

In Re: Sessions Judge

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Court : Madhya Pradesh

Decided On : Apr-01-2004

Reported in : 2005CriLJ2629

Judge : Shantanu Kemkar, J.

Acts : commission of Sati (Prevention) Act, 1987 - Sections 9 and 36; [Narcotic Drugs and Psychotropic Substances Act, 1985](#)

Appeal No. : M. C. Re. No. 2405 of 2004

Appellant : In Re: Sessions Judge

Judgement :

ORDER

1. The Sessions Judge, Sagar had sent a Memo dated 27-1-2004 requesting transfer of cases arising out of commission of Sati (Prevention) Act, 1987 (hereinafter referred to as 'the Act') registered as Special Case No. 1/02 (State of Madhya Pradesh v. Ashok Kumar and Ors.) and Special Case No. 2/02 (State of Madhya Pradesh v. Ashok Kumar and 16 others) from Special Court, Sagar to Special Court, Panna.
2. The matter has been placed on the judicial side by order of Hon'ble Acting Chief Justice.

The State Government vide Notification No. F-1-4-2002/XXI-B(1), Bhopal dated 14th August, 2002 issued under Section 9 of the Act, constituted seven Special Courts, out of which, one Court was constituted as Special Court, Sagar to take cognizance of the cases arising out of Sagar, Damoh, Panna, Tikamgarh and Chhatarpur districts. The aforesaid two cases are arising out of District Panna and are pending in the Special Court, Sagar at the stage of prosecution evidence.

3. On 14-1-2004 a notification was issued by the State Government in supersession of the earlier notification dated 14-8-2002 under Section 9 of the Act and as many as 40 Special Courts were constituted for the places mentioned in column (2) of the schedule of the said notification for the areas specified in column (3). As per the notification dated 14-1-2004, for the revenue district Panna, Special Court has been constituted at Panna and Sessions Judge, Panna has been appointed as Presiding Officer of that Court.

4. In view of this notification dated 14-1-2004, the Sessions Judge, Sagar has requested this Court to transfer the aforesaid cases arising out of Panna district to the Special Court at Panna.

I have carefully examined the provisions of the Act and the notification referred to above. In my view, the request of the learned Sessions Judge, Sagar cannot be allowed since in a similar situation the Division Bench of this Court in case of *Barji v. State of M. P.* (2000 (1) MPLJ 390) : (1999 Cri LJ 4197) arising out of Narcotic Drugs and Psy-chotropic Substances Act. 1985 has considered the effect of the issuance of subsequent notification issued under N. D. P. S. Act, 1985 and has held as under (Para 10) :

'The Notification in question is obviously issued by the State Government under the delegated powers conferred by Section 36 of the Act. Generally speaking, such power may be conferred to make subordinate legislation in the shape of a Rule, a Bye-law or a Notification, which have retrospective operation. However, in the absence of an express or necessarily implied power to that effect, subordinate legislation be it a Rule, a bye-law or a Notification, cannot have retrospective operation (See Principles of Statutory Interpretation by Justice G. P. Singh, 6th Edition, 1996, Chap. 12, Syn. 6). In the instant case Section 36 of the Act does not

seem to have given any such power either expressly or by necessary implication to the State Government to issue a notification having retrospective operation. The notification dated 2-4-1998 also does not give even slightest indication of being retrospective in operation.'

5. Further, in para 15, the Division Bench has held that the subsequent notification shall not affect the Special cases pending on the date of subsequent notification in which cognizance had already been taken by the Special Courts already constituted under the previous notification. Such cases shall be continued to be tried by the Courts in which they are pending on that date. The cases in which cognizance has not been taken shall alone stand transferred to the Special Courts constituted under the subsequent notification for the respective areas.

6. In the present case, as per the memo sent by the learned Sessions Judge, Sagar, cognizance had already been taken and the cases are at the stage of prosecution evidence.

7. In that view of the matter, applying the ratio of the judgment of the Division Bench of this Court (1999 Cri LJ 4197) (supra), the request made by the Sessions Judge, Sagar for transferring the cases from Special Court, Sagar to Special Court Panna cannot be allowed and the same is rejected.

M. Cr. C. stands disposed of.