[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 349 OF 2021

THE STATE OF GNCT OF DELHI AND OTHERS … APPELLANTS

VERSUS

PRAVEEN KUMAR @ PRASHANT … RESPONDENT

J U D G M E N T

S.V.N. BHATTI, J.

1. The instant Criminal Appeal has been tagged and taken up for hearing along with Criminal Appeal No. 348 of 2021 for the circumstances examined in both the Appeals are same. But for convenience, separate judgments are delivered.

2. On 29.04.2018, the respondent lodged a complaint before the Station House Office, P.S. Fatehpur Beri, New Delhi (for short, "the SHO"). The complaint dated 29.04.2018 narrates alleged offences under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989") against Preeti Agarwalla, Anush Agarwalla, Shikha Mundkur, Amir Pasrich, Shivani Pasrich and Ameera

Pasrich (Appellant Nos. 1 to 6, respectively, in Criminal Appeal No. 348 of 2021). On 09.05.2018, the respondent filed an application under section 156(3), read with section 200 of the Code of Criminal Procedure, 1973 (for short, "the CrPC"), before the Ld. Chief Metropolitan Magistrate, South Saket Court, to direct registration of an FIR on the complaint dated 29.04.2018.

2.1 The Respondent, on 25.05.2018, filed a Criminal Miscellaneous Application under sections 4(2) and 4(3) of the Act of 1989 before the Special Court of Shri Ajay Kumar Jain, Special Judge, New Delhi and is directed against the Special Commissioner of Police, Southern Range (for short, "Spl. CP") etc. for registering an FIR and action as deemed just and proper, is taken in accordance with the Act of 1989. In effect and substance, the subject application deals with the alleged commissions and omissions by public servants in the discharge of the duties and functions under the Act of 1989. The miscellaneous application has been numbered as C.T. No. 536/2018. To wit, the respondent impleaded the Spl. CP, the SHO, P.S. Fatehpur Beri, and Shri Anurag Das, the Ld. Metropolitan Magistrate (South), Saket Court, New Delhi, as respondents in the application under Section 4 of the Act 1989 for initiating prosecution against them. The application alleges that the public servants neglected the duties and functions assigned to them by the Act of 1989*, viz.* register an FIR on the information lodged on 29.04.2018, investigate the

allegations and take prompt and timely action, by keeping in perspective the scope and object of the Act of 1989. It would be apposite to refer to the allegations, without diminishing or diluting the grievance stated in C.T. No. 536/2018 by the sole respondent, against the public servants as precisely as possible for our consideration:

(i) The application alleges that the SHO and staff, allegedly influenced by Amir Pasrich, accused in the complaint dated 29.04.2018, refused to acknowledge the respondent's complaint dated 29.04.2018. The multiple representations said to have been made by the respondent, to all the concerned, after the purported refusal to register the complaint are stated in the application. During the proceedings, the Metropolitan Magistrate vide order dated 22.05.2018 instructed the SHO to submit an Action Taken Report, scheduling the next date of hearing of the application filed under section 156(3) of the CrPC for 19.07.2018. The respondent, after being dissatisfied with the next date of the hearing, applied for an urgent hearing. On 24.05.2018, the respondent was heard, but the Metropolitan Magistrate dismissed the request for dasti. The respondent, then, filed the application under section 4 for the registration of an FIR against the public servants.

(ii) Vide order dated 05.06.2018, the Ld. ASJ, Special Judge, Saket, disposed of the respondent's application under section 4 of the Act of 1989. The ASJ observed that in substance, the respondent's grievance

was that the Metropolitan Magistrate did not order the registration of FIR and refused to prepone the matter for filing the Action Taken Report. In this background, it is noticed, that a judicial remedy cannot be sought against the Spl. CP and SHO, P.S. Fatehpur Beri, since they are not judicial officers. The respondent, aggrieved by the rejection of prayer, filed an appeal under section 14A before the High Court of Delhi, praying to call the records of C.T. No. 536/2018 and CC No. 24/01 for perusal, citing the imminent threat of acid attack again.

3. By Order dated 05.07.2018, the Chief Metropolitan Magistrate transferred the application dated 09.05.2018 filed by the Respondent under section 156(3) read with section 200 of the CrPC from the Court of Shri Anurag Das, Metropolitan Magistrate to the Court of Shri Gaurav Gupta, Metropolitan Magistrate. On 06.07.2018, the Metropolitan Magistrate directed the Assistant Commissioner of Police (for short, "ACP") to furnish the enquiry report on the complaint dated 09.05.2018 of the respondent. On 09.07.2018, the ACP filed an Action Taken Report. By Order dated 02.08.2018, the application dated 09.05.2018 filed under section 156(3) was dismissed by the Court of Metropolitan Magistrate. The order dismissing the application was challenged in Crl.A. 817/2018 before the High Court of Delhi. Through the judgement dated 20.04.2020, the criminal appeal was allowed. The accused, aggrieved by the said judgment, filed Crl.A. No. 348/2021 in this Court. The Metropolitan

Magistrate, on the prayers for registering an FIR against the public servants, by a separate order dated 05.06.2018 in C.T. No. 536/2018, held as under:

> *"In this factual scenario, at present stage, I do not find any ground to take action u/s 4 SC/ST Act against the respondents as per memo of parties ie Spl. CP Southern Range, SHO PS Fatehpur Beri and Sh Anurag Das, Ld. MM, South. Hence, the present application stands dismissed. However, nothing in this order shall be construed as opinion over the merits of allegations levelled by the complainant against the alleged accused persons mentioned above. Application disposed off accordingly. Copy of this order be given dasti. File be consigned to record room.*
>
> *(Ajay Kumar Jain)*
> *ASJ-02 (South)*
> *New Delhi / 05.06.2018"*

4. Aggrieved by the order dated 05.06.2018, the respondent, on 06.06.2018, filed Criminal Appeal No. 667/2018 before the High Court of Delhi. The Commissioner of Police, Delhi, the Spl. CP, the SHO, P.S. Fatehpur Beri and Shri Anurag Das, Metropolitan Magistrate-01, (South) Saket Court, New Delhi were added as respondents in the appeal. The grounds of challenge were that the dereliction or negligence of the named public servants was deliberate and willful, facilitated the accused in the main complaint to go scot-free and also defeated the objective of the Act of 1989. The grounds of challenge are adverted to hereunder:

> *"(i) The public servants wilfully ignore the statutory duty and functions under the Act 1989.The dictum in Lalitha Kumari v. State of Uttar Pradesh was not followed, while examining the complaint dated 29.04.2018.*
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> *That on 29-04-2018 at 12.30pm the appellant went to register his police complaint in P.S Fatehpur Beri the police officials disgracefully refused to recieve and register the complaint and disgracefully turned away the complainanant in the evening the*

appellant again tweets to the Hon'ble PM and others mentioning that to register his complaint.
*That because the public servants, SHO P.S Fatehpur Beri, Spl CP Southern Range and commissioner of Police-as well as Shri Anurag Das Ld. N.M.01 (South) Saket Court wilfully neglected their duties- expected to be performed under section 4(1) & 4(2) of the SC &ST (**sic** of Atrocities) Act 1989 as amended up to date, The appellant filed a complaint case 536/2018 accordingly before Shri Ajay Kumar Jain,Ld. ASJ-02(South) Spl Judge Saket Court New Delhi on 25- 05-2018 which came up for hearing on 2.6- 05-2 018, On 26-05-2018 matter was heard by Shri Ajay Kr. Jain Ld. ASJ and initially gave a date for 9th July and only after intensive pleading from the counsel the date was fixed for 4th June for calling of ATR. These acts in fine refer to the alleged commissions and ommissions under the Act 1989 by the public servants."*

5. Through the impugned judgment, the criminal appeal filed by the respondent stood allowed, and the operative portion reads thus:

*"**57.** This Court is conscious of the fact that the complaint in question was dated 29.04.2018, however, as per the Hon'ble Supreme Court in case of Dr. Subhash Kashinath Mahajan (supra) dated 20.03.2018, the Police was not supposed to register FIR straightway, if allegations are falling under section SC/ST Act, but after enquiry if prima facie case is made out. The said directions were in operation till Parliament had brought amendment and said directions were reviewed on 010.10.2019 01.10.2019 by the Hon'ble Supreme Court. As per directions dated 20.03.2018 of the Supreme Court in Dr. Subhash Kashinath Mahajan (supra), preliminary enquiry must be conducted within 7 days, whereas in the present case, enquiry report was submitted by the ACP on 18.06.2018 i.e. after 59 days.*

***58.** In view of above facts, it is not in dispute that during the sun-set period, on the allegations falls under SC/ST Act, preliminary enquiry was to be conducted but for other allegations and there was no embargo to register FIR. On perusal of complaint dated 29.04.2018, there are allegations falling the other offences of IPC. But, the then SHO of Police Station Fatehpur Beri failed to register FIR for other offences, not under SC/ST Act.*

***59.** Regarding allegations falling under SC/ST Act, the SHO of Police Station Fatehpur Beri was duty bound to entertain complaint and perform his duty required to be performed under section 4(1) and 4(2) of the SC/ST Act, however, he failed to do so. Moreover, the courts below have ignored the above facts.*

***60.** In view of above discussion and settled legal position of law and statute, this Court is of the view that the then SHO of Police Station Fatehpur Beri is liable to be prosecuted under section 4(2)(b) of SC & ST (Prevention of Atrocities) Act, 1989 as amended up-to-date.*

> ***61.*** *Accordingly, the impugned order dated 05.06.2018 is hereby set aside and Trial Court is directed to initiate proceedings against the then SHO of Police Station Fatehpur Beri as per law, however, no coercive steps shall be taken against the above said alleged accused.*
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> ***62.*** *In view of above, present appeal is allowed and disposed of.*
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> ***63.*** *This order be transmitted to learned counsel/representative for the parties.*
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> ***64.*** *A copy of this order be transmitted to the learned Trial Court for information and compliance.*
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> ***CRL.M.As.11836/2018 & 2660-6112/2020***
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> ***65.*** *In view of the order passed in the present petition, these applications have been rendered infructuous and are accordingly, disposed of."*

6. The State and the respondents in Criminal Appeal No. 667 of 2018, hence, filed the instant appeal.

7. The Ld. Additional Solicitor General, Ms. Aishwarya Bhati, appearing for the Appellants contends that the direction in the impugned judgment, calling upon the SHO to register FIR against the then SHO, P.S. Fatehpur Beri, is illegal, untenable and contrary to the mandate of section 4 of the Act of 1989. The direction to initiate proceedings against the then SHO of P.S. Fatehpur Beri ignores the inbuilt protection of section 4 available to a public servant.

7.1 It is vehemently argued that before initiating the proceedings, the viewpoint of the then SHO, P.S. Fatehpur Beri, on the alleged dereliction of duty or function should have been enquired into.

7.2 There has been a denial of opportunity to the public servant and in essence, the principles of natural justice are also violated.

7.3 The mechanism under section 4 of the Act of 1989 is firstly to undertake an administrative enquiry by the competent authority and arrive at a recommendation for initiating legal proceedings against the negligent public servant. In the case on hand, the application was moved before the court, and the Trial Court did not find a reason to order a departmental enquiry or initiate proceedings against the public servants named in CT. No. 536/2018. However, the High Court of Delhi examined each one of the dates and events narrated in the applications and recorded a finding on the public servant, resulting in a direction to initiate proceedings against the then SHO, P.S. Fatehpur Beri. The procedure followed is contrary to section 4 of the Act of 1989. Ms. Aishwarya Bhati made a few submissions on merits against the impugned judgment. For the present consideration, we are of the view that the contentions on merits, if need be, are adverted to and decided.

8. Mr. Kapil Nath Modi, Ld. Counsel appearing for the sole respondent argues that the appeal suffers from serious suppressions on material facts and the grounds raised on violation of principles of natural justice by the Court below is a convenient plea as well as a concocted version pressed before this Court only to avoid facing criminal proceedings for dereliction of duty. In the instant appeal, the public servants have deliberately flouted the duties and functions under the Act of 1989. Enough prevarications and suppressions are stated while invoking the jurisdiction of the Court.

Section 4 of the Act of 1989 is intended to make the public servants act and react to a complaint received under the Act of 1989 strictly in accordance with the law. The initiation of criminal proceedings through the impugned Judgment is justified, and no exception could be stated. He prays for dismissing the appeal.

9. In the accompanying Criminal Appeal No. 348 of 2021, filed by the accused, we have referred to the series of complaints and counter-complaints by the athletes, the administrator of OREA and the Respondent herein. We have referred to a few reported judgments of this Court on the object achieved by the Act of 1989. For brevity, these contentions are not adverted to in the instant judgment.

10. We have perused the record and noted the rival contentions canvassed by the Counsel appearing for the parties.

10.1 In the above narrative, this Court formulates and addresses the following two points:

A. Whether initiating proceedings against the then SHO, P.S. Fatehpur Beri by the impugned judgment conforms to the requirements of section 4 of the Act of 1989?

B. Whether on merits and in the circumstances of the case, the impugned direction to initiate proceedings against the then SHO is justified and tenable?

11. After careful consideration of the arguments and the record, we are of the view that the examination of Point B would be dependent on the outcome of Point A.

12. Section 4 of the Act of 1989 has been substituted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act No. 1 of 2016). To appreciate the change in the procedure, for taking cognizance of an offence punishable for the negligence of duty by a public servant, the unamended and amended section 4 are excerpted here under:-

Section 4, Act of 1989	**Section 4, Act of 1989 after amendment by Act No. 1 of 2016**
4. Punishment for neglect of duties- 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, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.	**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 in formant;

	(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.

13. Section 4(1), interpreted by the golden rule, has the following facets:

i. *Firstly,* section 4(1) is meant to operate against a public servant, and the threshold requirement is that the public servant shall not be a member of a Scheduled Caste or a Scheduled Tribe;

ii. *Secondly,* such a public servant willfully neglects his duties, as mandated under the Act of 1989 and the Rules of 1995.

13.1 Section 4(2) has set out the duties for performance by a public servant and sub-section (2) uses the word ‘include’. The word ‘include’ is a phrase of extension and not of restrictive connotations. The word ‘include’ is not equivalent to ‘mean’. The word ‘include’ is very generally

used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. [*See* ***Dilworth v. Commissioner of Stamps***[1]***; South Gujarat Roofing Tiles Manufacturers Association & Anr. v. State of Gujarat & Anr.***[2]***; Dadaji alias Dina v. Sukhdeobabu & Ors.***[3]*].*

13.2 The words and phrases in sub-section (2) must be construed as comprehending not only such acts as they signify according to their natural import but also those which the interpretation clause declares that they shall include. In the case on hand, the dispute is not on whether the alleged commission or omission comes within any of the clauses of sub-section (2) of section 4. The consideration is on the interpretation of the proviso to sub-section (2) of section 4 and consequent cognizance under section 4(3) of legal proceedings. Conversely, whether cognizance of an offence can be directed/carried out without the recommendation of the administrative enquiry.

13.3 In other words, to set in motion the penal proceedings including taking cognizance for an offence of commission and omission under section 4(2) of the Act of 1989, the recommendation of the administrative enquiry is a *sine qua non*. The proviso is an inbuilt safeguard to the public servant from initiation of prosecution by every dissatisfied complainant.

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[1] (1899 AC 99, 105-106 : 79 LT 473 : 15 TLR 61).
[2] (1976) 4 SCC 601.
[3] (1980) 1 SCC 621.

On appreciation of offences covered by section 3 and the nature of offences conversely dealt with under section 4 of the Act of 1989, it is noted that a complaint under section 3 presupposes insult, accusation, victimization, etc. of a member of the Scheduled Castes and Scheduled Tribes by a non-Scheduled Caste/Tribe person. However, the commission or omission by a public servant is rendered as an offence when the public servant contravenes the duties spelt in section 4(2) of the Act of 1989 read with the Rules of 1995 and by a recommendation made to that effect. The test in an enquiry is whether the public servant willfully neglected the duties required to be performed by the public servant under the Act of 1989 or not.

13.4 A proviso is a clause that introduces a condition by the word 'provided'.[4] The main function of a proviso is to put a qualification and to attach a condition to the main provision. It indicates the exceptions to the provision but may aid in explaining what is meant to be conveyed by its part.[5] A proviso is "introduced to indicate the effect of certain things which are within the statute but accompanied by the peculiar conditions embraced within the proviso".[6] A proviso is enacted to modify the immediately preceding language. It is apposite while reiterating the

[4] Webster's Second New International Dictionary1995 (1934).
[5] Jamunabai Motilal etc. v. State of Maharashtra & Anr., 1977 SCC OnLine Bom 38.
[6] James DeWitt Andrews, "Statutory Construction", in 14 American Law and Procedure 1, 48 (James Parker Hall & James DeWitt Andrews eds., rev. ed. 1948).

interpretation of a proviso to refer to the recent judgement of this Court in ***Union of India & Ors. v. VKC Footsteps (India) (P) Ltd***.[7]:

> "**F.4. *Construing the proviso***
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> ***91.*** *Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation [Justice G.P. Singh, Principles of Statutory Interpretation, (14th Edn., Lexis Nexis, 2016) pp. 215-234.] formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:*
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> > *"**The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment.** As stated by Lush, J. [Mullins v. Treasurer of the County of Surrey, (1880) LR 5 QBD 170] : (QBD p. 173) '… When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso.' In the words of Lord Macmillan [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7] : (SCC OnLine PC) '… The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' The proviso may, as Lord Macnaghten [Local Govt. Board v. South Stoneham Union, 1909 AC 57 (HL)] laid down, be 'a qualification of the preceding enactment which is expressed in terms too general to be quite accurate' (AC p. 62). The general rule has been stated by Hidayatullah, J. [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] , in the following words : (AIR p. 1600, para 9) '9. … As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.' And in the words of Kapur, J. [CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713] : (AIR p. 717, para 9) '9. … The proper function of a proviso is that it qualifies the generality of the main*

[7] (2022) 2 SCC 603.

enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment.…' "

(emphasis supplied)

92. *But then these principles are subject to other principles of statutory interpretation which may supplement or even substitute the above formula. These other rules which have been categorised by Justice G.P. Singh are summarised as follows:*

92.1. *A proviso is not construed as excluding or adding something by implication:*

"Except as to cases dealt with by it, a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment." [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 218.]

92.2. *A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:*

"The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. 'It is a cardinal rule of interpretation', observed Bhagwati, J. [Ram Narain Sons Ltd. v. CST, AIR 1955 SC 765, p. 769, para 10] , 'that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.' " [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 221.]

92.3. *Where the substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning:*

"If the enacting portion of a section is not clear, a proviso appended to it may give an indication as its true meaning. As stated by Lord Herschell [West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 at p. 655 (HL)] : (AC p. 655) "Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit

of doubt as to its having this scope or that, which is the proper view to take of it;" [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 223.]

92.4. *An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:*

> *"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution." [Id, p. 226.]*

92.5. *While ordinarily, it would be unusual to interpret the proviso as an independent enacting clause, as distinct from its main enactment, this is true only of a real proviso and the draftsperson of the statute may have intended for the proviso to be, in substance, a fresh enactment:*

> *"… To read a proviso as providing something by way of an addendum or as dealing with a subject not covered by the main enactment or as stating a general rule as distinguished from an exception or qualification is ordinarily foreign to the proper function of a proviso. However, this is only true of a real proviso. The insertion of a proviso by the draftsman has not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before." [Id, p. 228.]*

93. *Perhaps the most comprehensive and oft-cited precedent governing the interpretation of a proviso is the decision of this Court in S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] . S. Murtaza Fazal Ali, J. speaking for a three-Judge Bench of this Court held : (SCC p. 610, para 43)*

> *"43. …To sum up, a proviso may serve four different purposes:*
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> *(1) qualifying or excepting certain provisions from the main enactment;*
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> *(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain*

mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

94. *While enunciating the above principles, S. Sundaram Pillai [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] took note of the decision in Hiralal Rattanlal v. State of U.P. [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] where K.S. Hegde, J., speaking for a four-Judge Bench of this Court observed that while ordinarily, a proviso is in the nature of an exception, the precedents indicate that sometimes a proviso is in the nature of a separate provision, with a life of its own. The Court held : (Hiralal Rattanlal case [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] , SCC p. 224, para 22)*

"22. … Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd. [CIT v. Bipinchandra Maganlal & Co. Ltd., AIR 1961 SC 1040 : (1961) 2 SCR 493 : (1961) 41 ITR 290] this Court held that by the fiction in Section 10(2)(vii) second proviso read with Section 2(6-C) of the Indian Income Tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income."

Besides the decision in CIT v. Bipinchandra Maganlal & Co. Ltd. [CIT v. Bipinchandra Maganlal & Co. Ltd., AIR 1961 SC 1040 : (1961) 2 SCR 493 : (1961) 41 ITR 290] , the Court in Hiralal Rattanlal [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] adverted to the earlier decisions in State of Rajasthan v. Leela Jain [State of Rajasthan v. Leela Jain, AIR 1965 SC 1296] and Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar [Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar, AIR 1967 SC 389] ."

Interpreting the proviso to sub-section (2) of section 4, on the principles noted above, we notice that the proviso has an important role to play and in the scheme of proceedings under section 4 of the Act of 1989, acts as a condition precedent. Therefore, the commission or omission of any of the duties by the public servant becomes a cognizable offence against the public servant only on the recommendation of the administrative enquiry, for in law, an offence means any act or omission made punishable by any law for the time being in force. A combined reading of sub-sections (1), (2) and (3) of section 4, would demonstrate that the commission or omission by a public servant has penal consequences and the willful neglect is recommended by an administrative enquiry and the cognizance can be taken thereafter. The recommendation of administrative enquiry on alleged failure of duty or function by a public servant would make the neglect of an offence clear and the cognizance of such an offence is legal. The competent court can take cognizance of the commission or omission of any duty specified under sub-section (2) of section 4 when made along with the recommendation and direct legal proceedings. Therefore, to constitute a prima facie case of negligence of duty, the proviso to sub-section (2) of section 4 contemplates an administrative enquiry and recommendations.

14. In law, an administrative enquiry presupposes an enquiry into the circumstances in which a public servant has a reason for not acting as

expected by the provisions of the Act or whether willfully neglected the duties assigned to the public servant by the Act of 1989.

14.1 Sub-section (3) of section 4 enables the Special Court or Exclusive Special Court to take cognizance of the dereliction of a duty referred to in sub-section (2) of section 4 by a public servant. The reference to sub-section (2) in sub-section (3) of section 4 would include the requirement in the proviso and the need for recommendation of an administrative enquiry as well. Alternatively, tapering the application of proviso to a later stage, *viz.,* framing the charge, would defeat the very safeguard the proviso intends to accord to a public servant in the matter of registration of an FIR or facing criminal proceedings. The public servants are governed by conduct and discipline rules. The officers in charge of a police station are fastened with obligations, duties and functions in matters relating to crimes, prosecution, etc. The deviation of conduct is called misconduct by a public servant. Normally the word “misconduct”, among other contextual connotations, implies a wrongful intention and not a mere error of judgment. In service jurisprudence, the expression “misconduct” means wrong or improper misconduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanor, etc. *[See* ***Baldev Singh Gandhi v. State of Punjab & Anr.***[8]***]*** Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages a breach of discipline,

[8] (2002) 3 SCC 667.

although it would not be possible to lay down exhaustively what would constitute misconduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, “improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour”. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law *[See* ***Noratanmal Chouraria v. M.R. Murli & Anr.***[9]*]*

14.2 In the absence of section 4, the dereliction of duty by a public servant would have resulted in disciplinary proceedings and a punishment commensurate to the misconduct found against the public servant. Now for the same set of acts of commission or omission, section 4 makes them punishable and stipulates imprisonment of public servants for a term not less than six months which may extend to one year. The penal action can be set in motion by taking cognizance under section 4(3) of the Act of 1989. Therefore, it is all the more reason that the requirement in the proviso to sub-section (2) of section 4 receives grammatical interpretation and makes a condition precedent for taking cognizance of an offence under section 4(2) of the Act of 1989.

[9] (2004) 5 SCC 689.

14.3 At this juncture, we refer to the decision in ***Bijender Singh v. State and Anr***.[10] of the High Court of Delhi, which considered a point nearer to the one considered by us in this judgment. We notice with approval the view expressed in ***Bijender Singh*** (supra) and the operative portion reads thus:

> ***"49.*** *The argument of the learned counsel for the complainant is that the word "charges" occurring in proviso to Section 4(2) of the SC/ST Act is to be interpreted that the enquiry report is to be sought before framing of charges and not before the registration of the FIR.*
>
> ***50.*** *To my mind, the said argument is bereft of merit as the law laid down by the Hon'ble Supreme Court in Charansingh (supra) and as per the proviso noted above, the enquiry report is to be sought before the criminal proceedings are initiated and not before the framing of charges."*

14.4 The absence of recommendation would bar taking cognizance by the Court. In a given case, if a complaint without recommendation is filed before the Magistrate, the Magistrate before proceeding further to keep his decision conforming to section 4(2) read with the proviso, calls for a report/recommendation from the Department against the named public servant. The Special Court or the Exclusive Special Court based on an administrative enquiry report can take cognizance of the alleged offence and thereon direct penal proceedings. By keeping in perspective, the language/scheme of section 4, and on the literal interpretation of sub-

[10] (2024) 308 DLT 149.

sections (1), (2) and (3) of section 4, it would be legally permissible that the jurisdiction for infraction of sub-section (2) of section 4 is attracted only on the recommendation of the administrative enquiry and then, the cognizance under sub-section (3) of section 4 is ordered.

15. By adhering to the above procedure, we hold that the Magistrate would have the accusation of a party and view of the Department while deciding to take cognizance of the offence or not. At the cost of repetition stated that, the purpose of an administrative enquiry is to find out the conduct of a public servant against whom allegations of failure of duty or function are made and the omission or commission is bonafide or willful.

16. Let us juxtapose the statutory requirement with the chronology of events in the case on hand. On 05.06.2018, the Respondent moved the Court of the Metropolitan Magistrate for action against the named public servant under section 4 of the Act of 1989. The record does not disclose that the Magistrate called for an administrative enquiry report on the dereliction of duties complained against the named public servants. The material records that no case warranting penal proceedings under section 4 has been made out and by the order dated 05.06.2018 the Metropolitan Magistrate dismissed C.T. No. 536/2018. In the above background, let us review the impugned judgment. As noted in paragraph 60 of the impugned judgment, the High Court of Delhi adjudicated the alleged omission or commission by the public servants, and a direction was issued for penal

action. Upon due consideration of the method and manner of taking cognizance of an offence against the public servant under section 4 of the Act of 1989, we note that the impugned judgment, for all purposes, adjudicated the alleged dereliction of duty by the named public servants and directed penal prosecution. These directions are not in conformity with the mandate of law. We are convinced that the direction in the impugned judgment for the above reasons and discussion is unsustainable, and accordingly, Point A is answered in favour of the Appellants.

17. As adverted to in paragraph no. 11 *(supra)*, the consideration of negligence in the performance of duty as a fact is not taken up for consideration by us in this judgment. Taking up the merits of the negligence of duty by the public servant would be without the recommendation of the administrative enquiry and is impermissible. The Metropolitan Magistrate, keeping in perspective the binding precedents under section 156(3) of the CrPC, applied his discretion to the circumstances of the case and concluded that no offence was made out in the complaint and application dated 29.04.2018 and 09.05.2018, respectively, and also in the complaint dated 25.05.2018 under section 4 of the Act of 1989. In our considered view, the decision of the Metropolitan Magistrate is correct and unassailable in the circumstances of the case. Therefore, the impugned judgment, for the above reasons and

deliberation, is unsustainable and contrary to the proviso to section 4(2) of the Act of 1989. Hence, the impugned judgment is set aside and the Criminal Appeal is allowed.

…….…….....J.
[M. M. SUNDRESH]

……..…….....J.
[S.V.N. BHATTI]

NEW DELHI;
MAY 17, 2024