

# PRATHVI RAJ CHOUHAN V. UNION OF INDIA

[Case No.: WP(C) 1015/2018]

---

*Date of Decision*- 10 February, 2020

*Court*- Supreme Court of India

*Judges*- HMJ Arun Mishra, HMJ Vineet Saran, HMJ S. Ravindra Bhat

*Parties Involved*:-

Petitioner – Prathvi Raj Chauhan, Priya Sharma, Sandeep Lamba, India For Rule of Law Foundation

Respondent- Union Of India

*Lawyers*:-

Petitioner- Shashi Kiran

Respondent- Attorney General K. K. Venugopal

## **Background**

For generations the people from the SC and ST community were discriminated by the people from the upper caste community. People belonging to the SC and ST were forced to figure in menial jobs which was found out by the social and non secular norms. Fast forward to the independence, the Constitution became the legal force everywhere India. In their articles discrimination on the idea of caste is against the law. Untouchability, the practice that was finished numerous years are abolished under Article 17. Despite this achievement, people are still disillusioned with the class structure that's still prevalent and regressive even to the present day. People belonging within the so called "lower caste" are discriminated publicly space, employment and education institution. This case will bring some light on things.

## **Brief Facts**

The case begins with the petitioners filing a case within the Supreme Court. The sole reason they're so salty is because they need to challenge the constitutional validity of the Section 18A of the SC/ST (Prevention of Atrocities) Act, 1989(The act was amended in 2018). Consistent with the petitioners, Section 18A of the said act is much too advantageous for the people of the SC/ST Act. In other words, the act has the potential to be misused because the petitioner claims, Section 18A of the said act has made the case of Kashinath Mahajan v. The State of Maharashtra &nr. null and void. The petitioners mentioned Section 438 of the Code of Criminal Procedure i.e. the

anticipatory bail too. They fear that folks from the SC/ST community can misuse it to save lots of themselves from police arrest when a criminal offense is committed. Therefore the Supreme Court, got a problem from the Central Government where they highlighted the provisions of Section 18A of the said act. A 3 division bench was found out within the court regarding this and after hearing the arguments of the each side, the bench decided to upheld the constitutional validity of Section 18A of the SC/ST Act.

## **Issues**

There were few major issues raised within the Supreme Court-

1. Whether the constitutional validity applies to Section 18 of the SC/ST Act?
2. If Section 438 of the Crpc is misused within the case of arrest?
3. Does granting anticipatory bail to the accused violates the supply of the act?

## **The reason for inserting Section 18A of the SC/ST Act**

Section 18A of the SC/ST Act, 1989 has 3 provisions

1. there's no need for conducting the preliminary enquiry before the registration of the FIR.
2. The policeman investigating the case won't require any approval from the upper authority to form arrests.
3. The provisions of Section 438 of the CrPC won't be applied under this act. In other words, people get anticipatory bail during this case.

## **Arguments**

### ***Petitioner Contention:***

As stated above, the petitioner has problems regarding Section 18A of the SC/ST Act. The section is just too favourable for the people of the SC/ST Acts. The petitioner fears that the section are going to be the victim of loopholes and may be misused tons . He further added spice during this gourmet of a case by adding the validity of the Section 438 of the CrPC. He believes that constant granting of anticipatory bail will cause encroachment of Article 21 of the Constitution.

### ***Respondent Contention:***

The petitioner's arguments were dismissed by the respondent. the upper than a skyscraper amount of acquittal cases was a severe setback. When it involves enforcing the legislation, cops

aren't executing their jobs effectively. They also featured a scarcity of ineffectiveness in prosecuting the defendant. They went on to mention that the act's goal is in line with the 2018 amendment. The modification was adopted so as to guard those that are members of the SC and ST communities. was made for the sake of protecting the people belonging to the SC and ST community.

## **Disposition**

### 1. Nexus between the SC/ST Act and therefore the Fundamental Right

Post independence, the members of the SC/ST community are the victims of bullying, verbal harassment, discrimination and even violence simply because of where they came from. albeit the Constitution was enforced everywhere India, it had been not enough for the people of the said communities. The SC/ST Act 1989, is a deterrent against any and every one sorts of discrimination.

a. The assurity of treated equally everywhere the state is mentioned in Article 14 of the constitution.

b. nobody should be discriminated on the idea of any grounds which incorporates caste, gender, race, creed etc. this is often summed up by Article 15 of the constitution.

c. an individual no matter the mention grounds features a right to measure and die with his/her dignity intact. This was ensured by Article 21 of the constitution. Any violation of the SC/ST Act are going to be an entire breach of the Article.

### 2. The case with anticipatory bail

The need of anticipatory bail is merely required when an individual fears that his/her life are going to be in peril . He/she could seek the bail under Section 438 of the CrPC. However, the accusation must be a non bailable offence and therefore the anticipatory bail is quite seen during a negative light due to its rampant misuse.

Likewise, the section is simply a statutory right and not a fundamental right. Therefore, there's no existence of relation between anticipatory bail and fundamental rights. However, the measures might be helpful for the people of the SC/ST community as they see it as a necessity.

### 3. The case with false complaints-

The reasons why the petitioners picked the Kashinath Mahajan v. The State of Maharashtra &anr was the increase of false complaints like Everest . The lodging of complaints under the SC/ST Act was seen as an act of revenge within the eyes of the petitioner. The court however says otherwise. The court says that the class structure as an entire is flawed and that they rejected the argument of the petitioner. The court states that the argument is illogical.

- a. The failure of attribute was seen as root explanation for the rising false complaints. Caste has nothing to try to do with this.
- b. The SC/ST people are very reluctant of filing any complaints including an anticipatory bail. therefore the chances of rising fake complaints are very slim.
- c. The credit where credit is due must tend to the complainant. Calling him/her a liar is extremely illegal in nature.
- d. Investigations wiped out a flawed manner plays an enormous role in false complaints.
- e. If the complaints seems to be false and therefore the person was hurt due to this then he/she can attend the upper court to hunt remedy and to urge obviate the FIR.

#### 4. Permission of sanctioning authority for state Servants before the FIR

The downsides for the sanction of appointing the people authoritatively when it involves the prosecution-

- a. The SC/ST act suffers from non statutory position and therefore the offences that are committed under this act are cognizable also as non bailable which defeat the provisions of the CrPC and Indian legal code .
- b. Like whistleblowers, complainants fear the danger of their lives and safety.
- c. Obstructing the work of justice i.e. proper investigation during a crime scene. Arresting the people in question of committing a criminal offense are refused which might be an enormous downside.
- d. The authority liable for sanctioning are very discreet and secretive just like the Illuminati. the choice supported saying yes or no in providing sanction is extremely hidden. it's like asking a hidden occult group to reveal their identity.
- e. There are times, where the investigation and enquiry stays incomplete. This probably thanks to lot of your time consumption and therefore the absence of any knowledge which will cause the top of the investigation.

#### 5. SSP's Approval for arresting Non governmental person

- a. The SSP's discretionary power is being restricted, which might be problematic.
- b. Because SSP is that the district chief, he are going to be preoccupied with other matters, perhaps delaying the probe.
- c. Because the offences under the SC/ST are non-bailable and cognizable, the police will have more power in arresting people.

## 6. Analysing the rationale for further detention

The magistrate's analysis the rationale for what to try to do with the accused post arrest under the SC/ST Act isn't been recorded because it's not provided in neither the case laws nor in any legislation. this is often basically salt and pepper which not be added more during a dish. In layman's term, it couldn't be further sanction because it's extra.

## 7. DSP for preliminary inquiry

The lack of DSP officers damages the investigation. it's highly illegal for preliminary inquiry to be envisaged under the SC/ST Act. On the opposite hand, the working of Inspectors, Sub-Inspectors and other low ranking officers are highly debated. The consideration of preliminary inquiry can only be done as circumstantial when on Constitutional Bench as laid down by the Lalita Kumari Case.

## 8. Intervention of Judiciary

As for Section 438 of CrPC and its bearing, it's highly concerning because it couldn't be anointed within the provisions of the SC/ST Act. The bar which found out by Section 18 and 18A of the act won't make any difference if the grievance doesn't figure out at the primary site of the relevance of the said act.

## **Decision**

The Supreme Court's 3 judge-bench decided that Section 18A of the SC/ST Act and its 2018 amendment to be maintained. They also declared the case of Kashinath Mahajan and its effects to be null and void. The court says that case is liable for adding burden to the people of the above mentioned community unnecessarily. it's like adding more season in an already prepared food.

The court added more about the preliminary inquiry which may only be conducted by the supply laid down by the Lalita Kumari vs State of UP. In other words preliminary inquiry can only be wiped out certain cases only.

As for the anticipatory bail, the court states that it can't be granted under the provisions of the mentioned act. However, if need be the anticipatory bail are often granted within the special case and not in every cases. The anticipatory bail can only tend when there's no clear written everywhere the walls of the SC/ST Act.

The court expresses the importance of equality of all citizens over the sovereign. within the times, Casteism benevolently plays a profound role within the division of society. it's just like the ancient norms going buddy-buddy with the British's divide and rule policy. Further division will cause the fracture of the society and it could even destabilise the whole country. Thus it's

important for the citizens to point out camaraderie towards each other while also prioritising the private liberties of the citizens. This way, the society will progress forward and fulfill the needs of a civil and just society given by the sacred book that's the Constitution of India.

Lastly the court observed that the appointing authority's approval will cause the arrest if the accused turns to be an employee . If the accused is revealed to be the non governmental servant then the Senior of Supritendant Police are going to be the one who can make these arrests.

## References

1. *PRATHVI RAJ CHAUHAN vs. UNION OF INDIA*. (n.d.). Latest Laws.  
<https://www.latestlaws.com/latest-caselaw/2020/february/2020-latest-caselaw-139-sc/>
2. admin. (2020, September 10). *Prathvi Raj Chauhan v. Union of India: Case Analysis*. Our Legal World. <https://www.ourlegalworld.com/prathvi-raj-chauhan-v-union-of-india-case-analysis/>
3. *Case Summary: Prathvi Raj Chauhan v. Union of India*. (2020, July 6). LawLex.org.  
<https://lawlex.org/lex-bulletin/case-summary-prathvi-raj-chauhan-v-union-of-india/24395>