

STATE OF KERALA AND ANR.

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v.

CHANDRAMOHANAN

JANUARY 28, 2004

[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

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*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:*

*Ss.3(i) and (xi)—Scheduled Tribe—Effect of conversion—Offence alleged to have been committed against a girl of Scheduled Tribe—Plea of accused that since family of the victim had been converted about 200 years back, provisions of the Act are not attracted—Held, Although as a broad proposition of law it cannot be accepted that merely by change of religion person ceases to be a member of Scheduled Tribe but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the fact of each case—In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and tradition of the community, which he earlier belonged to—Before a person can be brought within the purview of the Constitution(Scheduled Tribes) Order, 1950, he must belong to a Tribe—A person for the purpose of obtaining the benefits of the Presidential Order must fulfill the condition of being a member of a Tribe and continue to be so—If by reason of conversion to a different religion a long time back, he/his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the Tribe and even had not been following the customary laws of succession, inheritance, marriage etc., he may not be accepted to be a member of the Tribe—In the instant case, it has been contended that the family of the victim had been converted about 200 years' back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic—The question, as to whether the family continued to be Scheduled Tribe or not can be gone into only during trial—Case remitted to the Court of Session—Constitution of India, 1950—Articles 341 and 342—The Constitution(Scheduled Tribes) Order, 1950.*

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*Nityanand Sharma and Anr. v. State of Bihar and Ors., [1996] 3 SCC*

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**A** 576; *Punit Rai v. Dinesh Chaudhary*, [2003] 8 SCC 204; *N.E. Horo v. Smt. Jahan Ara Jaipal Singh*, AIR (1972) SC 1840; *C.M. Arumugam v. S. Raigopal and Ors.*, [1976] 1 SCC 863; *Union of India v. Naveen Jindal and Anr.*, (2004) 1 SCALE 677 and *Kartik Oraon v. David Munzni and Anr.*, AIR (1964) Patna 201, referred to.

**B** “*The Customary Laws of the Munda & the Oraon*,” by Dr. Jai Prakash Gupta; *Tribal India, A Profile in Indian Ethnology*, by K.L. Bhowmik; “*Caste and the Law in India*”, S.B. Wad at p.30; ‘*Oraon Religion & Customs*’ by Sarat Chandra Roy and *Encyclopaedia Britannica, Volume 22, 1961* by W.H.R. Rivers, referred to.

**C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 240 of 1997.

From the Judgment and Order dated 19.3.96 of the Kerala High Court in Crl.M.C.No. 516 of 1994.

**D** Ramesh Babu M.R. for the Appellants.

Rajiv Sakdhar, Ms. Prashanthi Prasad, K.T.S. Lekha and Manoj Prasad for the Respondent.

**E** Mathai Paikadey, Siby Sebastian and M.T. George for Intervenor.

The following Order of the Court was delivered

**F** One Ramachandran, who was the President of the Pattambi Congress Mandlam, lodged a complaint against the respondent alleging that on 24th October, 1992, the respondent at 3.30 p.m. took one eight year old girl named Elizabeth P. Kora to the class room in the Patambi Government U.P. School, with an intent to dishonour and outrage her modesty. On 11st November, 1992, the said complaint was treated as a First Information Report under Section 509 of the Indian Penal Code. Subsequently on 21st November, 1992, the Investigating officer came to know that the father of the victim

**G** belonged to the Mala Aryan Community, which is considered to be Scheduled Tribe in the State of Kerala and lodged another First Information Report, charging the respondent under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as ‘the Act’). On the basis of the said First Information Reports, the Chief

**H** Judicial Magistrate summoned the respondent taking cognizance against him under Section 3(1)(xi) of the Act as well as under Section 509 of the Indian

Penal Code. Aggrieved, the respondent filed a petition under Section 482 of the Code of Criminal Procedure, for quashing the charges framed under Section 3(1)(xi) of the Act. The High Court was of the view that since the victim's parents have embraced Christianity, therefore, the victim ceased to be a member of the Scheduled Tribe. On this premise, the High Court quashed the charges framed against the respondent under Section 3(1)(xi) of the Act. It is against the said judgment, the State of Kerala has preferred this appeal by way of special leave petition.

When the matter came up before a Bench of two learned Judges, they were of the view that this matter should be heard by a larger Bench. It is by this way, the matter has came up before us.

The question which has been raised at the Bar is not free from doubt. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. Article 342 reads as under:

“342. Scheduled Tribes:-(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

The object of the said provision is to provide right for the purpose of grant of protection to the Scheduled Tribes having regard to the economic and educationally backwardness wherefrom they suffer. For the aforementioned purpose only the President of India has been authorised to issue the notification to parts or groups within the Tribes. It is not in dispute that the Constitution (Scheduled Tribes) Order, 1950 made in terms of the aforementioned provisions is exhaustive. The question which is required to be posed at the outset is what is the Tribes.

A “Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large states but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties it is no longer used for Kin groups in the strict sense, such as clans.”

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(See the Customary Laws of the Munda & the Oraon, by Dr. Jai Prakash Gupta.)

D “Tribe in the Dictionary of Anthropology is defined as a social group, usually with a definite area, dialect, cultural homogeneity, and unifying social organization. It may include several subgroups, such as sibs or villages. A tribe ordinarily has a leader and may have a common ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family, or blood ties.”

E (See Tribal India A profile in Indian Ethnology by K.L. Bhowmik.)

F The question as to whether a person is a member of the Tribe or has been accepted as such, despite his conversion to another religion, is essentially a question of fact. A member of a Tribe despite his change in the religion may remain a member of the Tribe if he continues to follow the tribal traits and customs.

G In *Nityanand Sharma and Anr. v. State of Bihar and Ors.*, [1996] 3 SCC 576, a three Judge Bench of this Court while considering the question as to whether Lohars, who are blacksmiths in the State of Bihar and Lohras, who are members of the Scheduled Tribes are same or not, held:

H “Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and

progressed but they would not be oblivious or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The tribe or tribal communities, parts of or groups thereof have their peculiar traits.” A

As regards Scheduled Castes, this Court in the case of *Punit Rai v. Dinesh Chaudhary*, [2003] 8 SCC 204, held as follows: B

“30. In *Caste and the Law in India* by Justice S.B. Wad at p.30 under the heading “Sociological Implications” it is stated:

“Traditionally, a person belongs to a caste in which he is born. The caste of the parents determines his caste but in case of reconversion a person has the liberty to renounce his casteless status and voluntarily accept his original caste. His caste status at birth is not immutable. Change of religion does not necessarily mean loss of caste. If the original caste does not positively disapprove, the acceptance of the caste can be presumed. Such acceptance can also be presumed if he is elected by a majority to a reserved seat. Although it appears that some dent is made in the classical concept of caste, it may be noticed that the principle that caste is created by birth is not dethroned. There is also a judicial recognition of caste autonomy including the right to outcaste a person.” C D E

31. If he is considered to be a member of the Scheduled Caste, he has to be accepted by the community. (See *C.M. Arumugam v. S. Rajagopal*, [1976] 1 SCC 863 and *Principal, Guntur Medical College v. Y. Mohan Rao*, [1976] 3 SCC 411).

32. A Christian by birth when converted to Hinduism and married a member of the Scheduled Caste was held to be belonging to her husband’s caste on the evidence that she had not only been accepted but also welcomed by the important members, including the President and Vice-President of the community (See *Kailash Sonkar v. Maya Devi*, [1984] 2 SCC 91).” F G

In *N.E. Horo v. Smt. Jahan Ara Jaipal Singh*, AIR(1972) SC 1840, a question arose as to whether a Ceylonese lady marrying a member of the Scheduled Tribe would become a member of that Tribe by marriage or not. This Court held that only by reason of marriage a woman does not become a member of the Tribe, but only in the event, she is accepted as such by the H

A other members of the tribe and approved by the Panchayat, she may be considered to be a member thereof.

In the aforementioned judgment it has been noticed that the Mundas are endogamous and inter-marriage with non-Mundas is normally prohibited. In such an event, a member of the tribe may also be ex-communicated.

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In Oraon Religion & Customs by Sarat Chandra Roy, it is stated:

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“Oraon religion, like similar other religions, is primarily concerned with ancestral and certain other disembodied souls, and Nature spirits and deities. The rites employed to establish harmonious relations with them are mainly, supplications and prayers, offerings and sacrifices, and the ceremonial, sharing of sacrificial food besides certain special observances and toboos.”

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Even if the members of the tribe belong to different religion, the rites conducted during marriage may be different but in other respects namely inheritance, succession, etc., they may be following the same traits. (See Tribal Life of North-Eastern India by S.T. Das).

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In this case the matter may be considered from another angle. According to the respondents, the victim's family were converted to Christianity two centuries back. The mother of the victim belongs to Roman Catholic. Under the Customs of Roman Catholic, Catholic women can marry only a Catholic wherefor it is also necessary for the groom to convert himself as a Roman Catholic and such conversion has taken place and the father of the victim is now a member of the Roman Catholic. It has been alleged that the family of the victim has ceased to be members of the notified Tribe.

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The Customary Laws of a Tribe not only govern his culture, but also succession, inheritance, marriage, worship of Gods, etc. The characteristics of different tribes despite the fact that they have been living in the same area for a long time are different. They indisputably follow different Gods. They have different cultures. Their customs are also different.

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The learned counsel appearing on behalf of the appellant would submit that by reason of conversion, a tribe does not cease to be tribe. According to learned counsel whereas in relation to the scheduled castes notified under the Constitution (Scheduled Cast) [(Union Territories)] Order, 1951 to show that no person who professes a religion different from the Hindu, the Sikh or the

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Buddhist would be deemed to be a member of a Scheduled Caste, no such provision is contained in the Constitution (Scheduled Tribes) Order, 1950. This submission in our opinion cannot be accepted. A..

Learned counsel in this behalf has drawn our attention to the case of *Kartik Oraon v. David Munzini and Anr.*, reported in AIR (1964) Patna 201 and *C.M. Arumugam v. S. Rajgopal and Ors.*, [1976] 1 SCC 863. In *Kartik Oraon* supra referring to Encyclopaedia Britannica, Volume 22, 1961 edition, at page 465, by W.H.R. Rivers as a "a social group of a simple kind, the members of which speak a common dialect, have a single government, and act together for such common purposes as "warfare." Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. It has been noticed that the term is seldom applied to societies that have achieved a strictly territorial organisation in large states but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties. B C

Before a person can be brought within the purview of the Constitution (Scheduled Tribes) order, 1950, he must belong to a Tribes. A person for the purpose of obtaining the benefits of the Presidential Order must fulfill the condition of being a member of a Tribe and continue to be a member of the Tribe. If by reason of conversion to a different religion a long time back, he/ his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the Tribe and even had not been following the Customary Laws of Succession, Inheritance, Marriage etc., he may not be accepted to be a member of a Tribe. In this case, it has been contended that the family of the victim had been converted about 200 years' back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic. The question, therefore, which may have to be gone into is as to whether the family continued to be a member of a Scheduled Tribe or not such a question can be gone into only during trial. D E F

In *C.M. Arumugam* (supra), this Court held as under:

"10.....A caste is more a social combination than a religious group. But since, as pointed out by Rajamannar, C.J. in *G. Michael v. S. Venkateswaran*, ethics provides the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. But from that it does not H

- A necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion. It is no doubt true, and there we agree with the Madras High Court in *G. Michael's* case (supra) that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert ceases to have any caste, because caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. But ultimately it must depend on the structure of the caste and its rules and regulations whether a person would cease to belong to the caste on his abjuring Hinduism. If the structure of the caste is such that its members must necessarily belong to Hindu religion, a member, who ceases to be a Hindu, would go out of the caste, because no non-Hindu can be in the caste according to its rules and regulations. Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu religion but also persons professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persons professing such other religion can be members of the caste. This might happen where caste is based on economic or occupational characteristics and not on religious identity or the cohesion of the caste as a social group is so strong that conversion into another religion does not operate to snap the bond between the convert and the social group. This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste. When an argument was advanced before the Madras High Court in *G. Michael's* case that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being member of the caste, but has also been considered so by other members of the caste who had not been converted.
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Rajamannar C.J., who it can safely be presumed, was familiar with the customs and practices prevalent in South India, accepted the position "that instances can be found in which in spite of conversion the caste distinctions might continue", though he treated them as exceptions to the general rule.

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11. The High Court of Andhra Pradesh also affirmed in *Kothapalli Narasavva v. Jamma Jogi*, 30 ELR 199 (AP) that notwithstanding conversion, the converts whether an individual or family or group of converts, may like to be governed by the law by which they were governed before they became converts..... and the community to which they originally belonged may also continue to accept them within their fold notwithstanding conversion.....

The aforementioned decision is, thus, also an authority for the proposition that upon conversion, a person may be governed by a different law than the law governing the community to which he originally belonged but that would not mean that notwithstanding such conversion, he may not continue to be a member of the Tribe.

Learned counsel for the appellant has drawn our attention to the circulars issued by the State of Kerala with a view to show that the members of the Tribes are being treated in the same capacity despite conversion. We are afraid that such circulars being not law within the meaning of Article 13 of the Constitution of India, would be of no assistance (See *Punit Rai v. Dinesh Chaudhary*, [2003] 8 SCC 204 and *Union of India v. Naveen Jindal and Anr.*, (2004) 1 SCALE 677).

We, therefore, are of the opinion that although as a broad proposition of law it cannot be accepted that merely by change of religion person ceases to be a member of scheduled tribe, but the question as to whether he ceases to be a member thereof or not must be determined by the appropriate court as such a question would depend upon the fact of each case. In such a situation, it has to be established that a person who has embraced another religion is still suffering from social disability and also following the customs and tradition of the community, which he earlier belonged to. Under such circumstances, we set aside the order under appeal and remit the same to the Sessions Court, Palakkad, to proceed in accordance with law.

The appeal, with the aforementioned observations is, accordingly, allowed. Since no one appears on behalf of the respondent, there shall be no order as to costs.

R.P.

Appeal allowed.