
(2012) 08 MP CK 0260

In the Madhya Pradesh High Court

Case No : Criminal Reference No. 1 of 2012

**In reference Received from: Presiding Officer, Children's Court and
Sessions Judge, East-Nimar Khandwa (M.P.)**

Date of Decision : 07-08-2012

Acts Referred:

Commission for Protection of Child Rights Act, 2005 — Section 13, 13(1)(c), 13(1)(j), 14(1), 15
Criminal Procedure Code, 1973 (CrPC) — Section 193, 223, 395(2), 4
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 18
Motor Vehicles Act, 1988 — Section 181, 3
Penal Code, 1860 (IPC) — Section 279, 337, 338, 427
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 14

Citation : (2012) 4 MPHT 492

Hon'ble Judges : T.K.Kaushal, J;Rakesh Saxena, J

Bench : Division Bench

Advocate : R.D. Jain, /A.G. for the State, for the Appellant; S.C. Datt with Shri Siddharth Datt, Advocate as Amicus Curiae, for the Respondent

Judgement

Rakesh Saxena, J.—Sessions Judge, East-Nimar, Khandwa acting u/s 395(2) of the Code of Criminal Procedure, 1973 (for short the "Code") has made this reference under the following circumstances:-

Judicial Magistrate First Class, Harsud, East-Nimar, Khandwa has committed Criminal Case No. 657/2011 to the Court of Session considering the case as one relating to offences against child in view of the Government of Madhya Pradesh Gazette Notification No. FA 17(E)/38/2010/21-B(One) dated 7th January, 2011 made in exercise of its power conferred u/s 25 of the "Commission for Protection of Child Right Act, 2005" (for short the "Act"). Learned Magistrate in committal order has stated that since the offences under sections 279, 337, 338, 427 of the Indian Penal Code and section 3/181 of the Motor Vehicles Act were committed against the complainant who was of 16 years of age "i.e. a Child", these offences ought to have been tried by the Sessions Court which was specified as Children's Court for the purpose of speedy trial of the offences against the children.

Observing that the "Act" is silent on various important points relating to the trial of offences against child as well as the matters relating to violation of child rights, and a lot of confusion has been created as to what cases should be tried by the "Children's Court" and what exact procedure should be adopted in this respect, learned Sessions Judge has referred for our answer to the following questions:

1. First, what should be the meaning of expression "child" which is not defined in the Act of 2005.
2. Secondly, whether each and every offence irrespective of its gravity and nature in which a child happens to be a complainant or victim either alone or with other persons who are not child has to be tried exclusively by the Children's Court, which is a Court of Sessions.
3. Thirdly, whether, the Children's Court can directly take cognizance in such matters or a committal order is required at the hands of the Magistrate.
4. Fourthly, what is the expense and scope of expressions "Offence against Child" and "Violation of Child Right"s and what sort of trial or proceedings are required to be carried out in case or "Violation of Child Rights" which are brought to the notice of the Children's Court.

Admittedly, the "Act" neither, defines "Child" nor the expression "Offences against Children". The Act, however, contemplates creation of National Commission as well as State Commission for Protection of Child Rights providing that the Commission shall inquire into violation of Child Rights and recommend initiation of proceedings in such cases. As far as violation of "child Rights", section 2(b) of the Act defines expression "child Rights" as under:

2(b) "child rights" includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992.

2. Since the Act is silent on the point as up to what age a person would be deemed to be a child for the purpose of this Act, it is necessary for us to probe into statement of objects and reasons for introducing the Bill in the Legislature. No doubt statement of objects and reasons for introducing a Bill in the Legislature are ordinarily not admissible as an aid to the construction of the statute as enacted; far less can it control the meaning of the actual words used in the Act, but it can sometimes be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for doing so. The preamble of a statute which is often described as a key to the understanding of it may legitimately be consulted to solve an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meaning than one. It may afford useful assistance as to what the statute intends to reach, but if the enactment is clear and unambiguous in itself then no preamble can vary its meaning. [A.C. Sharma

Vs. Delhi Administration,

3. Since the "Act" is silent in respect to the meaning of words "child" and "child rights" a reference to preamble may render assistance in deriving the real intention of Legislature. Its preamble reads:

An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

Whereas India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

And whereas India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

And whereas CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

And whereas in order to ensure protection of rights of children one of the recent initiatives that the Government have taken for Children is the adoption of National Charter for Children, 2003;

And whereas the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

And whereas it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments:

4. It is apparent that India being signatory to the United Nations Convention on the Rights of the Child and having adopted the National Charter for Children, 2003, the Parliament enacted the Act. For ascertaining the meaning of expression "Child" we will have to look at the definition of "Child" given under Article 1 of the Convention on the Rights of the Child which India endorsed on 11th December, 1992.

Article 1 (Definition of the child): The Convention defines a "child" as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

5. In India under the provisions of Indian Majority Act, 1875 as well as in Juvenile Justice (Care and Protection of Children) Act, 2000 the age of "minor"

and "juvenile" has been prescribed as a person who has not attained the age of 18 years. Apart from it, the Committee of Convention on the rights of child recommends States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18. In our opinion, the above provisions enacted for describing the age of a child can be taken into consideration to decipher the intention of the Legislature about the age of a child for the purpose of the Act. Therefore, in our opinion, for the purpose of the Act "child" would be a person who has not attained (completed) the age of 18 years.

6. Questions No. (2),(3) & (4) require analogous consideration as the matters included therein overlap each other. Primary question before us would be whether all the offences defined under any Penal Law, if committed in relation to a child, would amount to offence against the child and whether all the rights of a child described in Convention on the rights of Child or National Charter for Children, 2003 would be cognizable and triable by the Court of Session specified under the Act ? Apparently if it is so, it would create chaos and also result in flooding of the Sessions Court with all such types of cases which are not exclusively triable by it in which a child alone or with other adult person or persons is victim. For example, if a child is dashed by a scooter and a case u/s 279 I.P.C. is registered on his report, should it be sent to Sessions Court for trial merely because the victim is a child. In our view, it would be a preposterous situation.

7. United Nations Convention on the Rights of Child ratified by Government of India on 11th December, 1992, and the National Charter for Children, 2003 adopted by Government of India described number of rights of child under various categories viz.

1. Survival, Life and Liberty;
2. Promoting High Standards of Health and Nutrition;
3. Assuring Basic Minimum Needs and Security;
4. Play and Leisure;
5. Early Childhood Care for Survival, Growth and Development;
6. Free and Compulsory Primary Education;
7. Protection from Economic Exploitation and All Forms of Abuse;
8. Protection of the Girl Child;
9. Empowering Adolescents;
10. Equality, Freedom of Expression, Freedom to Seek and Receive information, Freedom of Association and Peaceful Assembly;
11. Strengthening Family;

12. Responsibilities of Both Parents;

13. Protection of Children with Disabilities;

14. Care, Protection, Welfare of Children of Marginalized and Disadvantaged Communities;

15. Ensuring Child Friendly Procedures.

8. In the backdrop of aforesaid rights, when we examine various provisions of the Act, we find that the Parliament for the protection of Child Rights and for providing speedy trial of offences against children or of violation of Child Rights constituted National and State Commission and Children's Court.

9. Functions and powers of the Commission have been described in Chapter III and Chapter IV. Section 13(1)(c) empowered Commission to inquire into violation of child rights and recommend initiation of proceedings in such cases, and section 13(1)(j) provided for enquiry into complaints and taking suo motu notice of matters relating to deprivation and violation of child rights etc. For ready reference said provisions are reproduced hereunder:-

13(1)The Commission shall perform all or any of the following functions, namely:-

xxx xxxx xxxx xxx xxx xxxx

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases.

xxx

(j) inquire into complaints and take suo motu notice of matters relating to,-

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities;

10. Commission u/s 14(1) of the Act has also been conferred all the powers of a Civil Court while inquiring into any matter referred to in clause (j) of sub-section (1) of section 13. Steps which the Commission may take after inquiry are described in section 15 which reads as under:-"15. The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:-

(i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation

of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

11. For the purpose of providing speedy trial of offences against children or of violation of child rights, State Government has been empowered to specify a Court of Session with the concurrence of the Chief Justice of the High Court and for appointment of Special Public Prosecutor. Chapter V is reproduced hereunder:-

Chapter V

Children's Courts

25. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

Special Public Prosecutor

26. For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

12. Shri R.D. Jain, learned Advocate General submitted that if all the offences against children or of the violation of children's rights are made triable by the Court of Session, it would lead to absurd consequences, therefore, the provisions of section 25 of the Act cannot be interpreted in isolation, without noticing the effect of the provisions of sections 13(1)(c) and 13(1)(j) of the Act. Violation of each and every right of child as described in the Convention cannot be put to trial as an offence before the Court. Since offences against children have not been defined or described in the Act, the provisions of General Law and procedures would apply in respect of them unless specifically barred under the Act.

13. Shri S.C. Datt, learned Senior Advocate, submitted that the main purpose of

the Act is the constitution of Commission for protection of child rights and constitution of Children's Court for providing speedy trial of the offences against children or of violation of child rights and for the matters connected or incidental thereto. When the Commission has jurisdiction to inquire into the violation of child rights and recommend initiation of proceedings in such cases, the Court is not supposed to take cognizance to such offences or violations unless it is recommended by the Commission. On perusal of the provisions of Chapter III, it can be gathered that Commission is empowered to hold a full fledged inquiry into the matter of violation of child rights, It is also empowered to inquire into complaints and to take suo motu notice of the matters relating to deprivation and violation of child rights and various other matters. For the purpose of inquiry the Commission is clothed with all the powers of Civil Court for trying a suit under the CPC particularly for summoning and enforcing the attendance of persons as witnesses, examining them on oath, discovery and production of documents, receiving evidence on affidavits, requisitioning public records from any court or office and issuing commissions for the examination of witnesses or documents. In case of defiance of such orders, the Commission can forward the case to Magistrate.

14. Section 15 of the Act provided that where the inquiry disclosed the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons. From the words "violation of child rights of serious nature" or "contravention of the provision of any law for the time being in force", it can unambiguously be gathered that the Legislature intended that when after inquiry the Commission finds contravention of any prevalent Penal law or violation of child rights of a serious nature, it may recommend to the concerned Government or authority for the initiation of the proceedings for prosecution. In this context, the logical corollary would be that if concerned Government or authority proceeds for prosecution of the concerned person or persons, such offences against children or of violation of child rights shall be tried by the Court of Session specified u/s 25 of the Act. In other matters looking to the exigencies, the Commission may approach to Supreme Court or High Court concerned for directions, orders or writs as that Court may deem necessary. In our view, this must be intention of Legislature behind enactment of statute.

15. Learned Advocate General, in our opinion, rightly submitted that in view of the provision of section 4 of the Code of Criminal Procedure, 1973 the jurisdiction of the regular Courts for inquiry and trial in respect of offences under the Indian Penal Code and all offences under any other laws is not excluded unless any other enactment in force regulated the manner or place of investigation, inquiry or trial otherwise. Section 4 of Code of Criminal Procedure reads as under:-

4. Trial of offences under the Indian Penal Code and other laws.-(1) All offences

under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other laws shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. The Act in question does not define offences against the children, therefore, it can be assumed that if any offence under the Penal Code or any other law is committed against or in relation to child, it would be offence against the child, but there may be myriads of criminal cases in which a child is affected. Would it not lead to absurdity if all those cases are sent to Sessions Court for trial. In our opinion, that cannot be the intention of Legislature. Only those cases of serious nature in which Government or the authority concerned proceeds for prosecution on the recommendation of Commission can be tried by the specified Sessions Court. Since the normal procedure provided under the Code of Criminal Procedure has not been excluded by the Act, all other cases affecting a child shall proceed in accordance with the procedure provided in the Code.

17. Next question before us is whether a case in which a victim is child and others are adult/major, can there be a joint trial? In our opinion, this question can be answered on the strength of section 223 of the Code of Criminal Procedure which provides that persons accused of the same offence committed in the course of the same transaction may be charged and tried together. The proceedings of the Code of Criminal Procedure in this regard have not been excluded by the Act. If the prosecution of an offence in which victims are child as well as adult is splitted for trial in two Forums, in our opinion, it would lead to complication and multiplicity. It has not been specifically provided by the Act that the offences against a child or the case of violation of child rights have to be tried separately where in the same incident or transaction, some of the victims are adult. There is no provision, like section 18 of Juvenile Justice (Care and Protection of Children) Act, 2000 where there cannot be a joint proceeding of a juvenile and a person who is not a juvenile, therefore, in our opinion, it cannot be held that there cannot be a joint trial of a case in which child is not the sole victim and some other persons are also victims. Separation of trials, in our opinion, would lead to absurdity since an accused would have to face two trials; one before specified Court and other before regular Court, and similarly prosecution witnesses would have to give evidence twice.

18. Last question before us is whether the Children's Court can directly take cognizance in such matters or a committal order by Magistrate is required? In our opinion, this question is squarely covered by the law laid down by the Apex Court in case of Gangula Ashok and Another Vs. State of A.P., The provisions of section 25 of the Act are pari materia to the provisions of section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. For ready reference both the sections are reproduced:-

[The Commissions for Protection of Child Rights Act, 2005]

25. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

[SC/ST(Prevention of Atrocities) Act, 1989]

14. Special Court.- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

19. Apex Court in case of Gangula Ashok (supra) observed:-

9. Thus the Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of Session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "Trial before a Court of Session".

10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting to those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a

magistrate.

11. Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a magistrate. If that be so, there is no reason to think that the charge- sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal Courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which magistrates have to do until the case is committed to the Court of Session.

16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straightway be laid before the Special Court under the Act.

20. In view of the above preposition of law, there is no doubt that the prosecution of the offences against children by way of complaint or a police case has to be initiated before the Court of Magistrate having jurisdiction. The Court of Session specified can take cognizance of the offence under the Act only if it has been committed to it by the Magistrate.

21. For the reasons given above, we answer the questions referred to us as follows:

(1) The meaning of expression "Child" for the purpose of the Act would be a person who has not completed 18th year of age.

(2) Each and every offence in which a child happens to be a complainant or victim shall not necessarily be deemed to be an offence triable under the Act unless in respect of it a proceeding for prosecution has been initiated by concerned Government or authority on the recommendation of Commission constituted under the Act. In respect of the prosecution initiated by the complainant or police in the absence of there being recommendation from the Commission, ordinary procedure provided under the Code of Criminal Procedure has to be followed. Even if the complainant or a victim is a child alone or there are other persons who are not child, the case has to be tried exclusively by the Children's Court constituted u/s 25 of the Act, if prosecution has been recommended by the Commission.

(3) Children's Court constituted u/s 25 of the Act cannot directly take cognizance in such matters. It can take cognizance only if the case has been committed to it by Magistrate as provided in the Code of Criminal Procedure.

(4) Only those kind of cases in respect of which the Commission finds "violation

of child rights of a serious nature" or "contravention of provision of any law for the time being in force" and recommends to the concerned Government or authority for initiation of the proceedings for prosecution, shall be deemed to be cognizable and triable by the specified Children's Court constituted u/s 25 of the Act. In all other cases, ordinary procedure provided in the Code of Criminal Procedure shall be followed.

22. Reference is answered accordingly. The matter shall now go back to learned Sessions Judge and Presiding Officer of Children's Court, East-Nimar Khandwa for disposal of cases before him in accordance with law and in the light of the observations made in this order.

23. Before parting, we place on record our sincere appreciation for the valuable assistance rendered by Shri R.D. Jain, Senior Advocate/Advocate General and Shri S.C. Datt, Senior Advocate. This matter, since, involves questions of general importance to all the subordinate Courts, Registry, subject to approval of the Hon'ble the Chief Justice, may circulate this order among all the Sessions Judges.