

PETITIONER:
STATE OF HIMACHAL PRADESH

Vs.

RESPONDENT:
GITA RAM

DATE OF JUDGMENT: 08/09/2000

BENCH:
K.T. THOMAS, J. & R.P. SETHI, J.

JUDGMENT:

THOMAS, J.

Leave granted.

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By the impugned judgment a 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 Schedules 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 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 vs. 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 learned single judge was not told by the government advocate of the fall out of such a view, if taken by the single judge, that it means all the witnesses once examined in full should be called back again, and the whole chief-examination, cross-examination, reexamination 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.