CASE DETAILS

AMANDEEP SINGH SARAN

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 2625 of 2023)

NOVEMBER 29, 2023

[C.T. RAVIKUMAR AND SUDHANSHU DHULIA, JJ.]

HEADNOTES

Issue for consideration: Conduct of the trial for offence under Section 409, Penal Code, 1860; exercise of powers under Cr.PC, for committal of cases to the Court of competent jurisdiction.

Code of Criminal Procedure, 1973 – ss.26, 29, 12, 323; First Schedule to CrPC – Penal Code, 1860 – s.409 – Courts by which offences are triable – Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed– Appellant charged for commission of various offences including u/s.409, IPC punishable with imprisonment for life or imprisonment of either description for a term which may extend to 10 years and fine and under two other enactments – Facing trial before the Court of the Chief Judicial Magistrate, not competent to impose a corporeal sentence of imprisonment beyond 7 years – Appellant had already undergone incarceration for more than 8 years – Parties ad idem that the Court of Chief Judicial Magistrate is not competent to try the offence u/s.409, IPC:

Held: True that going by the First Schedule to Cr.PC an offence u/s.409, IPC is triable by a 'Court of the Magistrate of the First Class' – Nonetheless, it is the indubitable position revealed from the very text of s.26 itself that the said Section and the First Schedule to Cr. PC enumerating the Courts by which different offences could be tried, are controlled by the other provisions of Cr.PC, as the Section itself opens with the phrase, "subject to the other provisions of this Code" – The First Schedule to Cr.PC, when lies in conflict with the other specific provisions under the Cr.PC must give way to such other provisions

under the Cr.PC – 'Magistrate of the First Class' and 'Any Magistrate' used in the explanatory note No. (2) in the First Schedule not only takes in 'Metropolitan Magistrates' but also takes in 'Chief Judicial Magistrates' as explicit from s.12, Cr.PC – The trial of the appellant is to be conducted before a Court of Session having jurisdiction over the area in question – As relates to an offence u/s.409 IPC, going by the First Schedule to Cr.PC, it is triable by Court of a Magistrate of the First Class and since that expression takes in the Court of a Chief Judicial Magistrate – A scanning of the provisions u/s.323, CrPC would show that in any inquiry or trial before a Magistrate, "which expression would take in the Chief Judicial Magistrate as well", it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, it should commit to that Court before signing the judgment, the power u/s.323, CrPC is available to be exercised – Under normal circumstances, it was desirable to direct the Court of the Magistrate concerned to exercise the power after due consideration – However, in view of the peculiar circumstances of this case, that the maximum penalty imposable by the Court of Chief Judicial Magistrate is imprisonment not exceeding 7 years, taking into account the fact that the appellant had already undergone incarceration for more than 8 years, order passed for his release on bail and the fact that only 10 out of 86 witnesses on the side of the prosecution have been examined, Court of the Chief Judicial Magistrate, Raipur to commit the case under trial against the appellant to the Court of Session to which he is subordinate, to enable that Court to conduct the trial in the said case – Court of Session concerned shall proceed with the trial of the case in accordance with law under Chapter XVIII, Cr. PC – Constitution of India – Article 21 – Prize Chits and Money Circulation Schemes (Banning) Act, 1978 – Negotiable Instruments Act, 1881. [Paras 11, 12, 26, 27]

Code of Criminal Procedure, 1973– Explanatory Note No. (2) in the First schedule to Cr.PC; ss.3(1)(c), 12:

Held: Expressions 'Magistrate of the First Class' and 'Any Magistrate' used in the First schedule to Cr.PC, include 'Chief Judicial Magistrates' as well – Any contra-construction would lead to a situation denuding the status of 'trial Court' to a Court of Chief Judicial Magistrate and in other words,

any such contra-construction would tantamount to a declaration that as per the First Schedule to Cr. PC no offence is triable by a Court of Chief Judicial Magistrate. [Paras 15, 16]

Criminal Law – Object of Penology – Discussed.

Code of Criminal Procedure, 1973 – ss.3(1)(c), 29, 31:

Held: In the Cr.PC, there is no provision to empower a Court of a Chief Judicial Magistrate or Court of a Magistrate of the first class to pass any sentence not authorized u/s.29 (1) or 29 (2), Cr.PC, as the case may be – s.31, Cr. PC deals with sentence in cases on conviction of several offences at one trial and needless to say that this provision would not cloth power on a Magistrate to bypass the provision u/s.29(1) or 29(2), Cr.PC in respect of imposing sentence in any given offence upon conviction of the offender and, therefore, it is different from s.34 of the old Code, 1898. [Para 18]

Constitution of India – Article 21 – Speedy trial, a facet of fair trial – Necessity of – Discussed.

Code of Criminal Procedure, 1973 – s.300(1):

Held: In the light of the provision u/s.300 (1), Cr. PC, an accused is having a right to claim to be tried (if he were to be tried) before a Court of competent jurisdiction because acquittal or conviction by a Court lacking competence would not be a bar for a second trial – Maxims - 'Nemo Debet Bis Vexari'.[Para 20]

Code of Criminal Procedure, 1973 – First Schedule to CrPC, surveyed – Court of competence in the hierarchy of Courts empowered to try a particular offence where imprisonment for life or imprisonment for 10 years and fine is prescribed:

Held : Barring very few offences including s.409, IPC, in all cases, where the offence concerned is punishable with imprisonment for life or imprisonment for 10 years and fine, the First Schedule to Cr. PC provides the Court competent to try such offences as "Court of Session" – Barring some exceptions, it is essentially the severity of the punishment imposable and severe nature of the offence that acts as the decisive factor in the matter of fixing the forum in the hierarchy of Courts, for trying the different offences. [Paras 21, 24]

LIST OF CITATIONS AND OTHER REFERENCES

Maneka Gandhi v. Union of India, AIR (1978) SC 597: [1978] 2 SCR 621; *Abdul Rehman Antulay v. R.S. Nayak,* AIR (1992) SC 1701: [1991] 3 Suppl. SCR 325; *Budhan Choudhry v. State of Bihar,* AIR (1955) SC 191: [1955] 1 SCR 1045 – followed.

Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, (1980) 1 SCC 81: [1979] 3 SCR 169; *Nirmal Singh Kahlon v. State of Punjab and Ors.,* (2009) 1 SCC 441: [2008] 14 SCR 1049 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.2625 of 2023.

From the Judgment and Order dated 18.04.2019 of the High Court of Chhattisgarh at Bilaspur in MCRC No.1730 of 2019.

Appearances:

Varinder Kumar Sharma, Adv. for the Appellant.

Sourbh Roy, Ld. AAG, Sumeer Sodhi, Prabudh Singh, Yash Gupta, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

C. T. RAVIKUMAR, J.

1. This appeal by special leave directed against the order dated 18.04.2019 passed by the High Court of Chhattisgarh at Bilaspur in MCRC No.1730/2019, owing to various circumstances including the inordinate delay occasioned in the matter of trial, now, poses a legal conundrum. The appellant is facing trial before the Court of the Chief Judicial Magistrate, Raipur in criminal case arising from FIR No.22/2015 of Police Station, New Rajendra Nagar, Raipur in the State of Chhattisgarh, registered under Sections 420, 409/34 and 120B of the Indian Penal Code, 1860 (hereinafter referred for short 'IPC') and Sections 3 and 4 of the Prize Chits and Money

Circulation Schemes (Banning) Act, 1978 (for short 'the Banning Act') and Section 138 of the Negotiable Instruments Act, 1881. In terms of Section 29(1) of the Code of Criminal Procedure, 1973 (for short 'Cr.PC') the Court of Chief Judicial Magistrate, Raipur where the case is now pending can only impose, in case found him guilty, a maximum corporeal punishment of a term up to 7 years even if it is of the view that the appellant deserves more severe punishment. We may hasten to clarify here that we shall not be understood to have expressed an opinion that the appellant deserves to be convicted and handed down such a sentence. Even the question whether he should be convicted or acquitted is a matter of evidence and to be decided by the trial Court, on appreciation of evidence, at the appropriate stage of trial. But then, by now the appellant had already undergone incarceration for a term of more than eight years. We do not think it just or appropriate to treat this situation as a mere happenstance and leave it there for the appellant to get resolved or remedied later. Taking note of the scope of the SLP this Court, normally, would be loath to permit the parties to submit beyond the question whether to grant or not to grant bail, but the very peculiar circumstances involved and also evolved tends us to think that disinclination to go into the legal conundrum emerging in this case may result in great miscarriage of justice in all probabilities. It is also to be noted that both sides submit and pray that appropriate orders be passed to ensure a fair trial by a court of competent jurisdiction. In such circumstances, the parties were heard in extenso.

2. We have heard Mr. Varinder Kumar Sharma, learned counsel for the appellant, Mr. Sourbh Roy, learned Additional Advocate General and Mr. Sumeer Sodhi, learned counsel for the respondent State.

3. We have already noted that the appellant herein has been charged for commission of various offences under the IPC including indictment under Section 409, IPC punishable with imprisonment for life or imprisonment of either description for a term which may extend to 10 years and fine and under the stated provisions of the two enactments mentioned hereinbefore. Essentially, taking into account the fact that the appellant had already undergone incarceration for more than 8 years as per order dated 02.08.2023, this Court called for an affidavit from the respondent-State as to the steps taken to apprehend the other absconding accused and also indicating the stage of trial proceedings as on date.

4. In compliance with the directions in the order dated 02.08.2023, the respondent-State filed an additional affidavit. It is stated therein that with respect to the illegal Collective Investment Scheme (CIS), being run by M/s HBN Dairies and Allied Limited, the appellant and other Directors indulged in collection of huge sums of money from around 97,707 investors under false assurances and then failed to return the amount upon maturity. Two First Information Reports, including the present one being FIR No.22 of 2015 were registered. As relates the appellant herein, it is stated therein that after registration of the FIR he was absconding and was arrested by the Bureau of Immigration on 02.02.2015 from the Indira Gandhi International Airport, New Delhi. It is further stated therein that chargesheet was filed in the case on 15.10.2015 and currently the matter is at the stage of prosecution evidence where 10 witnesses had been examined and 76 more witnesses are yet to be examined. Thus, it is evident that though the chargesheet was laid on 15.10.2015 by now only 10 out of the 86 prosecution witnesses alone were examined and the appellant had already undergone incarceration for more than 8 years. There can be no doubt with respect to the object of penology that is to protect the society against the criminals and in other words, for imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner of its commission, in case of conviction. Having said this, we cannot be oblivious of the rights of the accused as well. In the circumstances expatiated above, the question is how long the appellant-accused should carry the tag of "accused"? But, certainly, taking into account the legal and factual circumstances the appellant has to stand the trial.

5. Puzzling legal issues arise for consideration in the instant case in view of the attending circumstances as also the various provisions under the IPC, Cr.PC and also in view of various relevant decisions of this Court. Before delving into those aspects, we think it only appropriate to refer to the necessity of speedy trial which is a facet of fair trial, taking into account the fact that in the case on hand by now the appellant had already undergone incarceration for more than 8 years whereas the Court before which his matter is now facing trial is not competent to impose a corporeal sentence of imprisonment beyond 7 years. The requirement of a speedy trial assumes a

new gloss with the verdict in ***Maneka Gandhi v. Union of India***[1]. Thereafter, this Court issued guidelines in ***Abdul Rehman Antulay v. R.S. Nayak***[2] for the speedy trial of cases. It was held therein that fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right in the accused to be tried speedily. The concern underlying the right to speedy trial from the point of view of the accused was also highlighted therein and one of the aspects of concern is as under:-

> *"The period of remand and pre-conviction detention should be as short as possible. The accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction."*

6. The factual narration made hereinbefore regarding the period of incarceration underwent by the appellant and the punitive jurisdictional limit of the Court where the case of the appellant is under trial at present, would reveal the non-adherence, rather, the failure to follow the guidelines issued by this Court for the speedy trial of an accused. In view of certain relevant provisions under the Cr.PC and IPC, to be referred to hereafter, and the factual scenario of the case on hand, a formative analysis capable of formulating clues/guidelines to avoid recurrence of similar situations, is required.

7. A reference to Section 300 (1) Cr. PC, which lays down that a person once convicted or acquitted cannot be tried for the same offence, will not be inappropriate in the matter of such a formative analysis, as mentioned above. This law based on the maxim *'Nemo Debet Bis Vexari'* is founded on the condition that the initial trial must be by a Court of competent jurisdiction for the offences concerned. We are afraid, in the scenario now obtained if this Court is not passing appropriate directions, the appellant accused may have to face fresh trial or prolonged proceedings even after the conclusion of proceedings before the Court where the matter is presently pending. To know the *raison d'etre* for our remark, one may have to refer to various provisions of law, including the provisions referred infra:

8. Chapter III, Cr. PC deals with 3 topics idest.,

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1 AIR 1978 SC 597
2 AIR 1992 SC 1701

(i) Courts by which offences are triable;

(ii) The sentences which these courts can pass including passing of sentence in case of conviction of several offences at one trial; and

(iii) Modes of conferring of powers on and withdrawal of powers from the persons or officials by the High Court and the State Government.

9. Section 26, Cr.PC, in so far as it is relevant reads thus:-

> **"26. Courts by which offences are triable.—**Subject to the other provisions of this Code,—
>
> (a) any offence under the Indian Penal Code (45 of 1860) may be tried by−
>
> (i) the High Court, or
>
> (ii) the Court of Session, or
>
> (iii) any other Court by which such offence is shown in the First Schedule to be triable;…"
>
> (underline supplied)

10. Thus, going by the First Schedule to Cr. PC, an offence under Section 409, IPC is triable by "Magistrate of the first class". It is in this context that the phrase 'subject to the other provisions of this code' appearing in Section 26 of Cr.PC, and its impact on the 'First Schedule to Cr.PC' invites serious discourse. As noted above, offence under Section 409, IPC is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and also with fine. However, sub-section (1) of Section 29, Cr.PC, limits the power of punishment of the Court of a Chief Judicial Magistrate and it empowers the Court to pass any sentence short of a sentence of death or imprisonment for life or imprisonment for a term exceeding 7 years. Sub-section 2 thereof provides that Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding 3 years or of fine exceeding 10,000/- Rupees or of both. Evidently, in this case, after completion of the investigation a report under Section 173 (2), Cr. PC was filed before the Court

of Chief Judicial Magistrate, not merely by taking note of the accusation of having committed offence under Section 409 IPC, but owing to Section 9 of the Banning Act. Though the chargesheet was filed on 15.10.2015 the trial has progressed only upto the stage of examination of only a very few prosecution witnesses and in the meanwhile, the appellant had to remain in custody as an undertrial prisoner for more than 8 years which period is indisputably in excess of the maximum term of imprisonment imposable by a Court of Chief Judicial Magistrate. The disturbing fact is that even then the stage of prosecution evidence has reached only up to the examination of 10 out of 86 witnesses of the prosecution. The trial if permitted to continue in the Court where the appellant is presently under trial, may, in all the aforesaid circumstances, lead to a situation enabling either of the parties to contend that it was not a fair trial. On acquittal or conviction, either of the parties may call in question the verdict on the ground that it was conducted before a Court lacking competence to try the offence under Section 409, IPC as both the parties are ad idem on the point that the Court of Chief Judicial Magistrate is not competent to try the offence under Section 409, IPC. If ultimately, for any reason it is found that the trial was not before a Court of competent jurisdiction the appellant may again have to face fresh trial in view of the position obtained under Section 300(1), Cr.P.C. It is taking into account all the aforesaid circumstances that we made the initial remark. At this juncture, we may have to make a mention about the decision of this Court in ***Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar***[3] where this Court, not only held that an accused got a right to fair trial but also that he got a fundamental right for speedy trial of his case because a speedy trial is an integral and essential part of fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India. It is equally relevant to refer to the decision of this Court in ***Nirmal Singh Kahlon v. State of Punjab and Ors.***[4]**.** In the said decision this Court held that both the accused and victim of a crime have right to fair trial and that fair investigation and fair trial are concomitant to preservation of the fundamental right of an accused under Article 21 of the Constitution of India. In short, in the case on hand, in order to have a fair trial, fair to both sides,

3 (1980) 1 SCC 81
4 (2009) 1 SCC 441

and to do complete justice between the parties, we think it only appropriate to proceed with consideration of the joint submission of the parties that the case pending before the Court of the Chief Judicial Magistrate, Raipur is liable to be committed to the Court of Session having jurisdiction over the area in question.

11. Now, we will proceed to consider how to resolve these peculiar and puzzling circumstances so as to make a fair trial possible. We have already referred to Section 26, Cr.PC. Sub- clause (ii) of clause (a) thereof would reveal that a Court of Session has the power to try any offence under the IPC subject to the rider specified and sub-clause (iii) thereof would reveal that any other Court inferior in rank to a Court of Session can try only offences shown in the First schedule to the Cr.PC as triable by it. True that going by the First Schedule to Cr.PC an offence under Section 409, IPC is triable by a 'Court of the Magistrate of the First Class'. Nonetheless, it is the indubitable position revealed from the very text of Section 26 itself that the said Section and the First Schedule to Cr. PC enumerating the Courts by which different offences could be tried, are controlled by the other provisions of Cr.PC. We say so because the very Section itself opens with the phrase, "subject to the other provisions of this Code." Our view will get support from the decision of a Seven Judge Bench of this Court in ***Budhan Choudhry v. State of Bihar***[5], where taking note of the fact that Section 28 under the old Code, 1898 (corresponding to Section 26, Cr.PC) begins with the clause 'subject to the other provisions of the code' it was held that it would mean that the Section and the Second Schedule of the Code (old Code, 1898) are controlled by the other provisions of the Code. It was held therein thus:-

> *"6....*
>
> *** *** *** *** ***
>
> *It will be noticed that Section 28 begins with the clause "subject to the other provisions of this Code". This means that the Section and the Second Schedule referred to therein are controlled by the other provisions of the Code including the provisions of Section 30. Further, the text of Section 30 itself quite clearly says that its provisions will*

5 AIR 1955 SC 191

operate "notwithstanding anything contained in Section 28 or Section 29". Therefore, the provisions of Section 28 and the Second Schedule must give way to the provisions of Section 30.

*** *** *** *** ***"

12. Following the same analogy, despite the absence of a provision under Section 30 of the old Code in 'Cr.PC', it can safely be said that the First Schedule to Cr.PC, when lies in conflict with the other specific provisions under the Cr.PC must give way to such other provisions under the Cr.PC.

13. Now, we will refer to the other relevant provisions. Section 3(1)(c), Cr.PC, reads thus:-

"Section 3 (1). In this code, -

(a) ……..

(i) ……..

(ii) ……..

(b) ……..

(c) Any reference to a Magistrate of the first class shall,-

(i) In relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) In relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;"

14. In the Explanatory Note No. (2) in the First schedule to Cr.PC, insofar as it is relevant, it is stated thus:-

"In this schedule, (i) the expressions "Magistrate of the first class" and "Any Magistrate" include Metropolitan Magistrates but not Executive Magistrates;……."

15. According to us, the expressions 'Magistrate of the First Class' and 'Any Magistrate' used in the explanatory note No. (2) in the First Schedule not only takes in 'Metropolitan Magistrates' but also takes in 'Chief Judicial Magistrates'. This position is explicit from Section 12, Cr.PC, which reads thus:-

"S.12. Chief Judicial Magistrates and Additional Chief Judicial Magistrate etc.-

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate".

(Underline supplied)

16. In short, the expressions 'Magistrate of the First Class' and 'Any Magistrate' used in the First schedule to Cr.PC, include 'Chief Judicial Magistrates' as well and any contra-construction would lead to a situation denuding the status of 'trial Court' to a Court of Chief Judicial Magistrate and in other words, any such contra-construction would tantamount to a declaration that as per the First Schedule to Cr. PC no offence is triable by a Court of Chief Judicial Magistrate.

17. Should we assume in view of the afore-extracted provisions that the choice of the Court, where one allegedly committed an offence under Section 409, IPC simpliciter or along with other lesser punishable offences, is to be tried, is left to the whim or idiosyncrasy of the officer in-charge of the police station concerned by the legislature so that he may file final report under Section 173 (2), Cr.PC either before a Magistrate of the First Class exercising jurisdiction in the area concerned or before the Chief Judicial Magistrate/Magistrate according to his sweet will. If it is so, it would create havoc in view of the difference in their power of punishment as is evident from sub-sections (1) and (2) of Section 29, Cr.PC., which read thus:-

Section 29 –

"(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding [ten thousand rupees] or of both."

18. Certainly, any such unconscionable or undesirable situation as mentioned above, is avertable by a timely, judicious exercise of discretion of the powers under the relevant provision under Cr.PC, for committal of

such cases to the Court of competent jurisdiction. But then, we are of the considered view that disuse of such powers judiciously at the appropriate time will render the penal provision under Section 409, IPC otiose to certain extent inasmuch as it would create a situation where the offender would be liable only for a maximum punishment of rigorous imprisonment only of 7 years irrespective of the magnitude and seriousness though, statutorily the punishment imposable for the conviction thereunder is imprisonment for life or imprisonment of either description for a period which may extend to 10 years, going by Section 409, IPC. It is relevant to note that in the Cr.PC, there is no provision to empower a Court of a Chief Judicial Magistrate or Court of a Magistrate of the first class to pass any sentence not authorized under Section 29 (1) or 29 (2), Cr.PC, as the case may be. We may hasten to add that Section 31, Cr. PC deals with sentence in cases on conviction of several offences at one trial and needless to say that this provision would not cloth power on a Magistrate to bypass the provision under Section 29(1) or 29(2), Cr.PC in respect of imposing sentence in any given offence upon conviction of the offender and, therefore, it is different from Section 34 of the old Code, 1898. Pithily stated, the sole solution to avert a situation to raise the contention of conduct of a trial before a Court lacking jurisdictional competence in any given situation, is conduct of the trial for an offence under Section 409, IPC before a Court of Session. Since no minimum sentence is prescribed no prejudice would be caused to the accused concerned or to the prosecution by the conduct of a trial before a Court of Session as it would be open to the Court of Session to impose lesser or higher sentence than 7 years imprisonment, of either description, in case of conviction taking into account all relevant aspects. We will dilate the matter further.

19. It is to be noted that the division of cases into summons and warrant cases itself is based on the punishment which can be awarded to an offender. The division thus marks off ordinary cases from serious ones to determine the mode of trials. The procedure for the trial of summons cases is provided by Chapter XX, Cr.PC, whereas that of warrant cases are dealt with in Chapter XIX, Cr.PC, a trial before a Court of Session is provided under Chapter XVIII, Cr. PC. Indubitably, the procedures provided thereunder are different and distinct. There can be no doubt that an accused, unless relieved from facing the trial in accordance with the provisions of Cr. PC, has to face the trial.

20. Certainly, standing the trial is said to be an ordeal. Hence, in the light of the provision under Section 300 (1), Cr. PC, we have no hesitation to hold that an accused is having a right to claim to be tried (if he were to be tried) before a Court of competent jurisdiction because acquittal or conviction by a Court lacking competence would not be a bar for a second trial. When that be the consequence of conduct of a trial before a Court lacking competence to try any particular offence, the accused concerned while facing the trial in relation to such an offence must have the right to raise the question of competence of the Court to try him for that offence and once such a question is raised it must obtain a due and expeditious consideration in accordance with law.

21. In the contextual situation, it is only befitting to have a survey through the First Schedule to Cr. PC, carrying enumeration of Courts by which different offences can be tried. Such a survey would enable the Court to identify the Court of competence in the hierarchy of Courts empowered to try a particular offence where imprisonment for life or imprisonment for 10 years and fine is prescribed as is imposable on offender(s). Such a survey would reveal that barring very few offences including Section 409, IPC, in all cases, where the offence concerned is punishable with imprisonment for life or imprisonment for 10 years and fine the First Schedule to Cr. PC provides the Court competent to try such offences as "Court of Session". It is apposite to state that though such exceptions are exponible we could not find explicans anywhere.

22. Be that as it may, for an easy reference, we will refer to the outcome of such survey in the following tabulated form: -

Offences punishable under IPC	**Sentence awardable on conviction**	**Triable in terms of the First Schedule of Cr. PC**
Section 121	Punishable with death or imprisonment for life and fine.	By Court of Session
Section 121A	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 122	Imprisonment for life or imprisonment for 10 years and fine	By Court of Session

Section 124A	Imprisonment for life or with imprisonment which may extend to three years with fine.	By Court of Session
Section 125	Imprisonment for life and fine or imprisonment for 7 years and with fine.	By Court of Session
Section 128	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 130	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 131	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 132	Punishable with death or imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 194	Imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and fine.	By Court of Session
Section 222	Imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years and fine.	By Court of Session
Section 225 (Para V)	Imprisonment for life or imprisonment of either description for a term not exceeding ten years and fine.	By Court of Session
Section 232	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 238	Imprisonment for life or imprisonment for 10 years and fine.	By Court of Session
Section 255	Imprisonment for life or with imprisonment of either description for a term which may extend to ten years and fine.	By Court of Session
Section 302	Punishable with death or imprisonment for life with fine.	By Court of Session
Section 304 (Para I)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 305	Punishable with death or imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 307	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session

Section 307 (Para II)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 307 (Para III)	Punishable with death or imprisonment for 10 years with fine.	By Court of Session
Section 311	Imprisonment for life with fine.	By Court of Session
Section 313 (Para I)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 314 (Para II)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 326A	Ten years which may extend to imprisonment for life and fine.	By Court of Session
Section 329	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 363A (2)	Imprisonment for life and fine.	By Court of Session
Section 364	Imprisonment for life or Rigorous Imprisonment (R.I.) for 10 years with fine.	By Court of Session
Section 364A	Punishable with death or imprisonment for life with fine.	By Court of Session
Section 370 (3)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 370 (4)	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 370 (5)	Imprisonment for life or imprisonment for 14 years with fine.	By Court of Session
Section 370 (6)	Imprisonment for life with fine.	By Court of Session
Section 370 (7)	Imprisonment for life with fine.	By Court of Session
Section 371	Imprisonment for life or imprisonment for 10 years with fine.	By Court of Session
Section 376	RI for not less than 10 years but which may extend to imprisonment for life with fine.	By Court of Session
Section 376A	RI for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.	By Court of Session

Section 376AB	RI for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.	By Court of Session
Section 376D	RI for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.	By Court of Session
Section 376DA	Imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine.	By Court of Session
Section 376DB	Imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death.	By Court of Session
Section 376E	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.	By Court of Session
Section 395	Imprisonment for life, or with RI for a term which may extend to ten years, and fine.	By Court of Session
Section 396	Punishable with death, or imprisonment for life, or RI for a term which may extend to ten years, and fine.	By Court of Session
Section 400	Imprisonment for life, or with RI for a term which may extend to ten years, and fine.	By Court of Session
Section 412	Imprisonment for life, or with RI for a term which may extend to ten years, and fine.	By Court of Session
Section 413	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 436	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session

Section 438	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 449	Imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and fine.	By Court of Session
Section 459	Imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 460	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 489A	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 489B	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session
Section 489D	Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.	By Court of Session

23. Section 53, IPC would reveal that imprisonment for life is the second extreme punishment to which an offender is liable after the death penalty under the provisions of IPC. We have already noted that Cr. PC, firstly enumerates the Courts by which different offences can be tried and then defines the limits of sentencing power of each of such Courts in the order of hierarchy. Hereinbefore, we have already extracted the relevant provisions under Sections 26 and 29 Cr. PC. It is profitable to refer to Section 28, Cr. PC as well in this context. It reads thus:-

> ***"28. Sentences which High Courts and Sessions Judges may pass.***— *(1) A High Court may pass any sentence authorised by law.*
>
> *(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.*

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years."

24. A scanning of the facts and factors mentioned hereinbefore with reference to various provisions would reveal that barring some exceptions, it is essentially the severity of the punishment imposable and severe nature of the offence that acts as the decisive factor in the matter of fixing the forum in the hierarchy of Courts, for trying the different offences. A scanning of the First Schedule to Cr.PC also would reveal that barring some exceptions, in respect of the offences where the punishment imposable is imprisonment for life or imprisonment which may extend to 10 years and fine, the forum for trial is invariably the "Court of Session". The legislative intention appears to be that in respect of very serious or/and heinous offences where extreme sentence of imprisonment for life is imposable, trial has to be conducted before a Court of Session after following the procedure under Chapter XVIII, Cr.PC. We have already noted hereinbefore the consequences of conduct of a trial before a Court lacking competence in the light of the provisions under Section 300 (1) Cr. PC and also the object of penology that it is to protect the society by ensuring, granting of adequate, just and proportionate sentence commensurate with the nature and gravity of crime. In other words, to have a fair trial, both the accused and to the prosecution it is only appropriate to ensure that the first trial itself is being conducted by a Court having competent jurisdiction, lest it would prejudice either the accused concerned or the prosecution in which event it would be detrimental to the society at large. Thus, upon a diallage we find that in respect of a case where the offence to be tried is under Section 409, IPC, as in the case on hand, it is only conducive to conduct the trial before a Court of Session.

25. Having held as above and looking into the indisputable position that cases reach the Courts of Session for trial only upon committal by the Committal Court in accordance with the procedures the question is how this kind of legal conundrum could be resolved. It is bearing in mind such situation, we made an earlier observation that a timely and judicious exercise of power for committal of cases provided in the Cr. PC could

avert any such situation. In the case on hand, the appellant/accused is facing trial for offences including Section 409, IPC before the Court of the Chief Judicial Magistrate, Raipur. Both the sides made submissions to the effect that the case may be sent for trial before a Court of competent jurisdiction. Upon a diallage, including the impact of conduct of a trial before a Court lacking the jurisdiction, we find that the trial has to be before the Court of Session having jurisdiction over the area in question. We make it clear that this conclusion shall not be misinterpreted or misunderstood that it is for the purpose of ensuring handing down of conviction and upon such conviction imposition of a sentence of more than 7 years, upto a maximum of 10 years or imprisonment for life. Certainly, the Court of competent jurisdiction conducting the trial must have the power to acquit or convict the accused concerned, based on appreciation of evidence on record and in case of conviction to decide the quantum of punishment. With this we will proceed to consider the issue further.

26. As noticed hereinbefore, before the Court of the Chief Judicial Magistrate, Raipur, the trial against the appellant was in progress and 10 out of 86 prosecution witnesses were examined. When the upshot of the discussion made hereinbefore is that the trial of the appellant is to be conducted before a Court of Session having jurisdiction over the area in question, there can be no doubt with respect to the position that going by the scheme of Cr. PC, a Sessions Court can try an offence against any accused upon committal of the case to the Court of Sessions. In respect of offences which are exclusively triable, certainly when the accused appears or brought before the Magistrate concerned, the case would be committed to the Court of Session after complying with the provisions in accordance with law. We have already found that as relates to an offence under Section 409 IPC, going by the First Schedule to Cr.PC, it is triable by Court of a Magistrate of the First Class and since that expression takes in the Court of a Chief Judicial Magistrate. The case on hand is presently under trial before the Court of Chief Judicial Magistrate, Raipur. The question is what should be the procedure to be followed for committal of such a case before the Court of Session concerned at this stage. Since the case is already before the Court of Chief Judicial Magistrate, the learned counsel for both sides submitted that the case

could not be committed to the Court of Session concerned in exercise of the power under Section 325, Cr. PC. We do not think it necessary to delve into that question as according to us this could be done legally in exercise of the power under Section 323, Cr. PC which reads thus: -

> ***"323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.*** *- If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made]".*

27. A scanning of the provisions under Section 323 Cr. PC would show that in any inquiry or trial before a Magistrate, "which expression would take in the Chief Judicial Magistrate as well", it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, it should commit to that Court. Thus, it is evident that before signing the judgment, the power under Section 323, Cr. PC is available to be exercised. Certainly, the sine qua non for exercise of the power under Section 323 is the opinion of the Magistrate concerned that it is a case which ought to be tried by the Court of Session. In view of the provision, under normal circumstances, it is desirable to direct the Court of the Magistrate concerned to exercise the power after due consideration. However, in view of the peculiar circumstances of this case which we have already taken into account, id est that the maximum penalty imposable by the Court of Chief Judicial Magistrate is imprisonment not exceeding 7 years, that taking into account the fact that the appellant herein had already undergone incarceration for a period of more than 8 years we have already passed an order for his release on bail and the fact that only 10 out of 86 witnesses on the side of the prosecution have been examined, we direct the Court of the Chief Judicial Magistrate, Raipur to commit the case under trial against the appellant herein, arising out of FIR No.22/2015 of Police Station, New Rajendra Nagar, Raipur in the State of Chhattisgarh, to the Court of Session to which he is subordinate, to enable that Court to conduct the trial in the said case. This shall be done within a period of three weeks from the date of the receipt of the copy of this judgment. Upon such committal and

receipt of the case, the Court of Session concerned shall proceed with the trial of the case in accordance with law under Chapter XVIII, Cr. PC. The Court of Session concerned shall make an endeavor to conduct and conclude the trial expeditiously.

28. The appeal stands disposed of as above.

Headnotes prepared by:
Divya Pandey

Appeal disposed of..