[2017] 6 S.C.R. 711

STATE OF BIHAR AND OTHERS ETC. A

v.

ANIL KUMAR AND OTHERS ETC.

(Civil Appeal Nos. 4397-4400 of 2017)

MARCH 23, 2017 B

[JAGDISH SINGH KHEHAR, CJI, DR. D. Y. CHANDRACHUD AND SANJAY KISHAN KAUL, JJ.]

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss.9, 23 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 – r.7 – Central Government in exercise of rule making power vested u/s. 23, SCST ACt framed 1995 Rules wherein r.7 vested the investigative authority, for offences committed under SCST Act with an officer not below the rank of a DSP – However, appellant-State in exercise of power vested in it u/s.9, SCST Act issued a notification allowing the investigative process to be carried by officers three ranks below the rank of DSP, namely, through officers/officials holding the ranks of Inspector, Sub-Inspector and Assistant Sub-Inspector of Police – Notification challenged contending that it was ultra vires *the provisions of SCST Act as also contrary to r.7 of 1995 Rules – High Court upheld the validity of the impugned notification – On appeal, held: S.9 of SCST Act extended the power of arrest, investigation and prosecution, to all officers as would be entitled to carry out the said responsibilities, under CrPC – In addition, it further authorized the State Government to delegate the power of investigation (in addition to, the power of arrest, and of prosecution) in respect of offences under the SCST Act, "... to any officer of the State Government ...", as the State Government may consider "necessary" – Thus, the power vested with the State Government u/s. 9 was clearly expansive and was intended to enlarge the zone of arrest, investigation and prosecution, to officers/officials in addition to those authorised to do so under CrPC – Therefore, the power of delegation was not limited to police personnel only, but extended to any officer of the State Government, who may or may not belong to the Police Department – The said power was given to the State* C D E F G H

A *Government through a non-obstante clause and could be exercised irrespective of the provisions of CrPC and even the parent SCST Act itself – Impugned notification upheld – Code of Criminal Procedure, 1973.*

Scheduled Castes and Scheduled Tribes Rules, 1995 – r.7 –
B *Validity of – Held: In view of serious and harsh consequences emerging from any violation of the provisions of SCST Act, the Central Government in exercise of its rule making authority was fully competent and justified, in requiring that the investigative process be conducted by an officer not below the rank of a DSP –*
C *The power exercised by Central Government was within the framework of authority vested in it – Thus, exercise of such authority, by Central Government, cannot be assailed on the grounds of competence or legitimacy – r.7 held to be valid.*

Administrative Law – 1995 Rules framed by Central
D *Government u/s.23 of the parent Act wherein r.7 vested investigative authority for offences committed under the said Act – State Government exercising power u/s.9 of the parent Act issued notification relaxing the said provision made by r.7 of 1995 Rules – Permissibility of – Held: A provision made under a rule, i.e. r.7 cannot negate a right extended through the parent legislation i.e.*
E *by way of s.9 – The power vested with the State Government, through a non obstante clause u/s.9, cannot be neutralized by any rule framed u/s.23, SCST Act – Thus, the* non obstante *allowed the State Government to exercise the power conferred on it irrespective of the provisions of the parent Act or rules framed thereunder.*

F **Disposing of the appeals, the Court**

HELD: 1. In view of the rule making authority, and the seriousness attached to the offences contemplated under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SCST Act') and the policy
G **depicted through the legislative intent expressed therein, as also, the harsh consequences emerging from any violation of the provisions of the 'SCST Act', the Central Government was fully competent and justified in exercise of its rule making authority, in requiring that the investigative process be conducted by an officer not below the rank of a Deputy Superintendent of Police.**
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The Central Government had the jurisdiction of framing rules, and the Central Government had exercised its jurisdiction within the framework of the authority vested in it. Therefore, the validity of Rule 7 of the Scheduled Castes Scheduled Tribes Rules, 1995 ('SCST Rules') is upheld. [Para 12] [723-D-E]

2.1 In view of the scheme which was provided for by the legislature, in dealing with offences under the 'SCST Act', at the time of introduction and commencement of the provisions of the `SCST Act', Section 9 of the `SCST Act' extended the power of arrest, investigation and prosecution, to all officers as would be entitled to carry out the aforesaid responsibilities, under the Code of Criminal Procedure. And as such, when the provisions of the `SCST Act' came to be worked out, at the outset, police personnel only, including those holding the rank(s) of Inspector, Sub-Inspector and Assistant Sub-Inspector, exercised the above powers. All these police personnel, were authorised by Section 9 of the 'SCST Act', to be a part of the investigative process. In addition, under Section 9, a State Government was authorized, to delegate the power of investigation (in addition to, the power of arrest, and of prosecution), in respect of offences under the `SCST Act', "... to any officer of the State Government ...", as the State Government may consider "necessary", "...for the prevention of and for coping with any offence..." under the `SCST Act'. The power vested with the State Government, under Section 9 of the 'SCST Act', was therefore clearly expansive, and was intended to enlarge the zone of arrest, investigation and prosecution, to officers/officials in addition to those authorised to do so under the Code of Criminal Procedure. The power conferred on a State Government under Section 9(1)(b), allowed the State Government to confer the power "... on any officer of the State Government ...". Thus, the power of delegation was not limited to police personnel only, but extended to any officer of the State Government, who may or may not belong to the Police Department. [Para 14] [724-D-H; 725-A-B]

2.2 It is also necessary to take note of the legislative intent expressed in Section 9, in that, it extended to the State Government the above discretionary authority. The State Government was afforded the discretion to vest with "... any

A officer of the State Government ..." the power of arrest, investigation and prosecution, by augmenting the zone provided for through a *non obstante* clause. Obviously therefore, the right to delegate such powers of arrest, investigation and prosecution, vested with the State Government, was irrespective of the
B provisions of the Code of Criminal Procedure. Not only that, the above power could be exercised, irrespective of the provisions of the parent 'SCST Act' itself. It is therefore apparent that Section 9 was aimed at and provided for an effective mechanism for arrest, investigation and prosecution, in addition to the provisions in place. In case the State Government found the same as necessary
C and expedient, for an effective implementation of the provisions of the 'SCST Act', it had the right and the responsibility to vest the power of arrest, investigation and prosecution, in additional personnel. Stated differently, in case the State Government was satisfied, that the officers vested with such powers, in consonance with the provisions of the 'SCST Act', were insufficient to carry
D out the purposes of the `SCST Act', the State Government could extend the power, to those not so expressly provided for. Accordingly, in case of inadequacy, to deal with the provisions of the 'SCST Act', the State Government was at liberty to further delegate the power of arrest, investigation and prosecution to
E "...any officer of the State Government ...", for the fulfillment of the purposes of the `SCST Act'. [Para 15] [725-C-G]

3. Whether the State Government, could in its discretion, in furtherance of the power vested with it under Section 9 of the 'SCST Act', relax the provision made by Rule 7 of the 'SCST
F Rules'? The rightful approach to this issue would emerge from the query, whether a provision made under a rule, can negate a right extended through the parent legislation? The answer is in the negative. Section 9(1)(b) confers on the State Government, the power to further delegate the power of arrest, investigation and prosecution. This power vested with the State Government,
G through a *non obstante* clause, cannot be neutralized by any rule framed under Section 23 of the 'SCST Act'. The *non obstante* clause, would allow a State Government to exercise the power conferred on it – irrespective of the provisions of the 'SCST Act', and also irrespective of the provisions of the 'SCST Rules', to

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delegate to "... any officer of the State Government ...", the power of arrest, investigation and prosecution. Thus, the *non obstante* clause, extended to the State Government, the power to overlook and provide differently, from the position contemplated under the 'SCST Act', as well as the 'SCST Rules'. The issue whether the State Government was competent to relax the above rule, requiring that investigation be not carried out, by an officer below the rank of Deputy Superintendent of Police, and thereby, extend the power of investigation to officers below the rank of Deputy Superintendent of Police, is therefore answered in the affirmative. Thus, the notification issued by the State Government in exercise of the power vested in it under Section 9(1)(b) of the 'SCST Act' is upheld. [Paras 17, 18 and 19] [726-D; 727-A-F]

H.N. Rishbud and Inder Singh v. The State of Delhi **[1955] 1 SCR 1150**; *Union of India v. T. Nathamuni* **(2014) 16 SCC 285 : [2014] 12 SCR 297**; *M.C. Sulkunte v. State of Mysore* **(1970) 3 SCC 513**; *Muni Lal v. Delhi Admn.* **(1971) 2 SCC 48 : [1971] Suppl. SCR 276**; *State of Haryana v. Bhajan Lal* **1992 Suppl. (1) SCC 335 : [1990] 3 Suppl. SCR 259**; *A.C. Sharma v. Delhi Admn.* **(1973) 1 SCC 726 : [1973] 3 SCR 477 – referred to.**

Case Law Reference

[1955] 1 SCR 1150	**referred to**	**Para 22**
[2014] 12 SCR 297	**referred to**	**Para 22**
(1970) 3 SCC 513	**referred to**	**Para 22**
[1971] Suppl. SCR 276	**referred to**	**Para 22**
[1990] 3 Suppl. SCR 259	**referred to**	**Para 22**
[1973] 3 SCR 477	**referred to**	**Para 22**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4397-4400 of 2017.

From the Judgment and Order dated 18.01.2011 and 20.01.2011 of the High Court of Patna in CWJC Nos. 15490/2008, 7489/2006, 16407/2007 and 18736/2008

A WITH

C. A. No. 4401 of 2017.

Nagendra Rai, Sr. Adv., Chandan Kumar (for Gopal Singh), Santosh Mishra, R. R. Dubey, Jasbir Bidhuri (for Ms. Madhu Sikri), Alok Kumar, Advs. for the appearing parties.

B

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, CJI 1. Leave granted in the special leave petitions.

2. The question that arises for consideration, emerges from the C impugned order, dated 18/20.01.2011, passed by the High Court of Patna. It pertains to the validity of the investigative process, under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SCST Act').

3. In order to demonstrate the seriousness of the issue, learned D counsel in Civil Appeal arising from SLP(C) No. 7317 of 2017 (filed by an accused before this Court) invited our attention to Section 3(2) of the 'SCST Act', which is extracted hereunder:

"3. Punishments for offences of atrocities.-

E (1) ....

(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 F 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 G 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

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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 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;

(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

A be less than one year but which may extend to the punishment provided for that offence."

(emphasis is ours)

As a matter of comparison, our attention was also drawn to Section 201 of the Indian Penal Code, which is reproduced below:

B "201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal C punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.— shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which D may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, E and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one- F fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

(emphasis is ours)

It was submitted, that the consequences under the 'SCST Act' are far more serious and drastic, than the consequences contemplated G under the Indian Penal Code. It was therefore, the vehement contention of the learned counsel for the appellant – accused, that the provisions of the 'SCST Act', insofar as the investigative process is concerned, should be interpreted strictly (- and not liberally). And for the above purpose, it was submitted, that the investigative process needed to be placed in the H hands of the highest authority possible, in consonance with the rules

framed by the Central Government. Any determination to the contrary, it was pointed out, would be contrary to the legislative intent, as well as, the serious and harsh consequences, of any violation of the provisions of the 'SCST Act'. A

4. Before we endeavour to deal with the controversy in hand, it would be appropriate to extract hereunder, the conclusions drawn by the High Court, in the impugned order. The final determination of the High Court was rendered in the following words: B

> "For the aforesaid reasons, we declare that the impugned Notification dated 3rd June, 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned notification dated 3rd June, 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August, 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy Superintendent of Police, on or after 9th August, 2008 will be valid although the offence in question may have been committed prior to 9th August, 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e., 31st March 1995 and prior to 9th August 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June 2002 published on 9th August, 2008." C D E

5. In order to demonstrate the effect of the directions contained in the impugned order (extracted above), it would be relevant to mention, that the Central Government, is vested with the rule making authority, under Section 23 of the 'SCST Act'. The above provision is reproduced hereunder: F

> "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. G
>
> (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 H

A 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."

B (emphasis is ours)

6. The Central Government indeed framed rules, namely, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the 'SCST Rules') in exercise of its powers under Section 23. Rule 7 of the aforesaid rules, clearly vested the investigative authority, for offences under the 'SCST Act', with an officer – not below the rank of a Deputy Superintendent of Police. Rule 7 of the 'SCST Rules' is reproduced below:

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"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.

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(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).

F

G (3)

(2A) 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.

(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name

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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."

(emphasis is ours)

A perusal of the Rule 7 reveals, that the investigating authority, for offences under the 'SCST Act', was expressly vested with a police officer, not below the rank of a Deputy Superintendent of Police.

7. The controversy in the present set of cases, arose out of a notification issued by the State of Bihar. The instant notification was issued by the State Government, in exercise of power vested with it under Section 9 of the 'SCST Act'. Section 9 aforesaid, is reproduced below:

"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)."

(emphasis is ours)

A 8. The aforesaid notification was issued on 03.06.2002. The notification is available on the record of the appeals preferred by the State Government, as Annexure P1. The notification (– dated 03.06.2002), was published on 09.08.2008. It read as under:

> "No. - 3/YA-80-26/2002-H(p)-6104 – In exercise of the powers
> B conferred by Section 9(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No. 33 of 1989) and having regards to the number of cases filed under this Act, the State Government authorises all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant Sub-
> C Inspector of Police to investigate the cases filed under this Act within the State of Bihar with effect from 31st March 1995, the date of coming into force of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 made under this Act."
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> (emphasis is ours)

D A perusal of the notification extracted above reveals, that Rule 7 of the 'SCST Rules' (framed by the Central Government), which required all investigations in matters arising under the 'SCST Act', to be carried out by an officer not below the rank of Deputy Superintendent of Police, was virtually done away with. The notification in contrast, and as a
E matter of obvious inconsistency, allowed the investigative process (– under the 'SCST Act') to be carried by officers three ranks below the rank of Deputy Superintendent of Police, namely, through officers/officials holding the ranks of Inspector, Sub-Inspector and Assistant Sub-Inspector of Police.

F 9. In the appeal preferred by the appellant – accused, the first part of the conclusions drawn by the High Court, in the impugned order, has been assailed. It was the contention of learned counsel, that the notification dated 03.06.2002, was *ultra vires* the provisions of the 'SCST Act', and was also contrary to Rule 7 framed thereunder – and as such,
G was also violative of the 'SCST Rules'.

10. It would be relevant to record, that the striking down of the retrospective effect, given to the notification dated 03.06.2002 – "...with effect from 31st March 1995...", by the High Court, was not expressly assailed, by either of the sides.

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11. The second part of the conclusions drawn by the High Court in the impugned order, has been assailed by the State of Bihar, in the connected appeals. It would be pertinent to mention, that the High Court in its conclusions, also recorded, that such of the investigations as were conducted by a police officer below the rank of Deputy Superintendent of Police, after the publication of the 'SCST Rules' (on 31.03.1995), and prior to the date of publication of the notification dated 03.06.2002 (i.e. prior to 09.08.2008), would "not" be treated as valid, and consequential prosecutions conducted in furtherance of such investigative processes (conducted by a police officer, below the rank of (Deputy Superintendent of Police), would be a nullity.

12. The first question which arises for our consideration is, with reference to the validity of Rule 7 of the 'SCST Rules', which was issued by the Central Government, in exercise of the power vested with it, under Section 23 of the 'SCST Act'. Having given our thoughtful consideration to the rule making authority, and the seriousness attached to the offences contemplated under the provisions of the 'SCST Act', and the policy depicted through the legislative intent expressed therein, as also, the serious and harsh consequences emerging from any violation of the provisions of the 'SCST Act', we are satisfied, that in the exercise of its rule making authority, the Central Government was fully competent and justified, in requiring that the investigative process be conducted by an officer not below the rank of a Deputy Superintendent of Police. The Central Government had the jurisdiction of framing rules, and the Central Government had exercised its jurisdiction within the framework of the authority vested in it. We therefore hereby affirm the validity of Rule 7 of the 'SCST Rules'.

13. The next issue that arises for consideration is, whether the notification issued by the State of Bihar dated 03.06.2002, in exercise of the power vested in the State Government, under Section 9 of the 'SCST Act', can be considered to have been exercised in breach of, or in excess of the power delegated to the State Government. It was the contention of the learned counsel for the appellant – accused, that Section 9 contemplates the possibility of extending the powers of arrest, investigation and prosecution (– of persons, alleged to have violated the provisions of the 'SCST Act'), in addition to those already provided for under the Code of Criminal Procedure. Furthermore, as such, it was submitted, that it was not open to the State Government, in exercise of

A powers vested with it (under Section 9 of the 'SCST Act'), to vest such powers of arrest, investigation and prosecution, with police officer(s) below the rank of the police officer postulated and provided for under the 'SCST Rules'. It was submitted, that under Rule 7 of the above rules, the powers of arrest, investigation and prosecution are mandated to be exercised by a police officer, not below the rank of Deputy B Superintendent of Police. It was therefore submitted, that extension of the investigating power, to a police officer/official below the expressly postulated rank, was not permissible. In order to support his above assertion, learned counsel for the appellant – accused, also drew our attention to sub-section (2), of Section 9, of the 'SCST Act', and on the C basis thereof contended, that from a plain and simple interpretation of the language adopted by the legislature, in sub-section (2) of Section 9, it would emerge, that the additional conferment of authority (with reference to arrest, investigation and prosecution), could only be extended to an officer, other than a police officer.

D 14. In order to appreciate the contention of learned counsel for the appellant – accused, it is imperative for us to keep in mind the scheme, which was provided for by the legislature, in dealing with offences under the 'SCST Act'. In our considered view, at the time of introduction and commencement of the provisions of the 'SCST Act', Section 9 of the 'SCST Act' extended the power of arrest, investigation and prosecution, E to all officers as would be entitled to carry out the aforesaid responsibilities, under the Code of Criminal Procedure. And as such, it needs to be appreciated, that when the provisions of the 'SCST Act', came to be worked out, at the outset, police personnel only, including those holding the rank(s) of Inspector, Sub-Inspector and Assistant Sub-Inspector, F exercised the above powers. All these police personnel, were authorised by Section 9 of the 'SCST Act', to be a part of the investigative process. In addition, under Section 9 aforementioned, a State Government was authorized, to delegate the power of investigation (in addition to, the power of arrest, and of prosecution), in respect of offences under the 'SCST Act', "... to any officer of the State Government ...", as the State G Government may consider "necessary", "...for the prevention of and for coping with any offence..." under the 'SCST Act'. The power vested with the State Government, under Section 9 of the 'SCST Act', was therefore clearly expansive, and was obviously intended to enlarge the zone of arrest, investigation and prosecution, to officers/officials in addition

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to those authorised to do so under the Code of Criminal Procedure. The power conferred on a State Government under Section 9(1)(b), allowed the State Government to confer the power "... on any officer of the State Government ...". The power of delegation was not limited to police personnel only, but extended to any officer of the State Government, who may or may not belong to the Police Department. It is therefore not possible for us to accept the contention advanced by the learned counsel for the appellant-accused, founded on sub-section (2) of Section 9 of the 'SCST Act'.

15. It is also necessary to take note of the legislative intent expressed in Section 9, in that, it extended to the State Government the above discretionary authority. The State Government was afforded the discretion to vest with "... any officer of the State Government ..." the power of arrest, investigation and prosecution, by augmenting the zone provided for through a *non obstante* clause. Obviously therefore, the right to delegate such powers of arrest, investigation and prosecution, vested with the State Government, was irrespective of the provisions of the Code of Criminal Procedure. Not only that, the above power could be exercised, irrespective of the provisions of the parent 'SCST Act' itself. It is therefore apparent, that Section 9, was aimed at, and provided for, an effective mechanism for arrest, investigation and prosecution, in addition to the provisions in place. In case the State Government found the same as necessary and expedient, for an effective implementation of the provisions of the 'SCST Act', it had the right and the responsibility, to vest the power of arrest, investigation and prosecution, in additional personnel. Stated differently, in case the State Government was satisfied, that the officers vested with such powers, in consonance with the provisions of the 'SCST Act', were insufficient to carry out the purposes of the `SCST Act', the State Government could extend the power, to those not so expressly provided for. Accordingly, in case of inadequacy, to deal with the provisions of the 'SCST Act', the State Government was at liberty to further delegate the power of arrest, investigation and prosecution, to "... any officer of the State Government ...", for the fulfillment of the purposes of the `SCST Act'.

16. We will now, attempt to decipher and understand, the intent of the Central Government, while framing Rule 7 of the 'SCST Rules'. Needless to mention, that on account of the harsh consequences of the offences contemplated under the provisions of the `SCST Act', under

A the 'SCST Rules', the Central Government considered it expedient to vest the investigative power, for offences under the 'SCST Act' to officers, not below the rank of a Deputy Superintendent of Police. This determination at the hands of the Central Government, had an all India effect, and was not State specific. Therefore, when the provisions of the 'SCST Rules' were drawn, it is necessary to visualise, that the same B were framed by the Central Government, for their implementation at the pan-India level. The Central Government, keeping in mind the harsh effect of any violation, of the provisions of the 'SCST Act', considered it expedient to require investigation to be carried out, by an officer not below the rank of Deputy Superintendent of Police. This exercise of C authority, by the Central Government, cannot be assailed on the grounds of competence or legitimacy (as already concluded above). We, therefore, find no infirmity in the determination of the Central Government in vesting the investigative power, with reference to offences committed under the 'SCST Act', with an officer not below the rank of Deputy Superintendent of Police. It is therefore, that we express, and reiterate, D our affirmation to the validity of Rule 7 of the 'SCST Rules'.

17. The question however is, whether the State Government, could in its discretion, in furtherance of the power vested with it under Section 9 of the 'SCST Act', relax the provision made by Rule 7 of the 'SCST Rules'.

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18. It is imperative to emphasise, that as against the national character of the rule making power vested with the Central Government under Section 23 of the 'SCST Act', the delegated power contemplated under Section 9 of the 'SCST Act', is State specific. The power exercised by a State, keeps in mind the circumstances prevailing in the concerned F State. The legitimacy and validity of the exercise of the instant delegated power (vested in a State Government), has therefore to be determined, with reference to the peculiar facts and circumstances prevailing in an individual State. In exercise of the power vested under Section 9 of the 'SCST Act', each individual State Government, was vested with the G authority, to extend to officers other than the officers contemplated under the provisions of the 'SCST Act', powers of arrest, investigation and prosecution. A reasonable and legitimate understanding of the scope of the power of arrest, investigation and prosecution, will necessarily require a conjoint reading of the provisions of the 'SCST Act' and the 'SCST Rules'. After the promulgation of the 'SCST Rules', undoubtedly, the

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Central Government provided for investigation, at the hands of an officer not below the rank of a Deputy Superintendent of Police. But, the rightful approach to the issue in hand would emerge from the query, whether a provision made under a rule, can negate a right extended through the parent legislation? The answer obviously has to be in the negative. This simple reasoning, unfolds the answer of the issue being debated. In our considered view, Section 9(1)(b) confers on the State Government, the power to further delegate the power of arrest, investigation and prosecution. This power vested with the State Government, through a *non obstante* clause, cannot be neutralized by any rule framed under Section 23 of the 'SCST Act'. The *non obstante* clause, would allow a State Government to exercise the power conferred on it – irrespective of the provisions of the 'SCST Act', and also irrespective of the provisions of the 'SCST Rules', to delegate to "... any officer of the State Government ...", the power of arrest, investigation and prosecution. We are of the view, that the *non obstante* clause, extended to the State Government, power to overlook and provide differently, from the position contemplated under the 'SCST Act', as well as the 'SCST Rules'. The issue whether the State Government was competent to relax the above rule, requiring that investigation be not carried out, by an officer below the rank of Deputy Superintendent of Police, and thereby, extend the power of investigation to officers below the rank of Deputy Superintendent of Police, has therefore to be answered in the affirmative.

19. Having concluded as above, we are satisfied to uphold, not only Rule 7 of the 'SCST Rules', but also the notification dated 03.06.2002, issued by the State Government, in exercise of the power vested in it under Section 9(1)(b) of the 'SCST Act'. Accordingly, we find no merit in the challenge raised on behalf of the appellant-accused, to the notification dated 03.06.2002.

20. We also find merit in the conclusion drawn by the High Court to the effect that the operative date of implementation of the notification dated 03.06.2002, would be the date of the publication of the above notification (i.e., 09.08.2008). Firstly, because there is no challenge to the above conclusion recorded by the High Court. And secondly, the instant exercise of power, cannot have retrospective effect, because Section 23 of the 'SCST Act', does not vest in the Central Government with the authority to exercise its rule framing authority, with retrospective effect.

21. With the conclusions recorded in the foregoing paragraphs, we have dealt with the submissions advanced at the hands of the learned counsel for the appellant – accused.

22. We shall now deal with the challenge raised by the learned senior counsel, representing the State of Bihar. As already noticed hereinabove, the second conclusion drawn by the High Court was, that of investigation carried out, by police officers below the rank of a Deputy Superintendent of Police, after 31.03.1995 and prior to 09.08.2008, would stand vitiated. In order to assail the aforesaid conclusion, learned counsel first drew our attention to Section 465 of the Code of Criminal Procedure. The same is extracted hereunder:

> "465. Finding or sentence when reversible by reason of error, omission or irregularity. – (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
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> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."
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> (emphasis is ours)

Based on the aforesaid provision, it was the submitted, that an omission or irregularity with reference to investigation, would not have the effect of negating the prosecution itself, unless it is further shown, that the same had occasioned a failure of justice. In order to support his above contention, learned counsel placed reliance on H.N. Rishbud and Inder Singh vs. The State of Delhi, (1955) 1 SCR 1150. The questions that arose for consideration in the above judgment, were expressed in the following manner:

"On the arguments urged before us two points arise for consideration. (1) Is the provision of the Prevention of Corruption Act, 1947, enacting that the investigation into the offences specified therein shall not be conducted by any police officer of a rank lower than a Deputy Superintendent of Police without the specific order of a Magistrate, directory or mandatory.

(2) Is the trial following upon an investigation in contravention of this provision illegal."

In order to invite the Court's attention to the conclusion(s) drawn in the above judgment (rendered by a three Judge Division Bench), our pointed attention was drawn to the following position, recorded in the above judgment:

"The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of section 190(1) are conditions

requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

"Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice".

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It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the code as appears from section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case."

(emphasis supplied)

It was also the pointed contention of learned counsel, that the legal position, as has been expressed in the above judgment, has remained unaltered. In this behalf, our attention was drawn to a recent judgment of this Court in Union of India vs. T. Nathamuni (2014) 16 SCC 285, wherein the factual issue arose for consideration:

"13. The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorized by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by the Sub-Inspector, CBI who, after completion of investigation, submitted the charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting the Sub- Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of the investigation does not vitiate the result unless a miscarriage of justice has been caused thereby."

(emphasis supplied)

This Court in the above judgment, while placing reliance on M.C. Sulkunte vs. State of Mysore (1970) 3 SCC 513; Muni Lal vs. Delhi Admn. (1971) 2 SCC 48; State of Haryana vs. Bhajan Lal 1992 Supp (1) SCC 335 and A.C. Sharma vs. Delhi Admn. (1973) 1 SCC 726, concluded as under:

"19. As discussed earlier, the High Court erred in overlooking the gist of the order of the Special Judge permitting the Sub-Inspector to investigate. Further, having regard to the fact that no case of prejudice or miscarriage of justice by reason of investigation by the Sub-Inspector of Police is made out, the order of the High Court cannot be sustained in law. For the reasons stated above, these appeals are allowed and the order passed by the High Court is set aside. The concerned Court shall now act with utmost expedition."

(emphasis supplied)

23. Having given a thoughtful consideration, to the contention advanced on behalf of the appellant – State of Bihar, we are of the view, that the legal position as has been declared by this Court, is in complete consonance and conformity with the postulation contained in Section 465 of the Code of Criminal Procedure. This being the position, we have no hesitation in holding, that the second determination rendered by the High Court, to the extent that the investigation carried out by a police officer below the rank of a Deputy Superintendent of Police, after

A 31.03.1995 and prior to the issuance of the notification dated 03.06.2002 (on 09.08.2008), would stand vitiated, has necessarily to be set aside. In our view, the above finding could have been returned only if, the concerned Court expressed its satisfaction, that the investigation carried out, by a subordinate police officer/official, who had no authority to investigate the matter, had caused prejudice to the accused, leading to miscarriage B of justice. Since no such finding has been recorded, and since it has also not been established before this Court, that the accused had suffered such prejudice, it is not possible for us, to sustain the above conclusion, of the High Court. The same is accordingly hereby set aside.

24. Having recorded our conclusions with reference to the second C proposition, recorded in the preceding paragraph, it is necessary for us to take the issue canvassed on behalf of the State Government. In that, insofar as the facts and circumstances of the present cases are concerned, such a demonstration at the hands of the accused, will be inconsequential, inasmuch as, our having upheld the notification issued by the State D Government, under Section 9 of the 'SCST Act', a valid and legitimate investigation can "now" be carried out, even by a police officer below the rank of a Deputy Superintendent of Police. And as such, even in cases where a fresh investigation is ordered, at the present juncture, the officer/official (Inspector, Sub-Inspector, Assistant Sub-Inspector of Police) who had carried out the original investigation, would have to be E considered to be possessed of the investigative authority. As now, the investigating authorities, authorized under the 'SCST Act', would include those as have been notified by the State Government in exercise of the power vested in it under Section 9 of the 'SCST Act'. As such, no purpose would be served for any party to agitate the instant issue, seeking F re-investigation, in the facts and circumstances of the matters in hand.

25. Accordingly, the appeal filed by the appellant-accused is hereby dismissed, and the appeals filed by the State of Bihar are hereby allowed, to the extent indicated hereinabove.

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Divya Pandey Appeals disposed of.