

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.540 of 2020****Order reserved on: 24-11-2020****Order delivered on: 10-12-2020**

Ram Swarup Rajwade, S/o Pawan Kumar Rajwade, Aged about 25 years, Village Kankimudipara, P.S. Uрга, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Law and Legislative Affairs Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur (C.G.)
2. Station Incharge, P.S. Ajak, District Korba (C.G.)

---- Respondents

For Petitioner: Ms. Aditi Singhvi, Advocate.

For Respondents / State: -

Mr. Sunil Otwani, Additional Advocate General.

Amicus Curiae: Mr. Anurag Dayal Shrivastava, Advocate.
-----**Hon'ble Shri Justice Sanjay K. Agrawal****C.A.V. Order**

1. The short question that emanates for consideration in this writ petition is,

“If an accused has been charged for offence punishable under the penal provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, ‘the SC-ST Act of 1989’) and simultaneously also charged under the penal provisions of the Protection of Children from Sexual Offences Act, 2012 (for short, ‘the POCSO Act’) at the same trial, whether, in that situation, the special court constituted under the SC-ST Act of 1989 or the special court constituted under the POCSO Act would have jurisdiction to try the offences punishable under both the Acts?”

2. The petitioner / accused herein has been charge-sheeted for the offences punishable under Section 376 of the IPC, Section 6 of the POCSO Act and also Section 3(2)(v) of the SC-ST Act of 1989 and he is standing trial for the aforesaid offences in the Court of Special Judge (Atrocities) constituted under the SC-ST Act of 1989, Korba in Special Case (SC/ST) No.35/2019, as charge-sheet has been filed on 8-7-2019 and charges have been framed against him by that Court on 4-10-2019. The victim was also examined on 8-1-2020, but thereafter, the case could not be heard further on account of COVID-19 situation followed by closure of courts.
3. Now, the petitioner / accused has filed this petition stating inter alia that by virtue of Section 28(1) of the POCSO Act, Special Court constituted under the said Act would have jurisdiction to try the offences under the POCSO Act and by virtue of the provision contained in Section 28(2) of the POCSO Act, the Special Court (POCSO) shall have jurisdiction to try the offences other than the offences referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (for short, 'the Code of 1973'), be charged at the same trial, as by virtue of Section 31 of the POCSO Act, the Code of 1973 is applicable to proceeding before the Special Court (POCSO) and therefore by virtue of Section 26 of the Code of 1973 read with Section 28(2) of the POCSO Act, the offences under the SC-ST Act of 1989 would also be tried by special court constituted under the POSCO Act, as such, appropriate order / direction be issued to the

Special Court under the SC-ST Act of 1989 directing transfer of Special Case (SC/ST) No.35/2019 to the special court constituted under the POCSO Act for trial and disposal in accordance with law.

4. Ms. Aditi Singhvi, learned counsel appearing for the petitioner / accused, would submit that since the petitioner / accused has been charged for the offences which are said to have been committed under the SC-ST Act of 1989 and POCSO Act, both, therefore, by virtue of the provisions contained in Section 28(2) of the POCSO Act, the special court under the POCSO Act would have exclusive jurisdiction to try the offences even under the SC-ST Act of 1989, otherwise, the trial would be void by virtue of the provision contained in Section 461(l) of the Code of 1973 and therefore appropriate direction be issued to transfer the case from the special court under the SC-ST Act of 1989 to the special court under the POCSO Act for hearing and disposal in accordance with law. She would further submit that the POCSO Act is the later Act which prevails over the former Act by virtue of non obstante clause Section 42A contained in the POCSO Act with effect from 3-2-2013. She relied upon the decision of the Supreme Court in the matter of Sharat Babu Digumarti v. Govt. (NCT of Delhi)¹ to buttress her submission.

5. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / respondents, would submit that the special court under the POCSO Act would have jurisdiction to

1 (2017) 2 SCC 18

try the offences even under the SC-ST Act of 1989 in view of the provision contained in Section 28(2) of the POCSO Act.

6. Mr. Anurag Dayal Shrivastava, learned *amicus curiae*, would submit as under: -

1. That, in the proceeding before the Special Court under the POCSO Act, the Code of 1973 would be applicable by virtue of the provision contained in Section 31 of the POCSO Act.
2. That, by virtue of Section 220 of the Code of 1973, provision has been made for trial for more than one offence and by virtue of sub-section (3) of Section 220, all the offences connected with one series of incident should be tried together.
3. That, Chapter III of the Code of 1973 provides power of courts and clause (b) of Section 26 of the said Code would be attracted in the instant case which provides that subject to the other provisions of the Code of 1973, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by the High Court, or any other Court by which such offence is shown in the First Schedule to be triable.
4. Thus, by virtue of Section 28(2) of the POCSO Act read with Sections 220(3) and 26(b) of the Code of 1973, the offences charged against the petitioner under the SC-ST Act of 1989 would also be tried by the special court

constituted under the POCSO Act, as in Section 28(2) of the POCSO Act it is clearly mentioned that while trying an offence under the POCSO Act, Special Court shall also try an offence {other than the offence referred to in sub-section (1)}, with which the accused may, under the Code of 1973, be charged at the same trial and as such, the Special Court under the POCSO Act would have exclusive jurisdiction to try the offences including the offences under the SC-ST Act of 1989 because there is no similar provision in the SC-ST Act of 1989 as contained in Section 28(2) of the Code of 1973 and therefore the special court under the POCSO Act would have exclusive jurisdiction to try the offences, otherwise, the consequence provided in Section 461(I) of the Code of 1973 would ensue.

7. I have heard learned counsel for the parties and *amicus curiae* as well and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. The SC-ST Act of 1989 has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. The said Act came into force with effect from 30-1-1990 and it suffered amendment on 26-1-2016.

Section 14 of the SC-ST Act of 1989 provides for Special Court and Exclusive Special Court with power and jurisdiction to try the offences under the Act and further power to directly take cognizance of the offence under the Act. By virtue of Section 18 of the SC-ST Act of 1989, Section 438 of the Code of 1973 has been made inapplicable to the persons committing the offence under the SC-ST Act of 1989. Similarly, by virtue of Section 19 of the SC-ST Act of 1989, Section 360 of the Code of 1973 or the provisions of the Probation of Offenders Act has been made inapplicable to any person above the age of eighteen years who is found guilty of having committed under the SC-ST Act of 1989.

9. The SC-ST Act of 1989 does not provide any procedure to be adopted for special court for trial of offences under the SC-ST Act of 1989. Therefore, in absence of any provision laying down the procedure under the Code, there cannot be any doubt that in terms of Section 4(2) of the Code of 1973, the procedure laid down in the Code of 1973 has to be followed and further in view of Section 5 thereof, jurisdiction to try the case involving offence under the SC-ST Act of 1989 would vest in special court constituted under the SC-ST Act of 1989. Thus, in view of Section 4(2) of the Code of 1973, since the SC-ST Act of 1989 does not provide for any procedure to be followed for investigation, inquiry and trial of offence(s), all offences under the SC-ST Act of 1989 shall be investigated, inquired into, tried, and dealt with as per the provisions of the Code of 1973.

10. Whereas, in respect of the procedure to be followed before the Special Court under the POCSO Act, the provisions of the Code of 1973 would be applicable by virtue of the provision contained in Section 31 of the POCSO Act. Since the Code of 1973 is applicable to the proceeding before the Special Court (Atrocities) by virtue of Section 4(2) before the Special Court under the SC-ST Act of 1989 and before the Special Court (POCSO) by virtue of Section 31 of the POCSO Act, as such, for the trial of offences under both the Acts (SC-ST Act of 1989 and POCSO Act), the Code of 1973 would be applicable.

11. At this stage, it would be appropriate to notice Section 220 of the Code which prescribes the provision for trial of more than one offence. Sub-sections (1) and (3) of Section 220 of the Code provide as under: -

“220. Trial for more than one offence.—(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) xxx xxx xxx

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.”

12. In view of the above-stated provision contained in Section 220 of the Code of 1973, it is quite vivid that all offences connected with one series of incident or transaction should have to be tried together at one trial. The next question would

be, in which court these combined offences are to be tried? For this, reference to Section 26 of the Code of 1973 contained in Chapter III would be necessary. Section 26(b) of the Code of 1973 reads as follows: -

“26. Courts by which offences are triable.—Subject to the other provisions of this Code,

(a) xxx xxx xxx

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.”

13. A careful perusal of the aforesaid provision would show that subject to the other provisions of the Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by the High Court, or any other Court by which such offence is shown in the First Schedule to be triable.

14. Section 26(b) of the Code of 1973 is a *pari materia* provision contained in Section 29 of the Code of Criminal Procedure, 1898 (old), which states as under: -

“29. Offences under other laws – (1) 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.

(2) When no Court is mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such

offence is shown in the eighth column of Second Schedule to be triable.”

15. The Supreme Court in the matter of The State of Uttar Pradesh v. Sabir Ali and another² while considering Section 29 of the Code of 1898 (old), has held that the words of subsection (1) of Section 29 of the Code of 1898 (old) are peremptory and offence under any other law has to be tried in accordance with such law and it will be tried by no other Court, otherwise, trial would be void under Section 530(p) of the Code of Criminal Procedure, 1898. It was held by their Lordships as under: -

“(4) ... The scheme of the Criminal Procedure Code is that it provides separately for trial of offences under the Penal Code and for offences under any other law. The court which is to try them is indicated in the Code in the eighth column of the Second Schedule. The first part deals with offences under the Penal Code and the second part with offences under any other law. The last entry in the Second Schedule provides for the trial of offences under any other law which are punishable with imprisonment for less than one year or with fine only and they are made triable by "any Magistrate". If the matter were governed by the Second Schedule, the last entry would undoubtedly have comprehended a Magistrate, First Class. But S. 29 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. Here sub-sec. (2) of S. 15 mentions the courts by which offences under Section 15(1) are triable and S. 29(1) excludes the application of the second part of the Second Schedule. The words of sub-s. (1) of S. 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 under S. 15(1), therefore, is triable only by the two courts named therein, namely, Magistrates of the Second and the Third classes and not by any other Magistrate. ...”

Their Lordships finally concluded that in case of non-compliance of the provision contained in Section 29(1) of the Code (old), proceedings would be void. It was held as under:-

“(6) ... In any event, in view of the clear words of S. 29(1), the trial of these cases ought to have been before a court designated in S. 15(2) and as the trial was before a Magistrate who was not empowered to try the offence the proceedings were rightly declared void under S. 530(p) of the Code of Criminal Procedure. We accordingly hold that the decision under appeal was correct. The appeal fails and is dismissed.”

16. At this stage, it would be appropriate to notice Section 28 of the POCSO Act which provides for Designation of Special Courts. Sub-section (1) of Section 28 states 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’s court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a special Court under this section.”

17. Sub-section (2) of Section 28 of the POCSO Act provides, the “Court” which will try the offences under the POCSO Act and other offences also, which states as under: -

“(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

18. Sub-section (2) of Section 28 of the POCSO Act clearly provides that while trying an offence under this Act, a Special Court (POCSO) shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of 1973, be charged at the same trial. Thus, the competent legislature has clearly provided that the Special Court (POCSO) will be the court for the purpose of Section 26(b) of the Code of 1973 to try the offences to be charged under the Code at the same trial, other than the offence referred to in sub-section (1) of Section 28 of the POCSO Act. Therefore, the Special Court constituted under the POCSO Act while trying the case relating to offence under the POCSO Act will also try the offence(s) under any other law for the time being in force with which the accused may be charged in same trial as contemplated by Section 28(2) of the POCSO Act and the Special Court (POCSO) answers the description of the “Court” in terms of Section 26(b) of the Code of 1973 and consequently, offences apart from the POCSO Act, offences under the SC-ST Act of 1989 will also be tried exclusively by the Special Court (POCSO) and the said Special Court will have exclusive jurisdiction to try the offences under both the Acts (SC-ST Act of 1989 and POCSO Act).

19. There are *pari materia* provisions like Section 28(2) of the POCSO Act referred herein in the Prevention of Corruption Act, 1988 in terms of Section 4(3) of the said Act which provides as under: -

**“4. Cases triable by Special Judges.—(1) xxx
xxx xxx**

(2) xxx xxx xxx

(3) When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

20. Similarly, Section 43(2) of the Prevention of Money-laundering Act, 2002 which provides for Special Courts also deals with similar provision and states as under: -

“43. Special Courts.—(1) xxx xxx xxx

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

21. Similarly, Section 36-A(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 also provides as under: -

“36-A. Offences triable by Special Courts — (1) x x x

(a) to (d) xxx xxx xxx

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

22. Their Lordships of the Supreme Court in the matter of Vivek

Gupta v. Central Bureau of Investigation and another³ had an occasion to deal with sub-section (3) of Section 4 of the Prevention of Corruption Act, 1988 [which is *pari materia* to Section 43(2) of the Prevention of Money-laundering Act, 2002 and Section 36-A(2) of the NDPS Act and also *pari materia* to Section 28(2) of the POCSO Act, which is subject matter of consideration in the case in hand] in which it has been held that Special Court constituted under the Prevention of Corruption Act may by virtue of Section 4(3) of the said Act read with Sections 220 and 223 of the Code of 1973, would try any other offence under any other law under which the accused may under the Code of 1973 be charged at the same trial. Paragraph 9 of the report states as under: -

“9. A mere perusal of Section 4 of the Act clearly mandates that as specified in Section 3, offences punishable under the Act or any conspiracy, attempt or abetment to commit an offence under the Act shall be tried by a Special Judge appointed in accordance with Section 3 of the Act. Sub-section (3) of Section 4 also lays down clearly that while trying any case for an offence specified in Section 3 of the Act, a Special Judge may also try any offence other than offences specified in Section 3 with which the accused may under the Code of Criminal Procedure, 1973 be charged at the same trial. It therefore follows that a Special Judge trying a case relating to an offence specified in Section 3 of the Act may also try any offence under any other law for which, under the provisions of the Code of Criminal Procedure, the accused may be charged at the same trial. Thus in cases within the contemplation of Section 4(3) of the Act, the Special Judge is not precluded from trying an offence other than an offence specified in Section 3 of the Act.”

23. The principle of law laid down in **Vivek Gupta** (supra) has

³ (2003) 8 SCC 628

further been followed by the Supreme Court in the matter of **Essar Teleholdings Limited v. Registrar General, Delhi High Court and others**⁴ in which it has been held by their Lordships as under: -

“15.3. Both Section 4(3) of the PC Act and Section 43(2) of the Prevention of Money-Laundering Act, 2002 empower the Special Court to try any other offences that may be taken cognizance of under the CrPC. In this view of events, the cognizance taken by the Special Court of the charge-sheet filed against the accused was valid.

17. A mere perusal of Section 3 read with Section 4 of the PC Act clearly mandates that apart from an offence punishable under the PC Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the PC Act can also be tried by a Special Judge. Sub section (3) of Section 4 specifies that when trying any case, a Special Judge can also try any offence, other than an offence specified in Section 3, with which the accused may, under CrPC, be charged at the same trial.”

24. Similarly, in the matter of **HCL Infosystem Limited v. Central Bureau of Investigation**⁵, it was held by the Supreme Court that Special Judge under the Prevention of Corruption Act, 1988 was authorised by the Act of 1988 not only to deal with cases under the Prevention of Corruption Act, but also for non-PC Act offences, such course is permissible in view of law laid down in **Essar Teleholdings Ltd.** (supra) and further held that Special Judge has jurisdiction to try non-PC Act cases against non-public servants so long as the said non-PC Act offences arise out of the same transaction(s) for which co-accused public officials are charged under the PC Act. It

4 (2013) 8 SCC 1

5 (2016) 9 SCC 281

was observed in paragraphs 14 & 15 of the report as under: -

“14. While we do find that the observations of this Court in *Jitender Kumar Singh*⁶ in paras 46 and 47 quoted above support the contention of Shri Singh that the Special Judge, under Section 4(3), could not try an offence other than that specified under Section 3. The public servant was no more and the trial had not commenced. In view of the relied upon judgment in absence of PC Act charge, the appellants may not be liable to be tried before the Special Judge. However, we find two difficulties in accepting the submission of Shri Singh as follows:

(i) As observed by the High Court, the charge is yet to be framed and the framing of charge under the PC Act from the material placed on record was not ruled out. Thus, the argument at this stage is premature; and

(ii) The Special Judge was authorized not only to deal with the cases under the PC Act as was the position in the case before this Court in *Jitender Kumar Singh* (supra) but also for other offences. This course was permissible in view of law laid down by this Court in *Essar Teleholdings Ltd.* (supra).

15. In the present case, the Special Court in question has been constituted not only to deal with the cases of the PC Act but also other cases relating to the NRHM Scam. The procedure of the Code of Criminal Procedure is applicable to trial before the Special Judge and there is no prejudice to trial that is taking place before the Special Judge duly appointed to deal with non-PC cases when the object of doing so was to try connected cases before same court. Undoubtedly, while the Special Judge alone could deal with cases under the PC Act, non-PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure. There is no legal bar to do so, as held by this Court in *Essar Teleholdings Ltd.* (supra).”

25. Thus, following the principles of law laid down by their

6 State v. Jitender Kumar Singh, (2014) 11 SCC 724

Lordships of the Supreme Court in the above-stated judgments (supra) in Vivek Gupta (supra) followed in Essar Teleholdings Limited (supra) and further followed in HCL Infosystem Limited (supra), it is quite vivid that by virtue of Sections 28(2) and 31 of the POCSO Act read with Sections 220 and 223 read with Section 26(b) of the Code of 1973, the Special Court constituted under the POCSO Act would also have exclusive jurisdiction to try the offences including punishable under the SC-ST Act of 1989 i.e. for the non-POCSO cases. Accordingly, in my considered opinion, the petitioner having been charged for offences punishable under the SC-ST Act of 1989 and the POCSO Act i.e. one series of incident, the Special Court constituted and notified under the POCSO Act would have exclusive jurisdiction to try all the offences including the offences under the SC-ST Act of 1989.

26. This question involved herein-above can be examined from another angle. Section 20 of the SC-ST Act of 1989 contains a *non obstante* clause, whereas Section 42A of the POCSO Act also contains *non obstante* clause inserted with effect from 3-2-2013, which state as under: -

Section 20 of the SC-ST Act of 1989

“20. Act to override other laws.—Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent 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.

Section 42A of the POCSO Act (w.e.f. 3-2-2013)

42A. 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 any such law to the extent of the inconsistency.”

27. A *non obstante* clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. The meaning of ‘*non obstante* clause’ has been explained in the Advanced Law Lexicon by P. Ramnath Aiyar as follows: -

“*Non obstante clause.* A clause in a statute which overrides all provisions of the statute. It is usually worded : ‘Notwithstanding anything in ...’ Need not always have effect of cutting down clear terms of enactment. Enacting part when clear can Control non-obstante clause.

A clause used in public and private instruments intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.”

28. A clause beginning with ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force’, is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the *non obstante* clause. It is equivalent to saying that in spite of the provision or Act mentioned in the *non obstante* clause, the enactment following it will have its full operation or that the provisions embraced in the *non obstante* clause will not be an impediment for the operation of the enactment. Thus a *non obstante* clause may be used as a legislative device to

modify the ambit of the provision or law mentioned in the *non obstante* clause or to override it in specified circumstances.

(See page 364 of Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010.)

29. The nature and object of *non obstante* clause came to be considered by their Lordships of the Supreme Court in the matter of Union of India and another v. G.M. Kokil and others⁷ in which it has been held that a *non obstante* clause is a legislative device employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment to avoid the operation and effect of all contrary provisions.
30. Similarly, in the matter of State of Bihar and others v. Bihar M.S.E.S.K.K. Mahasangh and others⁸, the effect of *non obstante* clause has been explained by their Lordships of the Supreme Court in paragraph 47 of the report as under: -

“47. Normally the use of phrase by the Legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure (See Law Lexicon words 'notwithstanding anything in this Act to the contrary'). Use of such expression is another way of saying that the provision in which the non obstante clause occurs usually would prevail over other provisions in the Act. Thus, non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting

7 AIR 1984 SC 1022

8 AIR 2005 SC 1605

provision to which the non obstante clause is attached. (See Bipathumma and others vs. Mariam Bibi; (1966(1) Mysore Law Journal page 162 and at page 165.”

31. Thus, it is quite vivid that a *non obstante* clause is a legislative device which is employed by the competent Legislature to give overriding effect in case of any conflict or inconsistency over the provisions of the same Act or other Acts. The purpose of *non obstante* clause is to provide the way for full operation of enacting provision without any impediment of obstruction of any provisions of the same Act or any other Act. The main object is to provide full operation of the Act.
32. Both the Acts i.e. Section 20 of the SC-ST Act of 1989 and Section 42A of the POCSO Act provide *non obstante* clauses. It is required to be considered to find out as to whether by operation of the said non obstante clause both the Acts stand independently or any of one provides room to another for its operation or in other words as to whether any of the Acts provides the scope for operation of another Act by incorporating the provisions of another Act for the purposes of its operation. The other aspect of the matter would be, whether there is any inconsistency or conflict in operation exist in the event of operation of both the Acts together?
33. The language of Section 20 of the SC-ST Act of 1989 is more rigid than that of Section 42A of the POCSO Act. In the SC-ST Act of 1989, as per the language of Section 20, there is no scope available to incorporate the provision of the other Act, whereas Section 42A of the POCSO Act makes room for

operation of other.

34. **Principles of Statutory Interpretation** by Justice G.P. Singh has classically dealt with the issue where two Special Acts operate in the same field having *non obstante* clause by observing as under: (See page 372 of **Principles of Statutory Interpretation** by **Justice G.P. Singh**, 12th Edition 2010.)

“Sometimes one finds two or more enactments operating in the same field and each containing a *non obstante* clause stating that its provisions will have effect ‘notwithstanding anything inconsistent therewith contained in any other law for the time being in force’. The conflict in such cases is resolved on consideration of purpose and policy underlying the enactments and the language used in them.”

35. Similarly, in the matter of **Union of India v. I.C. Lala etc.**⁹, the Supreme Court held as under: -

“... *non obstante* clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made in applicable. It is the duty of the Court to avoid the conflict and construe the provisions to that they are harmonious.”

36. Likewise, in the matter of **Jugal Kishore v. State of Maharashtra and others**¹⁰, their Lordships of the Supreme Court while dealing with Socio-Economic Legislations have made pertinent observation as under: -

“8. ... Unless the Acts, with the intention of implementing various socio-economic plans, are read in such complimentary manner, the operation of the different Acts in the same field would create contradiction and would become impossible. It is, therefore, necessary to take a constructive attitude

9 AIR 1973 SC 2204

10 AIR 1989 SC 159

in interpreting provisions of these types and determine the main aim of the particular Act in question for adjudication before the Court.”

37. In the matter of Sarwan Singh and another v. Kasturi Lal¹¹, their Lordships of the Supreme Court while dealing with the rule of construction of *non obstante* clause, held as under: -

“20. ... 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. ...”

38. In the matter of Central Bank of India v. State of Kerala and others¹², their Lordships of the Supreme Court while dealing with Interpretation of Statutes, its internal aids and non obstante clause observed as under: -

“105.... When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. ‘A search has, therefore, to be made with a view to determining which provision answers the description and which does not.’”

39. Reverting to the facts of the case in the light of the aforesaid principles of law enunciated by their Lordships of the Supreme Court, it is quite vivid that the SC-ST Act of 1989 and the POCSO Act, both, are special Acts, they are enacted with an objective to achieve the goals those mentioned in the State of Objects and Reasons, however, one of the common objects

11 AIR 1977 SC 265

12 (2009) 4 SCC 94

of both the Acts is for establishment of “Special Court” to provide speedy trial to the victim. The status of the “Special Court” is of the same strength i.e. “Court of Session” and, therefore, in the considered opinion of this Court, there is no inconsistency exists in this regard between both the Acts.

40. A careful perusal of Section 28(2) read with Sections 31 and 42A of the POCSO Act read with Sections 26 and 220 of the Code of 1973, would reveal that it makes the path for operation / provisions of other laws particularly the trial of offences under the provisions of other law if the accused is charged at the same trial. In other words, the POCSO Act harmoniously allows the incorporation of other Acts for their operation by virtue of Section 28(2) of the POCSO Act. In this regard, there is neither any inconsistency nor any conflict in the POCSO Act and as such, the SC-ST Act of 1989 and the POCSO Act can co-exist and stand independently together with each other for operational purpose and as such, “Special Court” designated under the POCSO Act would have exclusive jurisdiction to try the offence of both the Acts if arise out of same crime in one incident.
41. Similarly, it is well settled position of law that if two Acts operate in the same field then the Act which is later enacted will prevail over the earlier one. This legal principle is based on the foundation that at the time of enactment of the later statute, the Legislature was well aware of the earlier legislation and its *non obstante* clause. Since the Legislature still confers the later enactment with a *non obstante* clause, it

means that the Legislature wanted that enactment to prevail. (See Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. and another¹³, Sarwan Singh (supra), Allahabad Bank v. Canara Bank and another¹⁴, Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd.¹⁵, Kumaon Motor Owners' Union Ltd. and another v. State of Uttar Pradesh¹⁶ and Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and others¹⁷.)

42. The view which I have taken in the foregoing paragraphs qua exclusive jurisdiction of Special Court (POCSO), finds support from the view taken by the other High Courts, which are noticed herein.

43. The Madras High Court in the matter of In – Re The Registrar (Judicial) High Court, Madras 600 104¹⁸, in paragraph 56, has clearly held that the Special Court under the POCSO Act shall have jurisdiction to grant all the reliefs to the victim for which the victim is entitled to under the SC & ST Act. It was observed as under: -

“56. If the act of the accused is an offence under the POCSO Act and also an offence under the SC & ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance of the offences either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all the

13 (1993) 2 SCC 144

14 (2000) 4 SCC 406

15 AIR 1956 SC 614

16 AIR 1966 SC 785

17 (2001) 3 SCC 71

18 Reference Case No.1 of 2017, decided on 28-4-2017

reliefs to the victim for which the victim is entitled to under the SC & ST Act.”

44. Similarly, the Patna High Court in the matter of Guddu Kumar Yadav v. The State of Bihar¹⁹ has held in the sub-paragraph of paragraph 28 as under: -

“Therefore, in the considered opinion of this Court where any prosecution is brought for offences under both the Acts i.e. POCSO Act and the ST/ST Act, the Special Court constituted under POCSO Act, alone would have jurisdiction in the matter at pre-cognizance stage and post cognizance stage including trial, provided the accused may be charged at the same trial under the Code of Criminal Procedure, 1973.”

45. Thus, in view of the aforesaid analysis, the question framed in paragraph 1 of this order is answered as under: -

“If the accused is charged for the offences punishable under the SC-ST Act of 1989 and the POCSO Act, simultaneously, in one series of incident, at the same trial, then, in that situation, the designated ‘Special Court’ constituted and notified under the POCSO Act will have exclusive jurisdiction to try the offence(s) under both the Acts.”

46. As a fallout and consequence of the above-stated discussion, the instant writ petition is allowed. Consequently, Special Criminal Case (SC/ST) No.35/2019 titled as State of Chhattisgarh v. Ram Swarup Rajwade pending in the Court of Special Judge (Atrocities), Korba under the SC-ST Act of 1989 is withdrawn from the file of Special Judge (Atrocities), Korba and transferred forthwith to the file of Special Court (POCSO), Korba (constituted / notified under the POCSO Act) for hearing and disposal in accordance with law. The Special

Judge (Atrocities), Korba is directed to transmit the entire record and proceeding of the above-mentioned criminal case to the Special Judge (POCSO) expeditiously. No order as to cost(s).

47. Before parting with the record, this Court appreciates the assistance rendered by Mr. Anurag Dayal Shrivastava, Advocate, who appeared as *amicus curiae* at short notice and assisted the Court.

48. Registrar (Judicial) is directed to send a copy of this order to the Special Judge (Atrocities), Korba and the Special Judge (POCSO), Korba for information and needful action.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.540 of 2020****Ram Swarup Rajwade****Versus****State of Chhattisgarh and another****Head Note**

If an accused is charged for the offences punishable under the SC-ST Act of 1989 and the POCSO Act, simultaneously, in one series of incident, at the same trial, then, in that situation, the designated ‘Special Court’ constituted and notified under the POCSO Act will have exclusive jurisdiction to try the offence(s) under both the Acts.

यदि कोई अभियुक्त किसी घटना के अनुक्रम में अनुसूचित जातियों और अनुसूचित जन जातियों (अत्याचार निवारण) अधिनियम, 1989 तथा पॉस्को अधिनियम से दण्डनीय अपराधों के लिए एक ही विचारण में एक साथ आरोपित किया जाता है, तब ऐसी स्थिति में पॉस्को अधिनियम के तहत अधिसूचित एवं गठित निर्दिष्ट “विशेष न्यायालय” को दोनों अधिनियमों के अधीन अपराधों का विचारण करने की अनन्य अधिकारिता होगी।