

Sr. No.

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**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**Reserved on :- 06.04.2021  
Pronounced on :- 12.04.2021**

Trp (Crl) No. 11/2020  
CrlM No. 995/2020  
CrlM No. 1567/2020

Davinder Singh

...Petitioner(s)

Through:- Mr. Z. A. Qureshi, Sr. Advocate with  
Ms. Rehana Fayaz, Advocate

v/s

Union of India and others

.... Respondent(s)

Through:- Mr. Vishal Sharma, ASGI

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**ORDER**

1. The petitioner has filed the instant petition under Section 407 of Code of Criminal Procedure seeking transfer of challan pending against the petitioner from the Special Court (3<sup>rd</sup> Additional Sessions Judge, Jammu to the Special Court (Additional Sessions Judge, TATA/POTA) Srinagar for trial

Sections 120-B, 121, 121-A & 122 IPC and Sections 17,18, 18-B, 19, 20, 23, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 and Section 25 (1) (a) & 35 of Arms Act read with Sections 4 & 5 of the Explosive Substances, Act before the Court of Special Judge (3<sup>rd</sup> Additional Sessions Judge) Jammu.

3. The transfer of aforesaid challan to the Special Court (Additional Sessions Judge, TATA/POTA) Srinagar has been sought on the ground that most of the witnesses whose statements are yet to be recorded by the learned trial Court pertain to Kashmir division and, as such, it would be convenient to hold the trial of the case at Srinagar. It is further contended that the petitioner is a resident of Indra Nagar, Srinagar where his family is also residing and that he has no relation at Jammu where the trial is to be conducted. It is averred that some of the lawyers at Jammu have refused to accept the brief of the petitioner and it would be very expensive for the petitioner to engage a Lawyer from Kashmir to defend the case on his behalf at Jammu. For the aforesaid reasons the petitioner has sought the transfer of the challan from Jammu to Srinagar.

4. The petition has been resisted by the respondent- Investigating Agency by filing reply thereto. In their reply respondents No. 1 and 2 have contended that there is no ground for transfer of the case from Jammu to Srinagar. It is further contended that merely because

is unable to engage a counsel in Jammu. Lastly it has been contended that there is only one Special Court in whole of the Union Territory of Jammu and Kashmir i.e., 3<sup>rd</sup> Additional Sessions Court, Jammu which has been designated as a Special Court in terms of Section 11 of the National Investigation Agency, Act ( for brevity 'NIA Act') and as such the challan which is subject matter of the instant petition cannot be tried by any other Court in Union Territory of Jammu and Kashmir .

5. I have heard learned counsel for the parties and perused the material on record.

6. It is an admitted case of the parties that the case in which the petitioner is facing trial before the Special Court, at Jammu has been investigated by National Investigating Agency which is an agency of the Central Government. Section 11 of the NIA Act empowers the Central Government to constitute one or more Special Courts for trial of scheduled offences. Section 13 of the same Act provides for jurisdiction of the Special Court. It reads as under:-

*“13. Jurisdiction of Special Courts. -*

*(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.*

*(2) If, having regard to the exigencies of the situation*

*(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or*

*(c) it is not otherwise in the interests of justice, the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.*

*(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.”*

8. From a perusal of the aforesaid provision it is clear that notwithstanding anything contained in the Criminal Procedure Code, every scheduled offence investigated by the NIA is to be tried only by the Special Court within whose local jurisdiction it was committed. It further provides that High Court has power to transfer a case pending before a Special Court situated in the State to any other Special Court within the State.

9. Thus, it is clear that a case pertaining to scheduled offence investigated by the NIA can be tried only by a Special Court that has

not to any other Special Court constituted under any other provision of the Act.

10. Contesting respondents along with their reply have placed on record a copy of the Notification bearing No. S.O 4154 (E), according to which the Central Government has in consultation with the Chief Justice of Jammu and Kashmir designated the Court of TATA/POTA at Jammu as a Special Court for the purposes of sub-section (1) of the Section 11 of the NIA Act for trial of the Scheduled Offences investigated by the National Investigation Agency. The notification further provides that jurisdiction of the Special Court extends throughout the Union Territory of Jammu and Kashmir. It is thus, clear that only one Special Court in terms of Section 11 of the NIA Act has been constituted for whole of the Union Territory of Jammu and Kashmir and there is no other Special Court, constituted by the Central Government under Section 11 of the Act, which is located within the jurisdiction of this High Court.

11. Learned counsel for the petitioner has vehemently argued that there is another Special Court constituted at Srinagar which can also try the cases investigated by the National Investigation Agency. He has placed on record a copy of the Notification SRO 149 dated 01.03.2019, where under Court of Additional District and Sessions Judge,

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12. The contention of learned counsel for the petitioner that the Special Court at Srinagar is empowered to hear the cases investigated by the National Investigation Agency appears to be misconceived. The Special Court at Srinagar has been constituted by the State Government in exercise of its power under Section 22 of the NIA, Act. Section 22 of the Act empowers the State Government to constitute one or more Special Courts for trial of offences under the enactments specified in the Schedule. It reads as under:-

*“22. Power of State Government to constitute Special Courts. -*

*(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.*

*(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely-*

*(i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;*

*(ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government";*

*(iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to*

*offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.*

*(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.”*

13. From a perusal of sub-clause (ii) of Clause (2) of the aforesaid provision, it is clear that it bears reference to investigation agency of the State Government and not to National Investigating Agency. Thus in other words means it that the Special Court constituted under Section 22 of the Act is empowered to try the cases relating to offences under scheduled enactments which have been investigated by the investigating agency of the State Government.

14. Therefore, the Special Court constituted at Srinagar in terms of SRO 149 lacks inherent jurisdiction to try the cases pertaining to offences under scheduled enactments which have been investigated by the National Investigating Agency. That being the case, the challan which is subject matter of the present transfer petition cannot be tried by the Special Court at Srinagar and, as such, it would be legally impermissible

15. As already noted there is no other Special Court within the jurisdiction of High Court of Jammu and Kashmir except the one at Jammu, therefore, even if it is assumed that the petitioner has any ground for seeking transfer of the challan to any Court other than the one at Jammu, this Court cannot come to his rescue.

16. For the forgoing reasons, I find no merit in this petition. The same is, accordingly, dismissed.

**(SANJAY DHAR)**  
**JUDGE**

Jammu  
12.04.2021  
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Whether the order is speaking:	Yes
Whether the order is reportable:	Yes