



**Citation :** CDJ 2017 MHC 3871

**Court :** High Court of Judicature at Madras

**Case No :** Reference Case No. 1 of 2017

**Judges :** THE HONOURABLE MR. JUSTICE S. NAGAMUTHU & THE HONOURABLE MR. JUSTICE P.N. PRAKASH

**Parties :** In - Re The Registrar (Judicial) High Court, Madras

**Appearing Advocates :** For the Appearing Parties: B. Vijay, Standing Counsel.

**Date of Judgment :** 28-04-2017

**Head Note :**

Protection of Children from Sexual Offences, Act - Section 2(1), Section 28, Section 33 - Criminal Procedure Code - Section 156(3), Section 167, Section 167(2), Section 194, Section 366, Section 395, Section 397, Section 408 - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 14 - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment) Act, 2015 – Reference - Reference under Section 395 of Cr.P.C. as per order of Hon'ble Chief Justice on office Note based on letter addressed by Trial Court, in letter -

Court held - intention of Legislature itself is to give overriding effect only to POCSO Act - Applying test of chronology also, POCSO Act should receive overriding effect over SC & ST Act - Therefore, for all these reasons Court hold that if act of accused was offence both under provisions of POCSO Act as well as SC & ST Act, Special Court under POCSO Act shall deal with case by exercising all powers conferred on said Court including power to remand, to take cognizance of offences and to try offender - Special Court shall have jurisdiction to grant all reliefs to victim for which victim was entitled to under SC & ST Act.

(Paras:51, 56)

Cases Referred:

State Of Tamil Nadu vs V. Krishnaswami Naidu & Anr., (1979 (4) SCC 5).

Harshad v. State of Maharashtra, 2001 (8) SCC 257,

Sarwan Singh v. Kasturi Lal, AIR 1977 SC 265,

KSL and Industries Ltd v. Arihant Threads Limited, 2008 (9) SCC 763.

Comparative Citations:

2017 (1) LW(CrI) 813, 2017 (4) CTC 371, 2018 (1) KLT 6 (SN) (C.No.9), 2017 CrLJ 4519, 2017 (2) MWN(Cr) 572, 2017 (3) MLJ(CrI) 202,

**Judgment :**

(Prayer: Reference under Section 395 of Cr.P.C. as per the order of the Hon'ble Chief Justice dated 11.04.2017 on the office Note based on the letter addressed by the Sessions Judge, Mahila Court, Tiruchirappalli, in letter in D.No.238/2016 dated 17.03.2016.)

S. Nagamuthu, J.

1. The Government of Tamil Nadu, under G.O.Ms.No.217 dated 02.04.2013, sanctioned the constitution of 22 Fast Track

Mahila Courts in 22 different districts in the cadre of Additional Sessions Judges to try the cases of offences against women. Subsequently, under G.O.Ms.No.514 dated 16.07.2013, 22 posts of Additional Sessions Judges were sanctioned, known as the Judges of the Fast Track Mahila Courts to preside over these 22 Courts. Thus, by constitution, these Fast Track Mahila Courts are presided over by Additional Sessions Judges. They exercise all the powers conferred upon them under the Code of Criminal Procedure as Additional Sessions Judges. These Fast Track Mahila Courts were later on specified to be the "Special Courts" under the Protection of Children from Sexual Offences, Act (for short "the POCSO Act") under G.O.Ms.No.1087 dated 04.12.2013. Thus, these Additional Sessions Judges (Fast Track Mahila Courts) have been functioning as Special Courts under the POCSO Act.

2. While so, the Chief Judicial Magistrate, Dindigul, had written to the High Court seeking instructions as to whether the Judicial Magistrates have got the power to remand an accused involved in cases relating to the offences under POCSO Act and The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Chief Judicial Magistrate was probably under the impression that in view of Section 28 of the POCSO Act, the Special Courts under the POCSO Act have got exclusive jurisdiction to deal with any case under the said Act including the power to remand an accused on being produced after arrest.

3. This Court, after having considered the said request, on the Administrative side, as per the view expressed by the Hon'ble Portfolio Judge, sent a communication in R.O.C.No.640/2014/G4 dated 12.02.2016 wherein, this Court instructed as follows:-

"Sub: Courts - Criminal - Dindigul District - Remand of Accused charged u/s 4 of the Protection of Children from Sexual Offences Act - 2012 along with offences charged under IPC/Special Act Cases - Instructions requested - Issued.

Ref: Your letter in D.No.254/2014, dated 13.02.2014 forwarded by The Registrar (Administration), Madurai Bench of Madras High Court, Madurai, dated 21.02.2014.

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I am to invite kind attention to the reference cited and to state that the Registry has submitted a note to the Hon'ble Portfolio Judge in respect of instructions sought for regarding remand of the accused charged u/s of the Protection of Children from Sexual Offences Act 2012 along with offences charged under IPC or Special Act Cases and His Lordship has minuted as follows:-

"Upon arrest of the accused pursuant to registration of a case which involves or also involves an offence under The Protection of Children from Sexual Offences Act, 2012, the accused is to be produced before the jurisdictional Magistrate for purposes of remand. Upon completion of investigation, it is not necessary that the case be committed for trial by the Magistrate. The Special Court is empowered to take cognizance on a complaint or upon receipt of a final report. Once cognizance is taken by the Special court, powers of remand would lie therewith, In contradistinction to Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, exercise of powers of remand by the jurisdictional Magistrate is not restricted to an initial period of fifteen days and there is no requirement placed upon the Magistrate to forward the accused to the Special Court having jurisdiction. Nor is there any provision enabling the Special Court to exercise powers u/s 167 Cr.P.C. as in Section 36-A(e) of the Narcotic Drugs and Psychotropic Substances Act, 1985."

The receipt of this letter is required to be acknowledged at once."

4. As per the above Circular, the accused, on arrest, in connection with the offences under the POCSO Act shall be produced only before the Judicial Magistrate having territorial jurisdiction and the said Magistrate alone has got power to authorize the detention of the accused as provided in Section 167 of the Code of Criminal Procedure and not the Special Courts under the POCSO Act. In other words, according to the Circular, Section 167 of the Code of Criminal Procedure is not applicable to the Special Courts under the POCSO Act.

5. Subsequently, the Additional Sessions Judge, Mahila Court, Tiruchirappalli, made a similar request seeking instructions from this Court as to whether the above said instructions in R.O.C.No.640/2014/G4 dated 12.02.2016, shall be treated as a general instruction to all the Courts in the State or the same shall be confined only to the Dindigul District. The said letter was placed on the Administrative side before the Hon'ble Portfolio Judge, who in turn directed the Registry to place the papers before the Hon'ble The Chief Justice. Thus, the learned Judge did not express any view on the above question of law involved.

6. Thereafter, as directed by the Hon'ble Portfolio Judge, the entire file was placed before the Hon'ble Chief Justice. The Hon'ble Chief Justice by an Administrative Order dated 11.04.2017, directed the above letter of the Additional Sessions

Judge, Mahila Court, Tiruchirappalli, to be treated as a Reference under Section 395 of the Code of Criminal Procedure so as to settle the above stated legal issues in their entirety with a view to maintain uniformity among all the Courts. The Hon'ble Chief Justice has accordingly constituted this Division Bench to resolve the above legal issues under Reference. That is how, this Reference is before us for disposal.

7. Considering the importance of the legal issues involved, we requested Mr.B.Vijay, the learned Counsel for the High Court to assist the Court. Accordingly, he made submissions. At our request, some Senior Counsel also expressed their views on the issues under Reference. We have considered them all.

8. At the outset, let us now look into the definitions of certain expressions used in the POCSO Act and in the Code of Criminal Procedure. As per Section 2(l) of the POCSO Act, the term "Special Court" means "a Court designated as such under Section 28 of the Act". Section 28 of the POCSO Act reads as follows:-

"28. Designation of Special Courts.- (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in subsection (1), with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online." [Emphasis supplied]

9. From a reading of the above provision, it is crystal clear that a Special Court is not constituted, but, a Court of Session already in existence is only designated as a Special Court by the State Government. Such Special Courts are designated for the purpose of providing speedy trial.

10. A plain reading of the above provision would make it crystal clear that "a Court of Session" alone could be designated for each district as a Special Court. The term "Court of Session" has not however been defined in the POCSO Act. Therefore, we have to fall back on the definition of the expression "Court of Session" as made in Sections 6, 7 and 9 of the Code which read as follows:-

"6. Classes Criminal Courts.- Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

(i) Courts of Session ;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

"7. Territorial divisions.- Territorial divisions. (1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts:

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.”

9. Court of Session.- (1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.- For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.”

11. As per the above provisions, it is the wisdom of the State Government to earmark Sessions Divisions in the State and every such Sessions Division shall have a Court of Session. A close reading of Sub Section (1) of Section 9 of the Code will make it very clear that such Court of Session for every Sessions division shall be established by the State Government which does not require any consultation with the High Court. As per Sub Section (1) of Section 9, after such establishment of a Court of Session, the same shall be presided over by a Judge who shall be appointed by the High Court. For such appointment, the High Court need not consult the State Government. The explanation appended to Section 9 of the Code explains that the term “appointment” as employed in Section 9 of the Code does not include the first appointment, a posting or promotion.

12. Sub Section (3) of Section 9 states that the High Court may also appoint Additional Sessions Judges to exercise jurisdiction in a Court of Session. Here the expression “jurisdiction in a Court of Session” needs to be emphasized. This expression indicates that an Additional Sessions Judge is appointed to exercise jurisdiction in the Court of Session. There is no establishment of a separate Additional Sessions Court. Thus, the Sessions Judge as well as the Additional Sessions Judge exercises jurisdiction in the same Sessions Division. But, a Sessions Judge presides over the Court of Session and to share the work load in the said Court, an Additional Sessions Judge is appointed. From these provisions, it is ipso facto clear that the Court of Session is presided over by a Sessions Judge and the Additional Sessions Judge exercises jurisdiction in the said Court of Session. Now, the question is, “Whether an Additional Sessions Judge exercises all the powers of a Sessions Judge presiding over a Court of Session?”

13. In order to highlight the difference between a Sessions Judge presiding over a Court of Session and an Additional Sessions Judge exercising jurisdiction in the said Court of Session, let us look into a few more provisions of the Code. Under Section 193 of the Code, it is only a Court of Session which can take cognizance of an offence exclusively triable by a Court of Session on the case being committed to the said court by a Magistrate under the Code. Thus, the Court of Session is a Court of original jurisdiction to take cognizance of any offence when the case is committed to it and thus, the Presiding Sessions Judge takes cognizance. But, an Additional Sessions Judge cannot take cognizance of any offence as he does not have original jurisdiction to take cognizance. As provided in Section 194 of the Code, an Additional Sessions Judge can only try such cases as the Sessions Judge of the division may, by a general or special order, make over to him.

14. Similarly, under Section 374 of the Code, the Court of Session has got appellate power to entertain any appeal against conviction recorded by a Metropolitan Magistrate, Assistant Sessions Judge, Magistrate of First Class, etc., But, the Additional Sessions Judge has got no such power to entertain an appeal directly. As provided in Sub-Section (2) of Section 381, an Additional Sessions Judge, shall hear only such appeals as the Sessions Judge of the Division may, by general or

special order, make over to him or as the High Court may, by a special order, direct him to hear. In other words, unless an appeal is made over to him by the Court of Session or it is directed by the High Court, an Additional Sessions Judge cannot exercise the appellate power over any appeal. This would also indicate that the Session Judge presiding over the Court of Session and an Additional Sessions Judge are not one and the same.

15. Now, turning to the power of Revision, under Section 397 of the Code, the Sessions Judge may call for and examine the records of any proceedings before any inferior criminal court situated within his local jurisdiction. Section 400 of the Code states that an Additional Sessions Judge shall have and may exercise all the powers of the Sessions Judge under Chapter XXX of the Code, in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. Here also, it needs to be highlighted that unless a revision case is transferred by the Sessions Judge presiding over the Court of Session, an Additional Sessions Judge cannot hear any revision case. These two provisions would again go to indicate that the Session Judge presiding over the court of session and an Additional Sessions Judge exercise different powers.

16. Similarly, under Section 408 of the Code, the power to transfer a case from one inferior criminal court to another in a sessions division is vested only with the Sessions Judge and not with the Additional Sessions Judge. Under Section 409 of the Code also, the power to withdraw any case or appeal or recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him lies only with the Sessions Judge. The Additional Sessions Judge does not have similar powers. This would also indicate that the Sessions Judge presiding over a Court of Session and an Additional Sessions Judge enjoy different powers.

17. Now, let us look into a few more provisions of the Code which would suggest that for certain purposes, the Sessions Judge presiding over the Court of Session and an Additional Sessions Judge are similarly placed.

18. Chapter XVIII of the Code contains various provisions prescribing the procedure for trial of cases before a Court of Session. In all the provisions contained in the said Chapter, there is no specific reference to a Sessions Judge or an Additional Sessions Judge. These provisions contain the expression “the Judge” without any qualifying words like a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. These provisions further employ the expression “the Court of Session”. Thus, the provision contained in Chapter XVIII of the Code are applicable to a Sessions Judge presiding over the Court of Session, an Additional Sessions Judge as well as an Assistant Session Judge exercising jurisdiction in the said Court of Session.

19. Now, turning to a case where death sentence is imposed, Section 366 of the Code states that when “the court of session” passes a sentence of death, the proceedings shall be submitted to the High Court and the death sentence shall not be executed unless it is confirmed by the High Court. This provision also does not make any specific reference either to a Sessions Judge or an Additional Sessions Judge. Instead, it uses the expression “Court of Session” which would indicate that the term “Court of Session” would include the Sessions Judge presiding over the said Court and an Additional Sessions Judge exercising jurisdiction in the said Court of Session. Thus, Section 366 of the Code is also applicable to both the Sessions Judge and an Additional Sessions Judge. On the contrary, if it is understood that the expression “Court of Session” as employed in Section 366 of the Code would not include an Additional Sessions Judge, it would only lead to an anomalous situation. A plain reading of Section 366 of the Code, thus obviates doubt, if any, that for the purpose of Section 366 of IPC, the Court of Session means the Sessions Judge presiding over the Court of Session and an Additional Sessions Judge exercising jurisdiction in the said Court of Session.

20. From the above discussion, on comparison of various provisions of the Code, it is crystal clear that the Court of Session established for a Sessions Division by the State Government is presided over by a Sessions Judge appointed by the High Court and an Additional Sessions Judge appointed by the High Court exercises jurisdiction in the same Court of Session. There is no separate or independent “Court of Additional Sessions Judge” established. It is also clear that so far as the powers of the Sessions Judge and an Additional Sessions Judge are concerned, for certain matters, they exercise different powers and in many other respects, they exercise similar powers.

21. With the above understanding, now let us go into Section 28 of the POCSO Act. As we have already extracted, Section 28 states that the State Government may designate for each district “a court of session” to be a special court. It is contended by some of the counsel that the term “a Court of Session” would not mean an additional Sessions Judge and therefore, the orders thus far passed specifying the Additional Sessions Judges as Special Courts under the POCSO Act are not valid in law. We are not at all persuaded by the said argument, for, the expression used in Section 28 of the Act is not a Sessions Judge or an Additional Sessions Judge; instead the expression used is “a Court of Session”. As we have already concluded, a Court of Session is established and a Sessions Judge presides over the said Court and an Additional Sessions Judge exercises jurisdiction in the said Sessions Court. Thus, it is crystal clear that the term “a court of Session” as employed in Section 28 of the POCSO Act, would mean either the Presiding Sessions Judge of a Court of Session or an Additional Sessions Judge

exercising jurisdiction in the said Sessions Court. Therefore, we hold that the orders specifying Additional Sessions Judges (Fast Track Mahila Sessions Judges) as Special Courts are perfectly in tune with Section 28 of the POCSO Act and there is neither any illegality nor irregularity in the said Government Orders.

22. Now, turning to the exclusive power of the Special Court to take cognizance of any offence under the POCSO Act, Section 33 of the Act empowers the said court which reads as follows:-

“33. Procedure and powers of Special Court.- (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.-For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighborhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.”

23. In *Essar Teleholdings Ltd vs Registrar General, Delhi High Court & Ors.* reported in 2013 (8) SCC 1 wherein the power of a Special Judge appointed under the Prevention of Corruption Act to take cognizance was under challenge, the Hon'ble Supreme Court has held as follows:-

“The Special Judge alone can take the cognizance of the offence specified in sub-Section (1) of Section 3 and conspiracy in relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-Section (1) of Section 3, in view of sub-Section (3) of Section 4. A magistrate cannot take cognizance of offence as specified in Section 3(1) of the PC Act.”

24. Applying the same law to the POCSO Act, there can be no doubt that by empowering the Special Court to take cognizance of an offence under the Act, either on a police report or on a complaint, the Legislature has, by implication, excluded the power of the Magistrate to take cognizance of the offence as provided in Section 190 of the Code. Thus, when the Special Court exercises the exclusive jurisdiction to take cognizance of any offence under the POCSO Act, and to try the same, undoubtedly, he has to necessarily exercise certain incidental powers of a Magistrate including the power to remand an accused under Section 167 of the Code.

25. Now, turning to the power of remand of an accused pending investigation of any offence, it has been explicitly conferred on a Magistrate. Under sub-section (2) of Section 167 of the Code, the Magistrate to whom an accused person is forwarded under this Section, may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of

the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole and if he has no jurisdiction to try the case or commit it for trial and consider further detention unnecessary, he may order the accused to be forwarded to the Magistrate having such jurisdiction. Section 167 of the Code does not refer either to a Court of Session, or a Sessions Judge or an Additional Sessions Judge. Of course, the power to remand an accused either by a Sessions Judge or an Additional Sessions Judge is provided in Section 309 of the Code during trial. In this provision also, neither the term "Sessions Judge" nor an "Additional Sessions Judge" is employed. The term "Court" alone is employed.

26. A bird's eye view of these two provisions may give an impression that the special Court under the POCSO Act, being a Court of Session, has no power to remand an accused pending investigation. But, a deep reading of these provisions would bring to light that though the Special Court under the POCSO Act is a Court of Session, the said Court has the power to remand an accused during investigation as provided in Section 167 of the Code as the Court having jurisdiction to try the case.

27. The Special Court under the POCSO Act, as per Section 33 of the Act, may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. But, for this enabling provision, a special court being a Court of Session cannot take cognizance upon receipt of a complaint or a police report.

28. As indicated above, in Section 33 of the POCSO Act, a Special Court under the said Act can entertain a complaint of facts, like a Magistrate having power under Sections 156 or 190 of the Code. Undoubtedly, a Magistrate may refer a complaint to the police for registration of a case under Section 156(3) of the Code, if the complaint makes out a cognizable offence. Like Section 156(3) of the Code, there is no provision in the POCSO Act explicitly empowering the Special Court under the POCSO Act to refer a complaint to the police for investigation. Section 156(3) of the Code speaks only of the power of a Magistrate and it has no specific reference to a Special Court under any Special Act. If it is so narrowly interpreted that Section 156(3) of the Code is applicable only to a Magistrate and not to a Special Court under the POCSO Act, then, the Special Court cannot refer any complaint to the police at all for investigation. This interpretation would only lead to absurdity. Therefore, such kind of narrow interpretation to Section 156(3) of the Code cannot be given. Thus, the term "Magistrate" as employed in Section 156(3) of the Code should be read as "the special court" in the context of the POCSO Act.

29. Similarly, Section 167 of the Code, of course, has not specifically referred to any Special Court under any special enactment. It refers only to a Magistrate. Should it, therefore, be interpreted that the expression "Magistrate" employed in Section 167 of the Code shall mean only a Judicial Magistrate?" Should it not include the Special Court under the POCSO Act?

30. In this regard, we may look into the judgment of the Hon'ble Supreme Court in State Of Tamil Nadu vs V. Krishnaswami Naidu & Anr., (1979 (4) SCC 5). That was a case under the Criminal Law Amendment Act of 1952. In the said judgment, it has been held as follows:-

"We will now examine the provisions of Section 167 of the Criminal Procedure Code. Section 167 of the Criminal Procedure Code requires that whenever any person is arrested and detained in custody and when it appears that the investigation cannot be completed within a period of 24 hours the police officer is required to forward the accused to the Magistrate. The Magistrate to whom the accused is forwarded if he is not the Magistrate having jurisdiction to try the case may authorize the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days on the whole. If he has no jurisdiction to try the case and if he considers that further detention is necessary he may order the accused to be forwarded to any Magistrate having jurisdiction. The Magistrate having jurisdiction may authorize the detention of the accused person otherwise than in custody of the police beyond the period of 15 days but for a total period not exceeding 60 days. In the present case the accused were produced before the Special Judge who admittedly is the person who has jurisdiction to try the case. The contention which found favour with the High Court is that the words 'Magistrate having jurisdiction' cannot apply to a Special Judge having jurisdiction to try the case. No doubt the word 'Special Judge' is not mentioned in section 167 but the question is whether that would exclude the Special Judge from being a Magistrate having jurisdiction to try the case. The provisions of chapter XII Cr.P.C. relate to the information to the police and their powers of investigation. It is seen that there are certain sections which require the police to take directions from the Magistrate having jurisdiction to try the case. Section 155(2) requires that no police shall take up non-cognizable case without an order of the Magistrate having power to try such case or commit the case for trial. Again Section 157 requires that when the police officer has reason to suspect the commission of an offence which is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report. Section 173 requires that on the completion of every investigation under the Chapter the Officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence a police report as required in the form prescribed. Section 8 of the Criminal Law Amendment Act specifically empowers the Special Judge to take cognizance of the offence without the accused being

committed to him. In taking cognizance of an offence without the accused being committed to him he is not a Sessions Judge for section 193 Cr.P.C. provides that no Court of Sessions Judge shall take cognizance for any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Strictly he is not a Sessions Judge for no Sessions Judge can take cognizance as a Court of Session without committal. The Criminal Law (Amendment) Act being an amending Act the provisions are intended to provide for a speedy trial of certain offences. The Criminal Law (Amendment) Act is not intended to be a complete code relating to procedure. The provisions of the Cr.P.C. are not excluded unless they are inconsistent with the Criminal Law (Amendment) Act. Thus read there could be no difficulty in coming to the conclusion that the Cr.P.C. is applicable when there is no conflict with the provisions of Criminal Law (Amendment) Act. If a Special Judge who is empowered to take cognizance without committal is not empowered to exercise powers of remanding an accused person produced before him or release him on bail it will lead to an anomalous situation. A Magistrate other than a Magistrate having jurisdiction cannot keep him in custody for more than 15 days and after the expiring of the period if the Magistrate having jurisdiction to try the case does not include the Special Judge, it would mean that he would have no authority to extend the period of remand or to release him on bail. So also if the Special Judge is not held to be a Magistrate having jurisdiction, a charge sheet under Section 173 cannot be submitted to him. It is relevant to note that the General Clauses Act Section 32 defines a Magistrate as including every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. Section 3 of the Criminal Procedure Code provides that any reference without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires in the manner stated in the sub-sections. If the context otherwise requires the word 'Magistrate' may include Magistrates who are not specified in the Section. Read along with the definition of the Magistrate in the General Clauses Act there can be no difficulty in construing the Special Judge as a Magistrate for the purposes of Section 167.”

31. When a doubt was raised about the correctness of the above law laid down by the Hon'ble Supreme Court in Krishnnaswami Naidu case (cited supra), the Hon'ble Supreme Court in Harshad v. State of Maharashtra, 2001 (8) SCC 257, rejected the said contention and held the law laid down in Krishnnaswami Naidu case (cited supra) as the correct exposition in the following words. [Harshad's case was also under the Criminal Law Amendment Act, 1952].

“We may note an illustration given by Mr.Salve referring to Section 157 of the Code. Learned counsel submitted that the report under that Section is required to be sent to a Magistrate empowered to take cognizance of offence. In relation to offence under the Act, the Magistrate has no power to take cognizance. That power is exclusively with the Special Court and thus report under Section 157 of the Code will have to be sent to the Special Court though section requires it to be sent to the Magistrate. It is clear that for the expression ‘Magistrate’ in Section 157, so far as the Act is concerned, it is required to be read as ‘Special Court’ and likewise in respect of other provisions of the Code. If the expression ‘Special Court’ is read for the expression ‘Magistrate’, everything will fall in line. This harmonious construction of the provisions of the Act and the Code makes the Act work. That is what is required by principles of statutory interpretation.”

32. The Magistrate before whom the accused is forwarded on arrest, irrespective of whether he has jurisdiction or not to try the case may remand the accused for a period, as a whole, for not more than fifteen days. Every subsequent extension of remand shall be made only by the Magistrate having jurisdiction either to try the case or to commit the case to the Court of Session for trial. As we have already concluded, the term “Magistrate” as employed in Section 156 and Section 157 of the Code includes a Special Court under the POCSO Act also. As a corollary, the term “Magistrate” employed in Section 167 should be read to include the Special Court under the POCSO Act also as held by the Hon'ble Supreme Court in the judgment cited supra. The Special Court has got exclusive power not only to try the case under the POCSO Act but also to take cognizance of offences under the Act without the case being committed to the said Court. No Magistrate can take cognizance or try any offence under the POCSO Act. Thus, the Special Court under the POCSO Act exercises original jurisdiction exclusively to take cognizance of any offence under the Act not being hindered by Section 193 of the Code of Criminal Procedure. Thus, the Special Court under the POCSO Act has got power to make initial remand of an accused for a period not exceeding 15 days and also to pass subsequent remand orders as the Court having exclusive jurisdiction to try the offences under the POCSO Act. Though the Special Court has power to pass initial remand of an accused for a period not exceeding 15 days as provided in Sub Section (2) of Section 167 Cr.P.C., the power of the nearest Magistrate before whom the accused is produced to remand the accused for a period not exceeding 15 days has not been excluded. But, it should not be mistaken that the initial remand for a period not more than 15 days shall be made only by a Magistrate. As provided in Sub Section (2) of Section 167 of the Code, for sufficient reasons, if the accused could not be produced within twenty four hours before the Special Court under the POCSO Act, such as for want of time, the accused could be produced before the nearest Magistrate seeking initial remand.

33. At this juncture, we may also usefully refer to Clause 32 of Section 3 of the General Clauses Act, which reads as follows:

“Magistrate” shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force.”



34. As we have already pointed out, the Special Court exercises many of the powers of a Magistrate such as power Sections 156 and 167 of the Code, the expression “Magistrate” shall include the Special Court also. This is the interpretation given by the Hon'ble Supreme Court in Harshad's case cited supra.

35. Now, turning to the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment) Act, 2015 [Act 1 of 2016], similar question has arisen as to whether the notifications specifying Additional Sessions Judges as Special Courts under the said Act are valid or not. To resolve this issue, let us first look into the definition of the term “Special Court” as defined in Section 2(d) of the Act, which reads as follows:

“Special Court” means a Court of Session specified as a Special Court in Section 14”

36. Section 14 of the Act, before the amendment Act of 2015, stood as follows:

“14. Special Court.- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.”

37. A reading of these two provisions would indicate that a Court of Session shall be notified as a Special Court. While discussing the in pari materia provision in the POCSSO Act, we have concluded that the term “a Court of Session” would include an Additional Sessions Judge also. For the very same reasons stated and the discussion made herein above, we hold that an Additional Sessions Judge exercising jurisdiction in a Court of Session may also be notified as a Special Court under Section 14 of the SC & ST Act as it stood before the Amendment. The Sessions Judge presiding over a Court of Session may also be notified as a Special Court under Section 14 of the Act. In the State of Tamil Nadu and in the Union Territory of Puducherry, some Additional Sessions Judges have been specified as Special Courts and in other places, the presiding Sessions Judges of the Courts of Session have been specified as Special Courts under the SC & ST Act. Such notifications specifying these Courts as Special Courts are perfectly valid and we find neither irregularity nor illegality in the said notifications.

38. Section 14 of the SC and ST Act was drastically amended by Amendment Act (1 of 2016). Section 14 has been now replaced by an entirely new provision. Thus, the amended Section 14 of the Act reads as follows:

“14. (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.”

39. So far as the exclusive Special Courts are concerned, it is for the State Government to establish such Courts with the concurrence of the Chief Justice of the High Court. The term “exclusive special Court” has been defined in Section 2(bd) of the Act as amended. It defines “exclusive Special Court” to mean an exclusive Special Court established under sub Section (1) of Section 14 exclusively to try offences under this Act. But, who shall be the Judge presiding over the exclusive Special Court has not been dealt with in the Act.

40. The proviso to Sub Section (1) Section 14 of the Act states that where less number of cases under the Act is recorded, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette,

specify a Court of Sessions to be a Special Court to try the offences under this Act. If the proviso is read in conjunction with sub Section (1) of Section 14, it could be understood that an exclusive Special Court shall also be presided over by a Sessions Judge or an Additional Sessions Judge to be appointed by the High Court. The exclusive Special Court as well as the Special Court, though are Courts of Session, shall have power to take cognizance of offences under this Act directly without there being any order of committal made by a Magistrate. This is as per the second proviso to Sub Section (1) of Section 14 of the Act. Thus, the exclusive Special Court as well as the Special Court shall exercise original jurisdiction exclusively to take cognizance of any offence under the Act and try the case not being hindered by Section 193 of the Code of Criminal Procedure. Such Courts shall have power to remand the accused by exercising the power under sub Section (2) of Section 167 of the Code of Criminal Procedure. Such power shall not, however, exclude the power of a Judicial Magistrate from passing an initial order of remand of an accused for a period not exceeding 15 days.

41. So far as the Special Courts that have been already notified under Section 14 of the Act, as it stood unamended, the said Special Courts shall be construed to be the Special Courts notified under first proviso to sub section (1) of Section 14 of the Act as amended. The said Special Courts, were not originally empowered to take cognizance of any offence under the SC & ST Act directly as the said Courts were hindered by Section 193 of the Code of Criminal Procedure. As we have already pointed out, now, a Special Court notified as per first proviso to Section 14 of the Act as amended, has got power to directly take cognizance without there being any need for committal. Since the existing Special Courts have not been notified as per the first proviso to Section 14 of the Act as special Courts, could it be held that they cannot take cognizance under the Act directly as provided in second proviso to sub Section (1) of section 14 of the Act, as amended? In this regard, we may usefully refer to Section 24 of the General Clauses Act, which reads as follows:

“24. Continuation of orders, etc. issued under enactments repealed and re-enacted.- Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

42. Apparently, there is no inconsistency between Section 14 of the Act, as it stood unamended, and the first proviso to Section 14 of the Act, as amended. Therefore, the notifications issued under Section 14 of the Act as unamended specifying various Sessions Courts in the State as Special Courts are saved by Section 24 of the General Clauses Act and so, the Special Courts notified already as per Section 14 of the Act, which stood unamended, shall be construed as Special Courts as notified under the first proviso to sub section (1) of Section 14 of the Act and the said Courts shall exercise all the powers of a Special Court as per the amended Act.

#### Cases under POCSO Act and SC & ST Act

43. Yet another question has also been included in this reference, namely, when offences under the POCSO Act have been committed against a child belonging to either a Scheduled Caste or Scheduled Tribe, which Court is competent to remand the accused and to try the offender. In other words, whether it is the Special Court under the POCSO Act or the exclusive Special Court or the Special Court under the SC & ST Act which has the power to remand the accused during investigation, to take cognizance of the offences on a police report or on a private complaint and also to try the offender.

44. Section 20 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, reads as follows:-

“Act to over ride other laws.- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

45. It needs to be noted that the SC & ST Act was brought into force with effect from 30.01.1990. Now, let us look into a similar provision contained in the POCSO Act namely, Section 42A of the Act which reads as follows:-

“42-A. Act not to derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency.”

46. Section 42-A of the POCSO Act was brought into force only with effect from 03.02.2013, whereas, the POCSO Act came into force with effect from 19.06.2012. At the time when the Legislature thought of introducing Section 42-A of the POCSO Act, the Legislature was aware of Section 20 of the SC & ST Act. Had it been the intention of the Legislature to give specifically, overriding effect for the SC & ST Act over the POCSO Act, the Legislature would have suitably amended the SC & ST Act also. The very fact that the Legislature has not done so, would go to show that the intention of the Legislature itself is to give overriding effect to the POCSO Act over the SC & ST Act.

47. Even otherwise, applying the standard norms of the rules of interpretation, when there are two analogous provisions in two different special enactments indicating overriding effect on the other Act, then, the Court has to look into the object of the two enactments and if the object is also more or less, one and the same, the Court shall hold that the Act which is subsequent in point of time shall have overriding effect over the Act which is earlier in point of time.

48. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Sarwan Singh v. Kasturi Lal, AIR 1977 SC 265, wherein, the Hon'ble Supreme court has held as follows:-

“When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their objects and purpose and the fact that one of them is later in point of time and was enacted with the knowledge of the non obstante clauses in the earlier Act.”

49. In KSL and Industries Ltd v. Arihant Threads Limited, 2008 (9) SCC 763, the Hon'ble Supreme Court has held as follows:-

“In view of non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is, as far as possible, fulfilled. Indeed, the question as to which Act shall prevail must be considered with respect to the purpose of the two enactments, which of the two Act is the general or special, which is latter. It must also be construed whether there can be harmoniously considered.”

50. Keeping in view these settled principles of interpretation, if we look into the main object of the SC & ST Act, it is Act to check and deter crimes against the persons belonging Scheduled Castes or Scheduled Tribes committed by non scheduled castes and non scheduled tribes. Yet another object is to provide speedy trial. The main object of the POCSO Act is to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

51. A comparison of the statement and objects and reasons of both the Acts would manifestly make it clear that in both the Acts, speedy trial is sought to be achieved. If, in the same transaction, an offence is committed by a non scheduled caste / non-scheduled tribe man against a child belonging to a scheduled caste / scheduled tribe as provided in the POCSO Act, the said act of the accused would also be an offence under SC & ST Act. Though the object of both the Acts is to provide speedy trial, the POCSO Act seems to be a more comprehensive Act and it safeguards the interests of the child victim under the POCSO Act and the same Act shall take care of the children who belong to the scheduled castes and scheduled tribes also. Further, sub-section (2) of Section 28 of the POCSO Act states that while trying an offence under the POCSO Act, a Special Court under the Act shall also try an offence other than the offence referred to in sub-section (1) with which the accused may under the Code of Criminal Procedure, 1973, be charged at the same trial. But, there is no analogous provision in the SC & ST Act. Though the Legislature thought of amending the SC & ST Act by Amendment Act 1 of 2016, it has not chosen to introduce a new provision in the SC & ST Act like, sub-section (2) of Section 28 of the POCSO Act. This would also indicate that the intention of the Legislature itself is to give overriding effect only to the POCSO Act. Applying the test of chronology also, the POCSO Act should receive overriding effect over the SC & ST Act. Therefore, for all these reasons we hold that if the act of the accused is an offence both under the provisions of POCSO Act as well as SC & ST Act, the Special Court under the POCSO Act shall deal with the case by exercising all the powers conferred on the said Court including the power to remand, to take cognizance of offences and to try the offender.

52. Incidentally, we feel that Section 14-A of the SC & ST Act as introduced by amending Act 1 of 2016 needs clarification. It reads as follows:-

“14-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellants had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”

53. A reading of sub section (2) of Section 14A would make it clear that an application seeking bail shall be dealt with by a Special Court or Exclusive Special Court as the case may be. Any order granting or refusing bail by such Court is appealable to the High Court. Thus, Section 439 of the Code is not applicable to the High Court in respect of any order of a Special Court or exclusive Special Court either granting or refusing bail. The limitation for lodging an appeal, as provided in Sub Section (3) of Section 14A of the Act is 90 days from the date of the order. However, the High Court has been empowered to entertain the appeal after the expiry of the said period on sufficient cause being shown. We clarify accordingly.

54. In view of the foregoing discussions, we answer the reference as under:-

Cases under the POCSO Act:-

(i) Whenever any person is arrested for any offence under the POCSO Act and detained in custody and it appears that the investigation cannot be completed within the period of twenty four hours as prescribed in Section 57 of the Code and if the other conditions enumerated in sub-section (1) of Section 167 of the Code are satisfied, the investigating officer shall forthwith transmit the accused to the Special Court under the POCSO Act and the said court shall deal with the accused as provided sub-section (2) of Section 167 of the Code.

(ii) If the accused could not be produced within twenty four hours before the jurisdictional Special Court under the POCSO Act, the investigating officer may produce him before the nearest Judicial Magistrate as provided in sub-section (1) of Section 167 of the Code, who may remand the accused to such custody, as he thinks fit for a term not exceeding fifteen days in the whole and he shall, as provided in sub-section (2) of Section 167, order the accused to be forwarded to the Special Court under the POCSO Act for further proceedings.

(iii) At any rate, all subsequent remands shall be made under sub-section (2) of Section 167 of the Code only by the Special Court under the POCSO Act.

(iv) We clarify that all the provisions contained in Section 167 of the Code are applicable to a Special Court under the POCSO Act.

(v) Consequentially, we direct the Registry of this Court to forthwith withdraw the circular issued in R.O.C.No.640/2014/G4 dated 12.02.2016.

Cases under the SC & ST Act:-

55. So far as the exclusive Special Courts and the special Courts under the SC & ST Act as amended by Act 1 of 2016 are concerned, our conclusions are as follows:

(i) Whenever any person is arrested for any offence under the SC & ST Act and detained in custody and it appears that the investigation cannot be completed within the period of twenty four hours as prescribed in Section 57 of the Code and if the other conditions enumerated in sub-section (1) of Section 167 of the Code are satisfied, the investigating officer shall forthwith transmit the accused to the Special Court or the exclusive Special Court, as the case may be, under the SC & ST Act and the said Court shall deal with the accused as provided sub-section (2) of Section 167 of the Code.

(ii) If the accused could not be produced, within twenty four hours before the jurisdictional Special Court or exclusive Special Court as the case may be under the SC & ST Act, the investigating officer may produce him before the nearest Judicial Magistrate as provided in sub-section (1) of Section 167 of the Code, who may remand the accused in such custody, as he thinks fit for a term not exceeding fifteen days in the whole and he shall, as provided in sub-section (2) of Section 167, order the accused to be forwarded to the Special Court or the exclusive Special Court, as the case may be, under the SC & ST Act for further proceedings.

(iii) At any rate, all subsequent remands shall be made under sub-section (2) of Section 167 of the Code only by the special court or exclusive Special Court as the case may be under the SC & ST Act.

(iv) We clarify that all the provisions contained in section 167 of the Code are applicable to a Special Court or an exclusive Special Court under the SC & ST Act.

(v) The Special Courts notified under Section 14 of the SC & ST Act, as it stood unamended, shall be construed as the Special Courts notified under the first proviso to Section 14 of the SC & ST Act as amended by Act 1 of 2016 and the said Courts shall exercise all the powers of a special Court under the SC & ST Act as amended.

(vi) The exclusive Special Courts and the Special Courts, as the case may be, shall deal with the applications seeking bail and any order of such Court either granting or refusing to grant bail shall be appealable to the High Court and Section 439 of the Code of Criminal Procedure is not applicable to the High Court in respect of any offence under the SC & ST Act.

Cases under both POCSO Act and SC & ST Act:-

56. If the act of the accused is an offence under the POCSO Act and also an offence under the SC & ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance of the offences either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all the reliefs to the victim for which the victim is entitled to under the SC & ST Act.

57. Before parting with this reference, we appreciate Mr.B.Vijay learned counsel who made argument with erudition touching upon all the relevant provisions of the enactments.