

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 434 of 2018

- Sanjay Negi, Aged About 17 Years, S/o Sonlal Negi, Residence Of Village Iragaon, P.S. Iragaon, Distt. Kondagaon, Chhattisgarh. Through Natural Guardian Father Sonlal Negi, S/o Late Budhram Negi, Aged About 38 Years, Residence Of Village Iragaon, P. S. Iragaon, Distt. Kondagaon, Chhattisgarh.

---- Applicant/Accused

Versus

- State Of Chhattisgarh Through The Police Station- Keshkal, Distt. Kondagaon, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Shobhit Koshta, Advocate.
For State	:	Dr. (Ms.) Veena Nair, Dy. A.G.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

18/11/2021

Challenge in this revision under Section 397/401 of CrPC is to the order dated 28.3.2018 passed by the Special Judge (Atrocities), Kondagaon in Special Case No.01/2018 framing charges against the applicant under Sections 363, 366, 376(2)(i)(n), 506(B), 313 of IPC, Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

02. Learned counsel for the applicant submits that the Special Court (Atrocities) has no jurisdiction to deal with the present case as the applicant is a juvenile being aged about 17 years, and it can be tried only under the Juvenile Justice Act by the Children Court. Even otherwise, from the material on record including the FIR, statement of

the prosecution under Section 164 of CrPC coupled with her conduct and her medical report, the charges framed against the applicant are not in accordance with law and as such, on the aforesaid grounds, the impugned charge framing order is liable to be set aside.

03. On the other hand, learned counsel for the State supporting the impugned order submits that the Court below has not committed any illegality or perversity in framing the said charges against the applicant based on the material available with the charge sheet which prima facie constitute the offence charged against him. Though charges have been framed by the Special Judge (Atrocities) but at present it is being tried by the Additional Sessions Judge (FTC) having the jurisdiction to deal with POCSO cases which is in accordance with law and as such, no interference is called for by this Court in the said proceedings.

04. Heard learned counsel for the parties and perused the material available on record.

05. Initially, vide order dated 24.1.2018 of Special Judge (under POCSO Act), Kondagaon, the criminal case No.28/2017, State of CG Vs. Juvenile S relating to offence under Sections 363, 313, 376 of IPC, Section 6 of POCSO Act and Section 3(2)(v) of SC/ST Act was received by the Special Judge (under POCSO Act), Kondagaon along with the record, remand papers and case diary. Since there was allegation of commission of offence under the SC/ST Act, the matter was sent to the Special Judge (Atrocities) on the same day i.e. 24.1.2018 who framed aforesaid charges against the applicant by the impugned order dated 28.3.2018.

06. Presently, the said Special Criminal Case No.01/2018 is being tried by the Additional Sessions Judge (FTC), Kondagaon as admitted

by both the counsel. As per Notification dated 12th September, 2014, the State Government in exercise of powers conferred by Section 28 of POCSO Act, 2012 and on the recommendation of the High Court, designated the Special Court specified under Section 14 of the SC-ST Act, 1989 as 'Special Court' under Section 28 of the POCSO Act for trial of offences under POCSO Act committed against the children belonging to the SC/ST community.

In Section 2(20) of the Juvenile Justice (Care and Protection of Children) Act, 2015, "Children's Court" has been defined as under:

"2. Definition. - In this Act, unless the context otherwise requires.-

(20) "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;"

07. The co-ordinate Bench of this Court in the matter of **Ram Swarup Rajwade Vs. State of CG and another**, vide **order dated 10.12.2020** passed in **WP (Cr) No.540 of 2020** has held that 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.

08. Since, admittedly, now the matter is being tried by Additional Sessions Judge (FTC), Kondagaon which is Special Court constituted and notified under the POCSO Act, in view of Section 2(20) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the fact that the applicant is aged about 17 years, the Court of Additional Sessions Judge (FTC) has the jurisdiction of Children's Court to conduct trial in this case.

09. So far as charges framed under Sections 363, 366, 376(2)(i)(n), 506(B), 313 of IPC, Section 6 of POCSO Act, 2012 and Section 3(2)(v) of the SC-ST Act, 1989 are concerned, considering the contents of the FIR and the charge sheet, the written complaint by the father of the prosecutrix, her medical report, statements of the witnesses and other material filed with the charge sheet, the aforesaid charges framed against the applicant cannot be said to be defective.

10. In the result, the revision petition being without any substance is liable to be dismissed and is, accordingly, dismissed. Consequently, the interim order passed by this Court stands vacated. The Court of Additional Sessions Judge (FTC), Kondadaon having the jurisdiction of Children's Court, is at liberty to proceed with the matter in accordance with law.

**Sd/
(Gautam Chourdiya)
Judge**