

(2019) 07 CAL CK 0052
In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 626 Of 2019, CRAN No. 1497 Of 2019

Pratap Pramanick And Others

APPELLANT

Vs

State Of West Bengal And Another

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 114, 323, 354, 354C, 376D, 376(2)(d), 376(2)(i), 376(2)(n), 509
Protection Of Children From Sexual Offences Act, 2012 — Section 6, 10, 17, 28, 31
Code Of Criminal Procedure, 1973 — Section 9(1), 9(3), 193, 194, 407, 407(1), 408, 408(1), 408(2), 408(3), 408(4), 408(5), 408(6), 408(7), 408(9), 409
Information Technology Act, 2000 — Section 67B

Citation : (2019) 07 CAL CK 0052

Hon'ble Judges : Asha Arora, J

Bench : Single Bench

Advocate : Milon Mukherjee, Ashraf Ali, Ashiwini Kumar Bera, Sabnam Laskar, S. G. Mukherjee, Faria Hossain, Baisali Basu

Final Decision : Dismissed

Judgement

Asha Arora, J

By the instant application the petitioners have assailed the order dated 15th February, 2019 passed by the Sessions Judge Howrah in Criminal Misc

Case No. 102 of 2019 arising out of Joypur P.S. Case No. 199 of 2018 dated 30th November, 2018 under Sections 376(2)(d)/ 376(2)(i)/ 376(2)(n)/

376D/ 323/ 354C/ 354/ 509/114 IPC and Sections 6/10/17 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act).

By the order impugned the aforesaid Criminal Misc Case arising out of an application under Section 408 of the Code of Criminal Procedure filed at the

instance of the State was allowed on contest and the case being Special Case No. 118 of 2018 has been transferred from the Court of Additional

Sessions Judge, 1st Court at Uluberia designated as Special Court under POCSO Act to the Court of Additional Sessions Judge 2nd Court at Howrah

designated as Special Court under POCSO Act for trial and disposal.

The facts in brief leading to the present application may be summarized as follows:

On the basis of a report dated 27/11/2018 of Mayukhi Kayal, Counsellor, District Child Protection Unit, Howrah, alleging that two female children of

the Child Care Institution named Chiranabin have been sexually abused by the male staff and associated persons of the said Home, the above

mentioned case being Joypur P.S. Case No. 199 of 2018 dated 30/11/2018 was initiated. Investigation of the case culminated in the submission of the

charge-sheet against the petitioners herein under Sections 376(2)(d)/ 376(2)(i)/ 376(2)(n)/ 376D/ 323/ 354C/ 354/ 509/ 114 IPC and Sections 6/10/17

of POCSO Act. Cognizance was taken by the Additional Sessions Judge 1st Court at Uluberia, being the Special Court designated under POCSO Act

whereafter charges were framed against the petitioners and the case was posted for evidence. At this stage an application under Section 408 of the

Code of Criminal Procedure was filed by the prosecution seeking transfer of the case to the Special Court under POCSO Act at Howrah Sadar on

the ground that the safety and security of the two deaf and dumb victim girls may be at stake if they are taken from Liluah Home to Uluberia Court

for their deposition. It was further contended before the Sessions Judge that the Special Court at Howrah Sadar is nearer to Liluah Home where the

victim girls have been kept in safe custody. It was also canvassed that the Special Court under POCSO Act at Uluberia is not child-friendly as

required under POCSO Act. The application under Section 408 CrPC was opposed by the accused persons/petitioners herein mainly on the ground

that the Sessions Judge has no power to transfer a case under POCSO Act from one Special Court constituted under the said Act to another such

Court. After hearing the learned counsel for the parties the impugned order was passed.

Learned counsel for the petitioners strenuously argued that in view of Section 28 of POCSO Act a Court of Session is designated to be a Special

Court to try the offences under the said Act, so the Sessions Judge of a sessions division has no authority to transfer a case under POCSO Act from

one Special Court constituted under POCSO Act to another such Court. Learned counsel submitted that a Special Court constituted under POCSO

Act shall be deemed to be a Court of Sessions in view of Section 31 of the said Act and this Section speaks about the application of the provisions of

the Code of Criminal Procedure to the proceedings before a Special Court unless otherwise provided in this Act. Therefore a Special Court under

POCSO Act is not administratively or judicially subordinate to a Sessions Court of a district. It is contended that the Special Court constituted under

Section 28 of POCSO Act being a court of original jurisdiction, the power to transfer a case under the said Act from one such Special Court to

another can be exercised by the High Court under Section 407 CrPC and not by the Sessions Judge under Section 408 CrPC or 409 CrPC. No

submission has been advanced challenging the grounds for transfer of the case. Simply put, whether the case deserves to be transferred or not is not

in issue before this Court.

Repudiating such submissions, learned Public Prosecutor countered that Section 28 of POCSO Act does not divest or debar the Sessions Judge from

exercising the power to transfer cases under Section 408 CrPC which has a wide ambit. Referring to Section 408(1) CrPC it is pointed out that

whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any

particular case be transferred from one criminal court to another criminal court in his sessions division. It is submitted that in view of the special

circumstances mentioned in the impugned order that the Special Court under POCSO Act at Uluberia is not child-friendly and for the safety of the

victims who are vulnerable, the order of transfer of the case under the aforesaid provision does not suffer from any illegality. It is further contended

that if this Court finds that the impugned order is not legally sustainable, by taking note of the grounds indicated in the order of the Sessions Judge, an

appropriate order for transfer of the said case may be passed by this Court.

The crucial point for determination is whether under Section 408 CrPC a Sessions Judge has the power to transfer a case under POCSO Act from

one Special Court constituted under the said Act to another such Special Court

within his sessions division.

For consideration of this issue it may be beneficial to quote Section 28 of POCSO Act which reads as follows:

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 facilities abuse of children online.

It is clear from a plain reading of the aforesaid provisions that the object of constituting a Special Court under POCSO Act is for expeditious trial and

disposal of the cases relating to offences under this Act and for providing speedy relief to the child victims of sexual offences. There is nothing in this

Act which negates, restricts or curtails the power of the Sessions Judge under Section 408 CrPC to transfer a case under POCSO Act from one

Special Court constituted under the said Act to another such Court in his sessions division. At this juncture, it may be useful to refer to Section 408

CrPC which is quoted hereinbelow:

408. Power of Sessions Judge to transfer cases and appeals.- (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-

section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in

his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order

under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-

section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty

rupees" were substituted.

It is evident that in view of Section 408 CrPC a Sessions Judge, in his administrative and supervisory capacity is empowered to transfer any particular

case from one Criminal Court to another Criminal Court in his sessions division whenever it is made to appear to him that it is expedient to do so in the

interest of justice. This section does not indicate that the power of a Sessions Judge to transfer cases from one Criminal Court to another Criminal

Court is restricted only to cases under the General Act and the cases under the Special Act are excluded from the exercise of such power under

Section 408 CrPC. There is also no legal embargo indicated in Section 408 CrPC on the power of a Sessions Judge to transfer a case even after the

commencement of trial. Sub-section (2) of Section 408 CrPC provides that the Sessions Judge may exercise such a power either on the report of the

lower Court, or on the application of a party interested or on his own initiative. In the case in hand, the Sessions Judge acted on the basis of an

application filed by prosecution. At this juncture, it may be profitable to refer to sub-section (3) of Section 9 CrPC which provides that the High Court

may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. The expression indicates that

an Additional Sessions Judge is appointed to exercise jurisdiction in a Court of Session. A Court of Additional Sessions Judge is not established

separately whereas sub-section (1) of Section 9 CrPC provides that the State Government shall establish a Court of Session for every sessions

division. Sub-section (2) provides that every Court of Session shall be presided over by a Judge, to be appointed by the High Court. Though the

Sessions Judge and the Additional Sessions Judge exercise jurisdiction in the

same sessions division, a Sessions Judge presides over the Court of Session and to share the workload in the said Court, Additional Sessions Judges are appointed. Now the question is whether an Additional Sessions Judge exercises all the powers of a Sessions Judge presiding over a Court of Session. Under Section 193 CrPC it is only a Court of Session which can take cognizance of an offence exclusively triable by a Court of Session on the case being committed to the said Court by a Magistrate under the Code. Thus the Court of Session is a Court of original jurisdiction to take cognizance of any offence when the case is committed to it and the Judge presiding over the Court of Session is the Sessions Judge of that sessions division. On the other hand, as provided in Section 194 CrPC an Additional Sessions Judge can only try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial. Similarly, under Section 408 CrPC the power to transfer a case from one Criminal Court to another in a sessions division is vested only with the Sessions Judge and not with the Additional Sessions Judge. Now coming to Section 28 of POCSO Act, it provides that the State Government shall in consultation with the Chief Justice of the High Court, designate for each district, a Court of Session to be a Special Court to try the offences under the Act. The expression used in Section 28 is not a Sessions Judge or an Additional Sessions Judge. It is a Court of Session. In view of Section 9(1) CrPC a Court of Session is established and a Sessions Judge presides over the said Court whereas an Additional Sessions Judge exercises jurisdiction in a Court of Session. It is evident that in exercise of his administrative power the Sessions Judge transferred the case from the Special Court under POCSO Act at Uluberia to the Special Court under POCSO Act at Howrah in view of the special circumstances mentioned in the impugned order.

For the reasons aforesaid, I do not find any illegality in the order impugned. The revisional application being devoid of merit is accordingly dismissed. The application being CRAN 1497 of 2019 also stands dismissed.

A copy of this order be communicated forthwith to the trial Court for expeditious trial and disposal of Special Case No. 118 of 2018 in accordance with law.

Urgent photostat certified copy of this order if applied for be given to the applicant upon compliance of requisite formalities.