

**(1969) 08 GUJ CK 0007**  
**In the Gujarat High Court**  
**Case No : Criminal Reference No. 38 of 1969**

The State of Gujarat

APPELLANT

Vs

Fulsinh Bimsinh and Others

RESPONDENT

---

**Date of Decision : 26-08-1969**

**Acts Referred:**

Child Marriage Restraint Act, 1929 — Section 8  
Criminal Procedure Code, 1898 (CrPC) — Section 29(1)

**Citation : AIR 1971 Guj 1 : (1971) CriLJ 41 : (1971) 12 GLR 105**

**Hon'ble Judges : J.M. Sheth, J**

**Bench : Single Bench**

**Advocate : J.U. Mehta, Hon. Asst. Govt. Pleader, for the Appellant; G.D. Bhatt, Amicus Curiae, for the Respondent**

---

## Judgement

1. This is a reference made by the learned Sessions Judge, Ahmedabad Rural at Himatnagar, recommending that the order of committing the

accused for several offences under the Indian Penal Code and for offences punishable under Sections 5 and 6 of the Child Marriage Restraint Act,

1929 (which will be hereinafter referred to as the Act), passed by the Judicial Magistrate First Class, Idar, in Criminal Case No. 1170 of 1968, so

far as it relates to offences punishable under sections 5 and 6 of the Act, be quashed. It is so recommended on the ground that the Court of

Session has no jurisdiction to try the accused for the said offences, but only a Magistrate of the First Class has got jurisdiction to try the accused

for the said offences. It is further recommended that the learned Judicial Magistrate, First Class, Idar, be directed to proceed further with the trial

of the accused for the offences punishable under Sections 5 and 6 of the Act, according to law.

2. The facts giving rise to this reference, briefly stated, are as under:

The prosecution case is that accused Nos. 1 and 2 kidnapped one girl Bai Vada, daughter of Bhikhsingh Kalusingh with intent that she might be

compelled to marry against her will or in order that she might be forced or seduced to illicit intercourse and that accused Nos. 3 to 8 abetted the

commission of the said offence and further, accused No. 3 married Bai Vada, aged below 16 years and thereby committed an offence punishable

u/s 5 of the Act; the other accused failed to prevent the said marriage being performed and thereby committed an offence punishable u/s 6 of the

Act. Bai Vada's father lodged a complaint at Vadali Police Station. After the necessary investigation, a charge-sheet was sent by the police against

all eight accused for the offences punishable under Sections 366 - 376 read with Section 511 and 34 of the Indian Penal Code and also under

Sections 5 and 6 of the Act. The Judicial Magistrate, First Class, Idar, after making a preliminary inquiry, committed the accused to the Court of

Session to stand their trial.

3. When the Sessions Case came for hearing before the learned Additional Sessions Judge, Ahmedabad (Rural) at Himatnagar, the order of

committal came to be challenged. The learned Additional Sessions Judge found that in view of the provisions of Section 8 of the Act and section

29 (1) of the Criminal Procedure Code, the Court of Session had no jurisdiction to try the accused for the offences punishable under Sections 5

and 6 of the Act.

4. One another contention raised before him was that the offences under the Act were alleged to have been committed within the jurisdiction of the

Judicial Magistrate, First Class, at Himatnagar. In view of it, ordinarily, the Judicial Magistrate, First Class Himatnagar would be a Magistrate

competent to inquire into and try the accused for the said offences. In view of the provisions of Section 12(2) of the Criminal Procedure Code, the

learned Additional Sessions Judge negative the second contention. Further more, he found that committal order cannot be quashed on that ground

in view of the provisions of Section 531 of the Criminal Procedure Code, unless it appears that such error has in fact occasioned a failure of

justice. It was only in view of the aforesaid first contention that the learned Additional Sessions Judge has made the aforesaid recommendation in

this Reference.

5. Mr. J. U. Mehta, learned Hon. Assistant Government Pleader, appearing for the State and learned Advocate Mr. G.D. Bhatt, appointed as

Amicus Curiae, supported the recommendation made by the learned Additional Sessions Judge.

6. A short, but interesting question, which is no doubt a ticklish question, that arises in this case is, whether accused for the offences under Sections

5 and 6 of the Act are concerned, if the committal order is made by a Magistrate competent to commit the accused for trial, can be tried by

Sessions Court in view of the provisions of Section 8 of the Act and Section 29 (1) of the Criminal Procedure Code.

7. I will first refer to Section 8 of the Act which is very material for our purposes. It reads:

Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure, 1898, no Court other than that of a Presidency Magistrate

or a Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

A plain reading of this section indicates that it is not only that the cognizance of any offence under this Act is to be taken by the Courts mentioned

therein, but it is also to be tried by the Courts mentioned therein. Furthermore, this section does not only mention that offences under this Act shall

be tried by a particular Court or by a particular category of Magistrates. There is an express prohibition. The express prohibition is that no Court,

other than that of a Presidency Magistrate or a Magistrate of First Class shall take cognizance as well as trying of an offence under this Act. The

Child Marriage Restraint Act is a special law. Under this Special law, a provision has been made as to the Court that shall take cognizance of as

well as try such offences and all other Courts are prohibited from taking cognizance of as well as trying any such offences under this Act. This is

Act No. 19 of 1929.

8. We will now refer to the relevant provisions of the Criminal Procedure Code (which will be hereinafter referred to as the Code.)

9. In Section 1 (2) of the Code, it is stated that it extends to the whole of India except the State of Jammu and Kashmir and the Union Territory of

Manipur; but, in the absence of any specific provisions to the contrary, nothing

herein contained shall affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to ... provided that the State Government may, if it thinks fit, by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

10. Section 4, sub-section (1) clause (0) of the Code defines `offence' as under: -

Offence"" means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made u/s 20 of the Cattle-trespass Act, 1871.

It is therefore, evident that the definition of the word, `offence' includes an act or omission made punishable even by special law an not only an act or omission punishable under the Indian Penal Code the general law.

11. Section 5 of the Code reads: -

(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 law 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 offence.

In the instant case, there is such a clear provision in Section 8 of the Act, which states that offences under the Act shall not be tried by any Court other than the Court mentioned therein.

12. Sections 28 and 20 of the Code fall in Chapter III which deals with ""powers of Courts"", under the heading - ""A. - Description of offences cognizable by each Court"".

13. Section 28 reads:

Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried -

(a) by the High Court, or

(b) by the Court of Session, of

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

The eighth column of the second Schedule refers to offences punishable under the Indian Penal Code, in Part I and in Part II it refers to offences

punishable under other laws. Column VIII of that Schedule mentions, ""By what Court those offences are triable."" It is no doubt true that this

Section 28 is subject to the other provisions of the Code. But Section 28 of the Act only refers to offences under the Indian Penal Code. It

indicates that any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such

offence is shown in the Second Schedule, to be triable. The illustration given is:

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a

Magistrate.

Even though this offence is triable by a Magistrate as per the Second Schedule, if 'A' is committed to the Court of Session on a charge of culpable

homicide, the Sessions Judge can convict a person of voluntarily causing hurt. That does not mean that the Sessions Court will be in a position to

take cognizance of such a case directly without an order of commitment by a competent Magistrate and try that offence. The reason is that Section

28 is subject to other provisions of the Code.

14. Section 193 (1) of the Code, which is material for our purposes, reads:

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of

any offence as a Court of original jurisdiction unless the accused has been committed to it, by a Magistrate duly empowered in that behalf.

Similarly, Section 194 of the Code provides:

The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

It is thus evident that the High Court and the Sessions Court can take cognizance of any offence upon the commitment made to it in the manner

thereinafter provided, so far as the High Court is concerned and so far as the Sessions Court is concerned, if the accused is committed to it by a

Magistrate duly empowered in that behalf. No doubt, if there are express provisions in the Code or there are such provisions in any other law for the time being in force, the Court of Session can take cognizance of any offence as a Court of original jurisdiction. In the absence of any such express provisions, it cannot take cognizance of any offence unless the accused had been committed to it be a Magistrate duly empowered in that behalf.

15. Section 29 (1) of the Code reads: -

Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

No doubt, in view of the provisions of this Section. 29 (1) of the Code, any offence under special law, like the Act, shall, when any Court is mentioned in that behalf in such law, be tried by such Court. No doubt, that position is qualified as it is made subject to the other provisions of the Code. In the instant case, as said earlier, in the special law, the Court has been mentioned. It is not only that the Court has been mentioned which is competent to try such offences and to take cognizance of. But there is an express prohibition that no other Court will be entitled to take cognizance of, and be entitled to try such offence.

16. We are not concerned with Section 29 (2) of the Code and hence, it is not necessary to refer to it.

17. Sections 206 and 207 are two other material sections falling in Chapter 18 of the Code which deal with "" Of inquiry into cases triable by the Court of Session or High Court"". Section 206 reads:-

(1) Any Presidency Magistrate or Magistrate of the first class, or any Magistrate not being a Magistrate of the third class empowered in this behalf by the State Government in consultation with the High Court may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

This sub-section (1) of Section 206 of the Code gives power to the categories of Magistrates referred to therein to commit any person for trial to the Court of Session or High Court for any offence triable by such Court. The question that arises for consideration is as to what is meant by any

offence triable by such Court.

18. Sub-section (2) of Section 206 of the Code reads:

But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

It, therefore, means that in the absence of any express provision to the contrary, no person triable by the Court of Session can be committed for trial to the High Court.

19. Section 207 of the Code, reads: -

In every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall -

(a) in any proceeding instituted on a police report, follow the procedure specified in Section 207-A; and

(b) in any other proceeding, follow the procedure specified in the other provisions of this Chapter.

A plain reading of these two sections indicates that even though a particular offence is not triable exclusively by the Court of Session, and is an offence triable by a Magistrate, the Magistrate can commit the accused to the Court of Session to stand his trial for the offence, if he is of opinion that such a case ought to be tried by the Court of Session.

20. There is similar Section 347 of the Code falling in Chapter 24 which relates to General Provisions as to Inquiries and trials. It, therefore, appears that it is a supplementary provision and that section reads:

(1) If in any inquiry before Magistrate, or in any trial before a Magistrate, before signing judgment it appears to him at any stage of the

proceedings that the case is one which ought to be tried by the Court of Session or High Court and if he is empowered to commit for trial, he shall

commit the accused under the provisions hereinbefore contained." Reading these three Sections 206-207 and 347 of the Code in conjunction, it

appears that even though the offence is triable by a Magistrate, the Magistrates referred to, in Section 206 of the Code, can commit the accused to

the Court of Session for trial. At the same time, one has to bear in mind that the Magistrate is empowered to commit any person for trial, for any

offence triable by such Court. Sections 207 and 347 of the Code indicate that

such committal can also be made even though the case is not triable

exclusively by the Court of Session or by the High Court, if the Magistrate is of opinion that such as case ought to be tried by such Court, i.e.,

Court of Session.

21. The question for consideration, therefore, is whether these provisions would control the provisions of Sections 28 and 29 of the Code. So far

as the offences under the Indian Penal Code are concerned, even though such offences are triable by the Magistrate only, and they are not

offences exclusively triable by the Sessions Court or triable both by the Sessions Court as well as by the Magistrate, the Court of Session can try

them if the Magistrates referred to in the provisions of Section 206 of the Code, commit the accused for trial. The provisions of Section 28 of the

Code make that position quite clear. So far as the provisions of Section 29 (1) of the Code are concerned, it appears that any offence under any

other law has to be tried by a Court which is mentioned in this behalf in such law. No doubt, that position is also subject to the other provisions of

this Code.

22. Whether these Sections 206, 207 and 347 of the Code can be said to be such other provisions of the Code to which that Section 29(1) is

subjected? It may be that these provisions of the Code. That matter is not absolutely free from doubt. But in the instant case, it is not necessary for

me to decide that question finally, as it appears to me that the present case stands on a little different footing. In Section 8 of the Act which is

special law, there is not only that a Court is mentioned by which such offences under the Act would be tried, but there is also an express

prohibition that no Court other than the Court mentioned therein shall take cognizance of such offences and further, they will not be entitled to try

such offences. It, therefore, means that there are clear provisions in the special law which prohibits taking cognizance of such offences as well as

trying such offences. One should bear in mind the distinction between taking cognizance of and the competence of Court to try a particular offence.

23. In *Basdeo and Others Vs. Emperor*, , Braund, J., has made the following observations which can be referred to, with advantage at this stage:

There is, I think, a great deal of difference between a case in which the Sessions Court is enjoined in certain circumstances not to take cognizance



of an offence and a case in which the Sessions Court is not a Court of "" competent jurisdiction"" in relation to that offence. A committal by a

Magistrate to an other Court does not confer jurisdiction on that other Court. Jurisdiction is given to Courts by the statutes which create them.

Jurisdiction is the definition of their legal powers in contradistinction to the machinery and procedure in accordance with which those legal powers

are to be exercised. Moreover, ""cognizance"" of an offence or a case is, I think, something quite different from jurisdiction to deal with tat case. A

Court may very well be a Court of competent jurisdiction in regard to any particular offence or any particular case without being in a position to

take ""cognizance"" of it; and, to my mind, it is a confusion of ideas to treat competence to take cognizance of an offence as the same thing as

competence in respect of jurisdiction in relation to that offence. The two things are, as I see it, quite different.

Section 193 of the Code no doubt, entitles the Sessions Court to take cognizance of an offence when the accused has been committed to it by a

Magistrate, duly empowered in that behalf. But the Magistrate is empowered to commit the accused for trial only in regard to the offence triable by

such Court.

24. A Division Bench of Hyderabad High Court in State v. Chand Khan AIR 1956 Hyd 39, observes:

The powers of a Magistrate to commit are not limited to cases exclusively triable by a Court of Session. The words "" any offence triable by each

Court"" in Section 206 (1) are general and of wide application. They do not necessarily mean any offence which is exclusively triable by a Court of

Session as shown in column 8 of Schedule (2) of Criminal Procedure Code. Thus it is not merely in cases which are exclusively triable by a Court

of Session but also in cases which in the opinion of the Magistrate ought to be tried by such Court, that the Magistrate has wide discretion to order

commitment. The general powers u/s 206 are not in any way limited in this regard by the provisions of Section 207. A committal order cannot,

therefore, be said to be without power or even an unsound exercise of discretion because the offence is triable by a Magistrate empowered u/s 30

and the order is not liable to be quashed.

At page 40, in the body of the judgment, the pertinent observations made are:

It is not merely in cases which are exclusively triable by a Court of Session but also in all cases which in the opinion of the Magistrate ought to be

tried by such Court, that the Magistrate has wide discretion to order commitment. The general powers u/s 206, Criminal Procedure Code are not

in any way limited in this regard by the provisions of Section 207, Criminal Procedure Code. The words used in that section are express and admit

of no other interpretation than the one stated above. Section 347, Criminal Procedure Code lends further support to this view. In *Rex v. Matoley*

AIR 1949 All 1 (FB), the Full Bench of the Allahabad High Court has observed:

the reasons for which a Magistrate who is otherwise competent may commit a case to the Court of Session are not in any way limited either to a

case which he cannot try or to a case in which he cannot adequately punish. A Magistrate otherwise competent may commit any person for trial to

the Court of Session for any offence.

Thus the contention that the Magistrate had no power to commit or hold preliminary inquiry for commitment as the case was not exclusively triable

by the Sessions Judge fails.

It is also contended that as the Additional District Magistrate, Adilabad was invested with powers u/s 30, Criminal Procedure Code such offences

as are not punishable with death ought not to be tried by the Court of Session and as such the Magistrate could not commit this case. We cannot

accept this view either. Section 28 (2), Criminal Procedure Code, makes it abundantly clear that the Court of Session is empowered to try every

offence. It is true that the provisions of Section 28, Criminal Procedure Code, are subject to other provisions of the Code including Section 30,

Criminal Procedure Code.

But the investment of powers u/s 30, Criminal Procedure Code by the State Government does not oust the jurisdiction of the Court of Session, nor

the powers of such a Magistrate especially empowered and those of the Sessions Judge become mutually exclusive. Powers u/s 30, Criminal

Procedure Code only enable the District Magistrate to try cases which otherwise on account of column 8, Schedule 2 of Criminal Procedure Code

he could not try.

25. Mr. Bhatt had pointed out to me a decision of a Division Bench of the Allahabad High Court in *Emperor, through Bachan Lal Vs. Subedar*

Singh and Others, , wherein it was observed that the words ""triable by such Court"" refer to entries in column 8 of the second schedule. It has

expressed a view which is contrary to the view expressed by a Division Bench of the Hyderabad High Court in the aforesaid case, but that

decision has been overruled by the Full Bench of Allahabad High Court in AIR 1949 All 1 (FB). It is also significant to note that the decision

earlier referred to, by me - Basdeo and Others Vs. Emperor, - has also been overruled, so far as this particular point is concerned.

26. A Full Bench of Allahabad High Court in AIR 1949 All 1 (FB), has relied upon the decisions of the various High Courts, some of which were

also the decisions of the Bombay High Court, and it overruled its earlier decisions and made the following observations: -

The provisions contained in Sections 346, 347 and 349 are generally applicable to all inquiries and trials. They should be looked upon as

supplemental to the provisions contained in Chapters 20, 21 and 22. The reasons for which a Magistrate, who is otherwise competent, may

commit a case to the Court of Session are not in any way limited either to a case which he cannot try or to a case in which he cannot adequately

punish the accused. A Magistrate, otherwise competent, may commit any person for trial to the Court of Session or the High Court for any

offence; but he must give adequate reasons for committing a person for an offence which is not exclusively triable by the Court of Session or the

High Court.

At page 7, it has been observed in para 32 as under:-

It is, therefore, clear that there is a weighty volume of judicial opinion in India which rounds counter to the view so far taken by this Court. I shall,

however, revert to this question after examining the relevant provisions contained in the Code of Criminal Procedure.

27. Certain observations made by a Division Bench of the Bombay High Court in Banappa Kallapa v. Emperor AIR 1944 Bom 146 : 45 Cri LJ

701 are quoted therein indicating that in cross cases, accused can be committed to the Court of Session, even though in one of them offences were

triable by Magistrate to avoid conflicting decisions. At page 9, in para 48, the relevant observations made are:

The provisions of Sections 346, 347 and 349 clearly indicate that a Magistrate

who takes cognizance of a case may try it himself, if he has jurisdiction. But if he is of opinion that he cannot inflict an adequate sentence, he may act u/s 346 or Section 349, and send the case to a higher Magistrate. Lastly, he may, if he thinks that it is a fit case for trial by a Court of Session, commit the accused for trial, or if he has no power to commit himself, he may send it by reason of the provisions of Section 346 to another Magistrate for proceedings for commitment. The words `the case is one which should be tried or committed for trial" show that there is a clear reference for the discretion or `opinion" of the Magistrate concerned. Similarly, the expression `it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court" clearly indicates that the Magistrate has full discretion, at any stage of the proceedings in any case before him to decide whether or not the case is a fit one for commitment to the Court of Session. The next point which requires serious consideration is whether there is any provision in the Code of Criminal Procedure which in any way restricts the discretion of the Magistrate vested in him by Section 347. There is undoubtedly, a serious conflict of judicial opinion on this question, as would appear from a long line of cases briefly noticed in an earlier part of this judgment. Section 254 has been interpreted in such a way as to make it obligatory for the Magistrate to frame a charge and proceed with the trial when once he has found that the offence is one which he is competent to try and which he can adequately punish."" At page 10, the observations made are:

In many of the above-mentioned cases it seems to me - I again speak with the utmost respect - that the real significance of the general provisions contained in Chapter 24 and, in particular, provisions of Section 347 has been lost sight of. Then again it appears to me that provisions of Sections 206 and 207, Criminal Procedure Code, which imply the existence of a power in the Magistrate concerned to commit a person for trial to the Court of Session or High Court, have not been given due consideration in the determination of these questions. It is important to note that the words used in this Section give a wide discretion to the Magistrate to commit any person for trial to the Court of Session for any offence triable by such Court. The words ""triable by such Court"" do not, in my judgment,

necessarily mean an offence which is shown as triable by the Court of Session in column 8 of Schedule 2 of Criminal Procedure Code. The words are quite general and they mean that any case involving any offence triable by the Court of Session, should be committed by a Magistrate for trial to the Court. Section 28, Criminal Procedure Code, makes it abundantly clear that the Court of Session is empowered to try every offence under the Penal Code." It is thus evident that for any such offence, a Magistrate is empowered to commit the accused to the Court of Session for trial, even though the offence is triable by a Magistrate, as Section 28 of the Code makes it abundantly clear that the Court of Session is empowered to try every offence under the Indian Penal Code. In the instant case, Section 28 of the Code cannot be pressed into service. It is only Section 29(1) of the Code which can be considered. As said earlier, in the special law itself, there is an express prohibition that offences under the Act cannot be tried by any Court other than the Courts cannot take cognizance of such offences. In view of this express prohibition in the special law which has an overriding effect, it is evident that even though the committing Magistrate has committed the accused to stand their trial, for offences under the Penal Code, which are triable by the Sessions Court, Sessions Court will not have jurisdiction to try these offences under the Act. The reason underlying it is that there is an express prohibition in special law which has got an overriding effect over the provisions of general law.

28. There is only one old solitary case which had to deal with a similar question. It was in relation to the interpretation of Section 9 of the Opium Act, 1878. The relevant part of it reads:

Any person who, in contravention of this Act, or of rules made and notified u/s 5 or Section.8..... shall, on conviction before a Magistrate, be punishable for each such offence with imprisonment which may extend to three years, with or without fine." In Queen-Empress v. Shade ILR (1897) All 465, it has been observed therein that inasmuch as a conviction of an offence punishable under Act No. 1 of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session". It was a reference u/s 215 of the Code made by the Sessions Judge of Allahabad. Two persons, one of them a European British subject had been charged before a

Magistrate of the first class with being, on different dates and at different places, in the possession of opium in contravention of the rules made by Government under Act No. 1 of 1878. The Magistrate committed both the accused to the Court of Session. The Sessions Judge, being of opinion, that having regard to Section 9 of the Opium Act, 1878, a conviction, if any, could only be arrived at by a Magistrate, referred the case to the High Court with a view to the commitment being quashed.

29. It has been observed in that judgment:

It is quite clear from Section 9 of Act No. 1 of 1878 that the Court of Session has no jurisdiction in the matter. The conviction, if there is one, must be before a Magistrate, for a Magistrate, and not the Judge of the Court of Session, is the person empowered to pass sentence.

30. In State of Uttar Pradesh Vs. Sabir Ali and Another, , the Supreme Court has interpreted Section 29 of the Code and has made the following observations: -

Section 29 of Criminal Procedure Code says that offences under any other law shall be tried by that Court which that law mentions and it is only when no Court is mentioned that the eighth column of the second schedule is applicable. Sub-section (2) of Section 15 of U.P. Private Forests Act, 1948, mentions the Courts by which offences u/s 15 (1) are triable and Section 29(1) of Criminal Procedure Code excludes the application of the second part of the second Schedule. The words of sub-section (1) of Section 29 are peremptory. There is no escape from them. They say that

`subject to the other provisions of the Code" any offence under any other law shall be tried by the Court when such Court is mentioned in that law.

A case u/s 15 (1) of the U. P. Private Forests Act, therefore, is triable only by the two Courts named therein, namely, Magistrates of the second and the third class and not by any other Magistrate.

The words ""subject to the other provisions of the Code"" occurring in sub-section (1) of Section 29, Criminal Procedure Code, cannot be referred

to bring in the provisions of third Schedule of Criminal Procedure Code. What Section 15 (2) of the U.P. Act does is to prescribe a particular

Court and in view of the words of Section 29 (1) of Criminal Procedure Code no other Court can try offences u/s 15 (1) of the U. P. Act even

though the powers of those Courts may be superior to those of Magistrates of the second and the third Class. If the second schedule of Criminal

Procedure Code itself, which prescribes the Court for the trial of offences under laws other than the Penal Code is excluded, the third Schedule

cannot bring about the same result indirectly. The provisions of the third Schedule must, therefore, be taken to define general powers and not to create jurisdiction to try offences which the second schedule does.

As there is no jurisdiction in the Magistrate of first class to try an offence under sub-section (1) of Section 15 of the U.P. Private Forests Act,

1948, the trial by such a Magistrate is void u/s 530 (p) of Criminal Procedure Code.

Dictum - `It was argued before us that there is no point in prescribing (in Section 15 (1) of the U.P. Act) that the Magistrates of the second and

third class can try subsequent offences because their powers u/s 32, Criminal Procedure Code do not extend as far as the punishment prescribed

by Section 15 (1). This question does not arise directly but it may be said that two views are possible; one is that by implication the powers of

these Magistrates are extended beyond what is prescribed u/s 32. The other is that in a case where the Magistrate feels that a heavier punishment

should be imposed he can take recourse to the provisions of Section 349 of the Code and make a recommendation to a Magistrate who can

impose adequate punishment in the case. The words ""subject to the other provisions of the Code"" would enable this to be done"".

It is significant to note that these are the two views suggested at pages 1675 and 1676 in para 5. No final decision has been arrived at on that

point. Furthermore, it is significant to note that Section 15 (2) of the Forests Act, reads:

Offence under this section shall be triable by a Magistrate of the Second or Third Class, and proceedings under this section may be instituted on a

complaint made by the Landlord of the notified area of the forest in respect of which the offence is alleged to have been committed or by any right-

holder of such a notified area or forest or by the Forest Officer or by any officer specially empowered by the Provincial Government in this behalf.

That section only states that offences u/s 15 shall be triable by the Magistrate of the second or third Class. There was no express prohibition in that

section as we find in Section 8 of the Act.

31. In *State of Uttar Pradesh v. Khushi Ram*, AIR 1960 SC 905, the Supreme Court has observed:

Section 21 of the Prevention of Food Adulteration Act, 1954 is not a disabling provision. All that it does is to authorise a Magistrate of the First

Class to award a sentence beyond the limits prescribed for him u/s 32 of the Code. It does not affect the provisions of Sections 207 and 347 of

the Code nor has it anything to do with the jurisdiction of a Court of Session. The section does not make the commitment by a Magistrate

competent to award the full sentence prescribed by the Act, a nullity; nor does the section interfere with the jurisdiction of a Court of Session to

deal with a matter committed to it in spite of its provision.

Thus where a judicial Magistrate competent to award full sentence u/s 16(1)(g) (iii) by virtue of Section 21 of the Act (Prevention of Food

Adulteration Act), commits the accused to stand his trial before the Court of Session, presumably acting u/s 347 of the Criminal Procedure Code,

under impression that his power as a Magistrate of the First Class to impose sentence was limited by Section 32 of the Code and the Sessions

Judge tries the case and convicts and sentences the accused, neither is the commitment void, nor is the trial by the Sessions Judge without

jurisdiction.

At page 906, it is observed:

The jurisdiction of a Court of Session depends upon the Code. It has jurisdiction to try any case which is committed to it. The case against the

respondent had been committed to a Court of Session by a Magistrate having power to commit. Further, the Magistrate did not lack territorial

jurisdiction to commit. It may be that the Magistrate was competent to try the case and award all punishment prescribed by law. It is also true that

the Magistrate was not compelled to commit the case to a Court of Session. We are unable to subscribe to the view that a commitment in such

circumstances is itself void.

These observations may, *prima facie* indicate that the view expressed therein is contrary to the view that I propose to take. But on critical

examination, it appears that that is not the correct position. Section 20 of the Prevention of Food Adulteration Act (Act No. 37 of 1954), sub-



section (2) reads:-

No Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act.

It only indicates that a Court inferior to that of Presidency Magistrate or first class, cannot try any offence under that Act. There is no express

prohibition in that Act that the offence under that Act cannot be tried or cognizance of that offence cannot be taken of, by any Court, Other than

the Courts mentioned therein. In the Act, with which we are concerned, there is such express prohibition. That decisions, therefore, does not run

counter to the view that I propose to take.

32. One has, therefore, to fall back on the provisions of Section 29 (1) of the Code and the provisions of Section 8 of the Act for deciding the

question whether any superior Court like the Sessions Court was competent to try these offences or not. In the instant case, there is express

prohibition in Section 8 which debars any other Court to take cognizance of such offences under the Act as well as to try such offences under the

Act. In my opinion, the necessary consequence of it is that any such offences cannot be tried by the Sessions Court even though the Magistrate has

committed the accused for trial. The result is that the commitment order itself would not be legal. The power to take cognizance of and jurisdiction

to try such offences by any other Court, being excluded by clear prohibition in the provisions of Section 8, the order of commitment, so far as

these offences under the Act are concerned, is bad and it cannot be sustained in law. The result is that the reference has to be accepted.

33. Before I part with the case, it may be noted that Mr. Bhatt had submitted before me that the order made by the learned Additional Sessions

Judge at the time of making his reference indicates that the offences under the Act were committed within the jurisdiction of the Judicial Magistrate,

First Class, Himatnagar and not within the jurisdiction of the Judicial Magistrate, First Class, Idar, who made the committal order in question. It

was, therefore, contended by him that this Court should send the case to the Court of Judicial Magistrate, First Class, Himatnagar, for trial of the

offences under Sections 5 and 6 of the Act. The Committing Magistrate made the committal order after making a preliminary inquiry as

contemplated by Section 206 of the Code. The learned Additional Sessions Judge

found that the part of this committal order was bad in law as the Sessions Court had no jurisdiction to try offences under Sections 5 and 6 of the Act. It will not be proper for this Court, therefore, in such a case to decide this question urged by Mr. Bhatt. It will be open to the Court where this case is sent back to decide the question whether that Court has jurisdiction to try these offences, or it is the Court of Judicial Magistrate, First Class, Himatnagar, which has got jurisdiction to try these offences. That question is kept open.

34. Reference is accepted. The order of committal passed by the learned Judicial Magistrate, First Class, in Criminal Case No. 1170 of 1968 is set aside, so far as it relates to committal of the accused to stand their trial for the offences under Sections 5 and 6 of the Child Marriage Restraint Act. The learned Judicial Magistrate, First Class, Idar, is directed to dispose of the case in relation to the offences punishable under Sections 5 and 6 of the Child Marriage Restraint Act, against these eight accused, according to law.

35. The question whether that Magistrate has jurisdiction to try those offences or the Judicial Magistrate, First Class, Himatnagar has jurisdiction to try these offences, is kept open. The accused will be at liberty to raise this question regarding jurisdiction before the Judicial Magistrate, First Class, Idar.

36. It is my duty to note that valuable assistance is rendered by Mr. Mehta, appearing for the State and Mr. G. D. Bhatt, appearing as Amicus Curiae for the accused.

37. Reference accepted.