to try the accused. Where, therefore, the trial of the case as proceeded to termination, the invalidity of the preceding investigation would not vitiate the conviction of the accused as a result of the trial unless the illegality of the investigation has caused prejudice to the accused.<sup>29</sup>

“The validity of the trial does not depend upon the validity of the investigation conducted unless of course any irregularity or illegality in the matter of investigation results or is likely to result in miscarriage of justice. The evidence collected during the illegal investigation does not necessarily become inadmissible on that account if it is otherwise relevant. The Court can always scrutinize it by the same method as any other evidence is scrutinized. If on the evidence adduced in the trial, it can satisfactorily be made out that the accused has committed an offence, the Court in spite of irregularities in the matter of investigation would be justified in convicting the accused. On the other hand, if the evidence given at the trial cannot independently make out the case and if the evidence is influenced by the improper investigation, the Court would naturally not convict the accused on such offence. What has to be seen in cases of improper investigation is whether it has occasioned miscarriage of justice or is it likely to cause prejudice to the accused. If the objection in regard to irregularity in investigation is taken at the earliest stage, it has to be of course set right.”<sup>30</sup>

“Where cognizance of the fact has in fact been taken and the case is proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity and that Section 5-A of Act (Prevention of Corruption Act, 1947) was not

complied with in substance, the trial by a Special Judge cannot be held to be illegal unless it is shown that mis-carriage of justice has been caused on account of illegal investigation.”<sup>31</sup>

Even if there was irregularity in the investigation and Section 5(A) of Prevention of Corruption Act, 1988 was not complied within substance; the trials cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of the illegal investigation.”<sup>32</sup>

The Madhya Pradesh High Court in *Karansingh's*<sup>33</sup> Case observed that as special and stricter provisions have been made in the Act, it is the duty of the prosecution to examine the case more carefully. Registration of the offence under the Act only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste was a mechanical exercise of authority and it has to be deprecated. It is also observed that the Courts have to see immediately after a case is brought to it whether an offence under the Act is purely made out prima facie on the material available in the case diary.

## **6. CHANGED SCENARIO AFTER SUPREME COURT DECISION IN 2018**

Recently, in the case of *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*<sup>34</sup> on 20 March, 2018 the Hon'ble Supreme Court amended some provisions of the Act in order to avoid false implications and unnecessary harassment of the innocent persons accused of offences under the Act. However, in the review petition filed by the Centre against the verdict made it clear that there was “no dilution” of any provision of the SC/ST Act in relation to compensation, trial or punishment in its judgment. The Court further clarified that its verdict was only intended to safeguard the abuse of power of arrest or of false implication of an innocent without affecting the rights of the members of SC/ST in any manner.<sup>35</sup>

This appeal has been preferred against the order of the High Court of Judicature at Bombay in Criminal Application. The question which has arisen in the course of consideration of this matter was whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse. Needless to say that if the allegation is to be acted upon, the proceedings can result in arrest

<sup>31</sup> *Munni Lal v. Delhi Administration* 1971 Cr.L.J. 1153

<sup>32</sup> *Munna Lal v. State of Uttar Pradesh* 1964 Cr.L. 11

<sup>33</sup> *Karansingh v. State of M.P.* 1992 Cr.L.J. 3054

<sup>34</sup> Criminal Appeal No. 416 of 2018 Decided on March 20, 2018.

<sup>35</sup> SC/ST Row: No Bar on paying compensation or lodging FIR, says SC, available at [www.business-standard.com](http://www.business-standard.com) visited on September 3, 2018

<sup>28</sup> *Pentakota Koteswara Rao v. State of Andhra Pradesh* 1999(1) ALT (Cri) 236, MANU/AP/0126/1999

<sup>29</sup> *Khandu Sonu Dhobi and Others v State of Maharashtra* 1972 Cr.L.J. 593

<sup>30</sup> *Public Prosecutors v. Hatam Bhai and Others* 1969 AP 99

or prosecution of the person and have serious consequences on his right to liberty even on a false complaint which may not be intended by law meant for protection of a bona fide victim. The question was whether this will be just and fair procedure under Article 21 of the Constitution of India or there can be procedural safeguards so that provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused for extraneous considerations. The appellant was the original accused in the case registered at City Police Station, Karad for the offences punishable under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as also Sections 182, 192, 193, 203 and 219 read with 34 of the Indian Penal Code, 1860. He was serving as Director of Technical Education in the State of Maharashtra at the relevant time. The second respondent the complainant is an employee of the department. He was earlier employed as a Store Keeper in the Government College of Pharmacy, Karad. He was later posted at Government Distance Education Institute, Pune. Dr. Satish Bhise and Dr. Kishor Burade, who were his seniors but nonscheduled caste, made adverse entry in his annual confidential report to the effect that his integrity and character was not good. He lodged F.I.R. with Karad Police Station against the said two officers under the Atrocities Act. The concerned Investigating Officer applied for sanction under Section 197 of the Code of Criminal Procedure, 1973 against them to the Director of Technical Education. The sanction was refused by the appellant. Because of this, Summary Report was filed which was not accepted by the court. He then lodged the present FIR against the appellant. According to the complainant, the Director of Technical Education was not competent to grant/refuse sanction as the above two persons are Class-I officers and only the State Government could grant sanction. Thus, according to him, the appellant committed the offences alleged in the FIR dated 28.03.2016 by illegally dealing with the matter of sanction. The appellant was granted anticipatory bail and thereafter he approached the High Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings on the ground that he had merely passed a bonafide administrative order in his official capacity. His action in doing so cannot amount to an offence, even if the order was erroneous. The High Court rejected the petition. Dealing with the contention that if such cases are not quashed, recording of genuine adverse remarks against an employee who is a member of Scheduled Caste and Scheduled Tribes or passing a legitimate administrative order in discharge of official duties will become difficult and jeopardize the administration, the High Court observed that no public servant or reviewing authority need to apprehend any action by way of false or frivolous prosecution but the penal provisions of the Atrocities Act could not be faulted merely because of possibility of abuse. It was observed that in the facts and circumstances, inherent power to quash could not be exercised as it

may send a wrong signal to the downtrodden and backward sections of the society. It was submitted that in facts of the present case, no offence was made out under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Atrocities Act and Sections 182, 192, 193, 203 and 219 of the Indian Penal Code, 1860 and, thus, the High Court ought to have quashed the proceedings.

Thus, it was observed that unless this Court laid down appropriate guidelines, there will be no protection available against arbitrary arrests or false implications in violation of Article 21 of the Constitution. The intervener submitted that preliminary enquiry must be held before arrest with regard to the following factors:

- a. Date and time of the incident and provocation.
- b. Preexisting dispute between the parties or rivalry.
- c. Gravity of the issue involved.
- d. Nature of allegations by both the parties.
- e. Necessary documents and evidence by the victim and accused to substantiate their case to be placed before committee.
- f. The proceedings may be recorded to avoid allegations of bias and non-transparency.

The following further safeguards have been suggested that arrest specifically in connection with offences under Scheduled Caste and Scheduled Tribes Act, 1989 should only be made with the prior sanction of the Magistrate. However, this may not apply in case arrest has to be made in connection with other offences under Indian Penal Code, 1860. Further the gravity of offence also needs to be seen since most of the cases at the institutional level are only on the basis of mere altercations or action by the public servants in their official capacity. Secondly if the Accused under the SC/ST Act surrenders with prior notice to the Public Prosecutor, then his bail Application should be considered on the same day and if not the regular bail, then at the least interim bail should be granted in the interest of justice. This requirement may be read into Section 18 of the SC/ST Act.

The Courts have acknowledged the misuse of law as under:

- (i) The misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. The purpose of bringing SC & ST Act was to put down the atrocities committed on the members of the scheduled castes and scheduled tribes.

The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.

- (ii) There was prime facie cases at the very outset that at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants. This sort of surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not un-judicial. At the cost of repetition, it was made clear that these observations are only preliminary, at this stage only in peculiar background of the case and for that purpose may be even in future be so highlighted by the accused in some other cases to the satisfaction of the Court. The reason is having regard to the basic cardinal tenets of the criminal jurisprudence more particularly in view of the peculiar circumstances highlighted by the accused which allegedly actuated complainant to victimize him, if ultimately at the end of trial what the accused has submitted in defence is accepted as probable or true and as a result, the accused is given a clean bill, holding that the complaint was nothing else but false, concoction by way of spite to wreck the personal vengeance then in that case what indeed would be the remedy and redresses in the hands of the petitioner, who in the instant case is Doctor by profession and for that purpose in other cases an innocent citizen? He stands not only stigmatized by filing of a false complaint against him but he shall stand further subjected to trial. Not only that but before that even subjected to arrest before the public eye and taken to Special Court where only he could pray for bail. Thus, subjected to all sort of agonies, pains

and sufferings lowering his image and esteem in the eye of public because the Court when approached adopted the helpless attitude. Under such bewildering circumstances, what indeed would be the face of the Court and the fate of the Administration of Justice denying bail to some victimized innocent accused at crucial stage when he surrenders to the Court custody for the purpose, can the Court proclaiming doing justice stand befooled at the hands of some mischievous complainant with head-down in shame. If for giving false evidence before the Court, the complainant is ordered to be prosecuted, but then will such prosecutions of complainant bring back the damage already done to an innocent. The most embarrassing and excruciating situation created by the complainant when, Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint denying simple bail to the accused? In this regard, perhaps, it may be ideally said that accused can be given compensation for the malicious prosecution and ultimate refusal of bail or anticipatory bail. But, then in that case what compensation can any Court would be in a position to give when the complainant is a person who is poor enough unable to pay a single pie? In case complainant is rich and able to pay compensation then even can any monetary compensation ever adequately compensate the wrong accused suffered at the hands of the malicious complainant? If the accused be quite innocent and accordingly a needy consumer of bail justice and yet is unnecessarily subjected to arrest taken to the police custody and then before Court because of denial of bail to him at that stage.

- (iii) There are various cases wherein the provisions of Atrocities Act are misused, as the complaints are filed immediately after elections, be it Panchayat, Municipal or Corporation, alleging offence under the Atrocities Act. In most of the cases, it was found that the F.I.R.s/Complaints were filed only to settle the score with their opponents after defeat in the elections and also in various cases, wherein, private civil disputes arising out of property, monetary matters, dispute between an employee and employer, dispute between the subordinate and his superior are given penal and the complaints are being filed either under Section 190 and 200 of the Code of Criminal Procedure, 1973 or F.I.Rs. at the

police station under Section 154 of the Code of Criminal Procedure, 1973. This is misuse of the Act. The purpose of bringing SC and ST Act is to put-down the atrocities committed on the members of the Scheduled Castes and Scheduled Tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties like the case one in hand, which is alien to the provisions contemplated under the laudable Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised over-zealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them. Passing mechanically orders by the Court of Magistrates in complaint and/or registration of the F.I.R. at the Police Station, which do not have any criminal element, causes great hardships, humiliation, inconvenience and harassment to the citizens. For no reasons the reputation of the citizen is put to stake as immediately after the said orders are passed, innocent citizens are turned as accused. It cannot be overlooked that there is Section 18 in the Atrocities Act, which imposes a bar so far as the grant of anticipatory bail is concerned, if the offence is one under the Atrocities Act. If a person is accused having committed murder, dacoity, rape, etc., he can pray for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 on the ground that he is innocent and has been falsely involved, but if a person alleged to have committed an offence under the Atrocities Act, cannot pray for an anticipatory bail because of the bar of Section-18 of the Act, and he would get arrested. This is the reason for the authorities to guard against any misuse of the Provisions of the Atrocities Act.

(iv) The most welcome step by way of collective wisdom of the Parliament in ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic questions in such circumstances, therefore, are-Whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent? The very same fundamental question arises in the facts and

circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents? Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinizing and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice. Virtually, it would be tantamount to abdicating and relegating its judicial duty, function of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. Whether the provisions of any particular Act and for that purpose the rules made there under are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore, neither mere allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinize and test the prima facie dependability of the allegations made in the complaint and reach its own decision.

(v) The complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests. We think the learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fabric of the society is not damaged or ruined. They must ensure that exaggerated versions should not be reflected in the criminal complaints having the outrageous effect of independence of judicial and quasi judicial authorities so also the public servants. It cannot be tolerated that putting them in a spooked, chagrined and fearful state while

performing their public duties and functions. There is a serious re-look at the provisions of the Act of 1989 which are being now largely misused is warranted by the Legislature, of course, on the basis of pragmatic realities and public opinion.

If mere accusations are treated as sufficient, it may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other. If allegations are against an employee, a committee should be formed in every department as follows:-

- (i) The employer or Head of every institution may be directed to constitute an internal committee to look into the matters and specific grievances related to atrocities committed on the members of SC/ST.
- (ii) That before proceeding to lodge any FIR or criminal complaint, a written complaint should be made to the internal committee of the institution along with supportive evidence.
- (iii) Such committee may be given the power to conduct a preliminary inquiry into the matter by hearing both the parties and other evidence, so as to ascertain the existence of a prima facie case under the SC/ST Act.
- (iv) The Magistrate must verify the averments in a Complaint/FIR to ascertain whether a prima facie case is made out and whether arrest was necessary and only then arrest should be made or continued.
- (v) The Atrocities Act is also prone to misuse on account of monetary incentive being available merely for lodging a case under Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Such incentive may encourage not only genuine victims but, there being no safeguard even against a false case being registered only to get the monetary incentive, such false cases may be filed without any remedy to the affected person.

Consideration of the issue was whether directions can be issued by the Hon'ble Supreme Court to protect fundamental right under Article 21 of the Constitution of India against uncalled for false implication and arrests. It was observed that jurisdiction of the Hon'ble Supreme Court to issue appropriate orders or directions for enforcement of fundamental rights are a basic feature of the Constitution. The Hon'ble Supreme Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 of the Constitution of India represent the

foundational values which form the basis of the rule of law. Contents of the said rights have to be interpreted in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty have to be protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of legislation has also to be consistent with the fundamental rights. Undoubtedly, this Court has jurisdiction to enforce the fundamental rights of life and liberty against any executive or legislative action. The expression 'procedure established by law' under Article 21 implies just, fair and reasonable procedure. This Court is not expected to adopt a passive or negative role and remain bystander or a spectator, if violation of rights. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights.

The facts of the case prima facie clearly demonstrated that the story revealed by the complainant does not appear to be free from doubt. If that is so, very applicability of the Atrocities Act is rendered doubtful. If that is the situation, then to refuse the anticipatory bail on mere accusations and assumptions that the petitioner-accused has committed an offence under the Atrocities Act would be absolutely illegal, injudicious, unjust and ultimately a travesty of justice. No Court can ever embark upon such hazards of refusing anticipatory bail on mere doubtful accusations and assumptions that Atrocities Act is applicable. No Court could and should be permitted to be 'spoon-fed' by the complainant whatever he wants to feed and swallow whatever he wants the Court to gulp down to attain and secure his unjust mala fide motivated ends. Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also, if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but the Hon'ble Supreme Court has no alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail.

In view of the fact that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, but in the opinion of the Hon'ble Supreme Court, at that stage, it was too difficult to rule out the probability of the accusations leveled by the complainant against the petitioner-accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralize the petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises and the Application for anticipatory bail was allowed.

In *Arnesh Kumar's case*<sup>36</sup>, the Hon'ble Supreme Court observed that arrest brings humiliation, curtails freedom and casts scars forever. It is considered a tool for harassment and oppression. The drastic power is to be exercised with caution. Power of arrest is a lucrative source of corruption. The arrest may be justified only if there is 'credible information' or 'reasonable suspicion' and if arrest was necessary to prevent further offence or for proper investigation or to check interference with the evidence. Reasons are required to be recorded. However, compliance on the ground is far from satisfactory for obvious reasons. The scrutiny by the Magistrates is also not adequate. This is to ensure that police officers do not arrest the accused unnecessarily and the Magistrate does not authorize detention casually and mechanically. The elaborative guidelines were issued in this regard.

In *D.K. Basu's case*<sup>37</sup>, the Hon'ble Supreme Court has issued the following guidelines in all cases of arrest or detention. It was held by the Court that if failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier

In *Joginder Kumar' case*<sup>38</sup>, the Hon'ble Supreme Court observed that horizon of human rights is expanding. There are complaints of violation of human rights because of indiscriminate arrests. The law of arrest is of balancing individual rights, liberties and privileges, duties, obligations and responsibilities. The arrest could be unjustified only in grave offences to inspire the confidence of the victim, to check the accused from committing further crime and to prevent him from absconding. The

National Police Commission recommended that the police officer making arrest should record reasons. This Court observed that no arrest can be made merely because it is lawful to do so. The exercise of power must be for a valid purpose. Except in heinous offences arrest must be avoided.

In *Lal Kamendra Pratap Singh case*<sup>39</sup>, the Hon'ble Supreme Court held that charge sheet was filed and cognizance was taken and the case was pending before the trial Court. In these circumstances, it was not proper to exercise discretion under Article 136 of the Constitution of India for quashing the F.I.R. The appellant apprehended that the appellant would be arrested as there was no provision for anticipatory bail in the State of Uttar Pradesh. He placed reliance on a decision of the Allahabad High Court in *Amaravti case*<sup>40</sup> in which a Seven Judge Full Bench of the Allahabad High Court held that the Court, if it deems fit in the facts and circumstances of the case, may grant interim bail pending final disposal of the bail application. The Full Bench also observed that arrest is not a must whenever an F.I.R. of a cognizable offence is lodged.

## 7. EFFECT OF AMENDMENT IN 2018

The Following amendments were made by the Parliament to dilute the basic principles of the Criminal Law and the principles enshrined by the Hon'ble Supreme in the *Dr. Subhash Kashinath Mahajan(supra)* and other decisions discussed hereinabove:

"After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:—

"18A. (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
  - (b) The investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.
- (2) The provisions of section 438 of the Code of Criminal Procedure, 1973 shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court".

<sup>36</sup> *Arnesh Kumar v. State of Bihar* AIR 2014 SC 2756

<sup>37</sup> *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416

<sup>38</sup> *Joginder Kumar v. State of Uttar Pradesh* AIR 1994 SC 1349

<sup>39</sup> *Lal Kamendra Pratap Singh v. The State of Uttar Pradesh and Others*, (2009) 4 SCC 437

<sup>40</sup> *Amaravati v. State of Uttar Pradesh* 2005 CrI. L.J. 755

This provision clearly laid down that there is a lack of political will in establishing the basic principles merely for the purpose of Vote bank and there is a huge turmoil across the nation by the amending provision of the 2018 whereby the other innocent sections of the society are victimized to attract the one section of the society, which appears to be improper. Now the biggest question which arises that what was the need to bring the draconian law in force which sets the entire nation into turmoil? The answer is that the politicians want to disturb the peace and tranquility of the nation by bringing such legislations contrary to the principles of the Criminal Law merely for the purpose of attracting the vote bank of the particular section of the society, which is totally unfair and unjust.

## 8. CONCLUSION

The Schedule Caste and Schedule Tribes Act also called as SC/ST Act, was enacted in 1989.<sup>41</sup> The main object of the Act was to improve the socio economic conditions of the scheduled castes and schedule tribes. The aim was to create awareness amongst the schedule castes and schedule tribes by spreading education. When the Schedule Castes and the Schedule tribes tried to preserve their self-respect or honour of their women, they became irritants for the dominant and mighty and consequently became victim of atrocities. There had been an increase in the disturbing trend of commission of certain atrocities like making the schedule castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless schedule caste and schedule tribes and rape of women belonging to the section of the society.<sup>42</sup> Consequently there arose the need to protect these weaker sections of the society and ameliorate their economic condition.

The solitary object behind this legislation is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, and for the relief and rehabilitation of the victims of such offences. This Act imposes an obligation on the State Government to effectively implement the provisions stipulated therein<sup>43</sup>. The use of the words "shall take such measures as may be necessary" removes the possibility of any discretion and mandates the government to, among other things', provide

- (a) Adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

- (b) Provide for the travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences; and
- (c) Provide for the economic and social rehabilitation of the victims of atrocities.

The Act <sup>44</sup> empowers the Central government to make rules by notification in the Official and Gazette for carrying out the purpose of this Act. In exercise of powers conferred by the section 23(1) of this Act, the Central Government of India passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995<sup>45</sup>. Rule 12(4) of these notified rules provides scales for the monetary relief to the victims of crime in a Schedule appended to these rules. The Rule provides that the District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependants. Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities, and other essential items necessary for human beings.

Now undoubtedly it is true that the alleged offence under the Atrocities Act is a very serious offence and if indeed the complaint is ultimately found to be truthful and genuine one, there cannot be any two views about the strictest possible view taken in such matter. Not only that but if the complaint is also found to be prima facie dependable one that is to say, free from doubt, then as a warranted under Section 18 of the Atrocities Act, even the anticipatory bail to such accused has got to be refused. In fact, the Parliament in its utmost wisdom has rightly evidenced great concern and anxiety over the atrocities which are going on unabatedly on Scheduled Caste and Scheduled Tribes by inserting the provisions under Section 18 of the Atrocities Act disabling the accused from obtaining the anticipatory bail under Section 438 of the Code of the Criminal Procedure, 1973. This indeed is a welcome step and in accordance with the axiomatic truth, viz., 'the disease grown desperately must be treated desperately else not'. The disease of commission of offences by way of atrocities against the members of Scheduled Caste and Scheduled Tribes are unabatedly going on since last hundreds of years and in the recent past have become alarmingly increasing and has become so rampant, breath taking and has reached such a desperate pass that it indeed needed a very stringent and desperate legislation which could help save the situation by effectively providing the legal protection to such cursed,

<sup>41</sup> Act No. 33 of 1989 dated, September 11, 1989

<sup>42</sup> A. Agarwal, , *Human Rights for survival of Civilization*, Kalinga Publications, New Delhi, 2004, at p.91.

<sup>43</sup> Section 21, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

<sup>44</sup> Section 23(1), The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

<sup>45</sup> Notified on 31<sup>st</sup> March 1995

crushed and downtrodden members of Scheduled Caste and Scheduled Tribes communities. Under such circumstances, it is equally the paramount duty of every Court to see that it responds to legislative concern and call and ensure effective implementation of the Atrocities Act, by seeing that the provisions enshrined in the said Act are duly complied with. But, ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants. The basic questions in such circumstances, therefore, are whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent? The very same fundamental question arises in the facts and circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from Scheduled Caste and Scheduled Tribes communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents? The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinizing and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice. Virtually, it would be tantamount to abdicating and relegating its judicial duty, function of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. Whether the provisions of any particular Act and for that purpose the rules made thereunder are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore neither mere allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinize and test the prima facie dependability of the allegations made in the complaint and reach its own decision.

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