A STATE OF HIMACHAL PRADESH

v.

GITA RAM

SEPTEMBER 8, 2000

B [K.T. THOMAS AND R.P. SETHI, JJ.]

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act 1989: Sections 14 & 2(1)(d)—Sessions Court designated as Special Court for trial of offences under the Act—Such specified Special Court not denuded C *of its character and powers as a Sessions Court—Competent to try offences under the Indian Penal Code—Indian Penal Code, 1860.*

Code of Criminal Procedure, 1973: Section 465—Technical objection as to jurisdiction—not taken at earliest stage—Cannot be allowed to be D *taken after completion of trial.*

In this appeal, the question arising for consideration was whether a Sessions Court designated as a 'Special Court' as provided under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would cease to be a Sessions Court and lost its jurisdiction to try offences E **under the Indian Penal Code.**

In the instant case the conviction and sentence awarded by such specified Sessions Court for an offence under Section 376 Indian Penal Code was set aside by the High Court on the ground that the Special Court could not have F **taken cognizance of the offence under section 376 IPC separately and commitment of the case to such a Court by the Magistrate was illegal. The High Court further directed a retrial by a competent court.**

Setting aside the impugned judgment and remitting the appeal back to the High Court for disposal on merits, this Court.

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HELD : 1. A Court of Session specified as a Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 continues to have jurisdiction to try offences under the Indian Penal Code and the order of committal to such Court by the Magistrate H **was legally valid. [198-D]**

1.1. It was intended by the legislature that only a Court of Session and no other court be specified as a Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Hence such specified Court would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or powers as a Court of Session. [198-G]

Gangula Ashok **v.** *State of Andhra Pradesh,* **[2000] 2 SCC 504, relied on.**

2. If any party to a criminal proceeding is aggrieved on any technical ground, he must raise the objection at the earliest stage; he cannot be heard on that aspect after the whole trial is over. [199-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 765 of 2000.

From the Judgment and Order dated 5.7.99 of the Himachal Pradesh High Court in Crl. A. No. 73 of 1999.

Anil Nag for the Appellant.

D.K. Garg, Ashok Kumar Sharma and Ms. Renu George for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

By the impugned judgment a learned single Judge of the High Court ordered a redo of the whole laborious exercise once completed in full measure at great cost of time and energy, solely on a technical ground.

Respondent was charge-sheeted for the offences under Section 376 of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (for short 'the Act').

A Magistrate committed the case to the Sessions Court who was specified as a Special Court to try the offences under the Act. A charge was framed by the said Sessions Court against the respondent only for the offence under Section 376 IPC. After trial the said Sessions Judge convicted the respondent for the offence under Section 376 and sentenced him to undergo imprisonment

A for seven years. Respondent filed an appeal before the High Court challenging the conviction and sentence. A learned single Judge of the High Court set aside the said conviction and sentence on one technical ground i.e. the trial Judge had no jurisdiction as he was only the Special Court specified under the Act. The case was committed to that court and resultantly that court has no jurisdiction to try an offence under Section 376 of the IPC separately, according to the High Court. The operative portion of the High Court judgment reads thus:

> "Consequently, the appeal is allowed. Conviction and sentence is set aside. Since the very commitment of the case to the Special Court by the learned Magistrate vide order dated 24.3.1998 was illegal as he could not have taken cognizance of the offence under the Act of 1989, the learned trial court shall return the record of the case to the learned Magistrate for being returned to the prosecution for being presented to the competent court."

This Court has considered the question whether the Sessions Court specified as a Special Court under the provisions of the Act will cease to be a Sessions Court, or whether he would continue to be the Sessions Judge. (Vide *Gangula Ashok* v. *State of Andhra Pradesh,* [2000] 2 SCC 504). This Court found that even after such specification the Sessions Court would continue to be the Sessions Court and a trial before that court can be held only in accordance with the provisions contained in Chapter XVII of the Code of Criminal Procedure. The following is the dictum laid down by this Court:

> "It is clear from Sections 14 and 2(1)(d) of the Act that it is for trial of the offences under the Act that a particular Court of Sessions in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session."

We are distressed to note that the learned single Judge was not told by the government advocate of the fall out of such a view, if taken by the learned single Judge, that it means all the witnesses once examined in full should be called back again, and the whole chief-examination, cross-examination, re-examination and questioning of the accused under Section 313 of the Code, hearing arguments, then examination of defence witnesses further again final arguments to be heard and preparation of judgment once again. The very object underlined in Section 465 of the Code is that if on any technical ground any party to the criminal proceedings is aggrieved, he must raise the objection thereof at the earliest stage. If he did not raise it at the earliest stage he cannot be heard on that aspect after the whole trial is over.

The premise adopted by the learned single Judge of the High Court is patently erroneous. The Sessions Court which tried the case for the offence under Section 376, IPC continued to have jurisdiction to try the same, and the order of committal was legally valid. The appeal filed before the High Court could only be disposed of on merits and not on the premise erroneously taken by the learned Single Judge. He has not considered the appeal on merits. We, therefore, set aside the impugned judgment. We remit the case back to the High Court for disposal of the appeal afresh on merits.

This appeal is disposed of accordingly.

R.C. Appeal disposed of.