

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

CRREF No. 1/2024

UT of Jammu and Kashmir through SHO Police
Station, Domana, Jammu.

.... Petitioner(s)

Through :- Mr. Pawan Dev Singh, Dy. AG.

V/s

Rahul Kumar, S/o Sewa Ram
R/o Vasuki Vihar, Gurha Bantalab,
Jammu.

....Respondent(s)

Through :- Mr. Pawan Kundal, Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER
13.03.2024.

1. Reference dated 17.02.2024 in the case of “*UT of Jammu and Kashmir v. Rahul Kumar*” is received by this Court for rendering its decision with regard to the issue raised by the learned Sessions Judge (PDJ), Jammu in the order of reference.
2. Briefly stated the facts leading to making of the instant reference are that the accused, namely, Rahul Kumar, was facing a charge under Section 3/4 POCSO Act and Section 302 IPC before the Court of Special Judge under Protection of Children from Sexual Offences Act, 2012 [“**POCSO Act**”]. On hearing the counsel for the accused and the prosecution on the charge, the special Court charged the accused only with the commission of offence punishable under 302 IPC and discharged him of the offence under Section 3/4 POCSO Act. Due to

alteration of the charge and deletion of Section 3/4 POCSO from the charge, the Special Court transmitted the records of the case to learned Sessions Judge for its disposal in accordance with law. The case was made over to the Court of learned Sessions Judge by the Special Judge on the ground that with the deletion of charge under Section 3/4 POCSO Act, the Court had lost jurisdiction to try the accused. When the case file was received by the learned Sessions Judge (PDJ), Jammu, he was of the opinion that notwithstanding the discharge of the accused under Section 3/4 POCSO Act, the Special Judge, being a Court of Sessions under Section 31 of the POCSO Act was competent to try the accused for an offence under Section 302 IPC. The learned Sessions Judge (PDJ), Jammu was also of the opinion that in terms of Section 28 of the POCSO Act, the Special Court was entitled to try along with offences under POCSO Act any other offence under Indian Penal Code. After formulating this tentative opinion, the Session Court has made a reference to this Court for guidance and issuance of necessary directions.

3. Heard learned counsel for the parties and perused the order of reference, Section 28 of POCSO Act reads thus:-

“28. Designation of Special Courts.-(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under section 67-B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.”

From a plain reading of Section 28 of POCSO Act, 2012, it is evident that with a view to providing a speedy trial, the State Government in consultation with the Chief Justice of the High Court is empowered to designate for each district a Court of Session to be a Special Court to try offences under POCSO Act. This is required to be done by the Government by issuing a notification in the official gazette.

Sub-section 2 of Section 28 of POCSO Act further provides that while trying an offence under the POCSO Act, the Special Court shall also try the offence other than the offence under POCSO Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

4. The conjoint reading of Sub-section 1 and Sub-section 2 makes it abundantly clear that a Special Court, which must necessarily be a Court of Session, can be constituted by the Government in consultation with the Chief Justice of High Court and after issuing a notification in the official gazette to try offences under the POCSO Act. And in terms of Sub-section 2 while the Special Court is trying the offences under POCSO Act, it shall also have jurisdiction and competence to try an offence other than the POCSO offences under POCSO Act

with which the accused may, under the Code of Criminal Procedure be charged in the same trial.

5. At this stage, I deem it appropriate to extract a Government Order issued on 20.03.2020 whereby exclusive POCSO courts were established at Jammu and Srinagar.

Govt. Order No. 2232-JK LD(A) of 2020

“Sanction is accorded to the:-

- a. Establishment of four Fast Track Courts (of the rank of District and Sessions Courts) pursuant to the scheme of Ministry of Law and Justice; two of which to be established at Jammu and Srinagar shall exclusively deal with cases under POCSO Act and other two to be established at Kulgam and Reasi shall deal with cases involving offences against women including rape, alongwith the creation of following posts/positions for each of such Courts:-*

S.No.	Post	Pay Band + GP	Number of Post(s) for each Court
1.	District & Sessions Judge	51500-63070	01
2.	Jr. Scale Stenographer	9300-34800+4200	01
3.	Head Assistant	9300-34800+4200	01
4.	Senior Assistant	5200-20200+2800	01
5.	Junior Assistant	5200-20200+240002	02
6.	Orderly	4440+7440+1400	03
7.	Chowkidar/Safaiwala	4440+7440+1400	01
Total			10

b. Establishment of office of Special Public Prosecutor for the aforesaid two Fast Track Courts at Jammu and Srinagar, exclusively for POCSO cases in terms of Section 32 of the Prevention of Children from Sexual Offences Act, 2012 alongwith the creation of following positions (on contract basis) and posts:

S.No.	Position/Post	Pay Band +GP	Number of Post(s) for each office
1.	Special Public Prosecutor	Rs. 20,000/- per month (Consolidated retainership)	01
2.	Junior Assistant	5200-20200+2400	01
3.	Orderly	4440+7440+1400	01
Total			03

Note:- The above creation and establishment of four FTSCs shall be subject to the condition that the posts and positions created for these four FTSCs shall be co-terminus with the scheme of Ministry of Law and Justice.

This issue with the concurrence of Finance Department, U.O. No. A/58(02)-II-B- 11 dated 22-01-2020 read with U.O. No. A/58(2002)-II-Part B-245 dated 11.03.2020.

By Order of the Lieutenant Governor.”

Understanding the provisions of Section 28 of POCSO Act correctly, the Government created two courts one at Jammu and other at Srinagar to be presided over by a Judicial Officer of the rank of District and Session Judge to exclusively deal with cases under POCSO Act. It is only by virtue of Section 28(2) of the

POCSO Act, that the Special Court while trying offences under POCSO Act is authorized to try any other offence with which the accused may, under Cr.P.C be charged in the same trial. Trial of such offences by the Special Court is permissible only along with offences under POCSO Act and not independently thereof.

6. Section 31 which has been relied upon by the learned Sessions Judge in the reference in support of his *prima facie* view reads thus:

“31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.- Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”

From a plain reading of Section 31 of POCSO Act, it clearly transpires that the provisions of Code of Criminal Procedure, 1973 including those pertaining to bail and bonds shall be applicable to the proceedings before the Special Court and for the purposes of said provisions, the Special Court shall be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a public prosecutor. Section 31 only regulates and prescribes procedure to be followed in the proceedings before Special Court. Section 31 does not confer any new jurisdiction on Special Court to try offences other than offences under POCSO Act independently and without there being any offence under POCSO being tried by the Special Court along with such offences.

7. When we read Section 28 along with Section 31, it becomes abundantly clear that with a view to regulate the procedure and also to exercise other powers

under the Code of Criminal Procedure including provisions as to bail and bonds, the Special Court shall be deemed to be a Court of Sessions but that does not mean that it can act as a Court of Sessions for trial of offences under the Indian Penal Code. The jurisdiction to try the offences under the Indian Penal Code including Section 302 IPC would be available to the Special Court when it is trying the said offence along with the offences under POCSO Act. That appears to be the clear position emerging on harmonious construction of provisions of Section 28 and Section 31.

8. If we were to concede that independently of the provisions of Section 28, the Special Judge being a Court of Sessions can also try the offences under IPC, in such situation, learned Sessions Judge (PDJ), Jammu alone would have the power and jurisdiction to make over the case to such Court. Being a special Court, POCSO Court entertains cases under POCSO Act directly and does not require any committal by Magistrate. The *prima facie* view taken by the learned Sessions Judge does not seem to be in accord with the provisions of Section 28 read with Section 31 of the POCSO Act.

9. Viewed from this angle, I am of the considered opinion that Special Judge, POCSO Court was perfectly justified in transmitting the record of the case to the Court of learned Sessions Judge (PDJ), Jammu for its disposal in accordance with law. This is so because with the alteration of charge and discharge of the respondent-accused under Section 3/4 of POCSO Act, the Special Court has lost jurisdiction to try the case. In such like situations when charges are framed by the Special Court, the requirement of committal by Magistrate under Cr.P.C shall be deemed to have been dispensed with.

10. Learned Sessions Judge (PDJ), Jammu is well advised to keep the matter with him or make it over to some other Sessions Judge for its further trial and disposal.

11. **Disposed of.**

12. Let a copy of this order be sent to learned Sessions Judge (PDJ), Jammu and Special Judge under POCSO Act, Jammu.

(Sanjeev Kumar)
Judge

Jammu:
13.03.2024.
Neha-1

Whether the order is reportable: Yes.

