

Neutral Citation No. - 2023:AHC-LKO:73870

AFR

Reserved on 25.09.2023

Delivered on 08.11.2023

Court No. - 28

Case :- APPLICATION U/S 482 No. - 8245 of 2023

Applicant :- Vishal Mishra And Anr.

Opposite Party :- State Of U.P. Through Principal Secretary Home And Anr.

Counsel for Applicant :- Angrej Nath Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

1. Heard Sri Angrej Nath Shukla, learned counsel for the applicants, Sri Shiv Nath Tilahari, learned AGA-I and Sri Aniruddh Kumar Singh, learned AGA-I for the State.

2. By means of the instant application, prayer has been made to quash the charge sheet and cognizance order dated 30.1.2023 and supplementary charge sheet and cognizance order dated 15.6.2023 passed by the Judicial Magistrate First Gonda as well as entire proceedings of Criminal Case No.11874 of 2023, arising out of Case Crime No./F.I.R. No.0516 of 2022, under Sections 147, 148, 149, 323, 504, 506, 307 I.P.C. & Section 2/3 Prevention of Damage to Public Property Act and Section 3 of Explosive Substance Act, registered at Police Station Kotwali Dehat, District Gonda.

3. Factual matrix of the case is that the incident is said to have taken place on 1.11.2022 at 7.00 AM and the injury was examined on the same date at 11.50 AM, in the police custody and the F.I.R. of the incident was lodged on 2.11.2022 at 1.05 pm. After the F.I.R. was lodged, the police investigated the matter and submitted the charge sheet on 26.1.2023, under Sections 147, 148, 149, 323, 504, 506, 307 of I.P.C. and 2 & 3 of the Prevention of Damage to Public Property Act, thereafter further investigation was done and supplementary charge sheet was filed on 9.6.2023, whereafter the trial court took cognizance of the offence under Section 3 of the Explosives Substances Act 1908 (hereinafter referred to

as 'the Act, 1908') along with the other sections and has summoned the accused persons including the present applicants.

4. Contention of the learned counsel for the applicants is that the Act 1908 has been substituted in the Schedule of the National Investigation Act, 2008 (hereinafter referred to as 'the Act 2008') with effect from 02.08.2019 and, therefore, the jurisdiction of the Special Courts as defined under Section 2(1)(h) comes into play. He added that 'Scheduled Offence' has been defined under Section 2 (1) (g) of the Act, 2008, which is quoted hereinunder:-

"2(1)(g). "Scheduled Offence" means an offence specified in the Schedule;"

5. He further submits that as per the provisions of Section 22 of the Act 2008, the State Government may designate one or more courts of sessions, as special courts by way of notification in the Official Gazette. Section 22 of the Act 2008 is reproduced hereinunder:-

"22. Power of State Government to [designate Court of Session as] Special Courts.-(1) The State Government may [designate one or more Courts of Session as] 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 [designated] 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 "Advocate-General of the State".

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is '[designated] by the State Government under sub- section (1) in the case of any 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 '[designated]' 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.

This clause seeks to empower the State Government to constitute one or more Special Courts for the trial of offences under this Act. It seeks to provide that until the Special Court is constituted by the State Government, the jurisdiction under this Act shall be exercised by the Court of Session within whose jurisdiction the offence has been committed. (Notes on Clauses).

6. Referring to the aforesaid, he submits that the Central Government inserted/substituted, the Act, 1908, in the Schedule of the Act, 2008, which became effective on 2nd of August 2019.

7. Further, Section 13 of the 'Act 2008' provides the jurisdiction of the Special Courts, which starts from non-obstante clause and provides that every 'Scheduled Offence' investigated by the Agency shall be tried only by the Special Court. Section 13 of the Act 2008 is reproduced hereinunder:-

"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 prevailing in a State if,-

(a) it is not possible to have a fair, impartial or speedy trial; or

(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. Act 2008 is the Special Act and, therefore, any matter, which is under the 'Scheduled Offences', shall be tried by the Special Courts only as designated by the Central Government or the State Government.

9. So far as the present case is concerned, supplementary charge sheet was filed under Section 3 of the Act, 1908 which is admittedly 'the Scheduled Offence' but the Judicial Magistrate-Ist, Gonda ignoring the provisions of the Act 2008 took cognizance and summoned the applicants including the other co-accused persons. He further argued that it reveals from the impugned order dated 15.6.2023 that the Judicial Magistrate-I has taken cognizance of the offence under Section 3 of the Act 2008 along with the other offences of the Indian Penal Code whereas so far as the offence under Section 3 of the Act 1908 is concerned that is to be tried by the Special Courts as are designated under Section 22 and defined under Section 2(1)(h) of the Act, 2008. It is also an admitted fact that the court of Judicial Magistrate-I, Gonda is not a court designated under Section 22 of the Act 2008 and the fact remains that the Special Court for hearing the matter is designated as third most senior Additional Sessions Judge at Lucknow and the same is having jurisdiction over all the State of Uttar Pradesh so far as the cases scheduled, under the Schedule of the Act, 2008.

10. Further submission is that since the order dated 15.6.2023 passed by the Judicial Magistrate-Ist is being against the provisions of the Act, 2008 is unlawful and erroneous and, therefore, the submission is that the order dated 15.6.2023 passed by the Judicial Magistrate-Ist may be set aside.

11. On the other hand, learned A.G.A. has submitted that as per the powers derived from the provisions envisaged under Section 22 of the Act 2008, the State Government by way of notification dated 20.4.2021 has designated III Seniormost Court of Additional District and Session Judge, Lucknow as Special Court having territorial jurisdiction over whole State of Uttar Pradesh for the trial of all offences as specified in the Schedule appended to the aforesaid Act. He added that the State Government has acted in compliance of the provisions envisaged under Section 22 of the Act, 2008, as such, there is no lacuna in the act of the State Government.

12. Having heard learned counsel for the parties and after perusal of the record, it transpires that initially, an F.I.R. was lodged under Sections 147, 148, 149, 323, 504, 506, 307 of I.P.C. and 2 & 3 of the Prevention of Damage to Public Property Act, thereafter the matter was investigated and the charge sheet was filed on 2.11.2022 and the cognizance was also taken on 30.1.2023. Later on, further investigation was done and Section 3 of the Explosive Substances Act, 1908 has been added and the supplementary charge sheet has been filed on 12.6.2023, thereafter, the Judicial Magistrate-I, Gonda took cognizance and issued summons against the applicants including the other co-accused persons.

13. When this Court examines the matter in the light of the contention made hereinabove by the counsel for the applicant and the records as well as the law applicable therein, it prima facie transpires that the present applicants have been charged for the offences under Section 3 of the Act, 1908 along with other Sections of the Indian Penal Code and once the charge sheet was filed, the Magistrate without considering the

fact that there is a provision under Section 2(1) (h) of the Act, 2008, regarding designated special courts under Section 22 of the Act, 2008, took cognizance in the matter and issued summons.

14. Section 22 of the Act 2008 empowers the State Government to designate one or more courts of session as a special courts for trial of the offences specified in the 'schedule'. It is, prima facie evident from the Schedule of the Act 2008 that the 'Act 1908' is substituted with effect from 2nd of August 2019, in the Schedule of the Act 2008 and, therefore, the jurisdiction of the Special Courts as provided under Section 13 of the Act 2008, shall come into picture, so far as the present matter is concerned.

15. While deriving the powers envisaged under Section 22 of the 'Act 2008', the State Government issued a notification on 20.04.2021 and designated the third senior most Court of Additional District and Sessions Judge, Lucknow as Special Court having territorial jurisdiction of whole of the State of U.P. for the trial of all offences as specified in the schedule which are investigated by anti-terror squad or State Police of Uttar Pradesh meaning thereby that even if the matter is investigated by the State Police, the jurisdiction would lie to the Special Court as provided under Section 13 of the Act 2008.

16. It is also evident from the First Information Report that the same was lodged on 02.11.2022, which is subsequent to the 02.08.2019, i.e., the date when the Act, 1908 has been inserted in the Act 2008 and further the notification was also done prior to the First Information Report was lodged and therefore the case of the applicants covers with the mandate of the Section 22 of the Act 2008 as well as the notification dated 20.04.2021, notified by the State of U.P., thereof.

17. Now, it is conclusive that any investigation which are done by anti-terror squad or the State Police of Uttar Pradesh, so far as the offences specified in the schedule are concerned, shall be tried by the Special Court, designated by virtue of the provisions provided under Section 13

of the Act 2008 read with notification dated 20.4.2021 issued by the State Government.

18. So far as the present matter is concerned, Section 3 of the Act 1908 has been charged after further investigation, by way of filing supplementary charge-sheet and therefore as per the notification dated 24.04.2021, issued by the Government of Uttar Pradesh while exercising its power provided under Section 22 of the Act, 2008 shall be applicable in the instant matter and therefore the matter is triable by the Special Court designated by the State of U.P., i.e., the third senior most Court of Additional District and Sessions Judge, Lucknow.

19. In view of the aforesaid submissions and discussions, the impugned cognizance order dated 30.06.2023 and further the order of cognizance on supplementary charge-sheet dated 15.02.2023 passed by the Judicial Magistrate First, Gonda are hereby set-aside.

20. The application is **allowed** accordingly.

21. Consequently, the District Judge, Gonda is hereby directed to transmit back the Criminal Case No. 11874 of 2023 arising out of Case Crime No. 0516 of 2022 of the Special Court designated by the State Government as the third senior most Court of Additional District and Sessions Judge, Lucknow, who in fact is having the territorial jurisdiction by virtue of the notification dated 20.04.2021, which was issued in consonance with the provision of Section 22 of the Act, 2008, within a period of three weeks from the date of this order.

Order Date :- 08.11.2023

Ram Murti/Anurag