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HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL REVISION CASE NO: 655/2026

Between:

- 1.SHAIK SHAHINA, W/O. RAKEEB,AGED ABOUT 40 YEARS, OCC HOUSEHOLDR/O. PRAKASAM COLONY, 1ST LANE,ONGOLE, PRAKASAM DISTRICT.
- 2.SYED SHABANA, W/O. ASGAR,AGED ABOUT 43 YEARS, OCC HOUSEHOLD,R/O. BALARAM COLONY, ONGOLE, PRAKASAM DISTRICT

...PETITIONER(S)

AND

- 1.THE STATE OF ANDHRA PRADESH, Rep. by its Public Prosecutor, High Court of Andhra Pradesh Through the Station House Officer Ongole Taluk Police Station, Prakasam District Velagapudi, Amaravati, Guntur District.

...RESPONDENT

SUBMITTED FOR APPROVAL:

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Judgment? | Yes/No |

Dr. Y. LAKSHMANA RAO, J

*** THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO**

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...RESPONDENT

! Counsel for the Petitioners : C.Nageswar Rao

^Counsel for the Respondents : 1. A. Sai Rohit, Assistant Public Prosecutor

2. Jyothi Eswar Gogineni

< Gist:

> Head Note:

? Cases referred:

1. (2018) 17 SCC 291
2. 2022 SCC OnLine Bom 873
3. Crl.M.C.No.1731 of 2025 on 22.09.2025

4. Crl.A.No.472 of 2021 dated 07.05.2021

5. (1977) 4 SCC 551

6. 1966 SCC OnLine SC 244

7. 1980 Supp SCC 92

8. (1977) 4 SCC 137

9. (2018) 16 SCC 299

10. (2012) 12 SCC 406

11. (2012) 9 SCC 512

12. (2003) 3 SCC 57

13. (1997) 4 SCC 435

14. (1954) 1 SCC 122

15. (1957) 3 SCC 385

16. (1997) 1 SCC 373

17. (1987) 1 SCC 424

18. (1990) 4 SCC 406

19. (1993) 2 SCC 144

20. (2001) 3 SCC 71

21. (1981) 1 SCC 315

22. (2015) 1 SCC 166

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 655/2026

ORDER:

The Criminal Revision Case is filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'the BNSS'), seeking to set aside the order dated 08.05.2026 framing charges in S.C.No.19 of 2026 on the file of the learned Special Court for Speedy Trial of Offences under the Protection of Children from Sexual Offences Act, Prakasam at Ongole.

2. Heard Sri C.Nageswar Rao, learned Senior Counsel appearing Sri Uday Kumar Vampugadavala, learned Counsel for the Petitioners, Smt. Jyothi Eswar Gogineni, learned Counsel for the Respondent No.2 and Sri A.Sai Rohith, learned Assistant Public Prosecutor.

3. Sri C.Nageswar Rao, learned Senior Counsel appearing Sri Uday Kumar Vampugadavala, learned Counsel for the Petitioners while reiterating the grounds of revision, has submitted that the order framing charges is illegal, irregular, and contrary to the material available on record. The Investigating Officer found no *prima facie* material against the Petitioners and that they were implicated only based on a second statement of the complainant recorded after an unexplained delay of about eight months, which merely repeated the earlier version. No material in the charge sheet, remand report, or witness statements discloses the Petitioners' involvement in the alleged offences. The learned Senior Counsel also submits that the learned Trial Court framed charges without conducting the mandatory hearing

contemplated under Section 251(2) of 'the BNSS.,' thereby violating the prescribed procedure. It is eventually concluded that in the absence of such hearing and sufficient material, the learned Trial Court could not have formed an opinion that there were grounds to presume the Petitioners had committed the alleged offences. Therefore, it is urged that the order dated 08.05.2026 framing charges in S.C.No.19 of 2026 is liable to be set aside.

4. *Per contra*, Mr. A.Sai Rohit, learned Assistant Public Prosecutor opposed granting any relief in the Criminal Revision Case and submitted that the order framing charges is legal and based on sufficient *prima facie* material collected during the investigation. It is submitted that the statements of the complainant and other witnesses clearly disclose the involvement of the Petitioners in the alleged offences. The delay in recording the second statement is a matter for trial and does not vitiate the prosecution case. It is further submitted that the learned Trial Court, upon considering the material on record, rightly framed the charges in accordance with law. Therefore, it is urged that the Criminal Revision Case be dismissed.

5. Smt. Jyothi Eswar Gogineni, learned Counsel for Respondent No.2, submits that the impugned order is an interlocutory order and not an intermediate one. Therefore, the present Criminal Revision Case is not maintainable. She submits that sufficient opportunity was afforded to the Petitioners to file a discharge petition; however, they neither filed such a petition nor even filed a memo expressing their intention to do so. She further submits that the learned Trial Court, keeping in view the mandate under

Section 35 of 'the POCSO Act.,' regarding the expeditious conduct of the trial, proceeded to frame the charges after granting adequate opportunity to the Petitioners to advance their submissions. So, there is no illegality or perversity in the order of framing charges passed by the learned Trial Court. Therefore, no interference is warranted in the exercise of revisional jurisdiction, and the Criminal Revision Case is liable to be dismissed.

6. Thoughtful consideration is bestowed on the arguments advanced by the learned Counsel for both sides. I have perused the entire record.

7. Now the point for consideration is:

*"Whether the order of framing charges dated 08.05.2026 by the learned Trial court in S.C.No.19 of 2026 is liable to be interfered and set aside?
And to what relief?"*

8. As seen from the record, the learned Trial Court, by order dated 08.05.2026, framed charges against the Petitioners for the offences punishable under Sections 6, 17 and 21 read with Sections 5(l) and 5(m) of the Protection of Children from Sexual Offences Act, 2012 (for brevity, 'the POCSO Act'), Section 49 read with Section 64(2)(f) and (m) of the Bharatiya Nyaya Sanhita, 2023 (for brevity, 'the BNS'), and Section 5(b)(i) of the Immoral Traffic (Prevention) Act, 1956 (for brevity, 'the ITP Act').

9. The Petitioners have denied the commission of the offence. The Petitioners were arraigned as Accused Nos.2 and 3. As seen from the docket proceedings, the learned Trial Court had taken cognizance of the offences on 23.03.2026 and issued summons to the Petitioners. On 21.04.2026, the Petitioners reported that they had arranged to engage Counsel, and copies of

the case records were furnished with them. On 29.04.2026, Counsel for the Petitioners entered their appearance before the learned Trial Court. Thereafter, the learned Trial Court posted the case to 08.05.2026 to hear on the question of framing of charges.

10. On a careful perusal of the record, it is evident from the docket proceedings dated 08.05.2026 that the Petitioners were examined under Section 251(2) of 'the BNSS'. The learned Trial Court framed charges under the relevant provisions of law and recorded that the charges were read over and explained to the Petitioners in the vernacular language, to which they pleaded not guilty and claimed to be tried. Consequently, the case was posted for trial. Subsequently, the trial schedule was cancelled, and a revised schedule was issued fixing the trial from 07.07.2026 onwards.

11. The learned Senior Counsel, Sri C. Nageswar Rao, for the Petitioners relied on the decision of the Hon'ble Apex Court in **Alakh Alok Srivastava v. Union of India**¹, wherein at paragraph Nos.18 while referring about the legislative mandate as contemplated under Section 35 of 'the POCSO Act.,' emphasized that the trial shall appropriately be conducted. Further, at paragraph Nos.25.1 to 25.6 several directions were given for expeditious disposal of cases by sensitizing the Trial Courts which are mentioned as below:

"25.1. The High Court's shall ensure that the cases registered under the Pocso Act are tried and disposed of by the Special Courts and the Presiding Officers of the said courts are sensitised in the matters of child protection and psychological response.

¹ (2018) 17 SCC 291

25.2. The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the Pocso Act.

25.3. The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time-frame under the Act.

25.4. The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.

25.5. The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.

25.6. Adequate steps shall be taken by the High Courts to provide child-friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.”

12. In another judgment relied on by the learned Senior Counsel for the Petitioners in **Atul Gorakhnath Ambale v. State of Maharashtra**², wherein at paragraph No.15 the following directions are given:

“15. Accordingly, the following directions are issued to all the Special Courts in Maharashtra:

(i) The Special Courts to ensure that the deposition of the child/victim is recorded as expeditiously as possible, keeping in mind the mandate of the POCSO Act, and the observations made by this Court hereinabove.

(ii) The Special Courts to conclude the recording of evidence i.e. examination-in-chief and cross-examination of the victim, as expeditiously as possible, preferably on the same day, unless adjournment is warranted.

(iii) The Courts to also ensure that the victim/child is not called frequently to the Court, as this would add to victim/child's trauma.

(iv) Adjournments whilst examining the child/victim should be minimal and if granted, adjournment. entertained. reasons be recorded warranting adjournments should Unwarranted not be

(v) When the child/victim is examined, all precautions/safeguards i.e. child friendly practices be taken/adopted to ensure that the child/victim feels safe, is comfortable, and that the child/victim is not in any way exposed to the accused; that the proceedings are conducted in-camera; that all measures as stipulated in the Act and directions given by various judgments are duly complied with. It is always open for the learned Judge in cases, where necessary, to call the child/victim to Court, prior to recording of the deposition. So that the child/victim is acclimatized/familiarized with the set-up, so that the child/victim has no

² 2022 SCC OnLine Bom 873

fear of what to expect in Court on the day of the deposition, which can aid in the child/victim in deposing freely, without fear or anxiety.

(vi) The Court to ensure that the parents of the child or any other person in whom the child has trust or confidence, is present at the time of examination of the child, as mandated under Section 37 of the POCSO Act. If the Court is of the opinion that the child needs to be examined at a place other than the Court, it shall do so in terms of the proviso to Section 37.

(vii) The directions of the Apex Court in Children in Street Situations, In Re, 2022 SCC OnLine SC 189 and other judgments in this regard be followed scrupulously whilst conducting trials under the POCSO Act.”

13. A learned single Judge of High Court of Orissa at Cuttak in **Narottam**

Prusty v. State of Odisha³, at paragraph No.25 it is held as under:

“25. From the above discussions, a clear inference maybe drawn that the intention of the legislature in including the 60-day period under sub-section (1) to Section 250 is to provide ample time to the accused to present his properly constituted discharge application so as to preserve the right of the accused to a fair trial, as envisaged under Article 21 of the Constitution of India. Time and again, various High Courts and the Apex Court of this nation have delivered various judicial pronouncements emphasizing the absolute significance of preserving the right of the accused to a fair trial.”

14. In **Sanjay Kumar Rai v. State of Uttar Pradesh**⁴, another judgment

relied on by learned Senior Counsel for the Petitioners, wherein at paragraph

Nos.12 and 15 it is held as under:

“12. At the outset, we may note that the High Court has dismissed the Criminal Revision on the ground of lack of jurisdiction under Section 397 of Cr.P.C. The High Court did not examine the issue in detail to find out whether the continuation of proceedings will amount to abuse of process of law in this case. The impugned order cites the decision of this Court in Asian Resurfacing (supra) wherein it was noted as under:-

“Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. considered, the challenge to an order of charge Thus should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter.”

15. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar

³ Crl.M.C.No.1731 of 2025 on 22.09.2025

⁴ Crl.A.No.472 of 2021 dated 07.05.2021

of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands-off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.”

15. It is trite law that an order either allowing or dismissing a petition filed for discharge is neither an interlocutory order nor a final order, but an intermediate order, as held by the Hon’ble Supreme Court in **Madhu Limaya v. State of Maharashtra**⁵; **Central Bank of India Ltd. v. Gokal Chand**⁶; **V.C. Shukla v. State through CBI**⁷; and **Amar Nath v. State of Haryana**⁸.

16. In **Madhu Limaya**, 5th *supra* wherein at paragraph No.17 it is held as under:

“17. Before we conclude we may point out an obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in Kuppaswami Rao case and in holding that an order of the kind under consideration being not a final order must necessarily be an interlocutory one. If a complaint is dismissed under Section 203 or under Section 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make Section 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it? The Legislature left the power to order further inquiry intact in Section 398. Is it not then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court

⁵ (1977) 4 SCC 551

⁶ 1966 SCC OnLine SC 244

⁷ 1980 Supp SCC 92

⁸ (1977) 4 SCC 137

for setting aside the order adversely made against him in similar circumstances and to quash the proceeding? The answer must be given in favour of the just and reasonable view expressed by us above.”

17. The Hon’ble Apex Court in **Central Bank of India Ltd.**, 6th *supra* wherein at paragraph Nos.2 and 3 it is held as under:

“2. The Delhi Rent Control Act, 1958 empowers the Controller to pass orders for fixing the standard rent or lawful increase thereof, eviction of tenants and various other orders on the applications filed before him by the landlord or the tenant. Under Sections 36 and 37(2), the Controller may pass interlocutory orders in a pending proceeding. Under Section 36, he may pass orders for the summoning of witnesses, the issue of commissions for examination of witnesses, discovery, production and inspection of documents and inspection of premises. By Section 37(2), he is required to follow as far as may be the practice and procedure of a court of Small Causes, and following such practice and procedure, he may pass other interlocutory orders. Section 38 gives a right of appeal to the Rent Control Tribunal from every order of the Controller made under the Act. The Tribunal has all the powers vested in a court under the Code of Civil Procedure, 1908 when hearing an appeal. Under Section 39, an appeal lies to the High Court from an order of the Tribunal if the appeal involves some substantial questions of law. By Section 43, save as expressly provided in the Act, every order made by the Controller or an order passed on appeal under the Act is final and cannot be called in question in any original suit, application or execution proceeding. Section 38(1) reads:

“An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette.”

3. The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words “every order of the Controller made under this Act”, though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act.

Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.”

18. In **V.C. Shukla**, 7th *supra* wherein at paragraph Nos.34 and 62 it is held as under:

“34. There is yet another aspect of the matter which has to be considered so far as this decision is concerned, to which we shall advert when we deal with the last plank of the argument of the learned counsel for the appellant. Suffice it to say at the moment that the case referred to also fully endorses the view taken by the Federal Court and the English decisions viz. that an order is not a final but an interlocutory one if it does not determine or decide the rights of parties once for all. Thus, on a consideration of the authorities, mentioned above, the following propositions emerge:

“(1) that an order which does not determine the right of the parties but only one aspect of the suit or the trial is an interlocutory order;

(2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;

(3) that one of the tests generally accepted by the English courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue, because, in our opinion, the term ‘interlocutory order’ in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi-final orders;

(4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;

(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused.”

62. The aforesaid view taken by this Court in Mohan Lal Magan Lal [AIR 1968 SC 733 : (1968) 2 SCR 685, 688, 689 : 1968 Cri LJ 876] is therefore significant, for it does not approve of the view taken in Salaman case [(1891) 1 QB 734 : 60 LJ QB 624] and lays down at least two clear propositions of law: (i) an order may be final for one purpose and interlocutory for another, and (ii) it may be final as to part and interlocutory as to part, and that the meaning of the two words has to be determined in relation to the particular purpose for which it is required to be given. As I shall show, both these propositions are significant in this case for while an order framing the charge against the accused does not conclude his trial,

it is “final” in the sense that his right to an order of discharge is refused to him once for all and he is put on trial.”

19. The Hon’ble Apex Court in **Amar Nath**, 8th *supra* wherein at paragraph Nos.6 it is held as under:

“6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus :

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

The main question which falls for determination in this appeal is as to what is the connotation of the term “interlocutory order” as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term “interlocutory order” is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster’s New World Dictionary “interlocutory” has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term “interlocutory order” in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.”

20. Additionally, in **Asian Resurfacing of Road Agency Pvt., Ltd., v. Central Bureau of Investigation**⁹, the Hon’ble Apex Court observed that interference with an order framing charges or refusing to discharge is warranted only in the rarest of rare cases to correct a patent error of

⁹ (2018) 16 SCC 299

jurisdiction. Section 250 of 'the BNSS.,' provides that the Court shall frame charges or discharge the accused within sixty days from the date of the first hearing on the question of charge. Section 251 of 'the BNSS.,' says if the Judge finds sufficient grounds to presume that the accused has committed an offence, a charge shall be framed. If the offence is not exclusively triable by the Court of Session, the case may be transferred to the competent Magistrate for trial; if it is exclusively triable by the Sessions Court, the Judge shall frame the charge in writing within sixty days from the first hearing on charge. The charge shall then be read and explained to the accused, who shall be asked whether they plead guilty or claim to be tried.

21. At the same time, the learned Trial Court is under a statutory obligation under Section 35 of 'the POSCO Act.,' to record the evidence of the child within thirty days from the date of taking cognizance of the offence. It appears that, keeping the said mandate in view, the learned Trial Court proceeded to frame the charges soon after taking cognizance though waiting for a reasonable period without waiting for the expiry of the sixty-day period contemplated under Section 250 of 'the BNSS.,' within which the Petitioners could have sought discharge. However, it is also pertinent to note that the Petitioners did not file either a discharge petition or even a memo before the learned Trial Court indicating their intention to file such a petition within the period prescribed under Section 250 of 'the BNSS'

22. The learned Trial Court, by order dated 29.04.2026, posted the case to 08.05.2026 for hearing on the question of charge as contemplated under

Section 251(2) of 'the BNSS'. However, on careful perusal of the docket proceedings dated 08.05.2026 it does not disclose that the Petitioners were afforded an effective opportunity of hearing before the charges were framed. Consequently, the Petitioners were deprived of their statutory right of hearing, and the order framing charges is liable to be interfered with.

23. Be that as it may, the docket proceedings of the learned Trial Court do not disclose that an opportunity of being heard, as contemplated under Section 251(2) of 'the BNSS.,' was afforded to the Petitioners before framing the charges. In the absence of any indication that such an opportunity was provided, the order framing charges is liable to be interfered with and set aside in exercise of the revisional jurisdiction of this Court. This Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases.

24. Section 35 of 'the POCSO Act.,' mandates that the evidence of the child victim shall, as far as possible, be recorded within thirty days from the date the Special Court takes cognizance of the offence, with reasons to be recorded for any delay. It further requires that the trial be completed, as far as practicable, within one year from the date of taking cognizance.

25. The issue that arises for consideration in the present revision case is whether the procedure adopted by the learned Trial Court while framing the charge is in conformity with the mandate of Section 251 of 'the BNSS.,' which corresponds to Section 228 of the Cr.P.C'. Section 251 of the BNSS.,' is

substantially identical to Section 228 of the Cr.P.C., except that clause (b) of sub-section (1) introduces a requirement that the charge shall be framed in writing within sixty days from the date of the first hearing on charge. For ready reference, Section 251 of 'the BNSS.,' is extracted below:

"Section-250: (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

26. A plain reading of Section 251(1) of 'the BNSS.,' shows that the Court may frame a charge only "after such consideration and hearing as aforesaid." The expression unmistakably refers to the procedure contemplated under the immediately preceding provision, namely Section 250 of 'the BNSS.,' which is *pari materia* to Section 227 of 'the Cr.P.C.' Section 250 of 'the BNSS.,' deals with discharge and provides as follows:

"Section 250- "(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

27. Section 250 of 'the BNSS,' confers upon the accused a statutory right to seek discharge by filing an application within sixty days from the date of commitment under Section 232 of 'the BNSS'. Upon such application being filed, the Court is required to consider the case records and accompanying documents and hear both the accused and the prosecution before determining whether sufficient grounds exist to proceed against the accused. If the Court concludes that no sufficient ground exists, it shall discharge the accused by recording reasons. Conversely, where the Court, after hearing both sides, is satisfied that there are grounds for presuming that the accused has committed the offence, it shall proceed to frame the charge in accordance with Section 251 of 'the BNSS'.

28. A significant departure from the erstwhile Section 227 of 'the Cr.P.C.,' is the incorporation of a sixty-day period under Section 250(1) of 'the BNSS,' for filing a discharge application. While this amendment seeks to ensure procedural certainty and expedition, it also gives rise to a legislative gap in cases where the statutory scheme does not envisage committal proceedings.

29. The present case is one such instance, involving offences under 'the POCSO Act'. Under Section 33(1) of 'the POCSO Act.,' the Special Court is empowered to take cognizance of offences directly upon a complaint or a police report, without the accused being committed for trial. Section 33(1) reads as follows:

"33. Procedure and powers of Special Court. — (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts."

30. In view of the above, the reference in Section 250(1) of 'the BNSS.,' to "the date of commitment of the case under Section 232 of 'the BNSS.," creates an interpretative difficulty in prosecutions before Special Courts exercising direct cognizance under special enactments such as 'the POCSO Act'. Since no committal order is passed in such proceedings, 'the BNSS.,' does not expressly indicate the point from which the prescribed sixty-day period for filing a discharge application is to be computed. This legislative silence necessitates a purposive interpretation so that the statutory right of the accused to seek discharge is not rendered illusory merely because the prosecution is instituted before a Special Court empowered to take direct cognizance.

31. To bridge the legislative gap, this Court finds it appropriate to draw guidance from Section 262 of 'the BNSS.,' which is *pari materia* with Section 239 of 'the Cr.P.C.,' governing the discharge of an accused in a warrant case instituted on a police report. However, Section 262 of 'the BNSS.,' differs from Section 239 of 'the Cr.P.C'. in two significant respects. First, while sub-section (2) substantially incorporates the provisions of Section 239 of 'the Cr.P.C.,' it additionally permits the examination of the accused either in person or through audio-video electronic means. Secondly, and more importantly for the present controversy, sub-section (1) prescribes a period of sixty days from the date of furnishing copies of the documents under Section 230 of 'the BNSS.,' within which the accused may file an application for discharge. Drawing support from

this provision, this Court is of the considered opinion that in prosecutions before Special Courts constituted under special enactments such as ‘the POCSO Act.,’ where the question of committal to a Court of Sessions does not arise, the sixty-day period contemplated under Section 250(1) of ‘the BNSS.,’ should be reckoned from the date on which the accused is supplied with the police papers and other documents under Section 230 of ‘the BNS’.

32. It is also necessary to examine the relevant provisions of ‘the POCSO Act’. Chapter VII of ‘the POCSO Act.,’ deals with the constitution and jurisdiction of Special Courts. Section 28 mandates that the State Government, in consultation with the Chief Justice of the High Court, shall designate a Court of Session in each district as a Special Court for the trial of offences under the Act. Section 31 further provides that, save as otherwise provided in ‘the POCSO Act.,’ the provisions of ‘the Cr.P.C.,’ (now ‘the BNSS’), shall apply to proceedings before the Special Court. The said provision further deems the Special Court to be a Court of Session and the prosecutor conducting the case before it to be a Public Prosecutor. Consequently, the procedural framework prescribed under ‘the BNSS.,’ for trials before a Court of Session is equally applicable to trials conducted by Special Courts under ‘the POCSO Act.,’ unless the Act expressly provides otherwise.

33 Chapter VIII of ‘the POCSO Act.,’ prescribes the procedure to be followed by Special Courts and delineates their powers, including the manner of recording evidence. The provisions contained in this Chapter must be

construed harmoniously with the procedural framework under 'the BNSS'. By virtue of the saving clause contained in Section 31 of 'the POCSO Act.', the provisions of 'the BNSS.', apply to proceedings before the Special Court to the extent they are not inconsistent with the provisions of 'the POCSO Act'. Further, Section 35(2) of 'the POCSO Act.', mandates that every trial, as far as practicable, shall be concluded within one year from the date on which the Special Court takes cognizance of the offence.

34. The next issue requiring consideration relates to the scope and effect of Section 35(1) of 'the POCSO Act'. The said provision requires the Special Court to record the evidence of the child victim within thirty days from the date of taking cognizance of the offence, while recording reasons for any delay. At first glance, this requirement appears to overlap with the procedure contemplated under Sections 250 and 251 of 'the BNSS.', corresponding to Sections 227 and 228 of 'the Cr.P.C.', which govern discharge and framing of charge in cases triable by a Court of Session. It is well settled that the stage of recording evidence arises only after charges have been framed and the trial has commenced. Consequently, before the prosecution evidence can be recorded, the Court is required to follow the statutory procedure governing consideration of discharge and framing of charge.

35. 'The BNSS.', confers a valuable procedural safeguard upon an accused before the commencement of trial. Under Section 250 of 'the BNSS.', the accused is entitled to seek discharge by filing an application within the prescribed period. Section 251(1)(b) of 'the BNSS.', further requires the Court

to frame charges in writing within sixty days from the date of the first hearing on charge, where grounds exist for proceeding against the accused. A combined reading of Sections 250 and 251 of 'the BNSS.,' thus indicates that the legislature has consciously provided an opportunity to the accused to seek discharge before charges are framed and the trial proceeds further. On the other hand, Section 35(1) of 'the POCSO Act.,' directs that the evidence of the child victim should ordinarily be recorded within thirty days from the date on which cognizance is taken by the Special Court. The apparent inconsistency between these timelines cannot be resolved by reading either provision in isolation. Instead, both enactments must be interpreted harmoniously and purposively so that the statutory safeguards available to the accused under 'the BNSS.,' are preserved without undermining the legislative objective of ensuring expeditious trials under 'the POCSO Act'.

26. While examining the apparent inconsistency between the provisions of 'the BNSS.,' and 'the POCSO Act.,' this Court notes that Section 31 of 'the POCSO Act.,' expressly provides that the provisions of 'the BNSS.,' shall apply to proceedings before a Special Court unless 'the POCSO Act.,' provides otherwise. Consequently, wherever an inconsistency arises, the provisions of 'the POCSO Act.,' being a special enactment, must prevail over the corresponding provisions of 'the BNSS'. Proceeding on the settled principle that a special statute ordinarily prevails over a general enactment, this Court confines itself to resolving the controversy on that basis.

37. While construing the provisions of 'the BNSS.,' and 'the POCSO Act.,' the endeavour of the Court should be to give effect to both enactments, insofar as they are capable of operating simultaneously. Keeping in view the mandate of Section 31 of 'the POCSO Act.,' the procedural provisions of 'the BNSS.,' should be applied unless they are inconsistent with the special provisions of 'the POCSO Act'. A holistic reading of both statutes reveals that they are capable of harmonious operation and need not be construed as being in conflict with one another.

38. Offences under 'the POCSO Act.,' are triable by Special Courts, which, by virtue of the statutory fiction created under 'the Act.,' are deemed to be Courts of Session. Section 33 empowers the Special Court to take cognizance of an offence directly, either upon a complaint or a police report, without the necessity of committal. At the same time, 'the POCSO Act.,' does not prescribe any independent procedure governing discharge of an accused or framing of charge. Further, Section 33(9) of 'the POCSO Act.,' sprovdes that the Special Court shall exercise all the powers of a Court of Session and conduct the trial, as far as practicable, in accordance with the procedure prescribed under 'the BNSS.,' for trials before a Court of Session. Therefore, after taking cognizance under Section 33(1), the Special Court is required to proceed with consideration of discharge and framing of charge by following the procedure contemplated under 'the BNSS'.

39. The question that consequently arises is at what stage an accused before a Special Court becomes entitled to seek discharge. Since 'the

POCSO Act.,’ contains no specific provision regulating this aspect, the procedural provisions of ‘the BNSS.,’ necessarily govern the field. As committal proceedings are dispensed with under ‘the POCSO Act.,’ the Special Court, after taking cognizance, is required to examine the case records and accompanying documents and, after hearing both the prosecution and the accused, determine whether sufficient grounds exist to proceed with the trial. It is also significant that Section 227 of ‘the Cr.P.C.,’ corresponding to Section 250 of ‘the BNSS.,’ does not make the filing of a formal discharge application a condition precedent for the Court to consider discharge.

40. Section 250(1) of ‘the BNSS.,’ confers upon an accused the right to file an application for discharge within sixty days from the date of committal under Section 232. While such a timeline is workable in ordinary Sessions cases, it creates a practical difficulty in prosecutions under ‘the POCSO Act.,’ where no committal takes place and the Special Court itself assumes cognizance. The absence of a corresponding reference point gives rise to uncertainty regarding the commencement of the limitation period. This procedural ambiguity has resulted in considerable confusion before the Special Courts, leading to repeated challenges against orders whereby charges are framed immediately upon the accused entering appearance and receiving copies of the prosecution papers.

41. Section 249 of ‘the BNSS.,’ corresponding to Section 226 of ‘the Cr.P.C.,’ contemplates the opening of the prosecution case after the accused appears before the Court of Session pursuant to committal. Since the concept

of committal has no application to proceedings under 'the POCSO Act,' the expression "date of committal" occurring in Section 250 of 'the BNSS.,' deserves a purposive interpretation. In the context of trials before a Special Court, the said expression should be understood to mean the date on which the accused first appears before the Special Court after cognizance has been taken under Section 33(1) of 'the POCSO Act'. Consequently, the sixty-day period prescribed under Section 250(1) for filing a discharge application should commence from the date of such first appearance. Upon the filing of a discharge application, the matter should be listed without delay for hearing on the question of charge, and thereafter the Special Court shall proceed in accordance with Section 251(1)(b) of 'the BNSS.,' by framing the charge, where warranted, within sixty days from the first hearing on charge. Such an interpretation ensures fairness to the accused while preserving the objective of expeditious trial envisaged under 'the POCSO Act'.

42. It is pertinent to note that the provision relating to discharge under Section 227 of 'the Cr.P.C'. was introduced for the first time in 'the Cr.P.C.,' following the abolition of the earlier committal procedure. The object of the provision is to empower the Sessions Judge to examine the materials placed before the Court at the threshold of the proceedings and to discharge an accused where the record does not disclose sufficient grounds for proceeding further. At this preliminary stage, the Court is not expected to undertake detailed appreciation of the evidence but only to determine whether a prima facie case exists warranting the accused to stand trial. If the materials disclose

sufficient grounds for proceeding, the Court is required to frame charges; conversely, where no such grounds exist, the accused must be discharged.

43. The expression “hearing the submissions of the accused” occurring in Section 227 of ‘the Cr.P.C.,’ contemplates consideration of the submissions advanced by the accused with reference to the records of the case and the documents produced by the prosecution. This interpretation finds support in the decision of the Hon’ble Supreme Court in **Ajay Kumar Parmal v. State of Rajasthan**¹⁰. Likewise, in **Central Bureau of Investigation, Hyderabad v. K. Narayana Rao**¹¹, the Hon’ble Supreme Court elucidated the principles governing the exercise of jurisdiction under Section 228 of ‘the Cr.P.C’. It was held that, while considering the question of framing of charge, the Court is not expected to function as a mere conduit for the prosecution. Rather, it must apply its judicial mind to the material available on record, examine the broad probabilities of the case, and consider the cumulative effect of the evidence and documents placed before it. Although the learned Trial Court is not required to undertake a meticulous examination of the probative value of the evidence, it must nevertheless satisfy itself that the material on record gives rise to a prima facie inference that the accused could have committed the alleged offence.

44. The underlying object of Sections 227 and 228 of ‘the Cr.P.C.,’ is to prevent an accused from being subjected to an unwarranted trial on frivolous

¹⁰ (2012) 12 SCC 406

¹¹ (2012) 9 SCC 512

or groundless accusations. These provisions impose a statutory obligation upon the Court to scrutinize the material placed before it and to ascertain whether the facts, if accepted at their face value, disclose the essential ingredients of the offences alleged. Therefore, the powers conferred under Sections 227 and 228 of 'the Cr.P.C.,' corresponding to Sections 250 and 251 of 'the BNSS.,' are substantive judicial safeguards and cannot be treated as mere procedural formalities. The Court is duty-bound to independently evaluate the record before deciding whether there exists sufficient ground to proceed against the accused.

45. The foregoing discussion unmistakably demonstrates that the legislative intent behind prescribing a period of sixty days under sub-section (1) of Section 250 of 'the BNSS.,' is to afford the accused adequate opportunity to prepare and file a well-founded discharge application. The object of the provision is to safeguard the accused's valuable right to seek discharge before being subjected to trial, thereby reinforcing the guarantee of a fair trial embodied in Article 21 of the Constitution of India. The statutory period is, therefore, not an idle formality but a substantive procedural safeguard intended to ensure meaningful exercise of the right conferred upon the accused. The Hon'ble Supreme Court as well as various High Courts have consistently underscored that the right to a fair trial is an indispensable facet of Article 21 and that procedural safeguards enacted to protect such right must receive a purposive and liberal interpretation to secure the ends of justice.

46. The statutory mandates embodied in Section 250 of 'the BNSS.,' and Section 35 of 'the POCSO Act.,' underscore the legislative intent to ensure the expeditious filing of petition for discharge of the accused within sixty days and timely conclusion of criminal proceedings by examining the victim of the offence within thirty days, particularly in cases involving offences against children, thereby safeguarding the interests of justice and the rights of victims. The doctrine of harmonious construction or harmonious interpretation is a well-settled principle of statutory interpretation in Indian law. The Hon'ble Supreme Court has repeatedly held that when two provisions of the same statute appear to be in conflict, the Court must endeavour to give effect to both rather than render either provision otiose. When two provisions belonging to different statutes appear to be in conflict, the Hon'ble Apex Court has consistently held that the Court should, as far as possible, harmoniously construe both statutes so that each is given effect. Repeal by implication is not favoured, and one statute will not be held to override another unless the conflict is irreconcilable or the Legislature has expressly so provided.

47. The Hon'ble Supreme Court, succinctly lays down the governing principles and has been consistently followed in subsequent decisions, in **CIT v. Hindustan Bulk Carriers**¹², a leading authority, at paragraph Nos.17, 18, 19, 20 and 21, which are extracted as under, wherein the Hon'ble Apex Court summarized the principles of harmonious construction as follows:

¹² (2003) 3 SCC 57

“17... If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

48. In **Jagdish Singh v. Lt. Governor**¹³, at paragraph No.7, which is reproduced as under, it is held that every provision of a statute must be read with reference to the others and each provision should be allowed to have its proper operation.

“7...A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a cooperative society. Rule 25 enumerates the disqualifications of a person for becoming a member of a cooperative society. Sub-clause (c) of Rule 25(1) deals with the disqualifications of a person in case of a housing society, clause (iii) of

¹³ (1997) 4 SCC 435

Rule 25(1)(c) provides that if the said person or his spouse or any of his dependent children is a member of any other housing society then he cannot become a member of another housing society unless permitted by the Registrar. Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership of either or both of the cooperative societies when such individual has become a member of two cooperative societies of the same class. The short question that arises for consideration is whether a person who is a member of a housing cooperative society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two cooperative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the cooperative societies. If sub-rule (2) of Rule 25 is interpreted to mean the deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise. If the interpretation given by the Registrar to sub-rule (2) of Rule 25 as well as the contention raised by the learned counsel for the respondents is sustained then the said sub-rule will be at loggerheads with Rule 28. On the other hand, if sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the society in respect of which the person concerned incurs the disqualification then both sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only

way by which sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the society is the society in respect of which the disqualification was incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Cooperative Housing Society Ltd. as he could not have become a member of the said Society as he was already a member of Dronacharaya Cooperative Group Housing Society, and therefore, by operation of sub-rule (2) he would be deemed to have ceased to be a member of the Tribal Cooperative Housing Society right from the inception in November 1983 and not from the Dronacharaya Cooperative Group Housing Society.”

49. In **Raj Krushna Bose v. Binod Kanungo**¹⁴, at paragraph No.10, which is extracted as under, it is held that one of the earliest decisions laying down that conflicting provisions should be interpreted to give effect to both.

“10...Now, does Section 123(8) contain express provision to the contrary or can such provision be inferred by necessary implication? It is usual, when one section of an Act takes away what another confers, to use a non obstante clause and say that “notwithstanding anything contained in section so and so, this or that will happen”, otherwise, if both sections are clear, there is a head-on clash. It is the duty of courts to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise.”

50. In **Venkataramana Devaru v. State of Mysore**¹⁵, at para No.31 and 33, which is extracted as under, it is held that a Constitution Bench harmoniously interpreted the apparent conflict between Articles 25 and 26 of the Constitution.

“31. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only

¹⁴ (1954) 1 SCC 122

¹⁵ (1957) 3 SCC 385

to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).

33. The learned Solicitor General for the respondents assails this portion of the decree on two grounds. He firstly contends that the right to enter into a temple which is protected by Article 25(2)(b) is a right to enter into it for purposes of worship, that that right should be liberally construed, and that the modifications in question constitute a serious invasion of that right, and should be set aside as unconstitutional. We agree that the right protected by Article 25(2)(b) is a right to enter into a temple for purposes of worship, and that further it should be construed liberally in favour of the public. But it does not follow from this that that right is absolute and unlimited in character. No member of the Hindu public could, for example, claim as part of the rights protected by Article 25(2)(b) that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those services, which the Archakas alone could perform. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times, the public in general are free to participate in the worship. Thus, the right recognised by Article 25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonising the right conferred by Article 25(2)(b) with that protected by Article 26(b)."

51. In **Sultana Begum v. Prem Chand Jain**¹⁶, wherein at para No.14 and 15, which is extracted infra, it is held that the Court reiterated that statutes must be construed harmoniously so that every provision has meaning and effect.

"14...This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.

15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) **It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if**

¹⁶ (1997) 1 SCC 373

possible, effect should be given to both. This is the essence of the rule of “harmonious construction”

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”

52. In **RBI v. Peerless General Finance & Investment Co. Ltd.**,¹⁷ wherein at para No.32 and 33, which is extracted as under, it is held that though primarily on statutory interpretation, the Court emphasized that a statute must be read as a whole and interpreted to further its purpose rather than create inconsistency.

“32. We do not think it necessary to launch into a discussion of either *Dilworth* case [*Dilworth v. Commissioner of Stamps*, 1899 AC 99] or any of the other cases cited. All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive. We do not think that by using the word “includes”, in the definition in Section 2(e) of the Act, the Parliament intended to so expand the meaning of prize chit as to take in every scheme involving subscribing and refunding of money. The word “includes”, the context shows, was intended not to expand the meaning of “prize chit” but to cover all transactions or arrangements of the nature of prize chits but under different names. The expression “prize chit” had nowhere been statutorily defined before. The Bhabatosh Datta Study Group and the Raj Study Group had identified the schemes popularly called ‘prize chits’. The Study Groups also recognised that “prize chits” were also variously called benefit/savings schemes and lucky draws and that the basic common features of the schemes were the giving of a prize and the ultimate refund of the amount of subscriptions (vide para 6.3 of the report of the Raj Study Group). It was recommended that prize chits and the like by whatever name called should be banned. Since prize chits were called differently, “prize chits”, ‘benefit/savings schemes’, “lucky draws”, etc. it became necessary for the Parliament to resort to an inclusive definition so as to bring in all transactions or arrangements containing these two elements. We do not think that in defining the expression “prize chit”, the Parliament intended to depart from the meaning which the expression had come to acquire in the world of finance, the meaning which the Datta and the Raj Study Groups had

¹⁷ (1987) 1 SCC 424

given it. That this is the only permissible interpretation will also be further evident from the text of the chit and the context as we shall presently see.

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."

53. The Hon'ble Apex court in **Ashoka Marketing Ltd. v. Punjab National Bank.**¹⁸ one of the leading authorities, at para Nos.50, 54, 56, 59 and 61 it is held that where two special statutes overlap, the Court must first attempt harmonious construction. If reconciliation is impossible, principles such as legislative intent, subject matter, and the later enactment may determine which prevails.

"50... One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : generalia specialibus non derogant (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory Interpretation* pp. 433-34).

¹⁸ (1990) 4 SCC 406

54. The Public Premises Act is a later enactment, having been enacted on August 23, 1971, whereas the Rent Control Act was enacted on December 31, 1958. It represents the later will of Parliament and should prevail over the Rent Control Act unless it can be said that the Public Premises Act is a general enactment, whereas the Rent Control Act is a special enactment and being a special enactment the Rent Control Act should prevail over the Public Premises Act. The submission of learned counsel for the petitioners is that the Rent Control Act is a special enactment dealing with premises in occupation of tenants, whereas the Public Premises Act is a general enactment dealing with the occupants of public premises and that insofar as public premises in occupation of tenants are concerned the provisions of the Rent Control Act would continue to apply and to that extent the provisions of the Public Premises Act would not be applicable. In support of this submission reliance has been placed on the non-obstante clauses contained in Sections 14 and 22 of the Rent Control Act as well as the provisions contained in Sections 50 and 54 of the said Act. On the other hand the learned counsel for the respondents have urged that the Rent Control Act is a general enactment dealing with the relationship of landlord and tenant generally, whereas the Public Premises Act is a special enactment making provision for speedy recovery of possession of public premises in unauthorised occupation and that the provisions of the Public Premises Act, a later special Act, will, therefore, override the provisions of the Rent Control Act insofar as they are applicable to public premises in occupation of persons who have continued in occupation after the lease has expired or has been determined. The learned counsel for the respondents have placed reliance on Section 15 of the Public Premises Act which bars the jurisdiction of all courts in respect of the eviction of any person who is in unauthorised occupation of any public premises and other matters specified therein. It has been submitted that the said provision is also in the nature of a non-obstante clause which gives overriding effect to the provisions of the Public Premises Act. Thus each side claims the enactment relied upon by it is a special statute and the other enactment is general and also invokes the non-obstante clause contained in the enactment relied upon.

56. We arrive at the same conclusion by applying the principle which is followed for resolving a conflict between the provisions of two special enactments made by the same legislature. We may in this context refer to some of the cases which have come before this Court where the provisions of two enactments made by the same legislature were found to be inconsistent and each enactment was claimed to be a special enactment and had a non-obstante clause giving overriding effect to its provisions.

59. In *Sarwan Singh v. Kasturi Lal* [(1977) 1 SCC 750 : (1977) 2 SCR 421], the question for consideration was, whether the provisions of Section 14-A and Chapter III-A of the Rent Control Act will prevail over those contained in Sections 19 and 39 of the Slum Areas (Improvement and Clearance) Act, 1956. Sections 14-A and 25-A of the Rent Control Act contained non-obstante clauses but in Section 54 of the Rent Control Act it was expressly provided that nothing in the said Act shall affect the provisions of the Slum Areas (Improvement and Clearance) Act, 1956. Moreover in Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 there was non-obstante clause and Section 39 of

the said Act gave overriding effect to the provisions of the said enactment over any other law. This Court has observed : (SCR p. 433 : SCC p. 760, para 20)

“When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration.”

61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.”

54. In **Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd.**,¹⁹ wherein at para No.9 the Hon'ble Supreme Court harmonized the provisions of two special statutes and explained when one special enactment prevails over another.

“9...Having reached the conclusion that both the 1951 Act and the 1985 Act are special statutes dealing with different situations — the former providing for the grant of financial assistance to industrial concerns with a view to boost up industrialisation and the latter providing for revival and rehabilitation of sick industrial undertakings, if necessary, by grant of financial assistance, we cannot uphold the contention urged on behalf of the respondent that the 1985 Act is a general statute covering a larger number of industrial concerns than the 1951 Act and, therefore, the latter would prevail over the former in the event of conflict. Both the statutes have competing non obstante provisions. Section 46-B of the 1951 Act provides that the provision of that statute and of any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force whereas Section 32(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a non obstante clause and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. The 1985 Act being a subsequent enactment, the non obstante clause therein would ordinarily prevail over the non obstante clause found in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one. In that event the maxim generalia specialibus non derogant would apply. But in the present case on a consideration of the relevant provisions of the two statutes we have come to the conclusion

¹⁹ (1993) 2 SCC 144

that the 1951 Act deals with pre-sickness situation whereas the 1985 Act deals with the post-sickness situation. It is, therefore, not possible to agree that the 1951 Act is a special statute vis-a-vis the 1985 Act which is a general statute. Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in cases of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern.”

55. Similarly, in **Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.**,²⁰ at paragraph Nos.9 and 10, the Hon’ble Apex Court held that where two special statutes contain overriding clauses, the later statute ordinarily prevails, subject to legislative intent.

“9... It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. v. State Industrial & Investment Corp’n. of Maharashtra Ltd. [(1993) 2 SCC 144] ; Sarwan Singh v. Kasturi Lal [(1977) 1 SCC 750 : (1977) 2 SCR 421] ; Allahabad Bank v. Canara Bank [(2000) 4 SCC 406] and Ram Narain v. Simla Banking & Industrial Co. Ltd. [AIR 1956 SC 614 : 1956 SCR 603]

10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. [(1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:

“Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of

²⁰ (2001) 3 SCC 71

the said Act were to prevail even over the provisions of the Sick Companies Act.

Under Section 3 of the 1992 Act, all property of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the Custodian in respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only. Under Section 22 of the 1985 Act, recovery proceedings can only be with the consent of the Board for Industrial and Financial Reconstruction or the appellate authority under that Act. The Legislature being aware of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under Section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985.

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special Court can, if it is convinced, grant time or instalments.

There can, therefore, be no stay of any proceedings for recovery against a sick company so far as the Special Court under the 1992 Act is concerned.”

56. Further, in **Life Insurance Corporation of India v. D.J. Bahadur**²¹,

wherein at paragraph Nos.53, 109 and 112 the Hon'ble Supreme Court

²¹ (1981) 1 SCC 315

discussed the interaction between a general statute and a special statute and reiterated that the special law ordinarily prevails.

“53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis “industrial disputes” at the termination of the settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

109. For convenience of examination, Conclusion I may be split up into two propositions:

(a) The ID Act is a special law because it deals with adjudication and settlement of matters in dispute between an employer and his workmen while the LIC Act is a general law.

(b) The ID Act, being a special law, would override a general law like the LIC Act.

112. The general rule to be followed in the case of a conflict between two statutes is that the later abrogates the earlier one (leges posteriores priores contrarias abrogant). To this general rule there is a well known exception, namely, generalia specialibus non derogant (general things do not derogate from special things), the implications of which are thus stated succinctly by Earl Jowitt in the dictionary of English law:

“Thus a specific enactment is not affected by a subsequent general enactment unless the earlier enactment is inconsistent with the later enactment, or unless there is some express reference in the later enactment to the earlier enactment, in either of which cases the maxim leges posteriores priores contrarias abrogant applies.”

In other words a prior special law would yield to a later general law, if either of the two conditions is satisfied:

“(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.”

57. In **KSL & Industries Ltd. v. Arihant Threads Ltd.**,²² the Hon’ble Supreme Court wherein at para No.41, reiterated that an implied repeal is not readily inferred and that statutes should be harmoniously construed wherever possible.

²² (2015) 1 SCC 166

“41. Indeed, the question as to which Act shall prevail must be considered with respect to the purpose of the two enactments; which of the two Acts is the general or special; which is later. It must also be considered whether they can be harmoniously construed.”

58. On a meticulous study and analysis of the above referred judgments, the following principles are culled out.

a. Harmonious construction is the first rule. In this regard, courts must attempt to read both statutes together and give effect to each, if possible. Further, a construction that preserves both enactments is preferred over one that renders either provision redundant.

b. Repeal by implication is not favoured. So, the Hon'ble Supreme Court has repeatedly held that there is a strong presumption against implied repeal. Unless there is a clear and irreconcilable inconsistency, both statutes continue to operate in their respective fields.

c. General law yields to special law (*Generalia specialibus non derogant*). Hence, if one statute is a general law and the other is a special law dealing with a particular subject, the special law ordinarily prevails over the general law to the extent of inconsistency.

d. Later special law may prevail over earlier general law. Where Parliament enacts a later special statute covering the same field, it ordinarily prevails over an earlier general statute.

e. About express overriding clause, i.e., where a statute contains a non obstante clause (e.g., "notwithstanding anything contained in any other law"), the Court examines: the scope of the clause, the legislative purpose, and whether the Legislature intended to give overriding effect. Even then, courts attempt to harmonize the enactments before giving one overriding effect.

59. Among the authorities, **Ashoka Marketing Ltd.**, *supra* is generally regarded as the leading Supreme Court decision on resolving apparent

conflicts between different statutes. The Courts should avoid a head-on clash between two statutes and should endeavour to construe them harmoniously so that both are given effect. Repeal by implication is not favoured. It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

60. Section 250 of ‘the BNSS.,’ and Section 35 of ‘the POCSO Act.,’ would operate in the same procedural field and should be read harmoniously. Section 35 of ‘the POCSO Act.,’ prescribes timelines for expeditious trial, whereas Section 250 of ‘the BNSS.,’ confers a substantive procedural right upon the accused to seek discharge. Neither provision expressly excludes the operation of the other. Therefore, the learned Trial Court ought to have interpreted and applied both provisions in a manner that preserves the accused’s statutory right to seek discharge while simultaneously adhering to the mandate of expeditious disposal under ‘the POCSO Act’.

61. The learned Trial Court is required to maintain a balance between complying with the legislative mandate under Section 35 of ‘the POCSO Act.,’ and safeguarding the statutory rights of the Petitioners/Accused to seek discharge within the period contemplated under Section 250 of ‘the BNSS’. While ensuring the expeditious trial of offences under ‘the POCSO Act.,’ the learned Trial Court must also adhere to the procedural safeguards guaranteed to the accused under ‘the BNSS’.

62. On a careful reading of the impugned order dated 08.05.2026, it is evident that the said order is neither one dismissing a discharge petition nor one discharging the Petitioners. It is, in substance, an order framing charges. However, the docket proceedings do not disclose that, prior to framing the charges, the Petitioners/Accused were heard on the question of framing of charges. Consequently, the impugned order resulted in the Petitioners being deprived of an opportunity of hearing before the charges were framed, thereby affecting their valuable right to be heard at that stage.

63. Furthermore, the learned Trial Court did not ascertain from the Petitioners whether they intended to file a discharge petition under Section 250 of 'the BNSS.,' notwithstanding that such petition was required to be filed within the period contemplated under Section 35 of 'the POCSO Act'. Be that as it may, the Petitioners/Accused also did not submit the learned Trial Court that they intended to file a discharge petition, nor did they seek a reasonable opportunity for the said purpose instead of waiting until the expiry of the sixty-day period.

64. Sri C.Nageswar Rao, learned Senior Counsel for the Petitioners, submitted that the Petitioners have no objection if this Court fixes a time frame for filing the discharge petition, its disposal, hearing the parties on the question of framing of charges, if necessary, and thereafter framing the charges. He further submitted that a schedule may also be fixed for the trial to expedite the proceedings and ensure that the trial is concluded at the earliest, in terms of the legislative mandate and also the directions of this Court. The

said submission of the learned Senior Counsel appears to be appealing, sound, convincing, and reasonable.

65. The principles of a fair hearing and a fair trial assume even greater significance where the accused is exposed to the possibility of severe penal consequences. In the present case, the accused stands charged under Section 64(2) of 'the BNS.,' and Section 6 of 'the POCSO Act.,' offences carrying a minimum sentence of twenty years' imprisonment and extending to the punishment of death. In such circumstances, strict adherence to the procedural safeguards prescribed by law becomes imperative. Although the expeditious disposal of trials involving such grave offences is an important objective and constitutes an essential facet of the right to a speedy trial, the quest for expedition cannot be permitted to dilute the accused's right to a fair opportunity to defend himself in accordance with law. The criminal justice system must strike a careful balance between prompt adjudication and procedural fairness. Speed, however desirable, cannot override the fundamental requirements of due process or erode the statutory protections available to an accused. The ultimate objective of every criminal proceeding is not merely the swift conclusion of the trial, but the just and fair administration of justice in conformity with the constitutional mandate under Article 21 of the Constitution of India.

66. In the present case, a perusal of the impugned order dated 08.05.2026, passed by the learned Trial Court, discloses that the charges were framed on 17th day of the appearance of the Petitioners. The order further does not

record that learned counsel appearing for both sides were heard on the question of framing of charge. However, significantly, the order is conspicuously silent as to whether the accused had filed, or was afforded an opportunity to file, an application seeking discharge before the charges were framed.

67. Having regard to the legal principles discussed hereinabove and considering that the offences alleged carry severe penal consequences, this Court is of the considered opinion that the procedure adopted by the learned Trial Court has resulted in denial of the accused's valuable procedural safeguards. Such a course of action effectively curtailed the accused's statutory right to seek discharge and, consequently, impaired his right to a fair trial guaranteed under Article 21 of the Constitution of India. The requirement of a meaningful hearing at the stage of discharge or framing of charge cannot be reduced to a mere ritualistic formality; it necessarily presupposes that the accused and his counsel are afforded sufficient opportunity to acquaint themselves with the materials on record before the Court proceeds to determine whether a prima facie case exists for framing charges.

68. In view of the legal position discussed in the preceding paragraphs, and with a view to dispel the ambiguity that has arisen on account of the time schedule fixed under Section 35 of 'the POCSO Act.,' and the coming into force of 'the BNSS.,' this Court considers it appropriate to clarify the procedure to be followed by the Special Courts while dealing with the stage of discharge and framing of charge in prosecutions under 'the POCSO Act'. Accordingly, it

is directed that the Special Courts trying offences under 'the POCSO Act.,' shall adhere to the following procedure while considering the question of framing of charge against an accused:

69. If the accused does not intend to seek discharge under Section 250 of 'the BNSS.,' such intention shall be expressly recorded by way of a written memorandum signed by the accused and filed before the Trial Court as early as possible from the date of supply of copies of the case record. Such memorandum shall signify that the accused has consciously waived the opportunity to file a discharge application, whereupon the Court may proceed to consider the question of framing of charge in accordance with law.

70. On a careful reading of the impugned order dated 08.05.2026, it can be gleaned that the impugned order is neither an order of dismissal of the discharge petition nor an order of discharging the Petitioners, but it is an order of framing charges without mentioning in the docket proceedings that before the charges are framed, the accused were heard about framing of the charges. However, the end of result of the impugned order is no opportunity was afforded to the Petitioners by way of hearing on the charges. As a result, right of the accused is deprived of. *Afortiori*, the learned Trial Court has also not inquired from the Petitioners whether they intend to file a discharge petition as per their entitlement under Section 250 of 'the BNSS.,' though not within a period of sixty days in the view of the legislative mandate prescribed in Section 35 of 'the POSCO Act'. Be that as it may, the Petitioners/Accused had also not submitted to the learned Trial Court that they intend to file

discharge petition though not waiting till the last day of sixty days, at least within a reasonable time.

71. For the end of justice, the order dated 08.05.2026 of the learned Trial Court framing charges without affording an opportunity of hearing to the Petitioners and the prosecution is liable to be set aside, with the following directions:

- i. The Petitioners shall file a discharge application under Section 250 of 'the BNSS.,' within a period of fifteen (15) days from the date of this order.
- ii. Upon such application being filed, the learned Trial Court shall dispose of the same within a period of two (2) weeks after affording sufficient opportunity of hearing to both sides.
- iii. In the event the discharge application is dismissed, the learned Trial Court shall hear both sides before framing the charges either on the same day or, in any event, within one (1) week thereafter.
- iv. The learned Trial Court shall thereafter fix the case for trial and conclude the trial as expeditiously as possible.
- v. The Petitioners shall extend full cooperation to the learned Trial Court to ensure compliance with the above directions.

72. Accordingly, with the above directions, the Criminal Revision Case is disposed of. There shall be no order as to costs.

73. Before parting with this matter, this Court places on record its sincere appreciation for the able and valuable assistance rendered by Sri C.Nageswar Rao, learned Senior Counsel appearing on behalf of Sri Uday Kumar Vampugadavala, learned Counsel for the Petitioners, whose incisive submissions and well-researched reference to the relevant precedents were of considerable assistance in appreciating the intricacies involved in the interplay between 'the BNSS' and 'the POCSO Act'. This Court also places on record its appreciation for Smt.Jyothi Eswar Gogineni, learned Counsel for Respondent No.2, for her lucid and forthright submissions placing the case of the victim in proper perspective, and for Sri A.Sai Rohith, learned Assistant Public Prosecutor, for ably assisting the Court on behalf of the State with clarity and diligence.

As a sequel, interlocutory applications, if any pending, shall stand closed.

Dr. Y. LAKSHMANA RAO, J

Dt: 06.07.2026
KMS

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No