

otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.¹

11. Enhanced penalty on subsequent conviction.—Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, ² [shall, on conviction, be punishable—

(a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;

(b) for the third offence or any offence subsequent to the third offence with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.]

12. Presumption by Courts in certain cases.—Where any act constituting an offence under this Act is committed in relation to a member of a scheduled caste ³[* *] the Court shall presume, unless, the contrary is proved, that such act was committed on the ground of "untouchability".

COMMENTS

Presumption of scheduled caste.—It is only those persons, who profess the Hindu or the Sikh religion and who belong to the castes, races or tribes therefrom or groups within castes, races or tribes therefrom and so notified by the President by virtue of his powers under Art. 341; who shall be deemed to be members of a scheduled caste or castes. A reference to the schedule attached to the aforesaid Constitution (Scheduled Castes) Order further shows that in no part of the country has the President under his aforesaid order notified Buddhist as a caste or race covered by the aforesaid order. The resultant position thus is that a Buddhist or one professing Buddhism does not belong to a scheduled caste within the meaning of the said Act. Consequently, the provisions of the Protection of Civil Rights Act, 1955, would not apply to a Buddhist or one professing Buddhism.⁴

If the act of insult is committed with reference to a member of scheduled castes as defined in Sec. 2 (db) of the Protection of Civil Rights Act, 1955, then presumption under Sec. 12 of the Act can be raised. Section 12 of the Protection of Civil Rights Act, 1955, enacts a special rule of evidence. It provides that where any act constituting an offence under this Act is committed in relation to a member of a scheduled caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability". The provision of Sec. 12 of the Protection of Civil Rights Act, 1955, relieves the prosecution of the burden of proving that ingredient, namely that the act was committed on the ground of

1. *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal*, A.I.R. 1991 S.C. 1538 at p. 1541: (1991) 3 S.C.C. 442 at pp. 447 : A. N. Sehgal v. Raje Ram Sheoram. A.I.R. 1991 S.C. 1406 : *Toguru Sudhakar Reddy v. Government of A.P.*, A.I.R. 1992 A. P. 19 at p. 38; *Dileep v. State of Kerala*, 2000 (84) F.L.R. 110 at p. 113 (Ker.).

2. Subs. by Act 106 of 1976, Sec. 14, for certain words (w.e.f. 19th November, 1976).

3. The words "as defined in Cl. 24 of Art. 366 of the Constitution" omitted by Sec. 15, *ibid.*, (w.e.f. 19th November, 1976).

4. *Mangla Parashram Kelkar v. State of Maharashtra*, A.I.R. 1979 Bom. 282 at p. 284.

untouchability. A careful reading of the provision shows that the presumption is not as regards commission of the act of insult or attempt to insult, but is restricted to one of the ingredients of the offence only. If a proof of this ingredient is also insisted upon, then Sec. 12 of the Protection of Civil Rights Act will become redundant. An act of insult or attempt to insult in relation to a member of scheduled caste is presumed to be on the ground of untouchability unless the contrary is proved. The presumption under Sec. 12 of the Protection of Civil Rights Act, 1955, is a rebuttable presumption. If the prosecution succeeds in proving that the act constituting an offence has been committed in relation to a member of scheduled caste and the words used or the insult offered has a nexus with the caste which is a scheduled caste, then the Court is obliged to presume, until the contrary is proved, that the said act was committed on the ground of untouchability.¹

Presumption rebuttable.—On a perusal of the provisions of Sec. 12 of the Act it becomes clear that the presumption under this provision is not final and it can be rebutted by the accused. The burden of the accused to rebut his presumption is not so heavy as it lies on the prosecution. The burden can be discharged by him by showing preponderance of probability in favour of the plea taken by him. The statement of the witnesses clearly rebut the presumption of Sec. 12 of the Act.²

13. Limitation of jurisdiction of Civil Courts.—(1) No Civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No Court shall, in adjudicating any matter or executing any decree or order, recognize any custom or usage imposing any disability on any person on the ground of "untouchability".

COMMENT

Sub-section (2) specifically prohibits the Court from recognizing any custom or usage imposing any disability of any person on the ground of "untouchability".

14. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

1. *Baste Subrayalu v. Robert Mariadassou*, 1987 Cr. L. J. 272 at pp. 274-75 (Mad).
2. *Bherulal v. State*, 1994 Raj Cr.C. 496 at p. 498.