

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (DB) 458 of 2024

With

CRR 3324 of 2022

With

SRCR 1 of 2022

Sabiruddin Sk. @ Sabir & Anr.

Vs.

The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Moyukh Mukherjee, Adv.
 Mr. Pritam Roy, Adv.
 Mr. Anisur Rahaman, Adv.

For the State : Mr. Madhusudan Sur, Ld. APP.
 Mrs. Trina Mitra, Adv.

For the State Mr. Rudradipta Nandy, Adv.
In CRR 3324 of 2022 and
SRCR 1 of 2022.

Amicus Curiae Mr. Ayan Bhattacharyya, Adv.

CAV On : 19.07.2024

Judgment On : 29.08.2024

In Re: SRCR 1 of 2022

Apurba Sinha Ray, J. :-

1. The learned Amicus Curiae Mr. Bhattacharjee has outlined the backdrop of the present criminal reference in the following manner:-

Initially, two cases were registered by the Samsherganj Police Station being Case Nos. 121 of 2021 and 149 of 2021 under Sections 489B/489C of I.P.C. Subsequently, sections 15 and 16 of the Unlawful Activities (Prevention) Act, 1967 ('Act 1967' in short hereinafter) were added when the investigation was taken over by Special Task Force ('STF' in short hereinafter). After addition of charges under the Act 1967, the learned Additional Chief Judicial Magistrate, Jangipur sent the records of the cases to the Court of the learned Additional Sessions Judge, 1st Court, Jangipur, Murshidabad who, in view of the judicial decision reported in **(2020) 10 SCC 616 (Bikramjit Singh Vs. State of Punjab)**, held that only a court constituted under National Investigation Agency Act, 2008 (In short 'NIA Act') had the jurisdiction to try the case and accordingly, directed the learned Additional Chief Judicial Magistrate, Jangipur to transfer the case to the learned Special Court (III) at Bichar Bhawan, Kolkata being the 2nd Special Designated Court under the NIA Act. The learned Special Court(III) at Bichar Bhawan, Kolkata, vide his order dated November 16, 2021 observed that the learned Court of the Chief Judge, City Sessions Court at Kolkata was the senior most designated court under the NIA Act and further, since the investigation of the cases under reference was not taken

over by the NIA as per the provisions under Section 6 of the NIA Act, 2008, the STF was obliged to carry on the investigation. It was held that no designated court under the NIA Act have jurisdiction to inquire and try the same. The case record was sent back to the learned Additional Chief Judicial Magistrate, Jangipur, who in view of the aforesaid dichotomy, solicited instruction from the learned Sessions Judge, Murshidabad and the learned Sessions Judge after receipt of the case records, by order dated March 11, 2022 stated a case setting out the decision and the reasons thereof and referred the same for decision to this Court under Section 395 of the Code of Criminal Procedure, 1973. The issue as stated by the learned Sessions Judge, Murshidabad is:-

“Whether the Special Court under N.I.A Act at Bichar Bhawan, Kolkata has sole jurisdiction to try the case vide Samsheganj P.S. Case No. 121 of 2021 dated 26.05.2021 U/s 489B/489C of I.P.C and Sections 15(1)(a)(iiia)/16(1)(b) of the UAPA corresponding to G.R. Case No. 869/2021, pending before the Addl. Chief Judicial Magistrate, Jangipur, Murshidabad which involves scheduled offences under the UAPA Act?”

2. As a question of law is involved, this court thought it fit to have some deliberation over the relevant issue and for that purpose requested learned Advocate Mr. Ayan Bhattacharjee to act as an amicus curiae for assisting the court to answer the reference in accordance with law.

3. The learned Amicus Curiae has submitted that the NIA Act came into effect from December 31, 2008. The Act 2008 was enacted for the purpose of constituting an investigation agency at the national level to investigate and to prosecute offenders affecting sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under the laws enacted to implement international treaties, agreements, covenants and regulations of the United Nations.

4. Section 3(2) of the NIA Act empowers and authorizes NIA to investigate into a case relating to Scheduled Acts and Scheduled Offences throughout India. The Unlawful Activities (Prevention) Act, 1967 is one of such scheduled Acts.

5. The learned Amicus Curiae has referred to the provisions of the NIA Act. According to him, on registration of an FIR relating to any Scheduled Offence, the Officer-in-Charge of the Police Station is duty bound to report the same to the State Government forthwith. On receipt of such report of the Officer-in-Charge, as per Section 6(2) of the NIA Act the State Government is obligated to forward the report to the Central Government as expeditiously as possible. On receipt of such report from the State Government or otherwise, within 15 days therefrom having regard to the gravity of the offences and other relevant factors the Central Government shall determine whether it is a fit case to be investigated by NIA as per Section 6(3) of the NIA Act. Once the Central Government is of the opinion that a Scheduled Offence was committed and the case is required to be investigated by NIA, it

shall direct NIA to investigate the Scheduled Offence under Section 6(4) of the NIA Act. The Central Government has also the power to direct the NIA to investigate the occurrence of a Scheduled Offence, suo motu, even if there is no such recommendation or report from the State Government. Once, the case is taken over by the NIA Act pursuant to a direction under sub-section (4) or sub-section (5) of Section 6 of the NIA Act, the State Government and the State Police will refrain from proceeding with the investigation any further and shall forthwith transmit the case record to the NIA as per Section 6(6) of the NIA Act. Till investigation is taken over by NIA, the State Police is obligated to continue with the investigation according to the provision under Section 6(8) of the NIA Act.

6. Mr. Bhattacharjee has drawn the attention of this court to chapter IV of NIA Act which deals with the provisions relating to Special Courts. Section 11 empowers the Central Government to designate a Special Court whereas Section 22 of the Act empowers the State Government to designate any court as a Special Court under NIA Act with a view that when a Scheduled Offence is investigated by the State Agency the same may be enquired into or tried by such Special Court. As per Section 22(3) of the NIA Act in absence of such designation by the State Government, a court of sessions of the territorial jurisdiction will have the power to enquire and try a case involving a Scheduled Offences until such time a Special Court is designated by State Government under Section 22(4) of the NIA Act.

7. In this case, according to learned Amicus Curiae, neither the Central Government nor the State Government has designated any court as Special Court under the provisions of NIA Act in the sub-division Jangipur of the District – Murshidabad.

8. The learned Amicus Curiae contends that as there is no court designated under the provisions of NIA Act or UAPA Act, 1967 as Special Court, the jurisdictional sessions court has the power to entertain the application for remand in view of provisions of UAPA Act, 1967. The learned Amicus Curiae has, after placing case laws reported at **Bikramjit Singh (Supra), (2022) 6 SCC 339 (Sadique & Ors. Vs. State of Madhya Pradesh), 2021 5 SCALE 346 (Fakhrey Alam Vs. State of Uttar Pradesh), (2022) 6 SCC 308 (Naser Bin Abu Bakr Yafai Vs. State of Maharashtra & Anr.), (2022) SCC OnLine Cal 4286 In Re: (Pratik Bhowmik), 2024 (5) SCALE 144 (Para 24) (State of West Bengal Vs. Jayeeta Das)**, strenuously argued that the ratio decidendi of the case law of **Bikramjit Singh (supra)** is squarely applicable in the factual scenario of the present case.

8.1. The learned counsel of the State, Mr. Nandy, has adopted the submission of the learned Amicus Curiae.

8.2. Learned Counsel for the petitioners submitted that the reference may be answered appropriately by this court.

Court's View:-

9. We shall confine our discussion only to the issue raised herein. The question is when there is no special court constituted under the NIA Act, 2008, either by the Central Government or by the State Government in the sub-division of Jangipur, Murshidabad, then which court shall take cognizance of the offence or the remand file of the accused who is charged with the commission of a scheduled offence under UAPA Act, 1967 within the jurisdiction of Jangipur.

10. Admittedly, no special court either under Section 11 of the NIA Act or under Section 22 of the said Act has been constituted. This situation is not a new one or unheard of. Section 22(3) of the Act, 2008 has itself dealt with such an issue. Moreover, if we peruse the case law of **Bikramjit Singh (supra)** we shall find that the Hon'ble Supreme Court has been pleased to deal with such situation and has been pleased to lay down the law in this regard. The said view has also been adopted in **Sadique's case (supra)**. The case of **Fakhrey Alam (supra)** has also been placed before us for consideration but the factual scenario, in our opinion, are different from **Bikramjit Singh's case (supra)** and in **Sadique's case (supra)**. In **Fakhrey Alam's case (supra)** there were notified special courts in the relevant district of Uttar Pradesh which were not available in the State of Punjab or in the Sub-division of Jangipur. However, so far as the present case is concerned, we find that this Court at Calcutta in Re: **Pratik Bhowmik's case (supra)**

reported at (2022) SCC OnLine Cal 4286 has succinctly dealt with similar issues involved in the case at our hand.

11. In our view the case law reported at **Bikramjit Singh's case (supra)**, **Jayeeta Das (supra)** and **Pratik Bhowmik's case (supra)** lay down the law in this regard. In other words, when there is no Special Court either under Section 11 or under Section 22 of the NIA Act, the above judicial decisions have indicated which Court will have the power to deal with cases under UAPA, 1967.

12. The relevant paragraph 26 of **Bikramjit Singh's case** may be reproduced for proper understanding of the issue involved in this case:-

*“26. Before the NIA Act was enacted, offences under the UAPA were of two kinds - those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Session. This scheme has been completely done away with by the NIA Act, 2008 as all Scheduled Offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. **In the***

absence of any designated court by notification issued by either the Central Government or the State Government, the fallback is upon the Court of Session alone.

Thus, under the aforesaid scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts."

13. In the case of **Jayeeta Das (supra)** the Hon'ble Supreme Court has laid down the law that when there is no special court constituted under Section 11 or section 22 of the NIA Act, the jurisdictional Sessions Court has the power under the Act, 1967. Paragraphs 24 to 29 of the said decision are relevant for the purpose of our discussion:-

"24. A bare perusal of sub-section (3) of Section 22 of NIA Act would make it clear that until a Special Court is constituted by the State Government under sub-Section (1) of Section 22, in case of registration of any

offence punishable under UAPA, the Court of Sessions of the division, in which the offence has been committed, would have the jurisdiction as conferred by the Act on a Special Court and a fortiori, it would have all the powers to follow the procedure provided under Chapter IV of the NIA Act.

25. Admittedly, the present case involves investigation by the State police, and therefore, the provisions of Section 22 would be applicable insofar as the issue of jurisdiction of the Court to try the offences is concerned.

26. Learned counsel for the respondent relied upon Gazette Notification dated 29th April, 2011 in order to canvass that the Special Court had already been constituted for trial of UAPA offences within the State of West Bengal.

27. A bare perusal of the said notification would make it clear that the Special Court was constituted by the "Central Government" in exercise of the power conferred by sub-section (1) of Section 11 of the NIA Act.

28. The State Government has been given exclusive power delegated by virtue of Section 22(1) of the Act (reproduced supra) to constitute one or more Special Courts for trial of offences under any or all the enactments specified in the Schedule.

29. It is not in dispute that the State of West Bengal has so far not exercised the power conferred upon it by Section 22 of the NIA Act for constituting a Special Court for trial of offences set out in the Schedule to the NIA Act and hence, the Sessions Court within whose jurisdiction, the offence took place which would be the Chief Judge cum City Sessions Court in the case at hand, had the power and jurisdiction to deal with the case by virtue of sub-section (3) of Section 22 of the NIA Act.”

14. A co-ordinate Bench of this Court in **Pratik Bhowmik’s case (supra)** has dealt with a similar issue as the one which is involved in the case at hand. The relevant paragraphs 33 to 35 are quoted herein below:-

“33. As the Magistrate neither has the power to try nor commit cases involving UAPA, addition of offences under UAPA to the FIR would denude the Magistrate of the power to remand an accused beyond thirty days. Thereafter, the remand power is to be exercised by the court which is empowered to take cognizance and try the offence, i.e. the Special Court and in its absence, the Court of Sessions.

34. In this regard, reference may be made to State of Tamil Nadu v. V. Krishna swami Naidu where the Apex Court held the Special Judge under Criminal Law (Amendment) Act, 1952 who has power to take cognizance and try

offences shall also have the power to remand the accused during investigation and the expression 'Magistrate' under section 167 Cr.P.C. must be interpreted to include a Special Judge.

35. In the light of the aforesaid discussion, we hold as follows:-

(i) Once offences under UAPA are added to a case, Magistrate is denuded of his power to remand in terms of Section 167 of the Code of Criminal Procedure (as amended in UAPA) beyond a period of 30 days;

(ii) Thereafter, the accused must be produced before the Special Court constituted under Section 11 or 22 of the NIA Act (as the case may be) for the purposes of remand as well as extension of the period of remand in terms of proviso to Section 43D(2) of the UAPA;

(iii) In the absence of a Special Court constituted as aforesaid, Court of Sessions shall exercise all powers and jurisdiction of the Special Court in terms of Section 22(3) of the NIA Act including the power to remand as well as the power to extend the period of remand in terms of proviso to Section 43D (2) of the Act."

15. In view of the decisions in **Bikramjit Singh's case (supra)**, **Jayeeta Das's case (supra)** of the Hon'ble Supreme Court and also the decision in **Pratik Bhowmik's case** of this Hon'ble Court as referred to above we have

no doubt that the senior most Additional Sessions Judge, Jangipur Sub-Division within the District of Murshidabad is the appropriate court having power to deal with the relevant Samsherganj Police Station Case No. 121 of 2021 dated 26.05.2021 under Sections 489B/489C of I.P.C. and sections 15 and 16 of the Unlawful Activities (Prevention) Act, 1967, corresponding to G.R. Case No. 869/2021 of the learned Court of Additional Chief Judicial Magistrate, Jangipur including the powers of remand, taking cognizance of the offences committed by the concerned accused persons and trying a case until a Special Court under Section 11 or 22 of the NIA Act, 2008 is constituted.

16. We answer the reference accordingly, and request the learned Sessions Judge, Murshidabad to inform the same to the concerned courts at Jangipur sub-division immediately.

17. We record our deep appreciation of the immense assistance extended to us by Mr. Ayan Bhattacharyya, Learned Amicus Curiae.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)