

***THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

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+CRL.REVISION CASE No. 1596 of 2014

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%Dated 08.04.2015

The State of A.P. through P.S. Kowdipally PETITIONER

VERSUS

\$ Mangali Yadagiri RESPONDENT

! Counsel for Petitioner : Public Prosecutor

^ Counsel for Respondent : Sri Sriharinath

< GIST :

> HEAD NOTE :

? Cases referred :

1977 SC 265

2015 (2) ALD 15 (SC)

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1596 of 2014

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ORDER:

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The I Additional District and Sessions Judge, Medak, invested with the power to try offences under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POSCO Act) made a reference under

Section 395 (2) Cr.P.C. seeking clarification as to the jurisdiction of the Court to try the case when the offences alleged against the accused are triable under two legislations ie. POSCO Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as SC/ST Act) in view of Section 14 of the SC/ST Act and Section 42-A of the POSCO Act.

The facts in issue are as under:

The informant/victim girl, who was aged about 14 years at the time of incident, belonging to Scheduled Caste, lodged a report before the police on 03.05.2013 stating that the accused, who belongs to a caste other than scheduled caste or scheduled tribe, assaulted and used criminal force on her with a dishonest intention to outrage her modesty within public view. In respect of the above incident, a case in Crime No.39 of 2013 of Kowdipally Police Station came to be registered for the offences punishable under Section 354 (A) (1) (i) IPC, Section 2 of the Criminal Law Amendment Act, 2013, Section 8 of POSCO Act and Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as SC/ST Act). The police investigated into the matter and filed a charge sheet which was taken on file as P.R.C.No.22 of 2013 on the file of the Judicial First Class Magistrate, Narsapur, Medak District, for the above mentioned offences. Thereafter, the learned Magistrate committed the case to the Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-V Additional Sessions Judge, Medak at Sangareddy. The special Judge sent the case records to the Court of I Additional District and Sessions Judge, Medak at Sangareddy, on the point of jurisdiction since it involves an offence punishable under POSCO Act.

Thereafter, the learned I Additional District and Sessions Judge, Medak at Sangareddy, through his letter in Dis.No.536, dated 22.05.2014, made a reference under Section 395 (2) Cr.P.C., seeking necessary clarification from this Court.

Heard learned Public Prosecutor appearing for the State and learned counsel appearing for the accused.

As seen from the facts of the case, an offence under POSCO Act was

committed against a child, who was a member of Scheduled Caste/Scheduled Tribe. In such a case, the issue that stems out for consideration is whether the said case should be tried by a Special Court constituted under SC/ST Act or by a Special Court constituted under POSCO Act.

The POSCO Act, which came into force from 14.11.2012, was enacted with a view to protect the children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and matters connected therewith or incidental thereto. This Act is a children friendly Act providing a special procedure for dealing with the offences relating to the children.

Sections 25 and 26 of the POSCO Act deal with the procedure to be followed by the Magistrate for recording the statements of the children under Section 164 Cr.P.C.

Section 28 of the POSCO Act deals with Designation of Special Courts, which reads as under:

“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 Court under the Commissions for Protection of Child Rights Act, 2005 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 Cr.P.C. be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under Section 67 B of that Act insofar 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.

Section 31 of the POSCO Act refers to application of Criminal Procedure

Code to the proceedings before the Special Court while Section 33 of the Act deals with the procedure and powers of Special Courts while recording the evidence.

Section 42-A of the POSCO Act stipulates that the provisions of the POSCO Act shall be in addition to and not in derogation to the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of POSCO Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

Section 20 of the SC/ST Act reads as under:

“20. Act to override other laws: Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything consistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

As per Section 14 of the SC/ST Act, the State Government shall, with the concurrence of the Chief Justice of the High Court, by a notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act. From the above, it is clear that an offence punishable under the provisions of SC/ST Act is triable exclusively by a Special Court constituted under Section 14 of SC/ST Act.

Section 42-A of the POSCO Act reads as under:

“42-A. Act not in derogation of any other law: The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

A perusal of Section 20 of the SC/ST Act and Section 42-A of the POSCO Act reveal that there is a direct conflict between the two non-obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POSCO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POSCO

Act.

From a perusal of the aims and objects of SC/ST Act, it is manifest that it was passed with a view to prevent Commission of atrocities on members of the Scheduled Castes and the Scheduled Tribes by persons other than SC/ST. The procedure contemplated under the said Act is almost identical to the procedure contemplated under Cr.P.C. for trial of Sessions Cases, apart from providing compensation. The SC/ST Act is silent as to the protection granted to the children belonging to the weaker sections of the society. The situation under the POSCO Act is totally different. The statement of object and reasons of the Act show that it was enacted with a view to protect children from the offences of sexual assault, sexual harassment and pornography. It takes within its fold the protection of children of all castes including those belonging to SC/ST. As stated earlier, number of safeguards are provided to the children from being exploited and Special provisions are also made for recording their statements. Therefore, the paramount consideration of the legislature under POSCO Act appears to be the interest of all children including those belonging to SC/ST.

Dealing with an issue identical to the case on hand, the Apex Court in ***Sarwan Singh V. Kasturi Lal*** held as under:

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier.

In ***KSL & Industries Limited v. Arihant Threads Limited and others*** the Apex Court held as under:

"In view of the non-obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important

to recognize and ensure that the purpose of both enactments is as far as possible, fulfilled.

Indeed, the question as to which act shall prevail must be considered with respect to the purpose of the two enactments; which of the two Acts is the general or special; which is later. It must also be considered whether they can be harmoniously construed.”

From a reading of the judgments referred to above, it is clear that when there are two different enactments containing two non-obstante clauses, the Court has to see the object and purpose of the two enactments and the legislation which is later in point of time.

A perusal of both the enactments would show that POSCO Act is a self contained legislature which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and other allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non-obstante clause in Section 42-A of the POSCO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POSCO Act, though the legislature was aware about the existence of non-obstante clause in Section 20 of the SC/ST Act.

Applying the test of chronology the POSCO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POSCO Act being beneficial to all and later in point of time, it is to be held that the provisions of POSCO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments.

The reference is thus answered holding that where an accused is tried for offences under both the enactments, the appropriate Court to try the offence would be the Court designated under Section 28 of the POSCO Act.

JUSTICE C. PRAVEEN KUMAR

08.04.2015

Note: L.R.copy to be marked.

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