IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble CHIEF JUSTICE DR. MANJULA CHELLUR
And
The Hon'ble JUSTICE JOYMALYA BAGCHI

F.M.A. 2541 of 2015
With
C.A.N. 792 of 2015

District Civil Bar Association and Anr.
Versus
State of West Bengal & Ors.

For the Appellants:- Mr. Bikash Ranjan Bhattacharyya, Sr. Advocate
Mr. Uday Narayan Betal, Advocate
Mr.Bhaskar Hutait, Advocate

For the State:- Mr. Jayanta Mitra, Ld. A.G.
Mr. Tapan Kumar Mukherjee, Advocate
Mr. Bikash Kumar Mukherjee, Advocate

For the Respondent:- Mr. Kishore Dutta, Advocate
Nos.2 to 4 Ms. Sumita Shaw, Advocate

Heard on: 30.4.2015, 5.5. 2015, 14.5.2015, 16.6.2015, 25.6.2015, 7.7.2015, 14.7.2015, 9.9.2015.

Delivered on: October 05, 2015.

Dr. Manjula Chellur, Chief Justice :

This appeal is directed against the judgment of learned Single Judge dated 17.12.2015 whereby the learned Single Judge has dismissed the writ petition. The writ petition was filed assailing the resolution of Administrative Committee of the High Court dated 11.5.2011 as well as the consequential Government notification dated 22.9.2011 which, inter alia, empowered the Courts of Additional District and Sessions Judge i.e. the Sub-Divisional Head Quarters to have requisite power of entertaining the filing of all the appeals, applications except those are coming under –Section 438 of Code of Civil Procedure, 1973 or those applications which are required to be filed before District Judge under any other statute.

Although the notification published in the official gazette was also with regard to matrimonial suits but there was no challenge to the said issue, therefore, learned Single Judge was justified in opining that there is no need to decide the same. The legal issue raised before the learned Single Judge was with regard to the resolution of the Administrative Committee of the High Court and consequential

notification contending that there is violation of provisions of the Code of Civil Procedure, 1973, particularly, the second proviso to Sub-Section 3 of Section 9 of the Code as applicable in the State of West Bengal. According to them, it is not permissible to file criminal matters before any other Court than the Sessions judge. As the code mandates that only Seasons Judge presided over a Court of Sessions alone is obliged to receive such criminal matters and not any Additional Session's Judge. The learned Judge ultimately opined that consequence of the first proviso to Section 9(3) of the Code if applicable in the State of West Bengal then there cannot be exclusion of one particular Sub-Division in isolation and ultimately opined that if Additional Sessions Judge is the head of the criminal Courts hierarchy at the sub-division why the entire process pertaining to appeals, applications etc. should not be brought before the said Court? especially when the larger public policy contained in the notification clearly mandates that the object of notification was to promote or bring justice closure to the door steps of a litigant within the parameter of the territorial jurisdiction as recognized in the criminal jurisprudence. He also opined that there is an element of centralization and concentration of work in the District Head Quarters which should not be the criterion to challenge the notification in question. Accordingly, dismissed the writ petition as void of merits.

Learned Senior Counsel Mr. Bikash Ranjan Bhattacharyya argued for the appellant Bar Association and learned Advocate General argued for State of West Bengal.

Mr. Bhattacharyya, learned Senior Counsel arguing for the appellant assailed the notification primarily on the ground that the amendment brought by the State so far as Section 9(3) of the Code of Criminal Procedure as introduced by Code of Criminal Procedure (West Bengal Amendment) Act, 1988 (West Bengal Act XXIV of 1988) (hereinafter referred to as the West Bengal Criminal Law Amendment Act of 1988) had not coming to force since it was not notified in terms of Section 1(2) of the sad Amending Act and, therefore, the learned Judge was not justified in placing reliance on the said provision in upholding the notification in question. He alternatively contends that even if such Amendment had come into force, it did not empower the Additional Sessions Judges in the Sub- Divisions to entertain appeals and revisional applications under Sections 374(3) and Section 397 of the Code of Criminal Procedure. According to him, the power to transfer and revisional proceeding is vested in the Sessions Judge under Section 400 of Cr.P.C., therefore, there cannot be usurption of the same by the

impugned notification. He stressed upon the observations made by learned Single Judge as to the alleged motive or intention of the appellant /writ petitioners in preferring the writ petition as uncalled for and unwarranted and sought to be expunged.

Per contra, learned Advocate General arguing for State contended that West Bengal Criminal Law Amendment Act of 1988 has been duly notified and had coming to force with effect from 2.5.1989 since Administrative Committee of the High Court at Calcutta had taken a decision to decentralize judicial powers by virtue of resolution dated 11.5.2011 and the impugned notification has been issued by the State Government on 22.9.2011 in terms thereof. He also refers to Article 227 of the Constitution of India contending that it give ample powers of superintendence to the High Court in its Administrative capacity to distribute judicial business amongst subordinate Courts for public convenience. Hence, there is no scope for interference with the impugned notification is the stand of the State.

In order to appreciate the real controversy before us it would be just and proper for us to read the resolution of the Administrative Committee of the High Court and also the concerned notification. The resolution of

the Administrative Committee of the High Court dated 11.5.2011 reads as under:-

".....Therefore, it is made clear that in all districts of the State of west Bengal having Additional District & Sessions Judge in sub-divisions, filing of matrimonial suits and motor accident claims cases shall be allowed, for which the respective District Judges should make necessary provision. It is further made clear that the Resolution of the Administrative Committee (of) June 9, 1999, does not prohibit filing of such applications and suit; on the other hand, it clearly records that Additional District & Sessions Judges located at the sub-divisional headquarters shall have the requisite power of accepting the filing of all appeals, applications etc., which includes matrimonial suits and motor accident claims cases. The only prohibition is in respect of applications and suits which are required to be filed before the District Judge under any statute, to mean, where the statute specifically provides that such applications/suits will be decided by the District Judges as persona designate."

As a matter of fact the above resolution is a clarificatory one which clarified an earlier resolution adopted on 9.6.1999. It also brought on record that such decision was thereafter approved by the full Court on circulation of the resolution of the committee.

Pursuant to such resolution, on 22.9.2011, the State of West Bengal published a notification in the official gazette relevant portion thereof is set out herein below:-

"…….. all courts of Additional District and Sessions Judges located at the Sub-divisional Head Quarters shall have the requisite power of accepting the filing of all appeals, applications, except those under Section 438 of the Code of Criminal Procedure, 1973 (2 of 1974) as well as those applications/suits which are required to be filed before the District Judge under any statute and such resolution has been ratified by the High Court at Calcutta……."

In terms of the said notification, District and Sessions Judge Purba Midnapur issued memo dated 6.9.2014 directing Additional District and Sessions Judges posted at Haldia/Contai Sub-Division to exercise powers in terms of impugned notification. The aforesaid notification as well as resolution of the committee were the subject-matter of challenge before the learned Single Judge.

With regard to the 1st issue, relevant notification giving effect to the said Amendment Act of 1988 has been placed for our perusal. The said notification reads as follows:-

"No. 8105-J dated 15th April, 1989. In exercise of powers conferred by Sub-section (2) of section 1 of the Code of Criminal Procedure (West Bengal Amendment) Act 1988 (West Bengal Act XXIV of 1988), the Governor is pleased hereby to appoint the 2nd Day of March, 1989 as the date on which the said Act shall come into force."

Accordingly, the first issue raised fails and decided against the appellant.

The second issue raised on behalf of the appellants is that the proviso to Section 9(3) of the Code of Criminal Procedure as incorporated by West Bengal Act, XXIV of 1988 does not empower the Additional Sessions Judges in the Sub-Division to entertain criminal appeals and revision petitions under Sections 374(3) and 397 of Cr.P.C. respectively without such cases being transferred to them by the Sessions Judge. It is relevant to reproduce proviso to Section 9(3) of Criminal Procedure Code which reads as under:-

"After sub-sec. (3) Insert the following provisions:

Provided that notwithstanding anything to the contrary contained in this Code, an Additional Sessions Judge in a Sub division, other than the sub-division, by whatever name called, wherein the headquarters of the

Sessions Judges are situated, exercising jurisdiction in a Court of Session shall have all the powers of the Sessions Judge under this Code, in respect of the cases and proceedings in the Criminal Courts in that sub-division, for the purposes of sub-section (7) of sections 193 and 194, clause (a) of section 209 and sections 409, 439 and 449:

Provided further that the above powers shall not be in derogation of the powers otherwise exercisable by an Additional Sessions Judge or a Sessions Judge under this Code"

Reading of the above proviso definitely do not make reference to either to the appellate powers under Section 374 Cr.P.C. or revision section 397 Cr.P.C.

Sub Section 3 of Section 374 reads as under:-

"Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate of Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session."

The plain reading of the above and the said provision clearly shows that the appeal against the order of conviction and sentence as

envisaged therein was like before the Court of Sessions and not the Sessions Judge.

A Court of Sessions under Section 9 of the Code comprises of a principle Judge, namely, the Sessions Judge, as well as such number of Additional Sessions Judges and Assistant Sessions Judges, as may be appointed by the High Court. Therefore, an appeal against an order of conviction and sentence under Sub-Section 3 of Section 374 Cr.P.C. filed before an Additional Session Judge who is a constituent of the Court of Sessions in terms of the impugned notification cannot be said to be contrary to the provisions of the Code of Criminal Procedure particularly Section 374(3) thereof.

Coming to the revisional powers of the Sessions Court of the Sessions Judge, it has been argued that such power rests in the Session Judge alone under Section 397 of Cr.P.C. and can be exercised by the Additional Sessions Judge in respect of the cases transferred to him by or under a general or special order of the Sessions Judge under Section 400 of Cr.P.C.. Hence, it is contended that the impugned notification empowering the Additional Session Judge to entertain revisional application is without authority of law. The impugned notification dated

22.5.2011 was issued in pursuance of a resolution taken by the Administrative Committee of the High Court which was adopted by the full Court of the High Court. The notification is nothing but a expression of the Administrative Direction issued by the High Court in exercise of its powers under Article 227 of the Constitution of India. There cannot be any dispute that that constitutional power of superintendence of subordinate Courts by the High Court in its Administrative side cannot be by any stretch of imagination be eclipsed by operation of statutory provisions of the Court. In fact, in case of conflict (although there is none in the present case) the latter has to yield to the superior Constitutional authority.

Apart from exercising its judicial powers of transfer under Section 407 of the Cr.P.C., the High Court has ample Administrative Powers of superintending over subordinate criminal Courts to assign or transfer any case or class of cases including appeals or revisions to a particular Court or a class of Courts.

It would be appropriate to refer to decision in the case of **Kamlesh Kr. & Ors. Vs. State of Jharkhand & Ors.** reported in **2013(15) SCC 460.** Relevant portion of the said judgement reads as under :

"The High Court does not have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session. That does not mean that the High Court cannot transfer cases by exercising its administrative power of superintendence which is available to it under Article 227 of the Constitution of India. While repelling the objection to the exercise of this power, this Court observed in para 13 of Ranbir Yadav as follows:

"13. We are unable to share the above view of Mr. Jethmalani. So long as power can be end is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist."

For the reasons state above, there is no substance in the objections raised by the petitioners. The High Court has looked into Section 407 CrPC, referred to Articles 227 and 235 of the Constitution of India, and thereafter in its impugned judgment has observed as follows:

"Having perused Section 407 CrPC and Articles 227 and 235, I have no hesitation to hold that this Court either on the administrative side

or in the judicial side has absolute jurisdiction to transfer any criminal cases pending before one competent court to be heard and decided by another court within the jurisdiction of this Court. This Court in its administrative power can issue direction that cases of particular nature shall be heard by particular court having jurisdiction."

In the light of above discussion and reasoning, we are unable to accept the contention of the learned Senior Counsel for the appellant Mr. Bhattacharyya, that the notification authorizing the Additional Sessions Judge posted in Sub-Divisions other than the District Head Quarters to entertain appeals or revisions arising in such Sub-Division suffers from lack of jurisdiction.

Lastly it has been argued that certain observations were made in the impugned judgment attributing/motive to the appellant's Association in preferring writ petition which were uncalled for and such observations be expunged. The impugned observations are as follows:-

"Merely because a motely group of persons have got used to a certain way of functioning and find it inconvenient to travel to or distasteful to set up base at lesser stations cannot be a basis for questioning what is both proper and imperative as introduced by the

impugned notification and the apt comprehension thereof reflected in the District Judge's letter.

WP 27645(W) of 2014 is dismissed as unmeritorious, but the petitioners are spared the costs for an attempt that may have been for ulterior motive but did not otherwise lack in bona fides."

Reading the aforesaid observations, we find that the learned Single Judge did not impose cost upon the appellants on the premise that the appellants did not otherwise lack in bona fides.

It, therefore, appears that the learned Single Judge while entertaining doubt as to the motives as to the petitioners had not come to any definite conclusion with certainty in respect thereof.

On factual basis also we cannot conclude that the appellants being professional bodies had been persuaded by selfish and ulterior motive in instituting the writ petition. On the other hand, we feel that they were prompted by a bonafide erroneous believe that the impugned notification was *ultra vires* the provisions of the Code and without jurisdiction. Though for reasons aforesaid we are unable to subscribe to such view of appellant, we are of the opinion that in the factual matrix of the case and in the absence of any conclusive findings as to mala

fides of the appellants, the aforesaid observations made against the appellants by learned Single Judge need to be expunged.

Accordingly, the aforesaid observations in the judgment under appeal are expunged. With the aforesaid modification and direction, the appeal disposed of.

There shall be no order as to costs.

(Manjula Chellur, Chief Justice)

I agree.

(Joymalya Bagchi, J.)