

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

Pronounced on: 29.07.2024

Case No. : Crl A (D) No. 1/2024

National Investigation Agency
Represented through
Mr. Rajiv Om Parkash Pande, IPS,
Superintendent of Police Cum Chief
Investigating Officer, Branch Office, Jammu.

...Appellant..

Through: - Mr. Vishal Sharma, DSGI with
Mr. Vipin Kalra, PP (NIA) &
Mr. Sumant Sudan, Advocate.

V/s

Abid Mushtaq Mir (Juvenile/CCL)
S/o Mushtaq Ahmad Mir
R/o Putrigam Pulwama
Presently lodged in
observation Home
R.S.Pura, Jammu.

... Respondent..

Through: - Mr. Wani Jahangir Ahmed, Advocate.

**CORAM: HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

PER PUNEET GUPTA-J:

1. The appeal has been preferred against the order dated 07.11.2023 passed by the Court of learned 3rd Additional Sessions Judge, Jammu (Designated Court under Section 22 NIA Act), whereby the court submitted the case of the respondent herein-Abid Mushtaq Mir for disposal under law to the Special Court constituted under

the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as “POCSO Act”).

2. Mr. Vishal Sharma, learned DSGI has argued that the NIA Court has exclusive jurisdiction to deal with the offences under UA (P)Act and not the court to which the case has been sent by the impugned order. The Special Court designated under POCSO Act cannot deal with the case of the respondent keeping in view the gravity of the charges which have been raised against the respondent under UA(P)Act. The Special court constituted under POCSO Act cannot try the offences other than the one mentioned under the provisions of the Act.
3. The learned counsel appearing for the respondent has submitted that there is no flaw in the impugned order as the court has rightly directed the trial of the respondent by the POCSO Court.
4. It is suffice to mention herein that the respondent has been declared as Juvenile in terms of Section 2 (35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter called as “JJ Act, 2015”). The Juvenile Justice Board while holding the respondent as juvenile further held that since the respondent was above 16 years and alleged to have committed heinous offence he is to be tried as an adult. The Board submitted the case to the learned Principal Sessions Judge, Jammu on the ground that no Children’s Court was functional in the Jammu province. The court of Principal Sessions Judge, Jammu vide order dated 10.03.2023 transferred the case to the designated Special Court under the NIA Act, 2008 for trial. The NIA court, however, has passed the impugned order directing the trial of the respondent herein by the Special court constituted under POCSO Act.
5. It is not in dispute that the respondent is to be tried as an adult in the case arising out of RC03/2022/NIA/JMU, registered by NIA for offences punishable under different provisions of UA(P)Act as the finding of the Board has not been challenged. The only question

which arises for consideration is as to whether the respondent is to be tried by the NIA Court which has passed the impugned order or by some other court.

6. Section 11 of the NIA Act speaks of designation of Court of Sessions as Special Court for trial of scheduled offences. The offence under UA(P)Act is scheduled offence. Section 22 of the said Act also gives power to the State to designate one or more courts of Sessions as Special Courts for the trial of offences under any or all the enactments specified in the Schedule. Sub-section 3 of Section 22 ordains that the jurisdiction conferred by this Act on a Special Court shall be exercised by the Court of Sessions of the Division in which such offence has been committed till a Special Court is designated by the State Government under Sub-Section (1). The 'Code' in the NIA Act means the Code of Criminal Procedure, 1973 (2 of 1974). It is, thus, clear that the designated court is to try the scheduled offences and in case the Special Court is not designated for trying those offences as mentioned under the Schedule, the court of Sessions of the division in which such offence has been committed will have jurisdiction in the matter.
7. Admittedly, the respondent is to be tried under the provisions of JJ Act because the respondent is to be tried as an adult in terms of the order passed by the Juvenile Board. The provisions of JJ Act will have precedence over any other enactment.
8. It is profitable to take note of Section 25 of the Commissions for Protection of Child Rights Act, 2005 (hereinafter called as "CPCR Act"). As per the said Section, the State Government may with the concurrence of Chief Justice of the High Court specify atleast a court in the State or specify for each District a court of Sessions to be a Children Court to try the offences related to children or of violation of child rights. It is further provided that nothing in the Section shall apply if a court of Sessions is already specified as a Special Court or a Special Court is already constituted for such

offences under any other law for the time being in force. Admittedly, no such court has been established by the Government in terms of Section 25 of the Act meaning thereby that in case offences against children are to be tried, the court of Sessions which is already specified as a Special Court shall try the offences concerning the children. Another enactment which is relevant for disposal of the present appeal is “Protection of Children from Sexual Offences Act, 2012” (POCSO Act). Section 28 of the Act is relevant for the purposes of discussion. The Section provides constitution of Special Courts for trying the offences under the Act and reads as under :

“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 Sessions to be a Special Court to try the offences under the Act:

Provided that if a Court of Sessions 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.”

9. The State Government has constituted Special Court for trying offences under POCSO Act vide Government Order No. 2232-JK LD (A) of 2020 dated 20.03.2020 read with Government Order No. 2333-JK (LD) of 2020 dated 03.09.2020. One such Special Court has been constituted for Jammu. It is also relevant to take care of the provisions of the JJ Act, 2015. The definition of Children’s Court has been provided under sub-section 20 of Section 2 of the JJ Act. As per said provision Children’s Court means Court established under CPR Act, 2005 or a Special Court under POCSO Act wherever existing. The definition further provides that where such courts have not been designated, the court of Sessions will have jurisdiction to try offences under the Act. As mentioned above, the Children’s Court under CPR Act, 2005 has not been established. However, Special Courts under POCSO Act have been established

as mentioned above. The Court is of the view that Section 2 (20) of the JJ Act itself clarifies that either courts established under CPC Act or Special Courts under POCSO Act shall be considered as Children's Court and where such courts have not been established the court of Sessions will try the offences under the Act. Of course, the concerned court of Sessions should have jurisdiction to try offences under the Act where the Special courts have not been established. The JJ Act, 2015 will apply for offence committed by the child under any enactment. Section 2 (33) and Section 2 (54) of the JJ Act provide definition of heinous offences and serious offences respectively and include the offences committed under the Indian Penal Code or any other law for the time being in force. It is more than evident that the aforesaid provisions provide that the Children's Court can try offences not only under Indian Penal Code but offences committed under any other law which is in force and thus will include the offences under UA(P) Act also. The provisions of the JJ Act will override any other provision of law for the time being in force which brings child in conflict with law and Section 1 (4) of the JJ Act speaks so in unmistakable terms. The sanctity of non-obstante clause occurring in Section 1 (4) of the JJ Act has to be maintained and followed. Section 1 (4) of the JJ Act provides applicability of the Act in matters including detention and prosecution. The welfare of the child is paramount and the Act takes care of the same through special provisions and the Act being beneficial legislation cannot be by-passed and ignored in any manner. The JJ Act, 2015 being later in point of time to NIA Act, 2008, the same shall, therefore, have precedence over the later Act if there is any conflict between the provisions of two Acts. The argument of learned counsel for the appellant that Section 11 and Section 22 of the Act should prevail over the provisions of JJ Act cannot be accepted. The severity of punishment under UA(P) Act cannot be the reason to oust the jurisdiction of particular court

where the trial is required to be held in view of the Special provisions of law.

10. The other argument of the appellant that Section 28 of the JJ Act is not applicable in the present case as the Special Court under the Act can try the offences under the POCSO Act only cannot be agreed to by the court in view of the provisions of JJ Act and particularly Section 2 (20) of the JJ Act.
11. In view of the provision of Section 2 (20) of the JJ Act and the fact that the Special Court has been designated under the POCSO Act which is to be deemed as Children's Court for the purposes of JJ Act, 2015 and moreover as the present case stands registered within the jurisdiction where the designated Special Court under POCSO Act is also having jurisdiction, therefore, the designated Special Court under POCSO Act at Jammu constituted vide Government Order No. 2232-JK LD (A) of 2020 dated 20.03.2020 read with Government Order No. 2333-JK (LD) of 2020 dated 03.09.2020 shall have the jurisdiction to try the case against the respondent herein.
12. The order impugned in the present appeal whereby the NIA Court has directed the trial of the respondent by the POCSO Court, Jammu is upheld. There is no force in the contention of the appellant that the case of the respondent is required to be tried by the Special NIA Court, Jammu. The appeal is without merit and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE (ACTING)

JAMMU:
29.07.2024
Pawan Chopra

Whether the Judgment is speaking? Yes
Whether the Judgment is reportable? Yes