

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

[CENTRAL ACT No. 33 OF 1989]

[11th September, 1989]

(As amended by Karnataka Amendment Act Nos. 35 of 2003;
1 of 2016; 27 of 2018 and 34 of 2019)

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for¹[Special Courts and the Exclusive Special Courts] for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

CHAPTER I Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.**

(2) It extends to the whole of India²[except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—(1) In this Act, unless the context otherwise requires.—

(a) **"Atrocity"** means an offence punishable under Section 3;

(b) **"Code"** means the Code of Criminal Procedure, 1973 (2 of 1974);

³[(bb) **"Dependent"** means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;

(bc) **"Economic boycott"** means.—

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1. Substituted for the words "Special Courts" by Act No. 1 of 2016, w.e.f. 26-1-2016
 2. The words "except the State of Jammu and Kashmir" omitted by The Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dated 9-8-2019, w.e.f. 31-10-2019, vide S.O. 2889(E), dated 9-8-2019
 3. Clauses (bb) to (bg) inserted by Act No. 1 of 2016, w.e.f. 26-1-2016

- (i) a refusal to deal with, work for hire or do business with other person; or
 - (ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or
 - (iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or
 - (iv) to abstain from the professional or business relations that one would maintain with other person;
- (bd) **"Exclusive Special Court"** means the Exclusive Special Court established under sub-section (1) of Section 14 exclusively to try the offences under this Act;
- (be) **"Forest rights"** shall have the meaning assigned to it in sub-section (1) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- (bf) **"Manual scavenger"** shall have the meaning assigned to it in clause (g) of sub-section (1) of Section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013);
- (bg) **"Public servant"** means a public servant as defined under Section 21 of the Indian Penal Code (45 of 1860) as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;]
- (c) **"Scheduled Castes and Scheduled Tribes"** shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution;
- (d) **"Special Court"** means a Court of Session specified as a Special Court in Section 14;
- (e) **"Special Public Prosecutor"** means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in Section 15;
- ¹[(ea) **"Schedule"** means the Schedule appended to this Act;

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(eb) **"Social boycott"** means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others;

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(ec) **"Victim"** means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of Section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;

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(ed) **"Witness"** means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;]

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¹[(f) The words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.]

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(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CASE LAW

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Sections 2(1)(a) and (b) and 3(1) — Indian Penal Code, 1860, Sections 143, 147, 323, 430, 447, 504 and 506 — Atrocity — Requirement of complaint of — Complaint must contain clear averment that accused is not member of Scheduled Caste or Scheduled Tribe and that act of atrocity alleged to have been committed by accused against person belonging to Scheduled Caste or Scheduled Tribe was intentional — In absence of such averments in complaint, alleged act of insult or intimidation can only be tried as offence under Indian Penal Code and not as "atrocity" under Act.

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S.R. Bannurmath, J., Held: For an offence under Section 3(1)(x) there must be intentional insult or intimidation with an intent to humiliate a member of

1. Clause (f) substituted by Act No. 1 of 2016, w.e.f. 26-1-2016

SC or ST in a place within public view by a member of non-SC/ST. . . . Merely calling a person by his caste name though may amount to insult or abuse, it cannot be said to be with an intent to humiliate such a person. . . . It must be *prima facie* shown that the accused is not a member of SC or ST and humiliation by way of intentional insult or intimidation was conducted in a place, within public view. . . . There must be *prima facie* affirmation or say in the complaint that the accused are not the members of SC or ST. . . . In the present complaint, there is no averment to the effect that the accused-petitioners belonged to any higher caste or at least that they are not members of SC or ST. This being the basic and main ingredient and its absence will have significant impact as to the applicability of Section 18 of the Act. . . . Apart from no averment regarding petitioners belonging to non-SC or non-ST, there is no averment in this case regarding humiliation within public view also which is a must and necessary averment. Unless this is done then, there could not be any commission of offence. The averment *de hors* the name of particular caste in the present complaint would amount to intimidation and threat given by the petitioners to the complainant for drawing of the water and these acts including further allegation to assault even if accepted on their face, would fall under the purview of provisions of IPC with which, of course the petitioners are also charged for. . . . The use of words "the intentional" in the opening wordings under Section 3(1)(x) indicate that there must be *mens rea* and the object of such insult or intimidation is "to humiliate". As such, if the entire picture of the incident as alleged by the complainant is taken into account, *prima facie* it appears to be a simple case of quarrel between two parties regarding taking of water and as in fact admitted by the complainant himself, this quarrel was going on for some time. It appears that on the date of incident it burst into further action by threats, abuses and obstruction on the part of the accused including the alleged assault. — *Chikkappa and Others v State by Sub-Inspector of Police, Hangal Police Station*, 2002(1) Kar. L.J. 61A : ILR 2001 Kar. 5483.

CHAPTER II

Offences of Atrocities

3. Punishments for offences of atrocities.—¹[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.—

- (a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;

1. Sub-section (1) substituted by Act No. 1 of 2016, w.e.f. 26-1-2016

- (b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;
- (c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;
- (d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;
- (e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;
- (f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;
- (g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.—For the purposes of clause (f) and this clause, the expression “wrongfully” includes.—

- (A) against the person’s will;
- (B) without the person’s consent;
- (C) with the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or
- (D) fabricating records of such land;
- (h) makes a member of a Scheduled Caste or a Scheduled Tribe to do “begar” or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;
- (i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

- (j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;
- (k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;
- (l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe. —
 - (A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;
 - (B) not to file a nomination as a candidate or to withdraw such nomination; or
 - (C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;
- (m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IX-A of the Constitution, from performing their normal duties and functions;
- (n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;
- (o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;
- (p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

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- (r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

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- (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

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- (t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

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Explanation.—For the purposes of this clause, the expression “object” means and includes statue, photograph and portrait;

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- (u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

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- (v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

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- (w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

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- (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

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Explanation.—For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

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Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

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Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

- (x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- (y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;
- (z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

- (za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to.—
 - (A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;
 - (B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;
 - (C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;
 - (D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or
 - (E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

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(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.]

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.—

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

- (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property ¹[knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;
- ²[(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;]
- (vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or
- (vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

CASE LAW

Sections 3, 14 and 20 — Indian Penal Code, 1860, Sections 312 and 376 — Code of Criminal Procedure, 1973, Sections 193 and 216 — Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Police forwarding the accused to the Special Court for trial of offences under the Act and also under the IPC — Special Court refusing to take cognizance of the offence under the IPC pleading lack of jurisdiction — Jurisdiction of the Special Court — Whether limited to offences under the Act — Offences under the IPC — Whether triable by the Special Court without an order of commitment as contemplated in Section 193 of Criminal Procedure Code.

K.B. Navadgi, J., Held—The Special Court is neither a Court of Session nor a Court of Magistrate. It is a Court of Original Criminal Jurisdiction. Section 20 of the Act of 1989 gives overriding effect to the provisions of the Act over

1. Substituted for the words "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" by Act No. 1 of 2016, w.e.f. 26-1-2016
2. Clause (va) inserted by Act No. 1 of 2016, w.e.f. 26-1-2016

any other law for the time being in force. Therefore the provisions of Section 193 of Criminal Procedure Code have no consequence to restrict the jurisdiction of the Special Court. If the acts alleged against the accused constitute atrocity under the Act and also offence under the IPC, the accused can be tried for both in the same proceedings. No order of commitment by the Magistrate would be called for. — *State of Karnataka v Nagappa and Others*, 1995(2) Kar. L.J. 28.

Sections 3 and 18 — Code of Criminal Procedure, 1973, Section 438 — Persons accused of offences punishable under Section 3 of the Act — Benefit of anticipatory bail under Section 438 of Code — Provision of Section 18 of the Act denying benefit of anticipatory bail to such accused — Provision of Section 18 cannot be considered as violative of Article 21 or 14 of Constitution.

K.H.N. Kuranga, J., Held. — It is pointed out in the Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences. Anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21 of the Constitution. If the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the Act. — *Bapu Gouda and Another v State of Karnataka*, 1996(1) Kar. L.J. 111.

Section 3(1) — Code of Criminal Procedure, 1973, Section 438 — Bar for invoking — Though Section 18 of the Act 1989 creates a bar for invoking provisions of Section 438 of the Cr. P.C. — A duty is cast on the Court to verify the allegations made in the complaint on accused — Whether offence under Section 3(1) of the Act 1989 is made out *prima facie* — There is a specific averment in the complaint *viz.*, insult or intimidation with intent to humiliate by using caste name. (para 8) — [Criminal Petition No. 7912 of 2016, DD: 4-7-2017] *State of Karnataka v Dharmesh*, 2018(1) Kar. L.J. 80B.

Section 3(1)(c), 3(2)(iii), 3(2)(v) and 3(2)(va) — Code of Criminal Procedure, 1973, Section 439 — Indian Penal Code, 1860, Sections 143, 144, 145, 435, 436, 447, 448, 438, 427 and 120-B read with Section 149 — Karnataka

Prevention of Destruction and Loss of Property Act, 1981, Section 2 — Unlawful assembly, criminal conspiracy, causing mischief — Petition for enlargement on bail — Entitlement — Plea of presumption of innocence — Absence of identity and participation of each accused with reasonable certainty — Eye-witnesses to incident — Specific allegation that when complainant, an MLA were out of house to visit a temple, at about 8.00 p.m. nearly 2000 to 3000 miscreants gathered with deadly weapons, destroyed all his household articles, looted gold/silver ornaments, cash, property document and also set fire to his house — There are specific overacts alleged against petitioner for having participated in crime — There are eye-witnesses who have been accused participating with overacts — Whether all accused have conspired in alleged crime is a matter for determination only during course of trial and not at this stage — Witnesses have specifically stated about the overacts of present petitioner-accused — Considering the factual matrix, where case is still in initial stage, investigation in progress, accused 58 and 59 are absconding — Held, releasing petitioner on bail will send a wrong signal to society and hamper further investigation — Therefore rejected. (paras 1, 3, 10, 17, 19 and 20) — *Syed Imran v State of Karnataka by Devarajeevanahalli Police Station, Bengaluru*, 2021(1) Kar. L.J. 627A.

Section 3(1)(i), (r) and (z) — Code of Criminal Procedure, 1973, Section 374(2) — Indian Penal Code, 1860, Sections 347 and 357 — Bonded Labour System (Abolition) Act, 1976, Sections 16, 18 and 20 — Alleged use of bonded labour in stone quarry of accused — Wrongful confinement, chaining and tying up many workers to trees, brutalling assaulting them *etc.* to extract work — Held, a case where the victims themselves, P.Ws. 2 to 6 turning hostile in the first instance and not supporting case of prosecution at all — Even on recall, they did not support the case — Reasoning given, *inter alia*, by Trial Court that 'while Court was conscious of that the burden was on prosecution to establish, but at the same time cannot be blind to hard realities' — Not acceptable and would run against the grain — Testimony of witnesses being inconsistent and unreliable they are unworthy of credence — Further, the interpretation by Court of the injuries of victims on account of being shackled is rid with clouds of confusion and was impermissible for Court to draw conclusions to the prejudice of the accused — Further, political angle to the case is also glossed over by Trial Court — In view thereof — Impugned conviction of accused (appeals in Cri. A. Nos. 743 and 766 of 2009) — Not sustainable, set aside.

Anand Byraredddy, J., Held: One other circumstance that is apparent, is that P.W. 1 was a political leader and he having proceeded to the quarry with his supporters apart from press reporters and photographers would appear to be a well orchestrated plan, to gain maximum publicity. The evidence on record also indicates that accused 1 was a supporter of the rival JD(S) party, against whose candidate, the candidate of the party to which P.W. 1

belonged, had lost an election and therefore would have had a motive to frame him in a criminal case. Coupled with the evidence of the victims themselves that they were treated to food in a hotel and were offered other freebies, including house sites to tender evidence against the accused, is clearly glossed over by the Trial Court. – *Puttaswamy Gowda and Others v State of Karnataka*, 2017(5) Kar. L.J. 642A : 2017(1) AKR 774.

Section 3(1)(i), 3(1)(ii), 3(1)(viii), 3(2)(i) and 3(2)(ii) — Code of Criminal Procedure, 1973, Section 156(3) — Indian Penal Code, 1860, Sections 415, 416, 417, 418 and 420 — Investigation of cognizable offence under Section 156(3) of the Code — Exercise of powers by Magistrate — Application of mind — Allegation that petitioner committed offence of impersonation, forgery, fraud by creating general power of attorney to knock off suit property — Petitioner belongs to Reddy Community, whereas respondent belongs to Scheduled Caste — Held, an application under Section 156(3) of the Cr. P.C. — Must be supported by an affidavit — In appropriate cases, the Court can verify the truth and veracity of allegations — However, said requirements not met — There is no application of mind in the impugned order for investigation, taking cognizance — Apart, there are civil litigations pending between parties — Including a comprehensive suit for declaration — Similarly before Revenue Authorities regarding mutation entries — Trial Court, without looking into allegations, without applying mind, mechanically referred matter for investigation — Therefore, impugned order, criminal proceedings not sustainable, set aside.

H. Billappa, J., Held: The Hon'ble Supreme Court in *Anil Kumar's* case has held that the Magistrate while exercising powers under Section 156(3) of Cr. P.C., is required to apply his mind which should be reflected in his order though a detailed expression of his views is neither required nor warranted. It is clear, while exercising power under Section 156(3) of Cr. P.C., the Court is required to apply its mind and it should be reflected in the order. The impugned order does not reflect the application of mind of the Trial Court. It only shows that the Trial Court has not even looked into the allegations made in the complaint. Mechanically, the matter has been referred for investigation. – *Gopal Reddy v Smt. Munirajamma and Another*, 2016(4) Kar. L.J. 610.

Section 3(1)(j) — Manual scavenging — Accused are punishable under the provisions if they are not belonging to SC/ST — Safai Karmacharis concerned belonging to SC/ST were made to do manual scavenging by such accused persons — Further, the limitation period of 3 months prescribed under Section 10 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 — Has no application if accused are to be tried under the SC/ST Act also. – *National Institute of Rock Mechanics, Banashankari 2nd Stage, Bengaluru v Assistant Commissioner and Executive*

Magistrate, Kolar Sub-Division, at Kolar, Kolar District and Others, 2017(5) Kar. L.J. 279E : 2017(4) AKR 757.

Section 3(1)(r) — Words and phrases — Expressions "place within public view" and "public place" — Distinguished — A place can be a private place but yet within the public view — On the other, a 'public place' would ordinarily mean a place which is owned or leased by Government or municipality/local body or gaon sabha or an instrumentality of the State and not by private persons or private bodies (*Swaran Singh and Others v State through Standing Counsel and Others*, 2008 Cri. L.J. 4369 (SC)) — On facts: Admittedly, no member of public was present at the time of incident in private house of the victim — Therefore, it is not established that words uttered were 'in a place within public view' as contemplated under Section 3(1)(r) of the Act. (paras 14 and 15) — *Hitesh Verma v State of Uttarakhand and Another*, 2020(6) Kar. L.J. 188B (SC).

Section 3(1)(r) and 3(1)(s) — As amended by Ordinance 2014 — Code of Criminal Procedure, 1973, Section 438 — Indian Penal Code, 1860, Sections 323, 504 and 506 read with Section 34 — Petition for anticipatory bail — Entitlement — Incident involving money transaction in chit fund business — Wherein, petitioners who are running business allegedly insulted petitioner, by his caste (Adi Karnataka, a Scheduled Caste) and also assaulted him — Considering the alleged incident occurred at about 8.30 p.m. on 25-6-2020, when the first informant went to house of petitioners to pay chit amount — Complaint does not indicate presence any other persons at the spot — It cannot be said at this stage the offence was committed within public view, as contemplated under Section 3(1)(r) of the POA Act — Other offences charged under the IPC are not punishable with death or imprisonment for life — In such circumstances, petitioners deserving relief of anticipatory bail, with conditions — Order accordingly. (paras 3, 8, 9 and 10) — *Subbanna alias Subramani M and Another v State by Thirumalashettahalli Police Station, Bengaluru Rural District, Bengaluru and Another*, 2020(6) Kar. L.J. 53.

Section 3(1)(r) and 3(1)(s) — Code of Criminal Procedure, 1973, Section 438 — Indian Penal Code, 1860, Sections 332, 504, 506 and 353 read with Section 34 — Common intention, intentional insult by taking caste name — Petitioners 2 and 3 seeking anticipatory bail — Considering the contents of complaint against accused, though contain serious allegations against accused 1, and even these accused 2 and 3 have not abused the complainant by taking the name of caste — Alleged offences are not punishable with death or imprisonment for life — Petitioners ordered to be released on bail, with stringent conditions. (paras 3, 4 and 5) — *Kumara N alias Halu Kumar and Another v State of Karnataka and Another*, 2021(1) Kar. L.J. 171.

Section 3(1)(r) and 3(1)(s) — Indian Penal Code, 1860, Section 34 — Code of Criminal Procedure, 1973, Section 438 — Words and phrases —

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Anticipatory bail — Entitlement — Expression "in any place within public view" as used under Section 3(1)(®) and 3(1)(s) of the Atrocities Act, held, presupposes presence of a person other than accused persons who committed offence with common intention, as provided under Section 34 of the IPC — Therefore, the contention that when accused are plural in number, presence of onlooker is not an essential ingredient of the offence — Not sustainable.

Krishna S. Dixit, J., Held: "In any place within public view" presupposes the presence of a person other than the accused persons who are alleged to have committed the predicated offence with common intention (Section 34 of Indian Penal Code, 1860); reading the charging provisions otherwise would strain their text and context. (para 5(b)) — *Appoji Reddy and Another v State of Karnataka*, 2020(4) Kar. L.J. 199B.

Section 3(1)(r) and 3(1)(s) — Indian Penal Code, 1860, Sections 323 and 506 read with Section 34 — Code of Criminal Procedure, 1973, Section 438 — Application for anticipatory bail — Alleged offence of criminal intimidation, voluntarily causing hurt with common intention — Considering prime factors that the offence allegedly took place during dark hours of midnight when COVID-19 lockdown was in force — No other person was present at the scene of offence — There is no material to presume that petitioners who were from a different village, knew of the social status of the complainant, which is a *sine qua non* for invoking the Atrocities Act — Attention, detention of accused in overcrowded jails may expose them to hazard of infection of COVID-19 pandemic — Petitioners ordered to be admitted to bail, subject to conditions.

Krishna S. Dixit, J., Held: During the dark hours of the midnight and also when the penumbra of COVID-19 Lockdown was obtaining; except the accused persons, no other person is stated to have been present at the scene of offence; thus, at this stage, there is no reason to presume the presence of any third person who saw the commission of the offences or heard the prescribed words that were allegedly cast-denigrative. Complainant and the petitioners belong to two different villages, which fact is obviated by the allegation in the FIR that the latter threatened the former against visiting their village; therefore, at this stage, there is no material to presume that petitioners knew of the social status of the complainant, which is a *sine qua non* for invoking the charging provision of Atrocities Act. The other acts alleged against the petitioners may amount to offences punishable under Sections 323 and 506 of IPC; these offences are not punishable with death or life imprisonment; added to this, petitioners have undertaken to fully cooperate in the investigation process apart from abiding by the conditions that may be imposed by this Court; the oft quoted slogan of Criminal Jurisprudence "Bail is a rule and jail is an exception", extends to Anticipatory Bails too; the fact that the investigation is not yet completed cannot be treated

as the China Wall against a petition for the advance bail; a diction to the contra may defeat the very object of Section 438 of Cr. P.C.; that apart, the arrest and detention of persons in over-crowded jails may expose them to the hazard of infection of COVID-19 Pandemic, as rightly contended by the Counsel for the petitioners. (paras 5(a), 5(c) and 5(g)) – *Appoji Reddy and Another v State of Karnataka*, 2020(4) Kar. L.J. 199A.

Sections 3(1)(r), 3(1)(s), 18 and 18-A — Code of Criminal Procedure, 1973, Section 438 — Indian Penal Code, 1860, Sections 143, 147, 148, 323, 324, 307, 354-B and 504 read with Section 149 — Anticipatory bail — Permissibility in view of the bar under Section 18 of the Act 1989 — Considering the fact that only a sentence is added in the complaint that accused referred to caste name as "Nayaka" of the victim/respondent during the scuffle between the two groups of village, there is no specific abuse was made taking the caste name as such further, the alleged incident took place near agricultural land and there was also a loan transaction between the parties and complainant also admitted the same — Law on the issue is clearly laid down by the Supreme Court with regard to Sections 18 and 18-A of the Act 1989 and Section 438 of the Cr. P.C. (*Prathvi Raj Chauhan v Union of India and Others*, 2020 SCC Online SC 159) that where the complaint does not make out a *prima facie* case for applicability of provisions of the Act 1989, the bar created by Sections 18 and 18-A(1) of the Act 1989 shall not apply — In view thereof, held, it is a fit case to exercise the power under Section 438 of the Cr. P.C. — Petition allowed. (paras 2, 5, 6, 7 and 8) – *Agasara Jadiyahappa and Others v State of Karnataka and Another*, 2020(4) Kar. L.J. 184.

Section 3(1)(ix) — Indian Penal Code, 1860, Sections 196, 198 and 420 — Criminal Procedure Code, 1973, Section 482 — Constitution of India, Article 162 — False Caste Certificate — Prosecution for securing employment to post under State Government reserved for persons belonging to Scheduled Tribes, on basis of — Person belonging to "Kuruba" Community which comes under "OBC", obtaining certificate that he belongs to "Kaadu Kuruba" which is Scheduled Tribe to secure employment — Order issued by State Government exempting such employees from being prosecuted for offence if they surrender certificate and give undertaking that they shall not claim any further benefit on basis of such certificate, *vide* G.O. No. SWD 713 SAD 93, dated 11-3-2002 — In view of fact that employee in instant case has since complied with condition stipulated in said Government Order criminal proceedings instituted against employee, to be quashed.

Huluvadi G. Ramesh, J., Held: In the Government Order No. SWD 713 SAD 93, dated 11-3-2002, it is noticed that the persons who obtained benefits claiming that they belonged to 'Kaadu Kuruba' of ST, although they belonged to 'Kuruba' community is OBC, have been exempted from prosecuting with a condition that they shall surrender the certificate and shall not claim further promotion on the basis of the said certificate. It is

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stated that the petitioner has now surrendered the said certificate. In view of the same, the petitioner is entitled for the benefit granted by the Government in the said G.O. dated 11-3- 2002. — *Smt. C. Lathadevi v State by Ulsoorgate Police Station, Bangalore*, 2011(4) Kar. L.J. 495.

Section 3(1)(ix) — Indian Penal Code, 1860, Sections 198 and 420 — Criminal Procedure Code, 1973, Section 482 — Atrocities against Scheduled Castes and Scheduled Tribes — Petitioners produced false caste certificate — Cases against petitioner were registered alleging that they produced false Caste Certificate, and sought service benefits — Subsequently, Government issued notification dropping prosecution against petitioners on condition that they should surrender caste certificate and not claim any benefit *etc.* — Petitioners prayed for quashing of charge-sheet in the criminal case filed against them based on Government notification — Held — In view of Government notification petitioner are allowed to avail benefits under notification of Government. — *Huchuraya Swamy v State of Karnataka and Others*, 2009(5) Kar. L.J. 507.

Section 3(1)(ix) — Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointments, *etc.*) Act, 1990, Section 4-B — Intra-Court appeal — Circular issued by the Ministry of Home affairs, Government of India in April 1975 — Reservation in appointments — Categories of persons entitled for benefit of — It is now well-settled that reservation can benefit only those who belong to SC or ST by birth and not those who claim to acquire the status by marriage — Government Order circular of April 1975 clearly provides that no person who was not a SC or ST by birth will be deemed to be a member of SC/ST merely because he or she married a person belonging to SC or ST — Similarly, a person who is a member of SC or ST would continue as such, even after his or her marriage with a person who does not belong to a SC or ST — Aforesaid circular was adopted by the State by G.O. dated 23-3-1987 — Hence, till then, judgment in *N.E. Horo v Smt. Jahan Ara Jaipal Singh*, AIR 1972 SC 1840 held the field as was applicable to persons who had been issued Caste Certificate on the basis of their marriage to SC or ST person, even though by birth they did not belong to said caste — On facts, there was no falsehood, fabrication, manipulation or concealment made by respondent 1, while being issued with SC Certificate in the year 1979 — On which basis, she secured employment as Kannada Teacher, on 5-11-1979, in an aided institution — Said certificate was issued to her on the basis of law prevailing at the relevant point of time in *N.E. Horo* case — Therefore, subsequent declaration of law overruling the *N.E. Horo*, cannot, *ipso facto* result in the Caste Certificate issued to respondent 1 being fraudulent, illegal or invalid — Consequently, respondent 1 is entitled to seek terminal/retiral benefits in accordance with law — However, she is not entitled to benefit of a person belong to SC in future — Impugned

proceedings against respondent 1 — Quashed. (paras 2, 5, 29, 30 and 34) — *R.S. Mahadev v B.R. Gopamma and Others*, 2021(4) Kar. L.J. 488A (DB).

Section 3(1)(ix) — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, Rule 7 — Code of Criminal Procedure, 1973, Section 482 — Karnataka Civil Services (Absorption of Contract Veterinary Officers in Animal Husbandry and Veterinary Services) (Special) Rules, 1997 — Indian Penal Code, 1860, Sections 198 and 420 — Benefit of reservation — Alleged obtaining and use of false Caste Certificate of SC Community to secure post of veterinary officer — Petitioner praying for quashing of proceedings before the Sessions Court, under Section 482 of the Cr. P.C. — Abuse of process of law and miscarriage of justice — Held, in the first instance, having regard to Rule 7 of Rules 1995, which provides for investigation by Police Officer not below the rank of Deputy Superintendent of Police — Whereas, the entire investigation is conducted by the Police Inspector, without any special order or permission to do such investigation — Said investigation, therefore bad in law — Proceedings require to be quashed — Further on merits: Order of appointment was on contract basis as also order of absorption and subsequently his seniority is also made as per merit — No such document discloses that his appointment was made based on his Caste Certificate and therefore he was in general category — Before confirmation, he has furnished document of III(b) category certificate — Under such circumstances, when petitioner has not taken any advantage of the particular caste, that too SC community — Question of invoking Section 3(1)(ix) of the SC/ST Act, does not arise — Consequently, the ingredients of Section 198 or 420 of the IPC are also not attracted — Further, since the very order of dismissal is also under challenge and pending before the Court — Very initiation of proceedings is nothing but an abuse of process of law, leading to miscarriage of justice — Proceedings quashed by invoking Section 482 of the Cr. P.C.

H.P. Sandesh, J., Held: Having read the Rule 7 of the said Rules 1995, it is clear that investigation shall be investigated by Police Officer not below the rank of Deputy Superintendent of Police and in the case on hand, the entire investigation is conducted by the Police Inspector and there is no any special order permitting him to or authorising him to conduct investigation and it is not the case of the prosecution that he was specially authorised or permitted to conduct the investigation and statute also specifically bars the investigation not below the rank of Deputy Superintendent of Police. When such being the fact on hand, the very investigation conducted by the police inspector is bad in law and hence, on the first ground proceedings has to be quashed. The other contention that he was appointed at the first instance on contract basis and subsequently, absorption order was also issued and after passing the prescribed examination, his probation was also declared, the factual materials disclose that he was dismissed from service

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and the same has not been questioned before the Competent Authority and stay was granted and he continued in service and the matter is pending. Apart from that, a criminal proceedings is initiated against this petitioner and the petitioner's Counsel in his arguments he brought to my notice the order of appointment on contract basis and also the order of absorption and subsequently, his seniority is also made as per the merit and no such document discloses that his appointment was made based on his caste certificate and he was in the general category. Petitioner also submit that before confirmation, he was asked to furnish document and hence, he has furnished the document of III(b) category certificate and when such being the circumstances and when the petitioner has not taken any advantage of the particular caste that too SC Community, question of invoking Section 3(1)(ix) of the SC/ST Act also does not arise. Apart from that whether ingredients of either Section 198 or 420 of Indian Penal Code, 1860 also that is only with regard to if he has taken the advantage and he is a beneficiary claiming the said reservation and got an appointment, then the ingredients of Sections 198 and 420 of IPC also attracted or otherwise ingredients of those provisions does not attract and petitioner also succeed in other ground also that he did not get the appointment on the basis of the SC Caste Certificate, particularly obtaining the Caste Certificate of SC community and also the matter is also pending before this Court with regard to taking of the action against him. The very order of dismissal is also challenged and the same pending before the Court and such being the matter, the very initiation of proceedings against the petitioner is nothing but an a abuse of process and also it leads to miscarriage of justice and hence, it is appropriate to invoke Section 482 of Cr. P.C. to quash the proceedings. Having considered the factual aspects and also the grounds urged before this Court. (paras 12 and 13) – *Dr. Shivashekhharayya Tigarimath v State of Karnataka and Another*, **2019(3) Kar. L.J. 196 (Dharwad Bench)**.

Section 3(1)(x) — Code of Criminal Procedure, 1973, Section 377 — Indian Penal Code, 1860, Sections 323, 324, 504 and 506 read with Section 34 — Conviction, imposition of fine — Criminal appeal for modification of fine — As regards charges of intentional insult for provoking breach of peace and intimidation as provided under Sections 504 and 506 of the IPC, evidence of prime witnesses-P.Ws. 1, 2 and 13 do not establish the material ingredients required for convicting the accused for said offences — Mere threat by accused is not sufficient — Conviction under Sections 504 and 506 of the IPC cannot be sustained — However, considering other material/evidence before the Court, the entire incident cannot be treated as not believable — As for charge of abusing the victim by using his caste name, there is nothing in evidence to indicate that accused had such kind of intention as to insult P.W. 1 on ground that he belongs to Scheduled Caste — Thus viewed, conviction of accused under Section 3(1)(x) of the SC/ST Act — Not justifiable — Criminal appeal partly allowed by modifying the fine amount from Rs.

2,500/- to Rs. 1,000/- for each of offences under Sections 323 and 324 of the IPC. (paras 16, 17, 18 and 21) – *Ravikumar and Others v State of Karnataka by Byandur Police, Kundapura Sub-Division, Udupi*, **2021(1) Kar. L.J. 110A.**

Section 3(1)(x) – Criminal Procedure Code, 1973, Section 374(2) – Indian Penal Code, 1860, Sections 324, 506 and 341 – Modification of sentences by the High Court – In many cases, the Higher Courts just confirm or reverse the Trial Court judgments – It is rare gesture wherein the sentences recorded by the Special Court was modified to a larger extent – High Court read the evidence on record between lines – Held, ultimately, sentences imposed by the Trial Court required modifications thus modified sentences were drawn and also acquitted accused 2 and 3.

N. Ananda, J., Held: The learned Special Judge convicted accused 2 and 3 of an offence punishable under Section 341 of IPC and acquitted them of offences punishable under Sections 324 and 506 of IPC and also of an offence punishable under Section 3(1)(x) of the Act. Therefore, accused 1 to 3 are before this Court. Thus, from the evidence of P.W. 1 to P.W. 3 and medical evidence of P.W. 6, it can safely be held that accused 1 had assaulted on the head of P.W. 1 with handle of spade and caused injuries to him. In the circumstances, there are no reasons to interfere with the findings of learned Trial Judge that accused 1 had committed an offence punishable under Section 324 of IPC. P.W. 1 to P.W. 3 have not deposed that accused 1 to 3 had wrongfully restrained P.W. 1. In the circumstances, the judgment of conviction of accused 2 and 3 for an offence punishable under Section 341 of IPC cannot be sustained. There is no cogent and consistent evidence in relation to an offence punishable under Section 3(1)(x) of the Act. The reason for accused 1 to assault P.W. 1 would belie that accused 1 had abused P.W. 1 by taking out the name of his caste. The appeal is accepted in part. The impugned judgment is modified. – *Nandisha and Others v State by Kesthur Police, Bangalore*, **2014(2) Kar. L.J. 596.**

Section 3(1)(x) – Criminal Procedure Code, 1973, Section 438 – Bail application – Possibility of granting – Petitioner is facing charges under Sections 143, 147, 148, 323, 324 and 504 of the Indian Penal Code, 1860 – Offences alleged are all triable by the Magistrate Court – Not exclusively punishable with death or imprisonment for life except the offence punishable under Section 3(1)(x) of the SC/ST Act – Held, bail is granted on following conditions: (i) shall execute a person bond for Rs. 25,000/- and furnish one surety; (ii) shall not tamper with any of the prosecution witnesses directly or indirectly; (iii) shall make themselves available before the Investigating Officer.

Budihal R.B., J., Held: This petition is filed by petitioners/accused 2, 3, 6 and 7 respectively under Section 438 of Criminal Procedure Code, 1973, seeking anticipatory bail to direct the respondent-police to release the petitioners on

bail in the event of their arrest for the alleged offences punishable under Sections 143, 147, 148, 323, 324 and 504 read with Section 149 of Indian Penal Code, 1860 and also under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered in respondent-police station Crime No. 21 of 2014. The respondent-police are directed to release the petitioners on bail in the event of their arrest for the alleged offences punishable under Sections 143, 147, 148, 323, 324 and 504 read with Section 149 of IPC and also under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered in respondent-police station Crime No. 21 of 2014. — *Pavan Alias Pavan Kumar N.R. And Others v State By Lashkar Police Station, Mysore*, 2014(4) Kar. L.J. 670

Section 3(1)(x) — Indian Penal Code, 1860, Sections 143, 147, 148, 323, 324 and 504 read with Section 149 — Code of Criminal Procedure, 1973, Section 378(1) and 378(3) — Unlawful assembly, rioting and causing grievous hurt with dangerous weapons — Consequent to a civil dispute concerning land — Acquittal — Appeal by State — Claims and counter-claims — Earlier counter case and in this regard a separate trial held in Court of Sessions ending in acquittal — Held, allegations, *inter alia* — That accused attacked the respondents when they were doing agricultural work, and abused them in filthy language — Which, supported by wound certificate issued by doctor — On reappraisal of entire material, evidence on record found to be full of inconsistencies contradictions — P.W. 2 also deposed that material objects in front of the Court are not the objects concerned — In cross-examination admitted regarding civil dispute between parties — P.W. 3 alleged eye-witness to incident, even claimed that accused assaulted him on his right elbow — Which, however, is silent in FIR — Even otherwise, there is no mention of P.W. 3 being treated by doctor — No wound certificate produced with regard to injury sustained by him — Further, P.W. 5-husband of P.W. 1 were allegedly assaulted by two persons — But it is not clear from her evidence as to who were those two persons — Doctor who issued wound certificates has not been examined as witness and certificates show only minor injuries — Therefore, the Trial Court has failed to bring home guilt of accused beyond reasonable doubt — No reason to interfere with impugned judgment of acquittal — Appeal by State dismissed.

Mohammad Nawaz, J., Held: On a careful perusal of the above First Information Report, it can be said that the complainant has named all the accused persons having assaulted the injured and also named some of the witnesses who were present at the spot. According to the FIR, the accused have assaulted and caused injuries to P.Ws. 1, 2, 5 to 8 and 11. With regard to the counter attack and the injuries sustained by the accused persons, there is no whisper in the FIR. Looking into the evidence of P.W. 1-complainant, he has deposed therein that on 24-8-2009 between 9.00 – 10.00 a.m., they were

doing agricultural work in Sy. No. 166. At that time, all the accused persons, who are before the Court came armed with clubs, abused and threatened them and thereafter assaulted them with the said clubs. Accused 1, 3 and 5 are said to have assaulted P.W. 2 and caused injuries on the head. Accused 2 and 5 are said to have assaulted P.W. 1 with club. Then the accused have dragged P.Ws. 6 and 7. P.W. 1 has further deposed that the said incident took place for about 10 minutes and the accused have also assaulted his uncle Venkateshappa and sister Kanthamma *i.e.*, P.Ws. 8 and 6 respectively, who came and tried to pacify the quarrel. He has deposed that immediately after the assault made on him, he fell unconscious and all the injured were treated at SNR Hospital, Kolar. M.Os. 1 to 6 have been identified by P.W. 1. His complaint has been marked as Ex. P. 1 and Ex. P. 1(a) is the signature. In the cross-examination of P.W. 1 it has been elicited that there was a civil dispute in respect of Sy. No. 166 and he has admitted that the said civil dispute has ended in favour of the accused persons. He has further stated that he cannot identify as to which accused was holding M.Os. 1 to 6. However, he has denied the suggestion that the accused have not assaulted or abused and threatened them. It is elicited in the cross-examination of P.W. 1 that even the accused have lodged a complaint with regard to the assault made by them and in this regard a case was registered prior to the registration of the case lodged on their complaint and charge-sheet was filed against them which was subsequently numbered as S.C. No. 149 of 2009 before the Sessions Court, Kolar. Learned Counsel for the accused-respondents submitted that in S.C. No. 149 of 2009 there were 9 accused persons, wherein they were tried for the offences under Sections 143, 147, 148, 323, 324, 504 and 506 read with Section 149 of IPC and by judgment and order dated 10-8-2010 *i.e.*, on the same day of passing of the judgment in the present case, the learned Sessions Judge acquitted all the accused persons. Against the said judgment and order of acquittal, no appeal has been preferred by the State. A copy of the said judgment and order is made available by the learned Counsel appearing for the accused. On perusal of the evidence of the material witnesses, Court find that there are several inconsistencies and contradictions. P.W. 2 has deposed that he was assaulted by accused 1, 4 and 5 with the clubs and he sustained injury on his head and C.W. 2 *i.e.*, P.W. 5 sustained injury to the shoulder. P.W. 2 has further deposed that his sister Kanthamma's (P.W. 6) finger was cut and his brother sustained injuries on his neck and he fell unconscious. He has further deposed that this incident went on for about 5 minutes. He has deposed that the material objects in front of the Court are not the object. In the cross-examination, P.W. 2 also admitted regarding the civil dispute between the parties. Though he has denied regarding filing of the counter case, he has again admitted that the said case is pending before the same Court. P.W. 3 claims to be an eye-witness. According to him, the accused came and threatened the complainant and others and picked up a quarrel when they

were cultivating the land in Sy. No. 166. He has stated that the accused have assaulted with the club on P.Ws. 1 and 2 and accused 3-Chowdappa and Ramachandrappa assaulted his wife Nagarathnamma-P.W. 7 with clubs. It is relevant to note that accused-Chowdappa is accused 3 and there is no accused by name Ramachandrappa. P.W. 3 is also an attester to spot mahazar-Ex. P. 2. This P.W. 3 even claims that the accused assaulted him on his right elbow. This is silent in the First Information Report. Even otherwise there is no mention of P.W. 3 being treated by the doctor and there is no wound certificate produced with regard to the injury sustained by him. According to P.W. 5, her husband *i.e.*, P.W. 1 was assaulted by Vankatappa and Venkatesh. It is not clear from her evidence as to who are the said two persons. In the cross-examination, she has stated that her husband-P.W. 1, Ramachandrappa-P.W. 2 and also Hanumappa-P.W. 3 fell unconscious and her husband gained conscious only in the evening at 6.00 p.m. She admitted that there is a civil dispute between the parties and that a case was also registered against them. All these witnesses are not consistent with regard to the assault made by each of the accused and stated nothing about the counter case and the assault made by them on the accused, wherein it has come in the evidence that there is a counter case and in this regard a separate trial was held in sessions case in S.C. No. 149 of 2009. The complaint lodged against the complainants' party herein is first in point of time and even certain accused herein appears to have sustained injuries. The case filed against the complainants party has also ended in acquittal. It is no doubt that wound certificates were marked as per Exs. P. 12 to P. 18 with regard to the injured witnesses *viz.*, P.Ws. 1, 5, 6, 2, 7, 11 and 8 respectively. However, the doctor who has issued the said wound certificate has not been examined. Perusal of the wound certificates goes to show that the witnesses have sustained minor injuries. The Trial Court having considered the oral and documentary evidence and after appreciation of the evidence of the injured witnesses was of the view that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. Even after reappraisal of the said evidence and materials on record, Court find no reason to interfere with the judgment and order of acquittal passed by the Trial Court. (paras 12, 13, 14, 17, 18 and 24) – [Criminal Appeal No. 52 of 2011, DD: 7-6-2018] *State by Vemagal Police Station v Earappa and Others*, 2018(6) Kar. L.J. 192.

Section 3(1)(x) – Indian Penal Code, 1860, Sections 143, 323 and 325 read with Section 149 and Sections 341, 326 and 506 read with Section 149 – Charges of assault and abusing in filthy language, taking the name of caste of victims – Impugned order passed by Sessions Court – Convicting accused of charges under the IPC – Acquitting accused of charges under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – Appeals against – Held on facts – A number of variations noticed in evidence of key prosecution witnesses with regard to complicity of accused – Complaints reportedly filed by P.Ws. 1 and 9 – Not available on record –

Contention of accused that real facts are suppressed by prosecution — Justified — Considering totality of circumstances, however, the Trial Court is justified in passing the impugned orders — Appeals disposed of accordingly.

Mohan M. Shantanagoudar and Budihal R.B., JJ., Held: From the aforementioned narration, it is clear that the case of the prosecution mainly depends upon the evidence of P.Ws. 1 to 3 and the evidence of the doctor-P.W. 7. In the complaint-Ex. P. 1, P.W. 1 has stated that it was accused 7, who assaulted him with club on his left fore arm whereas in his evidence, he has deposed that accused 3 assaulted him on his left forearm. Such variations are found in the evidence of P.Ws. 1 to 3. It is also borne out from the material evidence on record that there was pitch darkness in the area and there was no electricity flow during that relevant point of time and hence, there may be some confusion in the mind of P.Ws. 1 to 3 while explaining the overt acts of each of the accused. Certain variations are bound to be there particularly when illiterate witnesses depose before the Court, that too, when the case involves number of accused and witnesses; the Court will have to assess the entire material evidence on record homogeneously and it cannot shut its eyes and decide in favour of the accused merely on the basis of technicalities. However, in regard to the totality of the facts and circumstances of the case, that the Trial Court was justified in acquitting the accused for the offences punishable under Sections 326, 341 and 506 all read with Section 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Section 149 of IPC. The reasons assigned for acquitting the accused for the offences punishable under Sections 326, 341 and 506 all read with Section 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Section 149 of IPC, appear to be just and proper. The view taken by the Trial Court while acquitting the accused in respect of the said provisions appears to be a possible view under the facts and circumstances of the case. — *State of Karnataka v Moti alias Mohan and Others*, 2015(6) Kar. L.J. 313 (DB).

Section 3(1)(x) — Indian Penal Code, 1860, Sections 323, 324 and 506 — Trial Court held appellant-accused guilty of offence punishable under — On facts — Whether Trial Court was justified in convicting the accused for offence punishable under Sections 323, 324 and 506 read with Section 34 of the IPC and Section 3(1)(x) of the SC and ST (Prevention of Atrocities) Act, 1989? — Held, there is no cogent evidence to show that the incident has occurred in public view — Hence Trial Court was not justified in convicting the appellant-accused for the offence punishable under Section 3(1)(x) of the SC and ST (Prevention of Atrocities) Act, 1989 — Conviction of accused for offences punishable under Sections 323, 324 and 506 read with Section 34 of the IPC is sustained and confirmed.

H. Billappa, J., Held: Insofar as the offence punishable under Section 3(1)(x) of SC and ST (POA) Act, 1989 is concerned. Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. In the complaint-Ex. P. 3, it is alleged, that on 8-6-2008 P.W. 2 went near the house of P.W. 3 asking for coolie amount. At that time, P.W. 3 told P.W. 2 to stay for some time as she is preparing tea. At that time, A1 and A2 *i.e.* appellants herein went near the house of P.W. 3-Shivamma and abused P.W. 2 saying “ಹೊಲೆಯ ಸೂಳೆ ಮಗನೇನಿಮಗೆಲ್ಲಾ ಕೊಬ್ಬು ಜಾಸ್ತಿಯಾಗ್ಯಂತೆ ಲಿಂಗಾಯ್ತರ ಮನೆ ಹತ್ತಿರ ಬರುವಷ್ಟು ಧೈರ್ಯನಾ ನಿನಗೆ, ನಿನಗೆ ಕೊಡಬೇಕಾದ ಕೂಲಿಯನ್ನು ಇವತ್ತಲ್ಲಾ ನಾಳೆ ಬಿಸಾಕುತ್ತೇವೆ” However, P.W. 3 has stated that the accused abused P.W. 2 taking his caste name. There is no cogent evidence to show that the incident has occurred in public view. In the circumstances, it cannot be said that the appellants have committed an offence under Section 3(1)(x) of SC and ST (POA) Act, 1989. Therefore, the Trial Court was not justified in convicting the appellants-A1 and A2 for the offence punishable under Section 3(1)(x) of SC and ST (POA) Act, 1989. Insofar as the offences punishable under Sections 323, 324 and 506 read with Section 34 of IPC is concerned, the Trial Court was justified in convicting the appellants-A1 and A2 for the said offences. Therefore, the impugned judgment and order needs to be modified. Accordingly, the criminal appeal is allowed in part. The impugned judgment and order passed by the VI Additional District and Sessions Judge, Mysuru, in Spl. Case No. 61 of 2008 is modified. The conviction of the appellants *i.e.*, A1 and A2 for the offences punishable under Sections 323, 324 and 506 read with Section 34 of IPC is sustained and it is confirmed. Insofar as the offence punishable under Section 3(1)(x) of SC and ST (POA) Act, 1989 is concerned, the conviction and sentence passed by the Trial Court is hereby set aside. The appellants *i.e.*, A1 and A2 are acquitted of the charge under Section 3(1)(x) of SC and ST (POA) Act, 1989. The sentence passed by the Trial Court for the offences punishable under Sections 323, 324 and 506 of IPC is modified. The appellants *i.e.*, A1 and A2 are sentenced to pay a fine of ₹ 5,000/- each for the offence punishable under Section 323 of IPC and in default of payment of fine, the appellants shall undergo S.I. for a period of one month. For the offence punishable under Section 324 of IPC, the appellants *i.e.*, A1 and A2 are sentenced to pay a fine of ₹ 15,000/- each and in default of payment of fine, the appellants shall undergo S.I. for a period of two months. For the offence punishable under Section 506 of IPC, the appellants *i.e.*, A1 and A2 are sentenced to pay a fine of ₹ 5,000/- each and in default of payment of fine, the appellants shall undergo S.I. for a period of one month. Out of the fine amount, a sum of ₹ 25,000/- shall be paid to P.W. 2-Somaiah and a sum of ₹ 10,000/- shall be paid to P.W. 3-Shivamma. – *Basavaraju and Another v State of Karnataka*, 2016(5) Kar. L.J. 480.

Section 3(1)(x) — Indian Penal Code, 1860, Sections 326 and 34 — Alleged intentional insult, intimidation and causing grievous hurt and abusing the

complainant victim by calling him by his caste name as "son of a bitch of Byada Community" — Conviction, sentencing of accused-appellants — Appeal — On reappraisal of entire evidence, the High Court holding the impugned conviction and order by Trial Court as erroneous and perverse — In factual matrix: neither P.W. 4-the victim, nor P.W. 5-eye-witness have stated anything about the motive which instigated or prompted accused to all of a sudden approach P.W. 4 and assault him — Again, nowhere P.W. 4 stated as to whether A2 came there and what made A2 also to assault him — Or whether the accused had exchanged verbal abuses with him — Otherwise, with respect to an old incident of four months, concerning cattles of P.W. 4 entering the lands of accused — All of a sudden and without any intimidation of their intention to assault — In such circumstances, the accused assaulting P.W. 4, is hard to believe — From the evidence of P.W. 5-eye-witness, it is obvious that there was a fight between both accused and P.W. 4 — Not a case where it was only A1 who assaulted P.W. 4 — In his evidence, A5 has specifically stated that he has not seen A2 in the incident — Which, leads to a lot of contradiction and discrepancy between the evidence of P.Ws. 1 and 5 with respect to manner and how the incident is alleged to have occurred — Further, the medical report/injury certificate (Ex. P. 3) nowhere mentions about the presence of any alleged injury near the ear of the victim — Delay of two days in lodging the complaint by victim, cannot also be ignored — In view of facts, circumstances, held, Special Court failed to notice catena of doubts crept in the case of prosecution — Jumped to the conclusion, based solely upon a few statements made by P.Ws. 4 and 5 regarding alleged incident — Impugned order set aside, accused set at liberty. (para 8) — [Criminal Appeal No. 347 of 2010, DD: 8-2-2018] *Kumara and Another v State of Karnataka*, 2018(3) Kar. L.J. 663.

Section 3(1)(x) — Indian Penal Code, 1860, Sections 420, 506 and 376 — Petitioner-accused alleged to have committed rape on the victim, on the assurance of marrying her — On fact — Petitioner and complainant acquainted with each other since two years — Having sexual contact with a major on the assurance of marriage will not amount to rape — But will amount to breach of promise under Section 417 of the IPC — Since substantial portion of investigation has already been completed — Conditional bail granted.

L. Narayana Swamy, J., Held: Admittedly, victim lady is major and petitioner is aged about 37 years. The petitioner had provided recruitment to the complainant and since from two years they loved each other. The petitioner had proposed to marry her and she has consented for the same. On the basis of the said assurance, the petitioner had sexual contact on several occasions with the victim. As per the decision rendered in the case of *Uday*, having sexual contact with a grown up lady on the assurance of marriage will not amount to rape; at the best one of breach of promise under

Section 417 of IPC. Now that the substantial portion of the investigation has been already completed and charge-sheet is yet to be filed. Petitioner has undertaken to obey any of the condition which may be imposed on him. In the circumstances, by imposing proper conditions petitioner may be enlarged on bail. The petitioner is ordered to be released on bail on executing a personal bond for a sum of Rs. 1,00,000/- (One Lakh Rupees Only) with one surety for the likesum to the satisfaction of the concerned Court. He shall mark his attendance once in a month on every second Saturday between 9.00 a.m. to 5.00 p.m. before the Jurisdictional Police Station without fail till the completion of investigation. He shall not hold out threats to the prosecution witnesses in any manner. He shall attend the concerned Court on all the dates of hearing without fail. Petitioner shall not involve in any criminal activities. If the petitioner violates any one of the conditions, the prosecution is at liberty to seek for cancellation of bail from the concerned Sessions Court. – *Vikas Kumar v State of Karnataka*, 2015(4) Kar. L.J. 604.

Section 3(1)(x) – Indian Penal Code, 1860, Sections 504 and 506 – Code of Criminal Procedure, 1973, Sections 227 and 401 – Alleged offence of intentionally insulting and abusing with filthy language by referring to the caste name of the victim girl – Also forcing her to marry the accused – Victim, SSLC Student and a minor, attempting to commit suicide – Trial Court convicting all accused – Father, mother of the victim and two others (accused 1 to 4) for offences charged – Held, the Trial Court not exercised its jurisdiction in a proper manner – Statement of witnesses and allegations made in charge-sheet – Not even peeped into – Impugned order passed mechanically, once again, convicting the accused – Earlier directions to the Court, while remanding the matter as to how the Court has to consider the application filed under Section 227 of the Cr. P.C. – Not followed – Order is cryptic and no materials to implicate accused 2 to 4 – They are entitled to be discharged – However, the impugned order passed, insofar as accused 1 is concerned, sustainable and confirmed. (paras 4, 5 and 6) – [Criminal Revision Petition No. 39 of 2018, DD: 16-2-2018] *Govindaraju alias Shiva and Others v State of Karnataka*, 2018(3) Kar. L.J. 632A.

Section 3(1)(x) – Indian Penal Code, 1860, Sections 504 and 323 – Petition seeking back wages gross misconduct of petitioner-bank employee – Change of fisting his officer on the face during an altercation while on duty – Dismissal of employee confirmed by Labour Court – However, Labour Court, while holding misconduct as proved – Considering other factors – (i) It was a trivial incident; (ii) criminal proceedings under the SC/ST Act, ending in acquittal – Petitioner is entitled to reinstatement without back wages – Denial of back wages – Sufficient punishment for misconduct proved – Petitioner also undergone ordeal since 2006 – In view of facts, circumstances, held, impugned order of Labour Court, for reinstatement, with continuity of service, consequential benefits, without

back wages — Justified, proper. — *B. Giridhar v State Bank of Mysore, Head Office, Bangalore*, 2016(1) Kar. L.J. 564.

Section 3(1)(x) — Insulting by using caste name of victim — Ingredients necessary for conviction — Particularly "intention to humiliate or insult" — Observations of the High Court regarding. — *Ravikumar and Others v State of Karnataka by Byandur Police, Kundapura Sub-Division, Udupi*, 2021(1) Kar. L.J. 110B.

Section 3(1)(x) — Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 — Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Rules, 1992, Rule 7-A(2) — Indian Penal Code, 1860, Sections 196, 198 and 420 — Constitution of India, Article 226 — Using of false Caste Certificate to procure employment in respondent 1-Bank — Respondent 3-Additional Director General of Police, Directorate of Civil Rights Enforcement, directing the respondent-Bank Authorities to initiate action against petitioners — As a consequence, the Bank Authorities issuing impugned show-cause notices to concerned petitioners — Petitioners questioning the validity of notices, on various grounds — Held, the contention of petitioners that the respondent 1-ADGP has no authority of law to initiate action against them cannot be countenanced — Sub-rule (2) of Rule 7-A, empowers the Directorate of civil rights enforcement cell to take steps to prosecute such claimants who have obtained false Caste Certificates — Impugned action is also in consonance with the directives issued by the Supreme Court in *Kumari Madhuri Patil and Another v Additional Commissioner, Tribal Development and Others*, AIR 1995 SC 94, to protect the interests of candidates belonging to designated caste, tribe or class for whom the benefit is reserved — Authorities were required to act to protect rule of law — Ensure that the benefit as reserved, is availed by those persons belonging to those caste, tribe or class alone — Moment an illegitimate claim is made, the concerned authorities are bound to initiate action — In factual matrix: Admittedly, the petitioners were appointed during 1979-1982, on the basis of Caste Certificates, claiming to belong to 'Kotegar Community', which according to them, includes the caste 'Rama Kshatriya', which is a synonyms of 'Kotegar Community' — Whereas, on facts, it is established that they do not belong to 'Koteyar' or any other community which is notified as SC or ST under the Presidential Notification — Further, admittedly, the caste verification committee declined to issue validity certificate to them when their Caste Certificates were sent for verification — Consequently Caste Certificates were cancelled in the case of some petitioners — Petitioners also admit that they have surrendered their Caste Certificates, to obtain benefit of one time amnesty under G.Os. dated 11-3-2002 and 29-3-2003 issued by the State Government — In view thereof, nothing further remains to be invalidated under the provisions of the Karnataka SC/ST/OBC Act, 1990 —

Show-cause notices issued by respondent-Banks cannot be interfered with — Where petitioners have already been dismissed from service, the action of respondent-authorities, upheld. (paras 13, 14, 19 and 20) — Smt. H.R. Sumangala and Others v The Additional Director General of Police, Directorate of Civil Rights Enforcement, Bangalore and Another, 2019(2) Kar. L.J. 694A.

Section 3(1)(x) — Offence under — Delay in making complaint — Delay explained as attributable to time taken for getting Government's permission to file complaint, as complainant is public servant — Such explanation is not acceptable as no such permission is required to make complaint of offence under Act.

M.P. Chinnappa, J., Held—From a perusal of the complaint it is clear that the incident had taken place on 28-12-1995 at 12 noon in the Chamber of the complainant who was working as a Commercial Tax Officer. But the report came to be filed to the police on 2-3-1996, i.e., after a lapse of over two months. There is no explanation as to why there was inordinate delay in lodging the complaint. However the complainant has stated in the complaint that after receipt of the permission to prosecute the petitioner, he lodged the complaint on that day. But there is nothing to indicate that such a sanction is necessary to prosecute the petitioner. — *Chandra Poojari v State of Karnataka by Seshadripuram Police, Bangalore*, 1997(4) Kar. L.J. 81B.

Section 3(1)(x) — Offence under — To constitute offence, insulting or intimidating must be in place within public view — Where incident occurred in complainant's office chamber which is not within public view, offence cannot be said to have been committed.

Held. — To attract the provisions of Section 3(1)(x) of the Act, it is necessary that it should be in a place where public could view the incident. In this case, the complaint does not disclose that the occurrence had taken place in public view. — *Chandra Poojari v State of Karnataka by Seshadripuram Police, Bangalore*, 1997(4) Kar. L.J. 81C.

Section 3(1)(x), 3(1)(e) and 3(1)(r) — Section 3(1)(r) substituted by Act No. 1 of 2016 with effect from 26-1-2016) — Indian Penal Code, 1860, Sections 323 and 354 — Intentionally insulting/intimidating with intent to humiliate a member of a SC or ST in any place within public view — Alleged disputes between parties relating to property and pending before Civil Court — Considering the object of SC/ST Act, 1989 and ingredients of Section 3(1)(x) and 3(1)(e) thereunder — Ratio laid down by an earlier judgment of Supreme Court in a similar case of *Swaran Singh and Others v State through Standing Counsel and Others*, 2008 Cri. L.J. 4369 (SC), wherein a distinction was drawn between expression "public place" and "in any place within public view", as contemplated under Section 3(1)(r) of the SC/ST Act, held — On facts: As per FIR, allegations of abusing the informant were only within four walls of her

building and there was also no member of public (not merely relatives or friends) at the time of incident in the house — That witnesses cited could not be said to be those who were actually present within four walls of the building — Therefore, basic ingredient that words allegedly uttered "in any place within the public view", as provided under Section 3(1)(r) of the SC/ST Act are not made out — Further, the pending civil dispute arising on account of possession of said property would not disclose an offence under the Act, unless the victim is abused, intimidated or harassed only for the reason that victim belongs to SC/ST — In instant case, allegation of hurling of abuses is against a person who claims title over property — When such person happens to be an SC, the offence under Section 3(1)(r) of the Act is not made out — Consequently, charge-sheet to that extent is quashed — FIR in respect of other offences under the IPC will be tried by Competent Court in accordance with law along with the criminal case. (paras 2, 9, 11, 12, 13, 14, 15, 16, 18 and 24) — *Hitesh Verma v State of Uttarakhand and Another*, 2020(6) Kar. L.J. 188A (SC).

Section 3(1)(x) and (xi) — Code of Criminal Procedure, 1973, Section 438 — Indian Penal Code, 1860, Sections 143, 147, 148, 323, 324, 327, 504 and 506 — Abusing by naming caste — Anticipatory bail — Bar under Section 18 of the POA Act is not an absolute bar against grant of anticipatory bail — Court has to see *prima facie* case while considering such applications — In that light, on facts and circumstances, the said bar — Not applicable to present case — Even on perusal of complaint, though there is reference with regard to the language used by accused — But such language is omnibus and there is no specific allegations as to who used the said words in this behalf — It is also apparent that the present complaint is a counter blast to the one earlier filed by the wife of accused 3 — Therefore, the provisions of Section 18 of the POA Act cannot be made applicable to present case — Petition allowed — Accused-petitioners are directed to be enlarged on bail, with conditions.

B.A. Patil, J., Held: The contents of the complaint and other materials which have been produced in this behalf. The said record indicates the fact that earlier the complaint was registered by the wife of accused 3 in Crime No. 186/2018 at about 9.30 p.m. for the offences punishable under Sections 143, 147, 148, 323, 324, 504 and 506 read with Section 149 of IPC and the present complaint came to be registered thereafter at about 10.00 p.m. It is the contention of learned Counsel for respondent 2-complainant that Section 18 of the Act is a bar to grant anticipatory bail to the accused persons. Though, a plain reading of Section 18 of the Act indicates that there is a prohibition for exercising power under Section 438 of Cr. P.C. in respect of the offences under the Act, it further clarifies the fact that when an offence falls under a special case, for enforcement of this Act, the offence which is unpunishable under the Code, shall be an offence punishable in accordance with the provisions of this Act. By going through the said section, it impliedly

excludes Section 438 of Cr. P.C. in connection with the offences. But the general power which has been vested in this behalf is not exclusively excluded has to be taken into consideration with reference to the facts of the case on hand. As could be seen from the decision of the Hon'ble Apex Court in the case of *Dr. Subhash Kashinath Mahajan v State of Maharashtra and Another*, AIR 2018 SC 1498, it has been observed that though there is a bar under Section 18 of the Act, it is not absolute bar against the grant of anticipatory bail. The Court has to see the *prima facie* case while considering such applications. In that light, the said bar cannot be said to be applicable to this case. No doubt, by going through the said provision and the object the said provision is incorporated in order to curb the atrocities and to protect the civil rights. The Parliament in its wisdom introduced Section 18 in the Act for applicability in special cases for atrocities and Section 438 of Cr. P.C. is totally excluded. But the allegations do not make any *prima facie* offences punishable under the provisions of the said Act. Under such circumstances, bar under Section 18 of the Act is inapplicable and Section 438 of Cr. P.C. can be made available in this behalf. Keeping in view the above said ratio and the facts and circumstances of the case, admittedly, the first complaint came to be filed by the wife of accused 3 and that the said case has been registered in Crime No. 186/2018 in the same police station and subsequently, the present complainant and other accused members were released. Thereafter, at about 10.00 p.m., the present complaint has been filed in this behalf. It clearly goes to show that it is a counter blast to the complaint which has been filed by the wife of accused 3. Even on perusal of the complaint, though there is reference with regard to the language used, but the said language is omnibus and there is no specific allegations made against the accused persons and exactly, who used the said words in this behalf has not been stated. In the absence of any specific reference to the statement or language used by anyone of the accused or specific language used by the particular accused person, it cannot be said that the provisions of the said Act is applicable in this behalf. Even the averments made in the complaint are very vague and are not certain. Taking into consideration the above facts and circumstances in the case on hand, the bar under Section 18 of the Act should not apply in the absence of the specific allegations made against the specific accused persons. The petition is allowed and the accused-petitioners are directed to be enlarged on anticipatory bail in the event of their arrest in Crime No. 187/2018 for the offences punishable under Sections 143, 147, 148, 323, 324, 327, 504 and 506 read with Section 149 of IPC and Section 3(1)(x) and (xi) of SC/ST (POA) Act, by the Vemagal Police. (paras 7, 8, 9, 11 and 13) – [Criminal Petition No. 5492 of 2018, DD: 3-10-2018] *Ramappa and Others v State by Vemgal Police Station, Kolar Taluk and Others*, 2019(1) Kar. L.J. 298.

- Section 3(1)(x) and (xi)** — Code of Criminal Procedure, 1973, Section 438
— Indian Penal Code, 1860, Sections 143, 147, 148, 323, 324, 327, 504 and 506
— Abusing by naming caste — Anticipatory bail — Bar under Section 18 of

the POA Act is not an absolute bar against grant of anticipatory bail — Court has to see *prima facie* case while considering such applications — In that light, on facts and circumstances, the said bar — Not applicable to present case — Even on perusal of complaint, though there is reference with regard to the language used by accused — But such language is omnibus and there is no specific allegations as to who used the said words in this behalf — It is also apparent that the present complaint is a counter blast to the one earlier filed by the wife of accused 3 — Therefore, the provisions of Section 18 of the POA Act cannot be made applicable to present case — Petition allowed — Accused-petitioners are directed to be enlarged on bail, with conditions.

B.A. Patil, J., Held: The contents of the complaint and other materials which have been produced in this behalf. The said record indicates the fact that earlier the complaint was registered by the wife of accused 3 in Crime No. 186/2018 at about 9.30 p.m. for the offences punishable under Sections 143, 147, 148, 323, 324, 504 and 506 read with Section 149 of IPC and the present complaint came to be registered thereafter at about 10.00 p.m. It is the contention of learned Counsel for respondent 2-complainant that Section 18 of the Act is a bar to grant anticipatory bail to the accused persons. Though, a plain reading of Section 18 of the Act indicates that there is a prohibition for exercising power under Section 438 of Cr. P.C. in respect of the offences under the Act, it further clarifies the fact that when an offence falls under a special case, for enforcement of this Act, the offence which is unpunishable under the Code, shall be an offence punishable in accordance with the provisions of this Act. By going through the said section, it impliedly excludes Section 438 of Cr. P.C. in connection with the offences. But the general power which has been vested in this behalf is not exclusively excluded has to be taken into consideration with reference to the facts of the case on hand. As could be seen from the decision of the Hon'ble Apex Court in the case of *Dr. Subhash Kashinath Mahajan v State of Maharashtra and Another*, AIR 2018 SC 1498, it has been observed that though there is a bar under Section 18 of the Act, it is not absolute bar against the grant of anticipatory bail. The Court has to see the *prima facie* case while considering such applications. In that light, the said bar cannot said to be applicable to this case. No doubt, by going through the said provision and the object the said provision is incorporated in order to curb the atrocities and to protect the civil rights. The Parliament in its wisdom introduced Section 18 in the Act for applicability in special cases for atrocities and Section 438 of Cr. P.C. is totally excluded. But the allegations do not make any *prima facie* offences punishable under the provisions of the said Act. Under such circumstances, bar under Section 18 of the Act is inapplicable and Section 438 of Cr. P.C. can be made available in this behalf. Keeping in view the above said ratio and the facts and circumstances of the case, admittedly, the first complaint came to be filed by the wife of accused 3 and that the said case has been registered in Crime No. 186/2018 in the same police station and subsequently, the present

complainant and other accused members were released. Thereafter, at about 10.00 p.m., the present complaint has been filed in this behalf. It clearly goes to show that it is a counter blast to the complaint which has been filed by the wife of accused 3. Even on perusal of the complaint, though there is reference with regard to the language used, but the said language is omnibus and there is no specific allegations made against the accused persons and exactly, who used the said words in this behalf has not been stated. In the absence of any specific reference to the statement or language used by anyone of the accused or specific language used by the particular accused person, it cannot be said that the provisions of the said Act is applicable in this behalf. Even the averments made in the complaint are very vague and are not certain. Taking into consideration the above facts and circumstances in the case on hand, the bar under Section 18 of the Act should not apply in the absence of the specific allegations made against the specific accused persons. The petition is allowed and the accused-petitioners are directed to be enlarged on anticipatory bail in the event of their arrest in Crime No. 187/2018 for the offences punishable under Sections 143, 147, 148, 323, 324, 327, 504 and 506 read with Section 149 of IPC and Section 3(1)(x) and (xi) of SC/ST (POA) Act, by the Vemagal Police. – *Ramappa and Others v State by Vemgal Police Station, Kolar Taluk and Others*, 2019(1) Kar. L.J. 298.

Section 3(1)(x) and 3(1)(xi) – Criminal Procedure Code, 1973, Section 378(1) and 378(3) – Appeal against acquittal – Respondents 1 to 18 were tried for offences punishable under Sections 143, 147, 148, 323 and 324 read with Section 149 of the Indian Penal Code, 1860 and also for offences punishable under the SC/ST Act – Court found enmity between some of prosecution witnesses and accused relating to cultivation of certain extent of Gomala land – A quarrel ensued between two parties – Held, Court found no reason to interfere with impugned judgment thus appeal is dismissed.

N. Ananda, J., Held: During the course of same transaction, accused wielded deadly weapons and also committed an offence of rioting. The accused also assaulted some of the prosecution witnesses with dangerous weapons and in the course of same transaction, accused used criminal force against C.Ws. 2 and 5 (women belonging to Scheduled Caste) to outrage their modesty. P.W. 9-Munivenkatappa has deposed; that accused 5 assaulted on his chest with a stone. The wound certificate of P.W. 9-Munivenkatappa (marked as Ex. P. 29) does not reveal corresponding injuries. P.W. 9 has deposed that he was treated in SNR Hospital at Kolar. The information of incident of assault was not lodged with the jurisdictional police station on the same day. There was enmity between some of the prosecution witnesses and the accused relating to cultivation of certain extent of Gomala land of Cheluvanahalli by some of the accused. It appears some of the prosecution witnesses had taken objection for the same and there

was dispute between the parties. — *State By Sub-Inspector Of Police, Chikkaballapur Rural Police Station v Nagesha And Others*, **2014(5) Kar. L.J. 50**.

Section 3(1)(x) and 3(1)(xi) — Indian Penal Code, 1860, Section 195 — Charges framed for various offences under — Issue 2: Whether the witnesses who resile from their examination-in-chief on the ground of compromise with the accused could be prosecuted under Section 195 of the IPC? — Answered in the affirmative — Whatever compromise that has been brought about by the accused by prevailing or pressurizing the prosecution witnesses cannot militate against the case of the prosecution — Rather the said compromise tends to expose the vulnerability of prosecution witnesses being the members of weaker sections of society for whose benefit the SC/ST (PA) Act has been enacted. (paras 1, 25 and 26) — *Parmanna and Others v State through Deputy Superintendent of Police, Yadgir*, **2019(2) Kar. L.J. 35B (Kalaburagi Bench)**.

Section 3(1)(x) and 3(1)(xi) — Object of the Act — Practice of untouchability — Duty of the Court — Very statement of objects and reasons of the Act graphically describes the social conditions in which the members of SC/STs are placed — Legislature itself has taken note that when they assert their rights and resist practices of untouchability against them — Or demand statutory minimum wages or refuse to do bonded labour, the vested interests try to cow them down and terrorize them — How members of dominant community silence their voice and lure them into a compromise — It is therefore, the duty of the Court, in such circumstance to effectuate the purpose and object of the Act — In factual matrix: Alleged compromise managed by the accused, belonging to dominant Kuruba community, against the victims who belonged to "Madiga" community who have been subjected to perpetual subjugation is illegal and amounts to unlawful interference in the administration of justice — Therefore, not acceptable — Appellants who were facing trial before the Court had no business whatsoever to enter into compromise with prosecution witnesses and to pressurize them to resile from their previous statements. (para 27) — *Parmanna and Others v State through Deputy Superintendent of Police, Yadgir*, **2019(2) Kar. L.J. 35C (Kalaburagi Bench)**.

Section 3(1)(x) and 3(1)(xi) — Offence punishable under — Criminal Procedure Code, 1973, Section 408 — Exclusive discretion of Sessions Court to transfer a particular case from one Criminal Court to another Criminal Court in its session division — Section not mandating giving of any opportunity to accused before transferring case — On facts — Petition does not merit admission — Accordingly dismissed.

S.N. Satyanarayana, J., Held: The plain reading of Section 408 of Cr. P.C., makes it very clear that it is exclusive discretion of the Sessions Court to transfer a particular case from one Criminal Court to another Criminal Court

in its sessions division. However, while exercising its discretion there is no compulsion on it to provide an opportunity to other parties to oppose the said proceedings before deciding the application for transfer. In the instant case, the case registered in C.C. No. 105 of 2013 is transferred to same Court where the proceedings were initiated by petitioners herein against 2nd respondent herein in S.C. No. 162 of 2013. The facts of the instant case being distinguishable from that of the facts pertaining to the judgment of Apex Court relied upon by the learned Counsel for petitioners and the relevant provisions of Section 408 of Cr. P.C., not mandating giving of an opportunity to the accused before transferring a criminal case, the question of relying upon the said judgment as a guiding factor to consider this case, does not arise. In that view of the matter, this Court holds that the present petition does not merit admission. Accordingly, same is dismissed. — *Sathyannarayana and Others v State by Rural Police Station, Sagar Taluk, Sagar, Shimoga District and Another*, 2015(1) Kar. L.J. 279.

Section 3(1)(x), 3(1)(xi) and 3(2)(v) — Code of Criminal Procedure, 1973, Section 374(2) — Indian Penal Code, 1860, Sections 143, 148, 302 and 324 read with Section 149 — Unlawful assembly and murder — Conviction, sentence — Appeal against — Dispute concerning land and harvesting of crop — It is trite law that accused be tried and either convicted or acquitted only for the charges against him — However, in this case, originally the Investigating Officer had not filed charge under Section 302 of the IPC for murder of deceased along with other offences — Whereas, Trial Court took a different stand or view and convicted the accused by stepping into the shoes of Investigating Officer, by holding that deceased suffered injuries like lacerated wound and contusion on the left thigh — Court, by overruling the opinion given by doctor has come to conclusion that deceased is totally infirm at the time of incident and died because of cardiac arrest — In circumstances where the complainant himself had no grievance about the charge-sheet filed by the I.O., and the same is not challenged — Conclusion arrived at by Trial Court and to decide whether the charge-sheet filed is correct or not — Totally erroneous as being beyond its jurisdiction — Court passed impugned judgment of conviction under Section 302 of the IPC, without any opportunity to accused for said offence is considered illegal and liable to be set aside — Looking from any angle, the finding is perverse and not in accordance with law — It is also evident from medical evidence that death of deceased is due to "Cardiorespiratory arrest as a result of chronic pulmonary disease" — Therefore, it can safely be held that the deceased succumbed to injuries by assault by accused and death is due to cardiorespiratory arrest — In that light, there is no evidence to substantiate the fact that deceased died an unnatural death — Further, though witnesses have deposed with regard to presence of accused, but mere presence at the place of incident will not make a person a member of an unlawful assembly, as contemplated under Section 149 of the IPC — No such person could be

convicted for the offence by taking the aid and assistance under Section 149 of the IPC — There must also be a *nexus* between the common object and the offence committed, which basic ingredients are absent in this case — Further, admittedly civil disputes are pending as against accused 3, as is evident from the evidence of P.W. 3-owner of the land — In that light, false implication of accused also cannot be overruled — Appeal allowed. (paras 3, 18, 19, 21, 23, 25 and 26) — *Mallinath and Others v State of Karnataka*, 2020(6) Kar. L.J. 403 (DB) (Kalaburagi Bench).

Section 3(1)(x) and 3(1)(xiv) — Atrocity — Against whom — Whether it is against SC/ST persons or higher caste people — Question is under debate — Counter cases were registered — Case against SC/STs ended in acquittal — Allegation is that higher caste people not allowed the SC/STs to enter the temple *etc.* — Trial Court also acquitted the accused in counter case — High Court has an opportunity to verify the records on appeal by the State — High Court copied and pasted the entire points raised for determination by the Trial Court — Held, the accused in counter case are rightly acquitted by the Trial Court thus appeal came to be dismissed.

N. Ananda, J., Held: The respondents (accused 1 to 12) were tried and acquitted for offences punishable under Sections 143, 147, 148, 341, 324, 504 and 506 read with Section 149 of Indian Penal Code, 1860 and also of an offence punishable under Section 3(1)(x) and 3(1)(xiv) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, the State has filed this appeal. The learned Trial Judge on appreciation of evidence adduced by the prosecution has held that prosecution has failed to prove the aforestated charges against the accused and acquitted them. It is the case of prosecution that accused 1 to 12 had formed into unlawful assembly prevented the aforestated prosecution witnesses from entering into the temple. . . . Thus, in relation to the same incident C.C. No. 215 of 2005 was filed against these accused alleging offences under Sections 143, 148, 323, 324, 504 and 506 read with Section 149 of IPC. The accused herein and other persons were tried in C.C. No. 215 of 2005 and they were acquitted. The instant case was filed in relation to same incident however, by including an offence punishable under Section 3(1)(x) and 3(1)(xiv) of SC/ST (Prevention of Atrocities) Act, 1989. On reconsideration of the matter, I do not find any reasons to interfere with the impugned judgment. The appeal is dismissed. — *State by Ajjampura Police Station v Chikkanna and Others*, 2014(3) Kar. L.J. 279.

Sections 3(1)(x) and 18 — Indian Penal Code, 1860, Sections 143, 147, 323, 430, 447, 504 and 506 — Criminal Procedure Code, 1973, Section 438 — Atrocity — Grant of anticipatory bail to person accused of — Court can look into complaint or F.I.R. for limited purpose of ascertaining whether allegations against accused do make out *prima facie* case of atrocity and if Court is convinced that acts alleged do not constitute "atrocity" but only

offence under Indian Penal Code, Court can grant anticipatory bail in deserving case, notwithstanding statutory bar against grant of such bail.

S.R. Bannurmath, J., Held: Though Section 18 of the Act creates a bar for invoking provisions of Section 438 of the Cr. P.C., still it is open for the higher forum like High Court to see whether *prima facie* case is made out to sustain the prosecution. Under Section 482 of the Cr. P.C. while exercising inherent jurisdiction High Court can go into question of *prima facie* existence of material to show commission of any offence and if the Court is satisfied about its absence as then it is certainly open to quash the entire proceedings at the threshold itself. If no case is made out for the offence under Section 3 of the Act, irrespective of bar under Section 18 of the Act, application under Section 438 of the Cr. P.C. can be considered. The Court will have to take a look at the first information/complaint and the allegations made therein to find out whether the essence of the offence under the Act is made out. If Court finds such material, then it has to reject the application under Section 438 of the Cr. P.C. as prohibited by Section 18 of the Act. On the other hand, if no *prima facie* case is made out to show commission of the offence under the Act, certainly, this Court can consider the application under Section 438 of the Cr. P.C. There was ill-will or quarrel between the complainant on the one hand and other villagers (mostly neighbouring landowners) on the other, regarding drawing of water from the canal to the field. It is admitted in the complaint itself that in this regard there used to be frequent quarrels between them and that on 7-9-2001 one such quarrel took place where the accused/petitioners and some other villagers not only prevented the complainant from taking water but also abused, threatened and assaulted them. It cannot be disputed that these acts on the part of the accused will squarely fall within the purview of the offences under Sections 143, 147, 323, 430, 447, 504 and 506 of the IPC. . . . It is open to this Court to see whether there is *prima facie* case made out by the complainant, by just looking into the complaint itself. If there is no *prima facie* material to hold that offence under Section 3 of the Act is committed, then, the bar under Section 18 of the Act cannot be invoked and in such event the case becomes regular case under Section 438 of the Cr. P.C. and nothing more. . . . In the absence of specific averments in the complaint itself, that the petitioner-accused not belonged to SC or ST; in the absence of any material to show that the intentional insult or intimidation was only with an intent "to humiliate"; and such intentional insult or intimidation "to humiliate" was done in a place within public view, it can be safely held at this stage that there is no material to *prima facie* hold that the petitioners have committed an offence under Section 3(1)(x) of the Act and as such, this Court can consider the application under Section 438 of the Cr. P.C. filed by the petitioners in spite of bar under Section 18 of the Act. . . . The offences alleged against the petitioners are offences under Sections 143, 147, 323, 430, 447, 504 and 506 read with Section 149 of the IPC and in such cases anticipatory bail can be granted. It would be just and appropriate

to grant interim bail for a limited period of four weeks so as to enable the petitioners to surrender and obtain regular bail before the jurisdictional Court. — *Chikkappa and Others v State by Sub-Inspector of Police, Hangal Police Station*, 2002(1) Kar. L.J. 61B : ILR 2001 Kar. 5483.

Sections 3(1)(x) and 18 — Indian Penal Code, 1860, Section 506 — Code of Criminal Procedure, 1973, Sections 438 and 439(2) — Anticipatory bail — Entitlement — In view of express provision of Section 18 of the PoA Act, there is bar for the Sessions Court or the High Court to entertain the application filed for granting anticipatory bail under Section 438 of the Cr. P.C. — Court shall also not enter into *prima facie* case, the scope being very limited — On merits, in granting anticipatory bail, the observation that there was no independent witness to support the alleged incident — There could have been settlement negotiated in presence of Advocate — Is unwarranted — Whether any witness supports the case of prosecution or not, it is a premature one — Not required to be addressed by Sessions Court, that too at the crime stage, impugned order set aside.

L. Narayana Swamy, J., Held: However, that itself is not a complete bar from filing an application for consideration of anticipatory bail. When such applications are made wherein accusation of offence under the provisions of the PoA Act is alleged, the Courts have to look as to whether there is a *prima facie* case made which attract the offence under the provisions of the PoA Act; and the case is required to be examined, whether the allegation made against the accused is sufficient for the purpose of Section 3(1)(x) of the PoA Act. The ingredients of the said section of the PoA Act is that the victim belong to either Scheduled Caste or Scheduled Tribe and the accused has called the victim by his caste for the purpose of insulting or verbally assaulting, then it is an offence. If basic ingredients are found from the complaint, that itself is sufficient for the Court to restrain itself from considering the petition made for anticipatory bail. — *Srinivasan K v State of Karnataka and Others*, 2017(1) Kar. L.J. 488 : ILR 2017 Kar. 1275 : 2017(1) AKR 493.

Sections 3(1)(x), 3(1)(xi), 18 and 15-A(3) — Indian Penal Code, 1860, Sections 324, 504 and 506 — Code of Criminal Procedure, 1973, Section 438 — Petitioner seeking anticipatory bail — Bar under Section 18 — Alleged offence of abusing of the complainant by her caste name “Wadda” — Basic ingredients of Section 3(1)(x) of the SC/ST Act — Held, the complainant must disclose that the accused does not belong to either Scheduled Caste or Tribe — That accused intentionally insulted and intimidated the complainant with an intention to humiliate a member of SC/ST within public view — Conspicuously, this allegation is not therein the complaint — Entire dispute appears to be in relation to building let out by accused to the complainant — If really the petitioner had such intention to insult the complainant just because she belongs to “Wadda” Caste — In which case, he would not have let out his building to her — As such, this Court does not find a caste based

attack by the accused — Therefore, held, provisions of Section 18 — Not a bar for granting anticipatory bail, in facts and circumstances — Petition allowed.

Sreenivas Harish Kumar, J., Held: Learned High Court Government Pleader argues that Section 18 of the Act is a bar for granting anticipatory bail as the complaint discloses intentional insultation of the complainant. (para 5) — [Criminal Petition No. 810 of 2018, DD: 6-3-2018] *B. Narayanaswamy v State of Karnataka and Another*, **2018(4) Kar. L.J. 175**.

Section 3(1)(x) and 3(2)(v) — Conviction by Trial Court for offences under — Ingredients of the provisions of law — Held, on a careful scrutiny of material on record — That is, averments made in the complaint (Ex. P. 2), and depositions of P.Ws. 1, 2, 13 and 14 — There is no whisper in their evidence about accused committing offences under the above provisions — Ingredients of the provisions — Not established by prosecution by adducing cogent evidence — While, undoubtedly the deceased belonged to SC community and the Investigating Officer laid charge-sheet against the accused for the offences under the provisions of the Act — Therefore, conviction of accused by the Trial Court — Not justified and impugned order set aside, insofar as it relates to conviction under the SC/ST Act. (paras 16 and 17) — [Criminal Appeal No. 1205 of 2012, DD: 2-2-2018] *Sridharaswamy alias Swamy and Another v State by Bellavi Police, Tumakuru*, **2018(3) Kar. L.J. 441C (DB)**.

Section 3(1)(xi) — Indian Penal Code, 1860, Sections 323 and 341 — Indian Evidence Act, 1872, Sections 3 and 8 — Assaulting or using force to woman — Appeal against conviction for — Conviction based on direct of evidence of victim — Complainant as corroborated by injury certificate issued by doctor — Intention to outrage modesty of woman, not alleged in complaint — Injury certificate reveals only simple injuries of abrasions on sides of complainants neck — Rivalry between complainant's brother who got appointment as postman and father of accused who was aspirant for it, is cited as cause — Conviction for offence under Act of 1989 cannot be sustained as evidence therefor is insufficient — Conviction of accused for offences punishable under Sections 323 and 341 of the Indian Penal Code only, to be affirmed, but with sentence of imprisonment commuted into one of fine.

A.S. Pachhapure, J., Held: In view of the fact that the complainant is a girl aged about 18 years at the time of the incident, I do not think that she had any *mala fide* intention to implicate the accused. Further it cannot be said that she got self-inflicted injuries and went to the doctor for the purpose of treatment. The evidence reveals that there was some rivalry between P.W. 5, who was appointed as postman and the father of the accused and that may be the reason for the accused to cause assault on P.W. 1. The existence of motive also corroborates the version of the prosecution and in view of the fact that P.W. 1

is an injured witness, her evidence cannot be lightly discarded unless the *mala fides* are proved on her part. So far as the offence under Sections 323 and 341 of the IPC are concerned, there is ample material on record to award the conviction. In view of the fact that there is no material as regards causing of the assault or use of force with an intention to cause dishonour or outrage the modesty of the complainant, the certificate produced by the prosecution is of no help. In the circumstances, the appellant has to be acquitted for the charge under Section 3(1)(xi) of the Act and his conviction for the offence under Sections 323 and 341 of the IPC has to be confirmed. Taking into consideration the fact that there was an existing rivalry between the parties and that P.W. 1 has sustained simple injuries, it would be just and proper to award fine for both the offences under Sections 323 and 341 of the IPC. To this extent, the sentence for these offences has to be reduced. The appellant is acquitted of the charge for the offence under Section 3(1)(xi) of the Act. His conviction for the offence under Sections 323 and 341 of the IPC is confirmed and modifying the sentence he is ordered to pay a fine of Rs. 1,000 for each of the offences, within a period of two months from this date, in default to undergo simple imprisonment for a period of two months. — *B.H. Ismail v State by Belthangady Police Station, Belthangady*, 2009(2) Kar. L.J. 509.

Section 3(1)(xi) — Criminal Procedure Code, 1973, Section 374(2) — Appeal against conviction — Appellants (accused 1 to 7 and 9 to 13) were convicted for offences punishable under Sections 143, 147, 148, 448, 427, 324 and 354 read with Section 149 of the Indian Penal Code, 1860 and also for an offence punishable under the SC and ST (PA) Act — P.Ws. 1 to 7, 12, 14 to 16 at the instance of elders of village have compromised the matter with accused — Court felt it proper to substitute sentence of imprisonment with fine — Held, fine imposed by learned Special Judge on accused 1 to 7 and 9 to 13 for offences punishable under Sections 143, 147, 148, 448 and 427 read with Section 149 of the IPC is confirmed.

N. Ananda, J., Held: The appellants and accused 8, 14 and 15 were tried for offences punishable under Sections 143, 147, 148, 448, 427, 324, 354 read with Section 149 of Indian Penal Code, 1860 and also for offences punishable under Section 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. P.W. 17 has deposed; on 27-3-2001, at about 8.00 p.m., she examined P.W. 3-Parashiva and found following injuries: Contusion over right dorsum of hand measuring 3" x 2" reddish in colour. Contusion over left scapular region measuring 2" x 2" reddish in colour. The impugned judgment is modified. Accused 1 to 7 and 9 to 13 are acquitted of an offence punishable under Section 3(1)(xi) of the Act. Accused 1 to 7 and 9 to 13 are acquitted of an offence punishable under Section 354 read with Section 149 of IPC. The conviction of accused 1 to 7 and 9 to 13 for offences punishable under Sections 143, 147, 148, 448, 427

and 324 read with Section 149 of IPC is confirmed. — *Kumara and Others v State By Sathanur Police, Bangalore, 2014(4) Kar. L.J. 519.*

Section 3(1)(xii) — Code of Criminal Procedure, 1973, Section 374(2) — Indian Penal Code, 1860, Sections 366 and 376 read with Section 34 — Common intention, kidnapping and rape — Inconsistencies in prosecution case — Medical/FSL report not supportive of alleged rape — Inordinate delay in complaint — While alleged rape took place on 11-10-2009, in a Mango Garden, complaint lodged only on 6-12-2009, after delay of 56 days — Such delay in case of this nature is very much fatal to prosecution — Evidence of the victim, P.W. 7 is itself full of inconsistencies — Complaint is not clear whether she was attempted to be raped by accused 1 alone while accused 2 to 4 assisted said act, or she was raped by all accused one after the other — Certificate issued by P.W. 2-Gynaecologist shows that the hymen though absent, it was an old tare and not a fresh tare — She has opined that as per SFL report, there is no medical evidence of rape as no seminal signs were detected in items 1 and 2 — Thereby runs contrary to evidence of prosecution to prove the guilt of accused under Section 376 of the IPC — Offence under the SC/ST Act also not attracted as prosecution failed to prove that appellant-accused had dominated the Will of victim and had exploited her and committed rape — Fact that there was a panchayat and the matter was compromised wherein accused 1 paid a sum of Rs. 36,000/- to P.W. 8 — However, the witness-P.W. 10 who deposed to said effect had turned hostile and not supported the case of prosecution — Prosecution failed to put forth positive, acceptable, cogent, consistent, convincing and evidence to prove guilt of accused — Impugned judgment of conviction, set aside.

K. Somashekar, J., Held: The alleged incident of rape though having taken place on 11-10-2009 at 6.30 p.m. in the Mango garden of Kempannanavara Gopalappa, the complaint regarding the said incident came to be lodged only as on 6-12-2009, after a delay of 56 days from the date of the alleged incident of rape. The delay in a case of this nature is very much fatal to the case of the prosecution, since evidence of rape is of much significance. The further circumstances is that though P.W. 8 confirms that on 13-10-2009 a complaint was lodged with the police, the same is not forthcoming but actually the matter was taken up for investigation only based upon the complaint which came to be registered only as on 6-12-2009. The complainant-Shobha has not been able to tell clearly whether she was attempted to be raped by accused 1 alone while accused 2 to 4 assisted the said act or whether she was raped by all the four accused, one after the other. Further, as regards the complaint-Exhibit P. 8 which is stated to have been written by her uncle Narayanaswamy, she has stated in her evidence that she did not know as to what was written in the complaint and that she did not dictate the complaint nor sign the complaint. Added to it, the said Narayanaswamy has not at all subscribed his signature with an endorsement that it was drafted by him and

further he has not been examined by the I.O. during the course of investigation in order to ascertain whether that complaint at Exhibit P. 8 was written by him. As per the FSL report, there is no medical evidence regarding occurrence of rape in view of the fact that the FSL report clearly stated that presence of seminal stains were not detected in Items 1 and 2. Therefore, it is inferred that the complaint at Exhibit P. 8 and so also the evidence of P.W. 2-Doctor in respect of the report at Exhibit P. 19 based upon Exhibit P. 18-FSL report, runs contrary to the evidence of the prosecution to prove the guilt of the accused under Section 376 of IPC. There is absolutely no evidence to prove that the victim girl was kidnapped or abducted or induced to compel her marriage. Hence, the Trial Court has also erred in convicting the accused under Section 366 of IPC, which offence is not at all attracted. The victim girl belonged to Scheduled Caste, the offence under Section 3(1)(xii) of the SC and ST (POA) Act is not attracted since the prosecution has not been able to prove that the appellants- accused had dominated the Will of the victim and had exploited her and committed rape in view of fact that she belonged to an oppressed class. There is no evidence forthcoming in this regard and in fact the offence of alleged rape itself is not established. There was a panchayath held in the village in presence of panchayatdars wherein accused 1 had paid a sum of Rs. 35,000/- to P.W. 8 and had compromised the matter, but however, the said witness P.W. 10-Ramappa *alias* Chikkaramappa who had deposed to the said effect had turned hostile and had not supported the case of the prosecution. Other witnesses-P.W. 11, P.W. 12, P.W. 13 and P.W. 14 who had deposed in this regard have also turned hostile and have not supported the case of the prosecution. Hence, viewed from any angle, I find that their evidence is of no credence. The prosecution has not put forth positive, acceptable, cogent, consistent, convincing and satisfactory evidence, to prove the guilt of the accused in respect of the alleged offences beyond all reasonable doubt. Thus, when the offences alleged have not been proved by the prosecution beyond all reasonable doubt, benefit of doubt shall accrue in favour of the accused-appellants. The impugned judgment requires to be interfered with, if not, certainly it would lead to a miscarriage of justice as narrated in the complaint filed by the victim. . . . The appeals filed by each of the appellants-accused 1 to 4 are hereby allowed. The judgment of conviction and order of sentence passed by the II Addl. District and Sessions Judge, Kolar, in Spl. S.C. No. 1 of 2010 by order dated 15/16-11-2010 for offences punishable under Sections 366 and 376 read with Section 34 of IPC and Section 3(1)(xii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside. (paras 8 and 9) – *Nagaraja v State of Karnataka by Srinivasapura Police, Kolar District*, 2020(3) Kar. L.J. 493.

Section 3(1)(xii) and 3(2)(v) — Protection of Children from Sexual Offences Act, 2012, Section 4 — Code of Criminal Procedure, 1973, Sections 374(2), 222, 464 and 215 — Indian Penal Code, 1860, Sections 376 and 506 —

Criminal intimidation and rape — Victim, a minor girl — Conviction sentence to undergo imprisonment for life and time — Requirement of framing proper charge — Effect of omission to frame, or absence of, or error in charge, as contemplated under Section 464 of the Cr. P.C. — Knowledge on the part of accused that person-victim is a member of Scheduled Caste or a Scheduled Tribe — Held, on careful perusal of Section 215 of the Cr. P.C. it is clear that omission to frame charge may or may not result in failure of justice — Ordinarily, such plea should not be allowed to be raised for the first time before the Court, as in instant case, unless materials on record are such which would establish that non-framing has occasioned failure of justice — Here, no charge has been framed under Section 3(2)(v) of the SC and ST Act — If no proper charge is framed and if it is not within the knowledge of accused, then, that itself would cause injustice to accused and it is nothing but failure of justice — Therefore, framing of proper charge under Section 3(2) of the SC and ST Act is mandatory so that accused will be knowing that in the event of conviction for offence under the IPC which is punishable with imprisonment for a term of 10 years or more and he will also be liable to be convicted and sentenced under Section 3(2)(v) of the SC and ST Act — Impugned order set aside — Matter remitted back for framing of proper charge and trial, with opportunity to both parties. (paras 3, 4, 15, 16, 17, 18 and 19) — *Hasham Umarali alias Babu Shaikh v State of Karnataka by Sirsi Rural Police Station*, 2020(6) Kar. L.J. 118A (DB) (Dharwad Bench).

Section 3(2)(iii) and 3(2)(iv) — Indian Penal Code, 1860, Sections 143, 144, 147, 148, 149, 307, 332, 427 and 448 — Offences under — Acquittal — Held, investigation having been conducted by an officer below rank of Deputy Superintendent of Police — Vitiating — P.W. 13, who conducted investigation being not the Designated Officer, in terms of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 — Thereby, accused cannot be held guilty of offences under the Act, 1989. — *V. Nagaraj and Another v State by Whitefield Police, Bangalore*, 2016(6) Kar. L.J. 63B.

Section 3(2)(v) — Accused alleged to have committed the overt act of stabbing deceased — Petitioners and others are contract killers — Accused 5, 6 and 8 enlarged on bail had inflicted fatal blows with weapons — Petitioner has not been attributed with any overt act — On grounds of parity petitioner is entitled to similar relief.

G. Narendar, J., Held: The submissions of the respective Counsel and it is undisputed that the act as described is a ghastly and dastardly act and requires to be condemned in the strongest possible terms. It is seen that the petitioner has not been attributed with any overt act as is the case with accused 6 and 8. But by order dated 9-3-2015 this Court was pleased to enlarge on bail accused 5, 6 and 8, who have been accused of inflicting the fatal blows with their weapons and it is based on this order that the petitioner's Counsel would pray that the case of the petitioner also be

considered in similar terms as those of petitioners in Cri. P. No. 100369 of 2015 connected with Cri. P. No. 100391 of 2015. It is also the case that on the ground of parity also the present petitioner is entitled to similar relief as granted in favour of petitioners in Cri. P. No. 100369 of 2015. The learned Government Pleader would submit that the FSL report is still awaited, but cash amounts have been recovered from the accused. The contention of the petitioners that they be treated on parity as has been done in the case of petitioners in Cri. P. No. 100369 of 2015 requires to be considered. The prosecution themselves have found it fit not to appeal against the reasoning of this Court that the accused could be enlarged on bail as it would require some more time for the trial to reach its logical conclusion. In that view of the matter, the Court inclined to grant relief to the petitioners. — *Mohammadsab and Another v State of Karnataka*, 2015(3) Kar. L.J. 610.

Section 3(2)(v) — Atrocity — Charge of — Unless it is shown that accused by his conduct or words has done or said something directed towards offending sensibilities of victim in relation to his caste, there can be no conviction.

M.F. Saldanha and B.N. Mallikarjuna, JJ., Held. — Merely because it has come on record that the deceased belonged to the Scheduled Caste, is no ground on which the accused can be convicted for an offence under this Act unless it is demonstrated that he has by his conduct said or done something that is directed to offend the sensibilities of the deceased in relation to the caste to which he belonged. — *Abdul Gafarsab v State by Badami Police*, 1998(3) Kar. L.J. 132 (DB).

Section 3(2)(v) — Conviction under — Ingredients for — Words and phrases — Key words "knowing that such person is a member of Scheduled Caste or a Scheduled Tribe", as used under provisions — Mere fact that the victim happened to be a girl belonging to Scheduled Caste, would not, *per se* attract the provision — In such a case, conviction under Section 3(2)(v) of the Act would not be correct (*Ramdas and Others v State of Maharashtra*, AIR 2007 SC 155) — *Sine qua non* for application of Section 3(2)(v) is that an offence must have been committed against the person knowingly that such a person is a member of Scheduled Castes or Tribes and evidence to that effect must be let in *Dinesh alias Buddha v State of Rajasthan*, AIR 2006 SC 1267 — Therefore, in the instant case, even though the victim belonged to Scheduled Caste, that by itself would not clinch the issues under Section 3(2)(v) of the Act — There is no such evidence against the accused. (paras 68 and 69) — *Ravi alias P. Ramakrishna v State of Karnataka by Hosanagara Police, Shimoga*, 2020(5) Kar. L.J. 522B (DB).

Section 3(2)(v) — Indian Penal Code, 1860, Sections 144, 148, 324 and 302 read with Section 149 — Code of Criminal Procedure, 1973, Section 374(2) —

Offence of unlawful assembly, rioting and murder — Conviction for — Criminal appeal against — On facts held, alleged motive being previous enmity concerning sale of arrack in village — Deposition of eye-witnesses P.Ws. 2 and 13, staying 100 meters away from the crime spot — *Inter alia*, that when they, accompanied P.W. 1-wife of deceased, went to place of the incident, they saw accused 1 and 2 stabbing the deceased with dagger and knife, and remaining accused kicking the deceased — There was electric light at the place of incident — Though the said witnesses could be termed as interested/relative witnesses, they were physically present at the place and narrated incident as it happened — Therefore, worthy of credence and remaining unshaken by the defence — Merely because the deceased was a rowdy sheeter — Law would not permit the accused to take law into their own hands — Coupled with medical evidence, would unerringly point finger towards guilt of A1 and A2, due to injuries inflicted on accused. (paras 12, 13 and 14) — [Criminal Appeal No. 1205 of 2012, DD: 2-2-2018] *Sridharaswamy alias Swamy and Another v State by Bellavi Police, Tumakuru*, 2018(3) Kar. L.J. 441A (DB)

Section 3(2)(v) — Indian Penal Code, 1860, Sections 302 and 201 — On facts and circumstances — Trial Court is not justified in acquitting the accused inasmuch as material on record is wholly insufficient to prove the guilt of accused — None of the circumstances are proved beyond reasonable doubt by prosecution — Appeal dismissed.

Mohan M. Shantanagoudar and Budihal R.B. JJ., Held: According to the prosecution case, Chandramma was running a coin booth and that the accused calling himself as Tumkur Police has informed the aforementioned facts to Chandramma by making call from telephone booth. It is the further case of the prosecution that P.W. 5 came there and Chandramma sought his assistance for hearing the telephone call. Though the evidence of P.Ws. 5, 8, 11, 15 and 16 is relied upon by the prosecution to show that there was conversation by the accused from his mobile phone through the coin phone maintained by Chandramma (mother of the accused), the prosecution has failed to obtain the all records duly certified by the appropriate authority as required under Section 65-B of the Indian Evidence Act. It is by now well-settled that certification of the call details is absolutely necessary and in the absence of such certification, the call details collected by the Investigating Officer cannot be looked into. Firstly, there is no certification of the call details by the appropriate authority. Secondly, there is nothing to show that the sim card, of which the call details are collected by the Investigating Officer belongs to the accused. Though P.W. 15, the shopkeeper who has allegedly sold the sim card to the accused is examined before the Court, his evidence does not disclose number of sim card sold by him to the accused. P.W. 15 has also admitted that he has not given any document to the Police during the course of investigation. The Police have not seized the register

maintained by the shopkeeper to show that the particular sim card was sold by him to the accused. Even the telephone instrument maintained by Chandramma which was being used as coin booth is also not seized by the Investigating Officer. In the absence of such admissible material, it would be very difficult for the Court to believe the case of the prosecution. Hence the 4th circumstance also fails. The aforementioned discussion leads us to the only conclusion that the prosecution has failed to prove any of the four circumstances relied upon by it. Since it is a case based on circumstantial evidence, the prosecution ought to have proved all the circumstances beyond reasonable doubt so as to complete the chain of circumstances. As none of the circumstances are proved beyond reasonable doubt by the prosecution, the Trial Court is justified in acquitting the accused. The view taken by the Trial Court is one of the possible views under the facts and circumstances of the case. Hence no interference is called for. – *State by Bilichodu Police v Lokeshwarappa*, 2017(1) Kar. L.J. 458 (DB).

Section 3(2)(v) – Indian Penal Code, 1860, Sections 302 and 201 – On facts and circumstances – Trial Court is not justified in acquitting the accused inasmuch as material on record is wholly insufficient to prove the guilt of accused – None of the circumstances are proved beyond reasonable doubt by prosecution – Appeal dismissed.

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Chandramma which was being used as coin booth is also not seized by the Investigating Officer. In the absence of such admissible material, it would be very difficult for the Court to believe the case of the prosecution. Hence the 4th circumstance also fails. The aforementioned discussion leads us to the only conclusion that the prosecution has failed to prove any of the four circumstances relied upon by it. Since it is a case based on circumstantial evidence, the prosecution ought to have proved all the circumstances beyond reasonable doubt so as to complete the chain of circumstances. As none of the circumstances are proved beyond reasonable doubt by the prosecution, the Trial Court is justified in acquitting the accused. The view taken by the Trial Court is one of the possible views under the facts and circumstances of the case. Hence no interference is called for. – *State by Bilichodu Police v Lokeshwarappa*, 2017(1) Kar. L.J. 458 (DB).

Section 3(2)(v) – Indian Penal Code, 1860, Section 307 read with Sections 34, 302 and 120-B – Code of Criminal Procedure, 1973, Section 374(2) – Criminal conspiracy, murder – Also attempted murder of complainant (P.W. 22) – Conviction – Appeal – Offence proved only against present appellant-accused – Alleged internal fight and previous enmity, in respect of business in sand and once relating to a land deal – Analysis of evidence of prosecution witnesses, clearly pointing to – *Inter alia*, several contradictions, improvements in versions, eye-witnesses turning hostile, unexplained delay in registration of FIR *etc.* – Though the death of the deceased occurred in the intervening night of 22-6-2011 and 23-6-2011 – That his death was homicidal – But, the evidence of prosecution witnesses, more particularly of P.W. 22 (complainant) and P.W. 23, projected as eye-witnesses to alleged incident – Does not inspire any confidence to believe them, so as to justify impugned order of conviction against the appellant – Case of the prosecution that the accused attempted to cause the murder of P.W. 22 also does not deserve to be believed – For, the injuries are said to be simple as per medical evidence of P.W. 38, as well as the wound certificate (Ex. P. 35) – Held, Court below – Not appreciated evidence in proper perspective – A perverse judgment – Bereft of all those doubts which ought to have been given to the accused – Impugned order set aside – Appellant acquitted of charges. (paras 51, 52, 62 and 63) – [Criminal Appeal No. 978 of 2012, DD: 9-2-2018] *Thimma Reddy alias Porantalu Thimma Reddy v State of Karnataka*, 2018(3) Kar. L.J. 320A (DB).

Section 3(2)(v) – Indian Penal Code, 1860, Section 375 – Rape – Knowledge on the part of accused that the victim belonged to SC/ST – No material is placed to establish that accused committed the offence intentionally on ground that victim belonged to Scheduled Caste – Hence appellant-accused held, is entitled to be acquitted for the offence punishable under Section 506 of the IPC and Section 3(2)(v) of the SC/ST Act. (paras 59 and 60) – *Doula v State by the Deputy Superintendent of Police, Hampi*

Sub-Division, Kamalapura Police Station, Hosapete Taluk, Ballari District, 2020(6) Kar. L.J. 63E (DB) (Dharwad Bench).

Section 3(2)(v) — *Mens rea* — Proof of — Necessary — Offence committed must be proved to have been committed by accused with knowledge that victim belongs to Scheduled Caste.

Held. — The object of the Act was to protect Scheduled Castes and Scheduled Tribes people from being the victims of atrocities on the ground that they belong to the said caste. It was never the intention of the legislature to bring a person within the purview of this Act, merely on the ground that victim is a Harijan. There must be the necessary *mens rea* that the Act committed by the accused has been done on the ground that the victim belongs to Scheduled Caste community. If there is no evidence forthcoming from the prosecution that the accused were in the knowledge that the victim belong to the said community and that the Criminal Act was done on the ground that the victim belongs to Scheduled Caste then it would not be permissible to invoke the Act. The words "on the ground that such person is a member of the Scheduled Caste" clearly implies that there must be an element of *mens rea* and if there is no *mens rea* with respect to the fact that the accused committed the offence against the prosecutrix knowingly she belongs to the Scheduled Caste, it would be difficult to hold that Section 3(2)(v) of the act can be applied. Since no evidence was placed before the Court that the accused were conscious of the fact that the act was committed knowing that the victim to be a Scheduled Caste, the Act will not apply to the facts of this case and the accused will have to be acquitted for an offence under Section 3(2)(v) of the Act. — *State of Karnataka v Mahantappa and Others, 1996(5) Kar. L.J. 381C (DB).*

Section 3(2)(v) — Interpretation of law — Offences against members of SC/ST Community by a person not being a member of SC/ST — With knowledge that victim being a member of SC/ST — Interpretation of provisions — On facts: In the absence of any material to show that accused committed the offence of rape punishable under Section 376 of the Indian Penal Code, 1860, on the ground of victim being a member of SC/ST — Merely because the victim happened to be a member of SC/ST, automatically, the offence under Section 3(2)(v) of the SC/ST Act, held cannot be interpreted to have been made out — Therefore, impugned conviction by Trial Court on the said ground — Not sustainable in law. (paras 45, 46 and 47) — *Mahadevu alias Pappi v State of Karnataka by Pandavapura Police Station, 2020(6) Kar. L.J. 545C (DB).*

Section 3(2)(v) — *Mens rea* — Proof of — Necessary — Offences under Sections 442 and 503 of Penal Code, complained of as incidental to complaint of offence under Section 3(1)(x) of Act — Offences under Penal Code must be

proved to have been committed by accused with knowledge that victim belongs to Scheduled Caste.

Held—From the reading of the complaint or the statements of the witnesses cited by the prosecution, nowhere it is stated that the petitioner was aware of the fact that the complainant belonged to Scheduled Caste. Admittedly, the petitioner was a stranger to that office. Unless it is made out that the petitioner was aware of the fact that the complainant belonged to that caste and with an intention to insult him, he used that word, it cannot be said that there is *mens rea* on the part of this petitioner to insult him by calling by that name. Therefore, none of the requirements of Section 3(ix) is satisfied in this case. — *Chandra Poojari v State of Karnataka by Seshadripuram Police, Bangalore, 1997(4) Kar. L.J. 81D.*

Section 3(2)(v) — Protection of Children from Sexual Offences Act, 2012, Section 4 — Code of Criminal Procedure, 1973, Sections 374(2) and 161 — Indian Penal Code, 1860, Sections 366-A, 376 and 302 — Procuration of minor girl, rape and murder — Trial Court acquitting accused for offences under Section 376 of the IPC read with Section 4 of the POCSO Act — Convicting for offences under Sections 366-A and 302 of the Indian Penal Code and Section 3(2)(v) of the SC/ST Act — Appeal against — Moot question whether the death of deceased is suicidal or homicidal — Case resting on circumstantial evidence — Held, as for alleged offence under Section 366-A of the IPC — Evidence of P.W. 2 (wife of accused) does not support the prosecution theory that the accused, accompanied by the deceased ran out of house of the accused and P.W. 2 where the alleged incident of rape happened — According to P.W. 2, it was only the deceased who ran out of her house and she chased her, accused also went out of the house towards a bushy area but he returned to the house — Hence the Trial Court was not right in convicting the accused under Section 366-A of the IPC — As for the cause of death of deceased allegedly due to her being pushed into a tank by the accused, so as to prove the case as one being homicidal — P.W. 3 and P.W. 4 stated to be eye-witnesses, have turned hostile — They have only admitted that the dead body of accused was found in the water tank of village — Hence, their evidence is of no assistance to the prosecution — As per the medical evidence/reports of P.Ws. 10 and 13, who conducted autopsy, the death was on account of drowning — Contusions on the body could be caused if the deceased had come in contact with a hard object, like a stone of the dimension of contusion, while jumping into the water tank — Therefore, the evidence of P.W. 13 is only relevant for purpose of proving the cause of death, namely, by drowning — But not for proving the fact that accused had caused the death of deceased — As for the statement made by P.Ws. 3 and 4 (eye-witnesses and P.W. 5 (brother of wife of accused) under Section 161 of the Cr. P.C., it has no evidentiary value, as there is nothing spoken which is consistent with Exs. P. 5, P. 6 and P. 7 (statement to police) — They were also

treated as hostile witnesses — In sum, while considering the evidence let in by prosecution, threadbare, there is no evidence to find the guilt of accused under Section 302 of the IPC — As for the alleged offence under Section 3(2)(v) of the SC/ST Act, there is nothing to establish that the offence committed by accused against the deceased was on the ground that such person is a member of SC/ST community — In fact, P.W. 2 (wife of accused), in her cross-examination has stated that she does not know whether the accused knew the caste of deceased or not — Petition allowed — Impugned order of conviction, sentence, set aside. (paras 3, 4, 5, 39, 40, 41, 42, 43, 44, 46, 49, 50, 52, 65, 67, 68 and 71) — *Ravi alias P. Ramakrishna v State of Karnataka by Hosanagara Police, Shimoga*, 2020(5) Kar. L.J. 522A (DB).

Sections 3(2)(v) and 4 — Indian Penal Code, 1860, Sections 300, 392, 504, 506, 201 and 34 — Criminal Procedure Code, 1973, Section 200 — Murder of person belonging to Scheduled Caste — Complaint against Investigating Officer that he has wilfully neglected his duties required to be performed by him inasmuch as he has not charged accused for committing offence punishable under provisions of special enactment — When there is no averment in complaint nor in FIR lodged by complainant himself that accused caused murder of person with animus that person belonged to Scheduled Caste, but on contrary, it was stated to be murder for gain, complaint, held, is not maintainable — Criminal proceedings instituted against Investigating Officer is liable to be quashed.

K. Sreedhar Rao, J., Held: Nowhere it is stated that the deceased was murdered with an animus that she belongs to Scheduled Caste. The motive offered by the petitioners, only indicate that the murder has been committed for gain. The gold jewellery worn by the deceased is alleged to have been robbed by the accused, it is very preposterous on the part of the petitioners to contend that the Police Officers have committed offence in this regard. The provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 fasten criminal liability on the public servants, who wilfully neglect their duties required to be performed by them under the Act and make punishable for imprisonment for a term not less than six months and may extend upto one year. In order to invoke Section 4 of the Act against the Investigation Officers, there should necessary and proper averments of facts to the effect that they have wilfully neglected their duties by not properly investigating the offence covered by sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In what manner there is a failure to take steps on the part of the Investigation Officers is to be clearly stated. The averments made in the private complaint do not suggest that necessary material showing ingredients of Section 4 has been made out to proceed against the Police Officers under the complaint. Therefore, the Sessions Judge was justified in setting aside the order as

interference. . . . The averments does not state that the accused caused the murder of Vasanthi with an animus that she belongs to Scheduled Caste. The allegations disclose that deceased was friendly with the accused persons and that the complainant suspect some foul play on the part of the accused. In order attract provision of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it is essential for the prosecution to show that the offence punishable with imprisonment for a term of 10 years or more against a Scheduled Caste person is committed on the ground that such member is a member of Scheduled Caste. There are no necessary averments in the FIR as envisaged under clause (v) of Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In that view of the matter, taking cognizance on the basis of private complaint by the Judicial Magistrate First Class appears to be bad in law and without exercisable jurisdiction. — *Ananda Pangala v T.R. Jagannath*, 2004(1) Kar. L.J. 623.

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

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

- (a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;
- (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
- (c) to furnish a copy of the information so recorded forthwith to the informant;
- (d) to record the statement of the victims or witnesses;
- (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
- (f) to correctly prepare, frame and translate any document or electronic record;

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

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

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

5. Enhanced punishment for subsequent conviction.—Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment for that offence.

6. Application of certain provisions of the Indian Penal Code.—Subject to the other provisions of this Act, the provisions of Section 34, Chapter III, Chapter IV, Chapter V, Chapter V-A, Section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. Forfeiture of property of certain persons.—(1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, moveable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, moveable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that.—

- (a) the accused rendered ¹[any financial assistance in relation to the offences committed by a person accused of], or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

1. Substituted for the words "any financial assistance to a person accused of" by Act No. 1 of 2016, w.e.f. 26-1-2016

- (b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object;
- ¹[(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.]

9. Conferment of powers.—(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do.—

- (a) for the prevention of and for coping with any offence under this Act, or
- (b) for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

CHAPTER III

Externment

10. Removal of person likely to commit offence.—(1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in Article 244 of the Constitution ²[or any area identified under the provisions of clause (vii) of sub-section (2) of Section 21], it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from

1. Clause (c) inserted by Act No. 1 of 2016, w.e.f. 26-1-2016

2. Inserted by Act No. 1 of 2016, w.e.f. 26-1-2016

which he was directed to remove himself for such period, not exceeding ¹[three years], as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal.—(1) If a person to whom a direction has been issued under Section 10 to remove himself from any area—

- (a) fails to remove himself as directed; or
- (b) having so removed himself enters such area within the period specified in the order,

otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under Section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under Section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

1. Substituted for the words "two years" by Act No. 1 of 2016, w.e.f. 26-1-2016

12. Taking measurements and photographs, etc., of persons against whom order under Section 10 is made.—(1) Every person against whom an order has been made under Section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under Section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under Section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non-compliance with order under Section 10.—Any person contravening an order of the Special Court made under Section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

CHAPTER IV Special Courts

¹[**14. Special Court and Exclusive Special Court.**—(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive

Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge-sheet.]

CASE LAW

Section 14 — As amended by Karnataka Act No. 35 of 2003 — Offences under Act — Jurisdiction of Special Court to take cognizance and try — Need for committal of case to Special Court has been done away with — Special Court is empowered to take cognizance of offences under Act as Court of original jurisdiction and to try such offences.

H.V.G. Ramesh, J., Held: The provision having been amended subsequently, wherein the need for committal by the Magistrate has been done away with. By the said amendment the Special Court was empowered to take the cognizance and try such offences as a Court of original jurisdiction. — *M.B. Ramachandran and Another v State by Assistant Commissioner of Police, J.C. Nagar Sub-Division, Bangalore, 2007(1) Kar. L.J. 686.*

Section 14 — Criminal Procedure Code, 1973, Section 10(3) — Bail application of accused — Disposal of — Assignment of bail application by Principal Sessions Judge who has been designated as Special Court under Act and before whom bail application was filed, to Additional Sessions Judge for disposal — Designation of Principal Sessions Judge as Special Court is only for purpose of trial of offences under Act, and designation does not denude him of power of Principal Sessions Judge under Criminal Procedure Code, to assign works among Additional Sessions Judges — Assignment of bail application cannot be held to be without jurisdiction.

H.N. Narayan, J., Held: There is no impediment for a Sessions Court which is not a Special Court not specially designated under the Act to dispose of a bail petition filed under the provisions of the Code of Criminal Procedure. Therefore, the objections raised by the State have no merit. All petitions are filed before the Principal Judge only who in exercise of his powers assigns work to the Additional Judges by virtue of the provisions of sub-section (3) of Section 10 of the Criminal Procedure Code. A Special Court is specially established only for trial of cases arising under the Act. There is no impediment for an Additional Judge who is not a designated Court to dispose of such bail applications even where allegations of offences punishable under the SC/ST Act are made. However, the Principal Sessions Judge wherever he is designated as a Special Court under the SC/ST Act, 1989 shall hear all such petitions arising under the Code of Criminal Procedure by himself without assigning the said work to the Additional Judges who are not designated as Special Courts. — *State by Arakere Police v Mahalingu and Others, 2001(2) Kar. L.J. 427 : ILR 2000 Kar. 4499.*

Section 14 — Criminal Procedure Code, 1973, Section 193 — Special Court — Jurisdiction to try offences under Indian Penal Code and offences under other statutes, along with offences under Act — It has jurisdiction, if offences arise out of same transaction and cases are committed to it.

Kumar Rajaratnam, J., Held: If the Magistrate commits the case to the Special Court, the Special Court will have authority and jurisdiction to take cognizance for trial of the offences under the Act and also offences under the Penal Code triable exclusively by the Sessions Court and for other lesser offences if it arises out of the same transaction. In other words once the Magistrate commits the case to the Special Court it would not be necessary for the Special Court to delete the other connected offences under the Penal Code. — *R. Thimmayya Shetty and Another v Vasanth Raj*, 2001(3) Kar. L.J. 89B : ILR 2000 Kar. 4221.

Sections 14 and 2(1)(d) — Criminal Procedure Code, 1973, Sections 193 and 200 — Special Court — Jurisdiction of — Specifying of Court of Session as "Special Court" is only for purpose of trial of offences under Act as distinguished from "enquiry" and Court of Session so specified does not cease to be Court of Session — It cannot therefore, take cognizance of case directly as Court of original jurisdiction without case being committed to it — Criminal proceedings initiated by Special Court on private complaint filed before it is to be held as proceedings without jurisdiction, liable to be quashed.

Kumar Rajaratnam, J., Held: Section 193 of the Code imposes a interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction. It can take cognizance only if 'the case has been committed to it by a Magistrate'. Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightaway be filed before such Special Court for offences under the Act. . . . Special Court constituted under the Act cannot proceed with the trial of an offence under the Act unless the case is committed to that Court by a Magistrate under Section 193 of the Code. — *R. Thimmayya Shetty and Another v Vasanth Raj*, 2001(3) Kar. L.J. 89A : ILR 2000 Kar. 4221.

¹[14-A. Appeals.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.]

CASE LAW

Sections 14-A(2), 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) — Code of Criminal Procedure, 1973, Section 438 — Indian Penal Code, 1860, Sections 307, 323, 324, 354-B, 504 and 506 read with Section 34 — Offences under — Grant of anticipatory bail — Bar under Section 18 of the SC/ST Act — Appeal against to High Court against an order of Special Court granting or refusing bail — Maintainability of petition for bail filed under Section 438 of the Cr. P.C. — Held, not maintainable — It is clear from the provisions of Section 14-A of the SC/ST Act that an appeal shall lie to the High Court against order of Special Court granting or refusing bail — Here, the Special Court trying the offence under the SC/ST Act has dismissed bail petition, on ground there is *prima facie* material to attract the provisions of said Act — Bar for entertaining application under Section 18 thereof — Therefore, remedy available to petitioners is to file appeal under Section 14-A(2) of the said Act to the High Court and not petition under Section 438 of the Cr. P.C. — Bail petition under Section 438 of the Cr. P.C. — Not maintainable. (paras 13 and 17) — *Jagadeesh and Another v State of Karnataka and Another*, 2020(6) Kar. L.J. 277.

Sections 14-A(2), 3(2)(v) and 3(2)(va) — As amended by Amendment Act, 2015 — Indian Penal Code, 1860, Sections 341, 342, 306 and 201 read with Section 34 — Main charge of abetment of suicide, with common intention — Application seeking bail — Entitlement — Inherent powers of High Court to grant — Appellants 1 and 2 being Head Constables and appellant 3 being Police Sub-Inspectors attached to concerned Police Stations — Prosecution theory is that, on a missing complaint lodged by complainant (wife of

deceased), appellants had called him to Police Station, in connection with a case of elopement and second marriage with a girl — Later, as per evidence his dead body was found lying at a bus stop, identified as that of missing person (*i.e.* husband of the complainant) — Autopsy report showed that death of deceased was due to asphyxia consequent upon partial hanging — Consequential circumstances led to arrest of the accused on charge of abetment of suicide by deceased — As regards the bail sought by appellants, mere filing of the charge-sheet against accused even for offences under special enactment of SC/ST Act, 1989, and so also under the IPC, it cannot be held that the accused are not deserving for bail — Considering that the major offence is under Section 306 of the IPC, the fact that accused are in judicial custody since October 2020 and moreover investigating agency has laid the charge-sheet by collecting sufficient material and recorded statements of several witnesses cited in charge-sheet, held, appellants 1 to 3 are entitled to be enlarged on bail, by exercising concurrent jurisdiction under Section 439 of the Code of Criminal Procedure, 1973 — Appeal allowed accordingly. (paras 2, 5, 18, 23 and 24) — *Nagraj and Another v State of Karnataka and Another*, 2021(4) Kar. L.J. 132.

Sections 14-A(2), 18 and 18-A — Code of Criminal Procedure, 1973, Sections 438 and 439 — Indian Penal Code, 1860, Sections 147, 341, 323 and 506 read with Section 149 — Petition for anticipatory bail — Maintainability — In view of availability of appeal under Section 14-A(2) of the SC/ST Act, 1989 — Section 14-A is a *non obstante* clause, providing that an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order of a Special Court — Therefore, wider meaning has to be given to the applicability of Cr. P.C. — Sections 438 and 439 of the Cr. P.C. provide for concurrent jurisdiction both to High Court and Sessions Court for releasing accused on anticipatory or regular bail — It is an independent right given to parties to approach High Court ignoring the order of Trial Court under Section 438 or 439 — Even under Section 378 of the Cr. P.C., appeal lies against an order of acquittal or other orders passed — Petition, therefore, maintainable. (para 1) — *Mahesh M.S and Others v State of Karnataka*, 2021(1) Kar. L.J. 253.

¹[15. Special Public Prosecutor and Exclusive Public Prosecutor.—(1) For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public

Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court.]

¹[CHAPTER IV-A RIGHTS OF VICTIMS AND WITNESSES

15-A. Rights of victims and witnesses—(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses. —

- (a) the complete protection to secure the ends of justice;
- (b) the travelling and maintenance expenses during investigation, inquiry and trial;
- (c) the social-economic rehabilitation during investigation, inquiry and trial; and
- (d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent,

informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including. —

- (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;
- (b) issuing directions for non-disclosure of the identity and addresses of the witnesses;
- (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as. —

- (a) to provide a copy of the recorded First Information Report at free of cost;
- (b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

- (c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;
- (d) to provide relief in respect of death or injury or damage to property;
- (e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;
- (f) to provide the maintenance expenses to the atrocity victims and their dependents;
- (g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;
- (h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;
- (i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge-sheet and to provide copy of the charge sheet at free of cost;
- (j) to take necessary precautions at the time of medical examination;
- (k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;
- (l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;
- (m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;
- (n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the non-Government Organisations, social workers or Advocates.]

CHAPTER V

Miscellaneous

16. Power of State Government to impose collective fine.—The provisions of Section 10-A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

17. Preventive action to be taken by the law and order machinery.—(1) A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquillity and may take preventive action.

(2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).

(3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

CASE LAW

Section 18 — Constitution of India, Articles 21 and 132 — Code of Criminal Procedure, 1973, Sections 438 and 482 — Bar against grant of anticipatory bail — Exclusion of Section 438 of the Cr. P.C. in connection with offences under the Atrocities Act — Abuse of process of law and Court — Interpretation of statutes — Held, there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act, if no *prima facie* case is made out — Or where, on judicial scrutiny, the complaint is found to be *prima facie mala fide* — In view of acknowledged abuse of law of arrest in cases under the Act, it is directed — That (i) arrest of public servant can only be after approval of Appointing Authority and of a non-public servant, after

approval by the Special Superintendent of Police, which may be granted in appropriate cases if considered necessary for reasons recorded — Such reasons must be scrutinised by the Magistrate for permitting further detention — That (ii) to avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act — That allegations are not frivolous or motivated — That (iii) any violation of these directions will be actionable by way of disciplinary action, as well as contempt — On facts, certain adverse remarks in confidential report against respondent 2, by the principal and Head of the Department of the College of Pharmacy where respondent 2 was employed as storekeeper — Respondent 2 sought sanction for his prosecution under the provisions of the Atrocities Act and certain other connected offences under the Indian Penal Code, 1860 — Said matter was dealt with the appellant herein, the Director of Technical Education — Which was declined by appellant on 20-12-2010 — Which led to another complaint by respondent 2 against the appellant under the said provisions — Quashing of the said complaint has been declined by the High Court of Judicature at Bombay, by impugned order dated 5-5-2017 — Question is whether this will be just and fair procedure under Article 21 — Or there can be procedural safeguards so that provisions of the said Act are not abused for extraneous considerations — Further held, this Court finds merit in the submissions of the learned *Amicus* that proceedings against the appellant are liable to be quashed, for being clear abuse of process of Court. (paras 1, 2, 82 and 83) — *Dr. Subhash Kashinath Mahajan v State of Maharashtra and Another*, 2019(2) Kar. L.J. 147A (SC).

Section 18 — Denial of anticipatory bail — Order of Trial Court stayed by High Court — Contentions of accused-appellants — That they have been on bail for last two years — That, they never misused bail granted, co-operated with Investigating Officer — Available to appellants to be placed before the Trial Court for consideration — Appellants to surrender before the Trial Court — Trial Court to consider application and pass order thereon on the same day of surrender within one month of this order. — *R. Madhusudhan v State of Karnataka and Another*, 2017(5) Kar. L.J. 467 (SC).

Section 18 — Insult or intimidation must be with reference to caste — This is *sine qua non* to attract the threshold bar under section — On facts — There is no reference about the first informant and his friends being abused with reference to their caste — Petitioners-accused having undertaken to obey any conditions imposed on them — Petition allowed — Anticipatory bail granted.

A.V. Chandrashekara, J., Held: As could be seen from the decision rendered in *Vilas Pandurang's* case Section 18 of the SC and ST (POA) Act creates a bar for invoking Section 439 of Cr. P.C. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence

under Section 3(1) of the SC and ST (POA) Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. After meticulously going through the first information lodged by Shekar, the first informant, it is forthcoming that they were abused by these petitioners and accused 4, but no reference is forthcoming that they were abused with reference to their caste. However, they were assaulted and the photo of Dr. B.R. Ambedkar was damaged and it is forthcoming in the first information. Insult or intimidation must be with reference to caste and this is *sine qua non* to attract the threshold bar under Section 18 of SC and ST (POA) Act. On verifying the averments made in the complaint, this Court is of the opinion that there is no reference about the first informant and his friends being abused with reference to their caste, though there is reference of assault made on them and the photo of Dr. B.R. Ambedkar being damaged. The petitioners are permanent residents of Hunsur Taluk having roots in the community. They have undertaken to obey any conditions imposed on them. Thus, the apprehension of the learned Government Pleader could be suitably met with by imposing certain conditions. Accordingly, petition is allowed and anticipatory bail is granted to the petitioners. – *Kumara and Others v State of Karnataka*, 2015(5) Kar. L.J. 112.

Sections 18 and 3—Criminal Procedure Code, 1973, Section 438 — Anticipatory bail — Exclusion of provision regarding — Offences declared as atrocities under Section 3 of Act form distinct class by themselves and not comparable with other offences — Provision of Section 18 of Act making anticipatory bail unavailable to persons accused of offences under Section 3 of Act — Not violative of Articles 14 and 21 of Constitution.

R.V. Raveendran, J., Held.—These matters are covered by the decision of the Supreme Court in the case of *Ram Kishan Balothia*, wherein the validity of provisions has been upheld. — *Ramarao v Union of India by its Secretary, Department of Home Affairs, New Delhi and Others*, 1997(1) Kar. L.J. 404.

Sections 18 and 3(1) — Code of Criminal Procedure, 1973, Sections 439(2) and 438 — Anticipatory bail — Allegation of rape — Abuse by accused of the victim by using her caste name — Entertaining application for grant of anticipatory bail by jurisdictional Court — Requirements of Section 439(2) of the Cr. P.C. for cancelling by the High Court bail granted to accused — Subjective satisfaction of Court, conduct of accused subsequent to release on bail and supervening circumstances, which are extraordinary — Alone are relevant — Not by narration of an abstract principle — Here, prosecution is seeking cancellation of bail neither on ground of violation of conditions of bail granted — Or in tampering of prosecution witnesses — Or on apprehension of his absconding — Further, as to alleged offence under the SC/ST Act provisions, the complaint itself *prima facie*, does not mention any

specific allegation about accused having abused the victim by her caste name in public — Impugned order of Court below for grant of anticipatory bail, justified. (paras 5 and 7) — [Criminal Petition No. 7912 of 2016, DD: 4-7-2017] *State of Karnataka v Dharmesh*, 2018(1) Kar. L.J. 80A.

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

- (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
- (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 shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.]

19. Section 360 of the Code or the Provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act.—The provisions of Section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

20. Act to override other laws.—Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act.—(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include.—

- (i) the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

- (ii) the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act;
- (iii) the provision for the economic and social rehabilitation of the victims of the atrocities;
- (iv) the appointment of officers for initiating or exercising supervision over prosecution for the contravention of the provisions of this Act;
- (v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
- (vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;
- (vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Government under sub-section (1).

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

23. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such

modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

¹[THE SCHEDULE

[See Section 3(2)(va)]

Section under the Indian Penal Code	Name of offence and punishment
120-A	Definition of criminal conspiracy.
120-B	Punishment of criminal conspiracy.
141	Unlawful assembly.
142	Being member of unlawful assembly.
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon.
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
146	Rioting.
147	Punishment for rioting.
148	Rioting, armed with deadly weapon.
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.
326-B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.

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| 341 | Punishment for wrongful restraint. |
| 354 | Assault or criminal force to woman with intent to outrage her modesty. |
| 354-A | Sexual harassment and punishment for sexual harassment. |
| 354-B | Assault or use of criminal force to woman with intent to disrobe. |
| 354-C | Voyeurism. |
| 354-D | Stalking. |
| 359 | Kidnapping. |
| 363 | Punishment for kidnapping. |
| 365 | Kidnapping or abducting with intent secretly and wrongfully to confine person. |
| 376-B | Sexual intercourse by husband upon his wife during separation. |
| 376-C | Sexual intercourse by a person in authority. |
| 447 | Punishment for criminal trespass. |
| 506 | Punishment for criminal intimidation. |
| 509 | Word, gesture or act intended to insult the modesty of a woman.] |
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**THE
SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) (KARNATAKA AMENDMENT)
ACT, 2002
[KARNATAKA ACT No. 35 OF 2003]**

(First published in the Karnataka Gazette, Extraordinary, on the Twenty-second day of August, 2003)

(Received the assent of the President of India on the Thirteenth day of August, 2003)

An Act to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in its application to the State of Karnataka.

Whereas, it is expedient to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) in its application to the State of Karnataka for the purposes hereinafter appearing.

Be it enacted by the Karnataka State Legislature in the Fifty-third year of the Republic of India, as follows.—

1. Short title and commencement.—(1) This Act may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Karnataka Amendment) Act, 2002.**

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

2. Amendment of Section 14.—In Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989), for the words “to try offences under this Act”, the words “to take cognizance of offences under this Act as a Court of original jurisdiction and to try such offences” shall be *substituted*.

THE
SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) (AMENDMENT) ACT, 2015

(CENTRAL ACT No. 1 OF 2016)

[31st December, 2015]

An Act to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Be it enacted by Parliament in the Sixty-sixth year of the Republic of India as follows. —

1. Short title and commencement.—(1) This Act may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2015.**

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of long title.—In the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) (hereinafter referred to as the 'principal Act'), in the long title, for the words "Special Courts", the words "Special Courts and the Exclusive Special Courts" shall be *substituted*.

3. Amendment of Section 2.—In Section 2 of the principal Act, in sub-section (1).—

(i) after clause (b), the following clauses shall be *inserted*, namely.—

"(bb) **"Dependent"** means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;

(bc) **"Economic boycott"** means.—

(i) a refusal to deal with, work for hire or do business with other person; or

(ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or

(iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or

(iv) to abstain from the professional or business relations that one would maintain with other person;

1. Came into force on 26-1-2016, vide S.O. No. 152(E), dated 18th January, 2016

- (bd) **"Exclusive Special Court"** means the Exclusive Special Court established under sub-section (1) of Section 14 exclusively to try the offences under this Act;
 - (be) **"Forest rights"** shall have the meaning assigned to it in sub-section (1) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
 - (bf) **"Manual scavenger"** shall have the meaning assigned to it in clause (g) of sub-section (1) of Section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013);
 - (bg) **"Public servant"** means a public servant as defined under Section 21 of the Indian Penal Code (45 of 1860) as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;"
- (ii) after clause (e), the following clauses shall be *inserted*, namely. —
- "(ea) **"Schedule"** means the Schedule appended to this Act;
 - (eb) **"Social boycott"** means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others;
 - (ec) **"Victim"** means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of Section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;
 - (ed) **"Witness"** means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;"
- (iii) for clause (f), the following clause shall be *substituted*, namely. —

"(f) the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments."

4. Amendment of Section 3.—In Section 3 of the principal Act.—

- (i) for sub-section (1), the following sub-section shall be *substituted*, namely.—

"(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.—

- (a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;
- (b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;
- (c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;
- (d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;
- (e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;
- (f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;
- (g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.—For the purposes of clause (f) and this clause, the expression “wrongfully” includes.—

- (A) against the person’s will;
- (B) without the person’s consent;
- (C) with the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or
- (D) fabricating records of such land;
- (h) makes a member of a Scheduled Caste or a Scheduled Tribe to do “begar” or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;
- (i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;
- (j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;
- (k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;
- (l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe.—
 - (A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;
 - (B) not to file a nomination as a candidate or to withdraw such nomination; or
 - (C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;
- (m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IX-A of the Constitution, from performing their normal duties and functions;

- (n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;
- (o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;
- (p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- (r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
- (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;
- (t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

Explanation.—For the purposes of this clause, the expression “object” means and includes statue, photograph and portrait;

- (u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;
- (v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;
- (w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman’s sexual history, including with the offender shall not imply consent or mitigate the offence;

- (x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- (y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;
- (z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

- (za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to.—
 - (A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;
 - (B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out

wedding procession, or mounting a horse or any other vehicle during wedding processions;

- (C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;
- (D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or
- (E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;
- (zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or
- (zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

(ii) in sub-section (2).—

- (a) in clause (v), for the words "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member", the words "knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" shall be *substituted*;
- (b) after clause (v), the following clause shall be *inserted*, namely.—

"(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine."

5. Substitution of new section for Section 4.—For Section 4 of the principal Act, the following section shall be *substituted*, namely.—

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

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

- (a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;
- (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
- (c) to furnish a copy of the information so recorded forthwith to the informant;
- (d) to record the statement of the victims or witnesses;
- (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
- (f) to correctly prepare, frame and translate any document or electronic record;
- (g) to perform any other duty specified in this Act or the rules made thereunder:

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

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

6. Amendment of Section 8.—In Section 8 of the principal Act.—

- (i) in clause (a), for the words “any financial assistance to a person accused of”, the words “any financial assistance in relation to the offences committed by a person accused of” shall be *substituted*;

(ii) after clause (b), the following clause shall be *inserted*, namely.—

“(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.”

7. Amendment of Section 10.—In Section 10 of the principal Act, in sub-section (1).—

(a) after the words and figures “Article 244 of the Constitution”, the words, brackets and figures “or any area identified under the provisions of clause (vii) of sub-section (2) of Section 21” shall be *inserted*;

(b) for the words “two years”, the words “three years” shall be *substituted*.

8. Substitution of new section for Section 14.—For Section 14 of the principal Act, the following section shall be *substituted*, namely.—

“14. Special Court and Exclusive Special Court.—(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge-sheet.”

9. Insertion of new Section 14-A.—After Section 14 of the principal Act, the following section shall be *inserted*, namely.—

"14-A. Appeals.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

10. Substitution of new section for Section 15.—For Section 15 of the principal Act, the following section shall be *substituted*, namely.—

"15. Special Public Prosecutor and Exclusive Public Prosecutor.—(1) For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court."

11. Insertion of new Chapter IV-A.—After Chapter IV of the principal Act, the following Chapter shall be *inserted*, namely.—

"CHAPTER IV-A RIGHTS OF VICTIMS AND WITNESSES

15-A. Rights of victims and witnesses—(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses. —

- (a) the complete protection to secure the ends of justice;
- (b) the travelling and maintenance expenses during investigation, inquiry and trial;
- (c) the social-economic rehabilitation during investigation, inquiry and trial; and
- (d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including.—

- (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;
- (b) issuing directions for non-disclosure of the identity and addresses of the witnesses;
- (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as.—

- (a) to provide a copy of the recorded First Information Report at free of cost;

- (b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;
- (c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;
- (d) to provide relief in respect of death or injury or damage to property;
- (e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;
- (f) to provide the maintenance expenses to the atrocity victims and their dependents;
- (g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;
- (h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;
- (i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge-sheet and to provide copy of the charge sheet at free of cost;
- (j) to take necessary precautions at the time of medical examination;
- (k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;
- (l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;
- (m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;
- (n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the non-Government Organisations, social workers or Advocates."

12. Insertion of new Schedule.— After Section 23 of the principal Act, the following Schedule shall be *inserted*, namely.—

"THE SCHEDULE

[See Section 3(2)(va)]

Section under the Indian Penal Code	Name of offence and punishment
120-A	Definition of criminal conspiracy.
120-B	Punishment of criminal conspiracy.
141	Unlawful assembly.
142	Being member of unlawful assembly.
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon.
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
146	Rioting.
147	Punishment for rioting.
148	Rioting, armed with deadly weapon.
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.
326-B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.
341	Punishment for wrongful restraint.
354	Assault or criminal force to woman with intent to outrage her modesty.

354-A	Sexual harassment and punishment for sexual harassment.
354-B	Assault or use of criminal force to woman with intent to disrobe.
354-C	Voyeurism.
354-D	Stalking.
359	Kidnapping.
363	Punishment for kidnapping.
365	Kidnapping or abducting with intent secretly and wrongfully to confine person.
376-B	Sexual intercourse by husband upon his wife during separation.
376-C	Sexual intercourse by a person in authority.
447	Punishment for criminal trespass.
506	Punishment for criminal intimidation.
509	Word, gesture or act intended to insult the modesty of a woman."

13. Repeal and saving.—(1) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 (Ordinance 1 of 2014) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

NOTIFICATION

No. 11012/1/2002-PCR (Desk), New Delhi, the 18th January, 2016
Gazette of India, Extraordinary, dated 18-1-2016

S.O. 152(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (1 of 2016), the Central Government hereby appoints the **26th day of January, 2016** as the date on which the provisions of the said Act shall come into force.

**THE
SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) (AMENDMENT) ACT, 2018**

[CENTRAL ACT No. 27 OF 2018]

[17th August, 2018]

An Act further to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Be it enacted by Parliament in the Sixty-ninth year of the Republic of India as follows. —

1. Short title and commencement.—(1) This Act may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018.**

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Section 18-A.—After Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the following section shall be *inserted*, namely. —

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

- (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
- (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 shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

NOTIFICATIONS

NOTIFICATION

No. HD 64 POP 94, dated 28-6-1995

Karnataka Gazette, dated 10-8-1995

SO 822.—In exercise of the powers conferred by sub-section (1) of Section 9 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989), the Government of Karnataka hereby considered it necessary and expedient to do so.—

(a) for the prevention of and for coping with any offence under the said Act; and

(b) for all cases under the said Act,

in any district or part thereof, in the State of Karnataka, hereby confers on the Officers of and above the rank of Sub-Inspector of Police working in the Directorate of Civil Rights Enforcement Cell in Karnataka, the powers exercisable by the Police Officer under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in such district or part thereof in the State of Karnataka, as the case may be, for all such cases and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

NOTIFICATION

No. HD 225 PCR 200, Bangalore, dated 12th March, 2001

Karnataka Gazette, Extraordinary No. 596, dated 15-3-2001

In exercise of the powers conferred by Section 15 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989), and in partial modification of the notification issued in this behalf, the Government of Karnataka hereby specify the Special Public Prosecutor for the purposes of conducting cases in the Special Court constituted under Section 14 of the said Act in respect of Revenue District of Koppal.

NOTIFICATION

No. HD 76 PCR 2001, Bangalore, dated 17th May, 2001

Karnataka Gazette, Extraordinary No. 1014, dated 29-5-2001

In exercise of the powers conferred by Section 15 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989), and in partial modification of the notifications issued in this behalf, the Government of Karnataka hereby specify the Special Public Prosecutor, Bagalkot for the purposes of conducting cases in the Special Court

constituted under Section 14 of the said Act in respect of Revenue District of Bagalkot.

NOTIFICATION

**No. HD 197 PCR 2001, Bangalore, dated 10th December, 2001
Karnataka Gazette, Extraordinary No. 2078, dated 12-12-2001**

In exercise of the powers conferred by Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of earlier notifications issued in this behalf, the Government of Karnataka with the concurrence of the Chief Justice of the High Court of Karnataka hereby specify the District and Sessions Court, Haveri to be the Special Court in respect of the Revenue District of Haveri for the purposes of the said Act.

NOTIFICATION

**No. HD 23 PCR 2002(I), Bangalore, dated 4th February, 2002
Karnataka Gazette, Extraordinary No. 147, dated 12-2-2002**

In exercise of the powers conferred by Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of the earlier notification issued in this behalf the Government of Karnataka, with the concurrence of the Chief Justice of the High Court of Karnataka, hereby specify with effect from the date of the establishment of the Court of District and Sessions Judge, Udupi, the said Court to be the Special Court in respect of the Revenue District of Udupi, for the purposes of this Act.

NOTIFICATION

**No. HD 23 PCR 2002(II), Bangalore, dated 4th February, 2002
Karnataka Gazette, Extraordinary No. 147, dated 12-2-2002**

In exercise of the powers conferred by Section 15 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification as of the notifications issued in this behalf, the Government of Karnataka, hereby specify that the Public Prosecutor attached to the District and Sessions Court, Udupi to be the Special Public Prosecutor from the date of establishment of the said Court for the purposes of conducting the cases in the Special Court constituted under Section 14 of the said Act in respect of the Revenue District of Udupi.

NOTIFICATION

No. HD 247 PCR 2000 (P), Bangalore, dated 30th September, 2003
Karnataka Gazette, dated 23-10-2003

In exercise of the powers conferred by sub-section (2) of Section 1 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Karnataka Amendment) Act, 2002 (Karnataka Act No. 35 of 2003), the Government of Karnataka hereby appoints the **30th day of September, 2003** to be the date from which the provisions of the said Act shall come into force.

NOTIFICATION

No. HD 244 PCR 2004, Bangalore, dated 30th March, 2005
Karnataka Gazette, Extraordinary No. 440, dated 30-3-2005

In exercise of the powers conferred by Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of earlier notifications issued in this behalf, the Government of Karnataka with the concurrence of the Chief Justice of the High Court of Karnataka hereby specify the Principal District and Sessions Court, Raichur to be the Special Court in respect of the Revenue District of Raichur for the purposes of the said Act.

NOTIFICATION

No. HD 266 PCR 2007, Bangalore, dated 4th December, 2007
Karnataka Gazette, Extraordinary No. 2093, dated 5-12-2007

In exercise of the powers conferred by Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of notifications issued in this behalf the Government of Karnataka with the concurrence of the Chief Justice of the High Court of Karnataka hereby specifies with effect from the date of establishment of the Courts of Session mentioned in column (2) of the Table below, to be the Special Courts in respect of the areas falling under Revenue Districts specified in the corresponding entries in column (3) thereof, to try the offences under the said Act.—

TABLE

Sl. No.	Court of Session	District
(1)	(2)	(3)
1.	District and Sessions Judge, Chickballapur	Chickballapur
2.	District and Sessions Judge, Ramanagar	Ramanagar

NOTIFICATION

No. HD 121 PCR 2008, Bangalore, dated 27th May, 2008
Karnataka Gazette, Extraordinary No. 598, dated 19-6-2008

In exercise of the powers conferred by Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of Notifications issued in this behalf the Government of Karnataka with the concurrence of the Chief Justice of the High Court of Karnataka hereby specifies with effect from the date of establishment of the Court of Session at Chamarajanagar to be a Special Court in respect of the areas falling under Revenue District of Chamarajanagar to try the offences under the said Act.

NOTIFICATION

HD 266 PCR 2007, Bangalore, dated 4th April, 2014
Karnataka Gazette, dated 10-7-2014

In exercise of the powers conferred by Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and in partial modification of the Notification of even No. ..., dated 4-12-2007 issued in this behalf, hereby, with effect from publication of this notification re-designates the Additional District and Sessions Court, Chickballapur to function as Special Court to try the Special Cases in respect of the areas falling under Chickballapur and permission also accorded to transfer the Spl. C.C. Cases and EACC Cases pending as on date before the District and Sessions Court, Chickballapur and any cases arising out of Forest and Excise Department to this Special Court.

NOTIFICATION

No. 11012/1/2002-PCR (Desk), New Delhi, the 18th January, 2016
Gazette of India, Extraordinary, dated 18-1-2016

S.O. 152(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (1 of 2016), the Central Government hereby appoints the **26th day of January, 2016** as the date on which the provisions of the said Act shall come into force.

NOTIFICATION

No. LAW 66 LCE 2017(I), Bengaluru, dated 28th July, 2017
Karnataka Gazette, dated 5-10-2017

In exercise of the powers conferred under Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 153 of the Electricity Act, 2003, the Government of Karnataka with the concurrence of the Hon'ble High Court of Karnataka, hereby designate the Court of LXX Additional City Civil and Sessions Judge, Bengaluru City (newly created Court *vide* G.O. No. LAW 137 LCE 2014, dated 26-3-2015) as a Special Court for trial of offences punishable under the said Acts with effect from the date of Presiding Officer assumes charge of the said post.

NOTIFICATION

No. LAW 66 LCE 2017(II), Bengaluru, dated 28th July, 2017
Karnataka Gazette, dated 5-10-2017

In exercise of the powers conferred under law relating to Prevention of Atrocities on Women, the Government of Karnataka, with the concurrence of the Hon'ble High Court of Karnataka, hereby designate the Court of LXXI Additional City Civil and Sessions Judge, Bengaluru City (newly created Court *vide* G.O. No. LAW 137 LCE 2014, dated 26-3-2015) as a Special Court for trial of offences against women with effect from the date the Presiding Officer assumes charge of the said post.

**THE
SCHEDULED CASTES AND THE SCHEDULED
TRIBES (PREVENTION OF ATROCITIES)
RULES, 1995**

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THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995

(As amended by GSR 896(E), dated 23-12-2011; GSR 725(E), dated 8-11-2013; GSR 416(E), dated 23-6-2014; GSR 774(E), dated 5-11-2014; GSR 424(E), dated 14-4-2016 and GSR 588(E), dated 27-6-2018.)

GSR 316(E).—In exercise of the powers conferred by sub-section (1) of Section 23 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the Central Government hereby makes the following rules, namely.—

1. Short title and commencement.—(1) These rules may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires.—

(a) “**Act**” means the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989);

²[(b) “**Dependent**” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for support and maintenance;]

(c) “**Identified area**” means such area where State Government has reason to believe that atrocity may take place or there is an apprehension of reoccurrence of an offence under the Act or an area prone to victim of atrocity;

(d) “**Non-Government Organisation**” means a voluntary organisation engaged in the welfare activities relating to the Scheduled Castes and the Scheduled Tribes and registered under the Societies Registration Act, 1860 (21 of 1866) or under any law for the registration of documents or such organisation for the time being in force;

(e) “**Schedule**” means the Schedule annexed to these rules;

(f) “**Section**” means section of the Act;

(g) “**State Government**” in relation to a Union territory, means the Administrator of that union Territory appointed by the President under Article 239 of the Constitution;

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1. Published in the Gazette of India, Extraordinary, dated 31-3-1995, Part II, Section 3(1).
 2. Clause (b) substituted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

- ¹[(ga) "**Voluntarily**" shall have the same meaning as assigned to it in Section 39 of the Indian Penal Code, 1860 (45 of 1860);]
- (h) Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Precautionary and Preventive Measures.—(1) With a view to prevent atrocities on the Scheduled Castes and the Scheduled Tribes, the State Government shall.—

- (i) identify the area where it has reason to believe that atrocity may take place or there is an apprehension of reoccurrence of an offence under the Act;
- (ii) order the District Magistrate and Superintendent of Police or any other officer to visit the identified area and review the law and order situation;
- (iii) if deem necessary, in the identified area cancel the arms licences of the persons, not being member of the Scheduled Castes or Scheduled Tribes, their near relations, servants or employees and family friends and get such arms deposited in the Government armoury;
- (iv) seize all illegal fire arms and prohibit any illegal manufacture of fire arms;
- (v) with a view to ensure the safety of person and property, if deem necessary provide arms licences to the members of the Scheduled Castes and the Scheduled Tribes;
- (vi) constitute a high power State-level committee, district and divisional level committees or such number of other committees as deem proper and necessary for assisting the Government in implementation of the provisions of the Act;
- (vii) set up a vigilance and monitoring committee to suggest effective measures to implement the provisions of the Act;
- (viii) set up Awareness Centre and organise Workshops in the identified area or at some other place to educate the persons belonging to the Scheduled Castes and the Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules, regulations and schemes framed thereunder;

- (ix) encourage Non-Government Organisations for establishing and maintaining Awareness Centres and organising Workshops and provide them necessary financial and other sort of assistance;
- (x) deploy special police force in the identified area;
- (xi) by the end of every quarter, review the law and order situation, functioning of different committees, performance of Special Public Prosecutors, Investigating Officers and other Officers responsible for implementing the provisions of the Act and the cases registered under the Act.

4. Supervision of Prosecution and Submission of Report.—¹[(1) The State Government, on the recommendation of the District Magistrate, shall prepare for each District a panel of such number of eminent Senior Advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts.

(1-A) The State Government in consultation with the Director Prosecution or in charge of the prosecution, shall also specify a panel of such number of Public Prosecutors and Exclusive Special Public Prosecutors, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts, as the case may be.

(1-B) Both the panels referred to in sub-rule (1) and sub-rule (1-A) shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.]

(2) The District Magistrate and the Director of Prosecution in charge of the prosecution shall review at least twice in a calendar year, in the month of January and July, performance of ²[Special Public Prosecutors and Exclusive Special Public Prosecutors] so specified or appointed and submit a report to the State Government.

(3) If the State Government is satisfied or has reason to believe that ³[a Special Public Prosecutor or an Exclusive Special Public Prosecutor] so appointed on specified date has not conducted the case to the best of his ability and with due care and caution, his name may be, for reasons to be recorded in writing, de-notified.

1. Sub-rule (1) substituted as sub-rules (1), (1-A) and (1-B) by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
2. Substituted for the words "Special Public Prosecutors" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
3. Substituted for the words "a Special Public Prosecutor" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

¹[(4) The District Magistrate and the Officer-in-charge of the prosecution at the District level, shall review. —

- (a) the position of cases registered under the Act;
- (b) the implementation of the rights of victims and witnesses, specified under the provisions of Chapter IV-A of the Act,

and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government, which shall specify the actions taken or proposed to be taken in respect of investigation and prosecution of each case.]

(5) Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for ²[conducting cases in the Special Courts or Exclusive Special Courts] on such payment of fees as he may consider appropriate.

(6) Payment of fee to the ³[Special Public Prosecutor and Exclusive Special Public Prosecutor] shall be fixed by the State Government on a scale higher than the other panel advocates in the State.

5. Information to Police Officer-in-charge of a Police Station.—(1) Every information relating to the commission of an offence under the Act, if given orally to an officer-in-charge of a police station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writings as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station.

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

(3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer-in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by that police station.

6. Spot inspection by officers.—(1) Whenever the District Magistrate or the Sub-Divisional Magistrate or any other executive Magistrate or any

1. Sub-rule (4) substituted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
2. Substituted for the words "conducting cases in the Special Courts" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
3. Substituted for the words "Special Public Prosecutor" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

police officer not below the rank of Deputy Superintendent of Police receives an information from any person or upon his own knowledge that an atrocity has been committed on the members of the Scheduled Castes or the Scheduled Tribes within his jurisdiction he shall immediately himself visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forthwith to the State Government.

(2) The district Magistrate or the Sub-Divisional Magistrate or any other executive magistrate and the Superintendent of Police, Deputy Superintendent of Police after inspecting the place or area shall on the spot.—

- (i) draw a list of victims, their family members and dependents entitled for relief;
- (ii) prepare a detailed report of the extent of atrocity, loss and damage to the property of the victims;
- (iii) order for intensive police patrolling in the area;
- (iv) take effective and necessary steps to provide protection to the witnesses and other sympathisers of the victims;
- (v) provide immediate relief to the victims.

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

¹[(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer in-charge of the concerned police station shall file the charge-sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

(2-A) The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule (2) shall be explained in writing by the Investigating Officer.]

1. Sub-rule (2) substituted as sub-rules (2) and (2-A) by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

¹[(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union Territory Administration, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police or the Commissioner of Police in-charge of the concerned State or Union territory shall review by the end of every quarter the position of all investigations done by the Investigating Officer.]

8. Setting up of the Scheduled Castes and the Scheduled Tribes Protection Act.—(1) The State Government shall set up a Scheduled Castes and the Scheduled Tribes Protection Cell at the State headquarter under the charge of Director of Police or Inspector General of Police. This Cell shall be responsible for.—

- (i) conducting survey of the identified area;
- (ii) maintaining public order and tranquility in the identified area;
- (iii) recommending to the State Government for deployment of special police force or establishment of special police post in the identified area;
- (iv) making investigations about the probable causes leading to an offence under the Act;
- (v) restoring the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes;
- (vi) informing the nodal officer and special officer about the law and order situation in the identified area;
- ²[(vi-a) informing the nodal officer and the concerned District Magistrates about implementation of the rights of victims and witnesses specified under the provisions of Chapter IV- A of the Act;]
- (vii) making enquiries about the investigation and spot inspections conducted by various officers;
- (viii) making enquiries about the action taken by the Superintendent of Police in the cases where an officer in charge of the police station has refused to enter an information in a book to be maintained by that police station under sub-rule (3) of Rule 5;
- (ix) making enquiries about the wilful negligence by a public servant;

1. Sub-rule (3) substituted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

2. Clause (vi-a) inserted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

- (x) reviewing the position of cases registered under the Act; and
- (xi) submitting a monthly report on or before 20th day of each subsequent month to the State Government nodal officer about the action taken, proposed to be taken in respect of the above.

9. Nomination of Nodal Officer.—The State Government shall nominate a nodal officer of the level of a Secretary to the Government preferably belonging to the Scheduled Castes or the Scheduled Tribes, to co-ordinate the functioning of the District Magistrate and Superintendent of Police or other officers authorised by them and investigation officers and other officers responsible for implementing the provisions of the Act. By the end of the every quarter, the nodal officer shall review.—

- (i) the reports received by the State Government under sub-rules (2) and (4) of Rule 4, Rule 6, clause (xi) of Rule 8.
- (ii) the position of cases registered under the act;
- (iii) law and order situation in the identified area;
- (iv) various kinds of measures adopted for providing immediate relief in cash or kind or both to the victims of atrocity or his or her dependent;
- (v) adequacy of immediate facilities like rationing, clothing, shelter, legal aid, travelling allowance, daily allowance and transport facilities provided to the victims of atrocity or his/her dependents;
- (vi) performance of non-Governmental organisations, the Scheduled Castes and the Scheduled Tribes Protection Cell, various committees and the public servants responsible for implementing the provisions of the Act;
- ¹[(vii) implementation of the rights of victims and witnesses specified under the provisions of Chapter IV-A the Act.]

10. Appointment of a Special Officer.—In the identified area a Special Officer not below the rank of an Additional District Magistrate shall be appointed to co-ordinate with the District Magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act, various committees and the Scheduled Castes and the Scheduled Tribes Protection Cell.

The Special Officer shall be responsible for.—

- (i) providing immediate relief and other facilities to the victims of atrocity and initiate necessary measures to prevent or avoid re-occurrence of atrocity;
- (ii) setting an awareness centre and organising workshop in the identified area or at the district head quarters to educate the persons belonging to the Scheduled Castes and the Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules and schemes, *etc.*, framed therein;
- (iii) co-ordinating with the Non-Governmental organisations and providing necessary facilities and financial and other type of assistance to non-Governmental Organisation for maintaining centres or organising workshop;
- ¹[(iv) implementation of the rights of victims and witnesses specified under the provisions of Chapter IV-A of the Act, in the identified areas.]

11. Travelling Allowance, Daily Allowance, Maintenance Expenses and Transport Facilities to the victim of Atrocity, his or her Dependent and witnesses.—(1) Every victim of atrocity or his/her dependent and witnesses shall be paid to and for rail fare by second class in express/mail/passenger train or actual bus or taxi fare from his/her place of residence or actual bus or taxi fare from his/her place or residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.

(2) The District magistrate or the Sub-Divisional magistrate or any other Executive Magistrate shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the Investigation Officer, Superintendent of Police/Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate.

(3) Every woman witness, the victim of atrocity or her dependent being a woman or a minor, a person more than sixty years of age and a person having 40 percent or more disability shall be entitled to be accompanied by an attendant of her/his choice. The attendant shall also be paid travelling and maintenance expenses as applicable to the witness or the victim of atrocity when called upon during hearing, investigation and trial of an offence under the Act.

(4) The witness, the victim of atrocity or his/her dependent and the attendant shall be paid daily maintenance expenses for the days he/she is away from the place of his/her residence or stay during investigation,

1. Clause (iv) inserted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

hearing and trial of an offence, at such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural labourers.

(5) In addition to daily maintenance expenses the witness, the victim of atrocity (or his/her dependent) and the attendant shall also be paid diet expenses at such rate as may be fixed by the State Government from time to time.

(6) The payment of travelling allowance, daily allowance, maintenance expenses and reimbursement of transport facilities shall be made immediately or not later than three days by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to the victims, their dependents/attendant and witnesses for the days they visit the investigating officer or in-charge police station or hospital authorities or Superintendent of Police, Deputy Superintendent of Police or District Magistrate or any other officer concerned or the Special Court.

(7) When an offence has been committed under Section 3 of the Act, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall reimburse the payment of medicines, special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim(s) of atrocity.

12. Measures to be taken by the District Administration.—(1) The District Magistrate and the Superintendent of Police shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victims, their family members and dependents entitled for relief.

(2) Superintendent of Police shall ensure that the First Information Report is registered in the book of the concerned police station in the area and take such other preventive measures as he may deem proper and necessary.

(3) The Superintendent of Police, after spot inspection, shall immediately appoint an investigation officer and deploy such police force in the area and take such other preventive measures as he may deem proper and necessary.

¹[(4) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.

1. Sub-rule (4) substituted as sub-rules (4), (4-A) and (4-B) by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

(4-A) For immediate withdrawal of money from the treasury so as to timely provide the relief amount as specified in sub-rule (4), the concerned State Government or Union Territory Administration may provide necessary authorisation and powers to the District Magistrate.

(4-B) The Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section (6) of Section 15-A of the Act.]

¹[(5) The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury or rape, or gang rape, or unnatural offences, or voluntarily causing grievous hurt by use of acid, or voluntarily throwing or attempting to throw acid, *etc.* or damage to property shall be in addition to any other right to claim compensation respect thereof under any other law for the time being in force.]

(6) The relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to these rules.

(7) A report of the relief and rehabilitation facilities provided to the victims shall also be forwarded to the ²[Special Court or Exclusive Special Court] by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police. In case the ³[Special Court or Exclusive Special Court] is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made, it may order for making in full or part the payment of relief or any other kind of assistance.

13. Selection of Officers and other State Members for Completing the work relating to Atrocity.—(1) The State Government shall ensure that the administrative officers and other staff members to be appointed in an area prone to atrocity shall have the right aptitude and understanding of the problems of the Scheduled Castes and Scheduled Tribes.

(2) It shall also be ensured by the State Government that persons from the Scheduled Castes and the Scheduled Tribes are adequately represented in the administration and in the police force at all levels, particularly at the level of police posts and police station.

⁴[14. Specific Responsibility of the State Government.—(1) The State Government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocity, as well as for implementing an appropriate scheme for the rights and entitlements of

1. Sub-rule (5) substituted by GSR 588(E), dated 27-6-2018, w.e.f. 27-6-2018

2. Substituted for the words "Special Court" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

3. Substituted for the words "Special Court" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

4. Rule 14 substituted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

victims and witnesses in accessing justice as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act.

(2) The State Government shall review at least twice in a calendar year, in the month of January and July the performance of the Special Public Prosecutor and Exclusive Special Public Prosecutor specified or appointed under Section 15 of the Act, various reports received, investigation made and preventive steps taken by the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers.]

15. Contingency Plan by the State Government.—(1) State Government¹[shall frame and implement a plan to effectively implement] the provisions of the Act and notify the same in the Official Gazette of the State Government. It should specify the role and responsibility of various departments and their officers at different levels, the role and responsibility of Rural/Urban Local Bodies and Non-Government Organisations, *inter alia* this plan shall contain a package of relief measures including the following.—

- (a) scheme to provide immediate relief in cash or in kind or both;
- ²[(aa) an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act;]
- (b) allotment of agricultural land and house-sites;
- (c) the rehabilitation packages;
- (d) scheme for employment in Government or Government undertaking to the dependent or one of the family members of the victim;
- (e) pension scheme for widows, dependent children of the deceased, handicapped or old age victims of atrocity;
- (f) mandatory compensation for the victims;
- (g) scheme for strengthening the socio-economic condition of the victim;
- (h) provisions for providing brick/stone masonry house to the victims;

1. Substituted for the words "shall prepare a model contingency plan for implementing" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

2. Clause (aa) inserted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

- (i) such other elements as health care, supply of essential commodities, electrification, adequate drinking water facility, burial/cremation ground and link roads to the Scheduled Castes and the Scheduled Tribes habitates.

(2) The State Government shall forward a copy of the contingency plan or a summary thereof and a copy of the scheme, as soon as may be, ¹[to the Central Government in the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment] and to all the District Magistrates, Sub-Divisional Magistrates, Inspectors General of Police and Superintendents of Police.

²[**16. Constitution of State-Level Vigilance and Monitoring Committee.**—(1) The State Government shall constitute high power vigilance and monitoring committee ³[x x x x x] consisting of the following, namely.—

- (i) Chief Minister or Administrator – Chairman (in case of a State under President's Rule, the Governor shall be the Chairman);
- (ii) Home Minister, Finance Minister and Minister(s) in-charge of Welfare and Development of the Scheduled Castes and the Scheduled Tribes - Members (in case of a State under the President's Rule, the Advisors shall be Members);
- (iii) all elected Members of Parliament and State Legislative Assembly and Legislative Council from the State belonging to the Scheduled Castes and the Scheduled Tribes shall be Members;
- (iv) Chief Secretary, the Home Secretary, the Director General of Police, Director/Deputy Director, the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes shall be Members;
- (v) the Secretary in-charge to the Welfare and Development of the Scheduled Castes and the Scheduled Tribes shall be Convener.

(2) The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act, scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers or

1. Substituted for the words "to the Central Government in the Ministry of Welfare" by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
 2. Rule 16 substituted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016
 3. The words "of not more than twenty-five members" omitted by GSR 588(E), dated 27-6-2018, w.e.f. 27-6-2018

agencies responsible for implementing the provisions of the Act and review of various reports received by the State Government including that of the Nodal Officer and Special Officer.]

17. Constitution of District Level Vigilance and Monitoring Committee.—(1) In each district within the State, the District Magistrate shall set up a vigilance and monitoring committee in his district to review the implementation of the provisions of the Act, ¹[scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act,] relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the District Administration.

(2) The District level vigilance and monitoring committee shall consist of the elected Members of the Parliament and State Legislative Assembly and Legislative Council, Superintendent of Police, three group "A" Officers, Gazetted Officers of the State Government belonging to the Scheduled Castes and the Scheduled Tribes not more than 5 non-official members belonging to the Scheduled Castes and the Scheduled Tribes and not more than 3 members from the categories other than the Scheduled Castes and the Scheduled Tribes having association with Non-Government Organisations. The District Magistrate and District Social Welfare Officer shall be Chairman and member-Secretary respectively.

²[(2-A) x x x x x.]

(3) The District level committee shall meet at least once in three months.

³[17-A. Constitution of Sub-Division Level Vigilance and Monitoring Committee.—(1) In each Sub-Division within the State, the Sub-Divisional Magistrate shall set up a vigilance and monitoring committee in his Sub-Division to review the implementation of the provisions of the Act, ⁴[scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of Section 15-A of Chapter IV-A of the Act,] relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the Sub-Division Administration.

1. Inserted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

2. Sub-rule (2-A) omitted by GSR 774(E), dated 5-11-2014, w.e.f. 5-11-2014

3. Rule 17-A substituted by GSR 725(E), dated 8-11-2013, w.e.f. 8-11-2013

4. Inserted by GSR 424(E), dated 14-4-2016, w.e.f. 14-4-2016

¹[(2) The Sub-Division level vigilance and monitoring committee shall consist of members of State Legislative Assembly and State Legislative Council from the division, elected members of Panchayat Raj Institutions belonging to Scheduled Castes and Scheduled Tribes, Deputy Superintendent of Police, Tahsildar, Block Development Officer, not more than two non-official members belonging to the Scheduled Castes and the Scheduled Tribes and not more than two members from the categories other than the Scheduled Castes and the Scheduled Tribes, having association with Non-Government Organisations.

(3) The Sub-Divisional Magistrate shall be the Chairperson and the Block Development Officer, the Member Secretary, respectively of the sub-division level vigilance and monitoring committee.]

²[(4) The sub-division level vigilance and monitoring committee shall meet at least once in three months.]

18. Material for Annual Report. — The State Government shall every year before the 31st March, forward the report to the Central Government about the measures taken for implementing provisions of the Act and various schemes/plans framed by it during the previous calendar year.

— SCHEDULE —

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1. Sub-rules (2) and (3) substituted by GSR 774(E), dated 5-11-2014, w.e.f. 5-11-2014
 2. Sub-rule (4) inserted by GSR 774(E), dated 5-11-2014, w.e.f. 5-11-2014