

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (FB) No.149 of 2015

Arising Out of PS.Case No. -299 Year- 2013 Thana -KHARAGPUR District- MUNGER

Bahadur Kora, son of Late Chutter Kora, resident of Village- Naya Bhagel,
Police Station- Kharagpur, District- Munger

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (FB) No.150 of 2015

Arising Out of PS.Case No. -40 Year- 2014 Thana -MOTIPUR District- MUZAFFARPUR

Pravesh Kumar Mishra @ Pravesh Mishra, Son of late Tarkeshwar Mishra,
resident of village+post-Kasma, Police Station- Kasma, District-
Aurangabad.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (FB) No.162 of 2015

Arising Out of PS.Case No. -109 Year- 2014 Thana -CHAKAI District- JAMUI

Lakhan Yadav, Son of Jagdish Yadav, Resident of Village Lalpur, P.S.
Kauwakol, District Nawadah.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (FB) No.187 of 2015

Arising Out of PS.Case No. -47 Year- 2014 Thana -SONO District- JAMUI

Umesh Yadav @ Dabloo Yadav, Son of Late Yaddu Yadav, Resident of
Village-Thamman, P.S.-Sono, District-Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (FB) No.185 of 2015

Arising Out of PS.Case No. -555 Year- 2014 Thana -BARACHATTI District- GAYA

=====

Birendra Sharma, Son of Naresh Sharma, Resident of Village - Tira, P.S. -
Hulasganj, District - Jehanabad.

.... Appellant

Versus

The State of Bihar.

.... Respondent

=====

with

Criminal Appeal (FB) No.189 of 2015

Arising Out of PS.Case No. -269 Year- 2014 Thana -RAMPUR District- GAYA

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Rajiv Kumar, son of Ramdas Sharma, resident of village Arkdivariya, P.S.
Tekari, District Gaya.

.... Appellant

Versus

The State of Bihar.

.... Respondent

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with

Criminal Appeal (FB) No.192 of 2015

Arising Out of PS.Case No. -34 Year- 2014 Thana -HATHAURI District- MUZAFFARPUR

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Shankar Prasad, son of Bhardur Bhaghat @ Bhardul Bhagat, resident of
village- Bara Bishunpur, P.S.- Rajepur, District- East Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No.149 of 2015)

For the Appellant : Mr. Sanjiv Kumar Singh, Adv.

For the Respondent : Mrs. Shashi Bala Verma (APP)

(In CR. APP (DB) No.150 of 2015)

For the Appellant : Mr. Sunil Prasad Singh, Adv.

For the Respondent : Mr. D.K.Sinha (APP)
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.162 of 2015)

For the Appellant : Mr. Prakash Mahto, Adv.

For the Respondent : Mr. A.Sharma(App)

(In CR. APP (DB) No.187 of 2015)



For the Appellant : Mr. Umesh Prasad, Adv.
For the Respondent : Mr. D.K.Sinha(App)
(In CR. APP (DB) No.185 of 2015)
For the Appellant : Mr. Rajesh Kumar, Adv.
Mr. Bela Singh, Adv.
For the Respondent : Mr. Mayanand Jha(App)
(In CR. APP (DB) No.189 of 2015)
For the Appellant : Mr. Ajay Kumar Thakur, Adv.
Mr. Imteyaz Ahmad, Adv.
Mr. Ravi Ranjan, Adv.
For the Respondent : Mr. A.Sharma(APP)
(In CR. APP (DB) No.192 of 2015)
For the Appellant : Mr. Rajeev Ranjan, Adv.
Mr. Bela Singh, Adv.
For the Respondent : Mr. Mayanand Jha(APP)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-03-2015

This batch of criminal appeals is filed under Section-21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as the Act for short).

All the appellants figured as accused in various cases registered by different police stations. The common feature in all such cases is that along with the offences punishable under various provisions of the Indian Penal Code (I.P.C.), certain offences punishable under the Unlawful Activities (Prevention) Act, 1957 (hereinafter referred to as the U.A.P. Act for short) were also alleged. Though the investigation into those cases was undertaken in accordance with the provisions of the



Code of Criminal Procedure (for short, Cr.P.C.), and cognizance of the offences was taken by the concerned Chief Judicial Magistrates, the cases have been transferred or sent to the Courts of Sessions at the respective places, on the basis of the judgment rendered by a Division Bench of this Court in Aasif P.K. Versus The State of Bihar¹.

It was held in Aasif's case that the U.A.P. Act is one of the enactments listed in the Schedule to N.I.A. Act and, in that view of the matter, wherever an allegation referable to the provisions of U.A.P. Act is made against an accused, the procedure prescribed under the N.I.A. Act must be followed. It was also held that even if the cognizance of offences was taken in accordance with the provisions of the Cr.P.C. and the investigation was undertaken by the State Investigating Agencies, and not by the National Investigation Agency (N.I.A. for short), the trial of such offences shall be conducted by the Court of Sessions, as provided for under Sub-Section (3) of Section 22 of the Act, even if no Special Court is constituted by the State under Sub-Section-(1) thereof.

1. 2015(1) P.L.J.R. 1017.



The appellants herein filed applications for bail before the concerned Courts of Sessions. On dismissal of the applications, they filed the appeals before this Court. Quite large number of appeals of this nature have been filed in the recent past. In none of the cases, any steps were taken by the Central Government for entrustment of the investigation to the N.I.A., as provided under Section-6 of the Act, much less the investigation was entrusted to that agency, nor the investigation was transferred to State agency under Section 7 of the Act. The learned Public Prosecutors consistently pleaded that indiscriminate transfer or making over the cases to the Court of Sessions, simply because the allegations referable to provisions of U.A.P. Act are made, would bring about several extraordinary situations and many a time the accused persons would be subjected to stringent procedures under the Special Law. The Division Bench, before which such appeals came for admission (of which one of us was a member), felt that the matter needs to be examined in detail in view of the phenomenal increase in number of appeals being filed under Section-21(4) of the Act. Accordingly, the matter was referred to the Full Bench.



The views expressed by the learned counsel for the appellants in this batch of appeals are not uniform. Majority of the counsel submitted that forwarding of the cases to the Courts of Sessions only on the ground that the offences punishable under the Act are alleged, and subjecting the accused to the procedure under the Act, is contrary to law and would result in hardship to the appellants. They submit that it is only when the investigation of a case is entrusted to the N.I.A. that the occasion for a Special Court constituted under Section-11 or 22 of the Act or a Court of Sessions under Section-22 (3) of the Act would arise. According to them, the N.I.A. Act, being a Special Law, can be applied to the cases only when the steps contemplated under that Act are taken, and not otherwise. They further submit that the view taken by the Division Bench in Aasif's case (supra) does not accord with the settled principles of law and the directions issued therein can be applied either to the cases in which the cognizance of offences was taken by the N.I.A. or where there was no controversy as to the jurisdiction of the Special Courts.

Learned counsel in some other appeals, however, argued that once a Division Bench of this Court

has taken the view that the cases in which offences punishable under the U.A.P. Act are alleged must be tried by a court of sessions, no exception can be taken to the making over of the cases to the Courts of Sessions. All the learned advocates for the appellants made arguments on merits also, for grant of bail.

Learned Public Prosecutors for the State, on the other hand, submit that the mentioning of sections of the relevant provisions of law would depend upon the nature of the offences alleged to have been committed by the accused taking cognizance of the offences and the investigation of the offences and trial of the cases must be under the provisions of the Code of Criminal Procedure unless such procedure is clearly excluded under any special law. They submit that it is only when the State Government is entrusted with the investigation that the trial of the cases can be entrusted to the Special Courts constituted under Section 22 of the Act or a Sessions Court. They submit that simply because an offence punishable under the U.A.P. Act is alleged against an accused, the provisions of the N.I.A. Act would not get attracted, much less the procedure under the Cr.P.C. can be deviated from. It is also their case that



when the State Government was not requested by the Central Government to forward any report, nor the matter was entrusted to the N.I.A. for investigation or the N.I.A. transferred the investigation to the State, the question of forwarding the case to the Court of Sessions, for trial does not arise.

The Cr.P.C. is virtually the repository of the procedure to be followed by the investigating agencies or the courts, in relation to criminal cases. The various steps; such as constitution of courts at different levels, conferment of jurisdiction on them; appointment of Public Prosecutors; the taking of cognizance of the offences, the investigation thereof; trial by the courts; grant of anticipatory or regular bails; filing of final report; discharge of accused on finding that there is no basis for the allegation; the examination of the accused, where the prosecution has adduced its evidence; the remedies of appeal, revision, execution of sentences; are provided for under the Cr.P.C. It also prescribes different procedures for trial of the offences of different kinds. Thus, it covers the entire gamut of cognizance, investigation, trial and execution, of all cases in which the punishment may range from the one of mere fine or imprisonment for a

few days or months, to one of the death sentence.

The conducting of investigation and trial in accordance with the Code was posing certain problems to the State, particularly where the crimes are committed in organized manner or where the offenders are posing threat to the security of the State and the society at large. The special enactments providing for preventive detention or prescribing special procedure for investigation and trial of offences have been enacted. The Hon'ble Supreme Court enunciated the principles governing the subject in the cases where such enactments were challenged. Law and order, as a subject, figures in list II (State list) of the VIII Schedule of the Constitution. Therefore, necessity has arisen for enactment of Special Laws to enable the Central Government to handle the offences that have their impact on the security of the State. Broadly stated, the principles are that a citizen cannot be subjected to a special procedure of trial unless a validly made law provides for it. The leaning of the courts would be towards protecting the rights of a citizen accused of offences that are provided for under the Constitution or the ordinary law of the land. Reference, in this context,

may be made to the judgments of the Supreme Court in (1) State of West Bengal V/s Anwar Ali Sarbar¹, (2) Kedarnath Bajoria V/s State of West Bengal² and (3) Ramakrishna Dalmia V/s. Justice Tendolkar³.

The Parliament enacted the U.A.P. Act in the year 1967. The statement of objects and reasons of that enactment discloses that the committee appointed by the National Integrity Council recommended for imposition of certain reasonable resistance on the rights of the citizens; in the interest of sovereignty and integrity of India (1) such as freedom of speech and expression, right to assemble peacefully and without arms and right to form associations and unions; and accordingly the Constitution 16th Amendment Act was passed. It is in that background that the U.A.P. Act was brought into existence. In the preamble of that Act, the words “terrorist activities” were included in the year 2004.

The scheme of the U.A.P. Act is that the State and Central Governments are conferred with the powers to declare certain associations whose activities are found to be a threat to the sovereignty of the State; as unlawful. The acts undertaken by such prohibited associations are

1. AIR 1952 S.C. 75
2. AIR 1953 S.C. 404
3. AIR 1958 S.C. 538



made punishable under the Act. Chapters-III and IV of that Act prescribe the punishments for the offences mentioned therein. This enactment does not contemplate any special procedure, to be followed for trial of the offences defined therein, much less did it provide for creation of any special courts. In other words, the jurisdiction of the ordinary criminal courts functioning under the Code of Criminal Procedure is kept intact and the ordinary procedure is to be followed.

Coming to the Act, i.e. the N.I.A. Act, which was brought into existence in the year 2008, the preamble and statement of objects thereof read as under:-

“An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.”

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:--

Statement of Objects and Reasons.--- Over the past several years, India has been the victim of large scale terrorism sponsored from across the borders. There have been innumerable incidents of terrorist attacks, not only in the militancy and insurgency affected areas and areas affected by Left Wing Extremism, but also in the form of terrorist attacks and bomb blasts, etc., in various parts of the hinterland and major cities, etc. A large



number of such incidents are found to have complex inter-State and international linkages, and possible connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, etc. Keeping all these in view, it has for long been felt that there is need for setting up an Agency at the Central level for investigation of offences related to terrorism and certain other Acts, which have national ramifications. Several experts and Committees, including the Administrative Reforms Commission in its Report, have also made recommendations for establishing such an Agency.

The Government after due consideration and examination of the issues involved, proposes to enact a legislation to make provisions in a concurrent jurisdiction framework, with provisions for taking up specific cases for establishment of a National Investigation Agency under specific Acts for investigation, provisions for setting up of Special Courts and for other related matters. These provisions are proposed to be incorporated in the National Investigation Agency Bill, 2008.

The Bill seeks to achieve the objectives mentioned above.”

The underlined portion clearly indicates that the objective is (a) establishment of National Investigation Agency in a concurrent jurisdiction framework; (b) to take up specific cases under specific Acts for investigation; and (c) to provide for setting up of special courts and other related matters.

It is not uncommon that the Parliament creates special courts for trial or adjudication of cases arising under the concerned enactments. In certain cases, Tribunals are constituted. It has also created

special courts for adjudication of specific cases and not for all the cases arising under an enactment. The extreme example is where the court was constituted for trial of only one case.

If the special courts are constituted for trial of a particular category of offences, there hardly exists any doubt that the cases can be tried only by such special courts and by no other court. Where the special courts are constituted for trial of specific offences, such courts can deal only with the offences falling into that category as provided for under the special enactment. In other words, it is only the specific case, as distinguished from the category of cases under the specific enactment, that can be tried by the special courts, wherever they are constituted. It is in this background that the provisions of the Act have to be understood.

Section-2 of the Act *inter alia* defines the “scheduled offences” and Section-3 provides for constitution of the N.I.A. Chapter 2, comprising Sections 3 to 5, provides for constitution and other aspects of the N.I.A. Section-6 happens to be the fulcrum of the Act. It reads:

“6. (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of

the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation."

Once a case is identified by the Central Government and its investigation is entrusted to the N.I.A., as indicated above, it is required to be tried by



special courts constituted, for this purpose. Such courts can be constituted by the Central Government under Section-11 of the Act or by the State Government under Section-22 of the Act. Section-21 provides for appeals against the orders passed by the “special court” only to High Court, be it on facts or on law. To be more specific, even the orders granting or refusing bail are made appealable under Section-21(4) of the Act.

If one goes by the scheme of the Act, the most important step happens to be the one of entrustment of the investigation of the case to the N.I.A. under Sub-section-(5) of Section-6. Once a decision is taken by the Central Government to direct the N.I.A. to investigate the offences, the provisions of the Act would apply, in the context of investigation as well as the trial.

The powers of the State Government, in respect of such offences, is virtually subjugated. This is evident from Section-10, which reads as under:-

“10. Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.”

A reading of this Section discloses that the

powers of the State Government to investigate and prosecute any scheduled offence or other offences would remain intact, unless otherwise provided for under the Act. In other words, if the investigation is entrusted to N.I.A., the power of the State to investigate and prosecute the scheduled offences, ceases.

Coming to the establishment of courts, it is evident that Section-11 of the Act empowers the Central Government, to do that, whereas Section-22 enables the State Government, to constitute such courts. Section-13 which defines jurisdiction of the special courts becomes relevant in this behalf. It reads:

“13.(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.” (Sub-sections (2) and (3) omitted since not necessary for this case).

From this it becomes clear that the Act excludes the jurisdiction of other courts to try every or any scheduled offence, “investigated by the Agency” (N.I.A.). The expression “every scheduled offence investigated by agency” has two components. The first is about the identification of the offence; i.e. it being a scheduled offence, and the second is the agency that investigates it, namely, the N.I.A. It is only when these



two factors exist, that the special court gets jurisdiction. In other words, the special court cannot deal with the offences (a) unless they are “scheduled offences” and (b) even if a case involves “scheduled offences”, it cannot deal with the same, unless it is investigated by the N.I.A. Whether one calls it as a literal or grammatical interpretation, this is the only possible way to understand the provision. Added to that, it is a well established principle that the provisions of a penal enactment must be construed strictly and there does not exist any occasion to expand the scope thereof, conferring jurisdiction or a court, by way of reasoning or inference.

Admittedly, in all these cases neither any special courts were constituted nor the investigation was entrusted to, or undertaken by the N.I.A.

The basis stated or mentioned by the Division Bench of this Court, in Aasif’s case (supra), to bring the cases involving offences punishable under the U.A.P., Act under the N.I.A. Act is Sub-section-(3) of Section-22 of the Act. To understand and appreciate that provision, it becomes necessary, to have a glance of Section-11, on the one hand, and Section-22, on the other hand, that

provide for constitution of Special Courts by the Central and State Governments respectively. They read:

“11.(1) The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled Offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court. (Sub-sections (4) to (9) omitted, since not necessary in this case).

“22. (1) The State Government may constitute one or more 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 constituted 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 constituted 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 constituted 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.”

A comparison of these two provisions reveals that while under Section-11 the Central Government is placed under obligation to constitute a special court, Section-22 leaves it to the discretion of the State Government to constitute the special court for trial of the offences mentioned in the schedule to the Act. Another aspect is that the N.I.A. happens to be the investigating agency in a case tried by the Special Court constituted under Section 11 of the Act, whereas the investigating agency of the State Government, plays that role in a case tried by the special court constituted under Section 22 of the Act. Sub-section (2) of Section 22 makes this, very clear. The investigating agency of the State Government is equated to N.I.A. Once an offence becomes triable by the special court constituted under Section 22(1) of the Act, the transitory provision being Sub-section (3), conferring jurisdiction upon the Sessions Court of the

Division, comes into play.

This, obviously, made their Lordships of the Division Bench to proceed on the assumption that the scheduled offences under the Act can be investigated by N.I.A. or by the State Government, hardly with any distinction. This is evident from paragraph-43 of the judgment:

“43. Thus, both, the agency of the Central Government as well as the investigating agency of the State Government, are competent to investigate a *scheduled offence*, the difference between the powers of the two investigating agencies being that when the National Investigation Agency investigates a *scheduled offence*, the investigating agency of a State Government cannot investigate the said *scheduled offence*. However, the Agency, constituted by the Central Government, is empowered to associate investigating agency of a State Government in the investigation of a *scheduled offence*.”

No mention was made, as to under what circumstances the investigating agency of the State Government comes into picture. It proceeded on the basis that the provisions of the Act would get attracted once an offence punishable under the U.A.P. Act is alleged, whether or not, any steps contemplated under Section 6 of the Act were taken.

It has been mentioned at the threshold itself that the objective of the Act is not to make the offences



punishable under the Acts mentioned in the schedule thereof, triable, invariably and exclusively by the N.I.A., or for that matter, the special courts constituted under it. It is only when the offences are entrusted for investigation to the N.I.A. that they become triable by the special courts. A serious doubt may arise that if N.I.A. alone is the competent authority to investigate the scheduled offences, *albeit* entrusted to it by the Central Government, under Section 6 of the Act, where is the occasion for the State Government to create special courts under Section-22 of the Act, or for that matter, to equate the investigating agency of the State with the N.I.A. under Sub-section (2) thereof. The answer is readily available in Section-7 of the N.I.A. Act. It reads:

“ 7. While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

(a) if it is expedient to do so, request the State Government to associate itself with the investigation;

or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.”

We have already observed that Section-6 happens to be the fulcrum, or basis to bring any particular case within the ambit of the Act, and for



entrustment of its investigation to the N.I.A. It is then, that the special courts come into picture. The N.I.A. is not given the freedom, much less conferred with the power, to investigate any case of its choice. It is only when the Central Government entrusts such cases to it, that the agency, i.e. the N.I.A., can investigate the cases. In other words, the N.I.A. does not have the power to investigate by itself, a case, even if it involves a scheduled offence referable to the Acts mentioned in the schedule. It has to wait till the case is entrusted to it by the Central Government.

Section-7 deals with situation, posterior to the entrustment of the case to N.I.A. under Section 6 of the Act. Once a case is entrusted to it, the N.I.A. may undertake the investigation, exclusively, by itself, or may request the State Government, to associate with it. It may also transfer the case to the State Government for investigation, depending on the facts of the case and with the previous approval of the Central Government. It is then, and then alone, that the State Government comes into picture for conducting investigation of the cases under the N.I.A. Act. Barring that, the State Government or its investigating agency does not have any authority,

or discretion to choose or pick up cases in which offences under the enactments mentioned in the schedule are alleged; for investigation under the N.I.A. Act.

Once a case is “transferred” under Clause-(b) of Section-7 of the Act, by the N.I.A. to the investigating agency of the State Government, the later gets equated to the former, under Section-22(2)(ii) and acquires the power to investigate such matters under the Act. It is only for trial of such cases, that were initially entrusted to the N.I.A., under Section 6 by the Central Government and the N.I.A. in turn “transfers” the investigation of the case to the investigating agency of the State Government, under Section 7(b) of the Act, that the constitution of special court under Section-22 of the N.I.A. Act is provided for.

In a given case, the N.I.A. may have transferred a case to a State Investigating Agency for investigation under Section 7(b) of the Act and by that time the special court may not have been constituted under Section-22 of the Act. To tide over such contingencies, Sub-section (3) provides for trial of such cases by a Court of Sessions of the Division in which the offence had been committed. It is important to

note that a provision similar to Sub-section (3) of Section-22 does not exist in Section-11 of the Act.

However, their Lordships of the Division Bench, that decided Aasif's case (supra) proceeded as though the State Investigating Agency has the power to investigate the scheduled offences on its own accord. In a way their Lordships conferred greater power on the State Agency than the N.I.A. in the context of trying scheduled offences. The reason is that while N.I.A. cannot investigate any matter unless it is entrusted to it by the Central Government under Section-6, the Division Bench proceeded as though the State Investigating Agency can investigate such offences without any requirement of entrustment by anyone whatever. This, in our view, has virtually negated the scheme of the Act.

It hardly needs any mention that the provisions of a criminal enactment must be construed strictly; and hardly there exists any occasion to expand the scope of such law through the process of interpretation. The principle that where law requires a thing to be done in a particular manner, it must be done in that manner, or not at all, applies with greater rigour in adjudication of criminal cases.



The trial of cases in accordance with the procedure prescribed under the Code of Criminal Procedure is the rule. Wherever the State intends to apply a different or special procedure, the law must be clear and it must accord with the provisions of the Constitution of India such as Articles-14, 19, 21 and 22. As and when persons were sought to be tried under special enactments, the approach of the Constitutional Courts is two-fold. The 1st is to see whether the law accords with the Constitution of India and principles of fair play apart from protection of liberty. The 2nd is to examine whether the case sought to be tried under it falls within its scope, benefit of any doubt in this behalf, is invariably given to the accused. Neither before us, nor before the Division Bench the N.I.A. was under challenge. Therefore, it has to be seen as to whether the cases of the nature, that are the subject-matter of these appeals are governed by the provisions of the Act.

For the most part of it, it is the State that insists on applying the provisions of special enactment against the concerned accused and the latter, in turn, raises objections, both on facts and law, against such a discriminatory and more oppressive treatment. In Aasif's



case (supra) it was a sort of reversal of the roles. On its part, the State did not make any attempt to apply the provisions of the N.I.A. Act to the cases of petitioners therein. However, the petitioners wanted the provisions of the Act to be applied. The effort appears to be to get the proceedings that have taken place under Cr.P.C., including the final report, set at naught and to bring about a new legal regime altogether for their cases. It must be said to the credit of their Lordships of the Bench that they have analyzed the provisions of the N.I.A. Act, the Cr.P.C., U.A.P. Act elaborately and discussed the procedures such as taking of cognizance, in detail. What, however, missed their Lordships' attention was Section-7 of the Act, which is the only provision that provided the link between the N.I.A., on the one hand, and the investigating agency of the State, on the other hand.

Two functions are entrusted to the State Government under the N.I.A. Act. The 1st is under Section-6(2) of the N.I.A. Act wherein it is placed under obligation to forward the report as to the information relating to any scheduled offence to the Central Government expeditiously, on being required under Sub-section-(1); The second is to create and constitute a



special court under Section-22 of the Act. The mention of the State Government in Sections-7 and 10 is more to remind it, of its restricted role if the investigation of a particular “scheduled offence” is entrusted to the N.I.A. At the same time, as long as the investigation of a case is not entrusted to N.I.A., the powers of the State Government and its investigating agencies remains intact and the investigation and trial of such cases must be proceeded under the Cr.P.C. without any reference to the Act.

The interpretation placed in Aasif's case (supra), particularly in paragraph-44 of the judgment, did not take note of another important provision. Section-6(3) mandates that within 15 days from the date of receipt of report from the State Government, the Central Government is placed under obligation to determine (a) whether the offence is a scheduled offence or not; (b) whether, having regard to the gravity of the offence and other related factors, it is a fit case to be investigated by the N.I.A. Till this twin exercise is undertaken, the occasion for the N.I.A. to take up the investigation does not arise. Aasif's case (supra) proceeds as though the State Government can take up the



investigation under the N.I.A. Act, without or independent of exercise comparable to the one under Sub-section (3). When the N.I.A. itself cannot investigate any matter unless entrusted to it by the Central Government, the question of any investigating agency in the State undertaking such investigation, without there being entrustment by the Central Government, does not arise. As pointed out earlier, the State Investigating Agency assumes power to investigate a scheduled offence in accordance with the procedure prescribed under the Act only when the N.I.A. transfers the investigations to it, that too, with the previous approval of the Central Government.

The acceptance of the view expressed by the Division Bench in Aasif's case (supra) would lead to a situation where the investigating agency, provided for under the Cr.P.C. or the Courts functioning thereunder would not be entitled to deal with the cases not only arising under the cases included as item nos.1 to 7 of the Schedule of the Act, but also any offence against the State, punishable under Chapter VI comprising of Sections 121 to 130, or the offences pertaining to currency notes and bank notes punishable under

Sections 489-A to 489-E of Indian Penal Code.

It is a different matter that as soon as the commission of offence under the Acts or provisions mentioned in the schedule are noticed and statement under Section 154 Cr.P.C. is recorded, an Investigating Officer in the State is placed under obligation to forward the report to the State Government under sub-section (1) of Section 6 of the Act and the latter, in turn, is required to forward the report to the Central Government under sub-section (2). If the Central Government decides to entrust the investigation to N.I.A., the State investigating agencies virtually have no role to play except that their assistance can be taken under Section 7(a) of the Act. However, if the Central Government does not pass any order entrusting the investigation to N.I.A. within fifteen days from the date of receipt of the report from the State Government, investigation of the offence can be undertaken by the State investigating agency without any reference to the provisions of the Act.

It has already been mentioned that in these cases not a single step referable to Section 6 or 7 were taken either by the State Government or by the Central Government or by the N.I.A. Therefore, simply because

an offence punishable under the Unlawful Activities (Prevention) Act, 1967 was alleged, the investigation and trial of such cases cannot be brought under the purview of the Act.

On facts it is clear that in none of the cases herein (a) the Central Government or the State Government has taken any steps under Section-6 of the Act; (b) the N.I.A. has transferred the investigation of the trial of the offence to the State Government under Section-7; (c) the State Government did not constitute any special court under Section-22; The occasion to forward a case to the court of sessions under Sub-section (3) of Section 22 would arise only if the case was transferred to the State Government by the N.I.A. Admittedly, no such eventuality has taken place. The result is that the very forwarding of the cases to the Court of Sessions or the taking cognizance of the offences by the court of sessions, directly, on the basis of the judgment of this Court in Aasif's case (supra) is untenable. As a consequence, the appeals preferred under Section-21(4) of the Act become not maintainable.

Before parting with the case, we intend to express our view about two legislative aspects. Firstly,



The definition of “Scheduled Offence” under Section 2(g) of the Act makes one to feel that it would have been better had it been worded in more succinct and clear terms. The “Scheduled Offence” is defined as to mean an offence specified in the Schedule. The Schedule, however, consists of the names of several enactments and few sections of Indian Penal Code in item 8, which reads as under:

- “1. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 1982 (65 of 1982);
4. The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under-
 - (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
 - (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860)”

The proper course would have been to define the expression ‘Scheduled Offence’ as an offence, punishable under the enactments included in the Schedule.

The second is about sub-section (3) of Section 22 of the Act. It refers to “any offence punishable under this Act”. Even a microscopic analysis of the Act

discloses that the Act does not define any independent offences nor does it provide for punishment thereof. It is felt that the proper expression to be employed, would have been “any offence which is liable to be investigated and tried under this Act”.

We, therefore, hold that

(A) the judgment in Aasif's case (supra), insofar as it held that investigating agency of the State Government can investigate and try offences in accordance with the provisions of the N.I.A. Act, in the cases where offences punishable under the Unlawful Activities (Prevention) Act are alleged, and that such cases must be tried by the Courts of Sessions under Sub-section (3) of Section-22 of the N.I.A. Act, cannot be said to have laid the correct law;

(B) the cases even where offences punishable under the provisions of U.A.P. Act are alleged shall be tried by the courts as provided for under the Cr.P.C. and not in accordance with the special procedure, under the Act unless (i) the investigation of such cases is entrusted by the Central Government to the N.I.A. and (ii) the N.I.A. transfers the same to the investigating agency of State Government.

The appeals shall be treated as bail applications, to be heard under Section-439 of Cr.P.C. and the registry shall place the same before the learned Single Judges after requiring the parties to alter the provisions of law;

(C) all the cases in the State of Bihar, which are being tried by the Courts of Sessions, on the basis of the judgment of this Court in Aasif's case (supra), shall stand transferred to the courts that otherwise have jurisdiction to try them; and

(D) none of the steps taken in such cases that were pending before the Court of Sessions shall render the investigation or trial, invalid or unlawful.

(L. Narasimha Reddy,CJ)

(Ajay Kumar Tripathi, J)

(Rakesh Kumar, J)

K.C.jha/-
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