

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 857 of 2015**

The National Investigating Agency A Central Government Agency Constituted Under The Provision Of National Investigation Agency Act, 2008(For The Purpose Of This Petition, The Nia Is Represented Through The Investigating Officer For The Case No. 01/14/nia-Dli, Nia, New Delhi

---- Appellant**Versus**

1. State Of Chhattisgarh Through: Principle Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. Mahadev Nag S/o Koya Aged About 30 Years R/o Patelpara, Kandamar, Ps- Darbha Distt- Bastar At Presently Lodged In Jagdalpur Central Jail.
3. Boti @ Mani Ram Madiya S/o Chhaki Madiya R/o Maiydam Para Chandmeta Ps- Darbha Distt- Bastar At Presently Lodged In Jagdalpur Central Jail.
4. Joga Kawasi @ Padaa S/o Koya Kawasi R/o Anadar Para Chandmeta Ps- Darbha Bastar At Presently Lodged In Jagdalpur Central Jail.
5. Dayaram Baghel S/o Mangtu Baghel R/o Nayapara, Bodawada, Ps-Tongpal, Distt- Sukma, Chhattisgarh, Presently Lodged In Dantewada Jail.

---- Respondents

For Appellant:	Shri Kishore Bhaduri, Advocate.
For Respondent/State:	Shri Vivek Sharma, Government Advocate.
For Respondent Nos.2 to 5:	Shri Jitendra Pali, Advocate through Legal Aid.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice P. Sam Koshy****Order On Board****Per Prashant Kumar Mishra, Judge****23/12/2015**

1. This is an appeal by the National Investigation Agency (for short 'the NIA') under Section 21 of The National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act') assailing the order passed by the Special

Judge (NIA) and Sessions Judge, Bilaspur in proceedings in connection with NIA's Crime No.RC-01/14/NIA-DLI by which the Special Judge has returned the remand papers to the Appellant for its presentation in the Court of 1st Additional Sessions Judge, Jagdalpur.

2. Shri Bhaduri, Learned Counsel for the Appellant would submit that the impugned order is palpably illegal and has been passed by complete misreading and misapplication of the earlier notifications in as much as even under notification issued by the Central Government on 1.9.2010 in exercise of powers under sub-Section (1) of Section 11 of the Act, the District and Sessions Judge, Bilaspur was notified to try the offences wherein, the investigation has been carried out by the NIA. He would submit that the Sessions Judge has wrongly applied the notification issued by the State Government in exercise of powers under Section 22 (1) of the Act, which is not applicable to an offence investigated by the NIA. He would further submit that by a recent notification bearing S.O. No.3161 (E) published in the Gazette of India dated 24.11.2015, the Central Government has exercised powers under Section 11(1) of the Act to notify the District and Sessions Judge, Bilaspur as the Special Judge for trial of scheduled offences for the State of Chhattisgarh except other Districts i.e. North Bastar Kanker, Bastar at Jagdalpur, South Bastar Dantewada and Kondagaon.

3. We have heard Learned Counsel for the parties and perused the papers.

4. Section 11(1) of the Act confers power on the Central Government to constitute Special Courts for trial of offences investigated by the NIA whereas, Section 22 (1) of the Act confers power on the State Government to constitute trial of offences which has been handed over by the NIA to the State Government for investigation. By previous notification dated 1.9.2010, the

District and Sessions Judge, Bilaspur was notified as the Court for trial of offences where investigation has been carried out by the NIA whereas the notification dated 19.5.2015 issued by the State Government was under Section 22(1) of the Act for trial of offences where investigation has been carried out by the State agencies on being referred by the NIA.

5. Bare perusal of the provisions contained under 11 (1) and 22(1) of the Act makes it explicit that in all such cases where investigation has been carried out by the NIA, the Court at Bilaspur had jurisdiction at all points of time by virtue of the notification dated 1.9.2010 and the Sessions Court has wrongly applied the notification issued by the State Government under Section 22 (1) of the Act to return the remand papers to the NIA.

6. The notification dated 19.5.2015 has no application in the cases where investigation has been carried out by the NIA.

7. The second notification dated 24.11.2015 has been necessitated for the fact that the earlier notification specially notified the name of the Presiding Officer who was holding Office of District and Sessions Judge and the said Office is now occupied by some other Presiding Officer. Even otherwise, the recent notification No.S.O.3160 (E) dated 24.11.2015 has again notified the District and Sessions Judge, Bilaspur as the Special Court for the purposes of sub-section (1) of Section 11 of the Act for trial of scheduled offences in the State of Chhattisgarh except the Districts like North Bastar Kanker, Bastar at Jagdalpur, South Bastar Dantewada and Kondagaon.

8. The provision contained under Section 22 (4) of the Act also needs reference which is reproduced as under:

“22(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.”

Thus, the provision itself makes it clear that offences investigated by the State Government under the provisions of the Act which have been required to be held before the Special Court shall stand transferred to the Court notified under Section 22 (1) of the Act. The Sessions Court, Bilaspur while passing the impugned order has also ignored this provision under sub-Section (4) of Section 22 of the Act.

9. For the foregoing, the appeal succeeds and is hereby allowed. The impugned order passed by the Sessions Judge, Bilaspur is set aside.

Sd/-
(Prashant Kumar Mishra)
JUDGE

Sd/-
(P. Sam Koshy)
JUDGE