

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 90 of 2023

Date of Order: 09.08.2023

Shri. Heiratami Biam

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Syngkon, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA.

Heard Mr. N. Syngkon, learned counsel appearing for the petitioner.

Also heard Mr. S. Sengupta, learned Addl. Senior GA appearing for respondent Nos. 1 & 2.

Issue Notice. Notice is made returnable in two weeks.

In this application under Section 482 Cr.P.C., the petitioner has challenged the very legality of the order dated 30-11-2022 passed in Special Sessions Case No. 24 of 2021 under Section 3(a)/4 of POCSO Act, passed by the Special Judge (POCSO), West Jantia Hills District, Jowai.

The petitioner contends that the said order was passed on 30-11-2020 at the stage of final argument of the matter after conclusion of the evidence in the case. The petitioner also challenges the order dated 26-06-2023 passed by the learned Session Judge, Jowai in Session Case No. 11 of 2023

by which the matter was fixed on 07-08-2023 for consideration of charges. By order dated 30-11-2022 passed in Special Session Case No. 24 of 2020, the learned Special Judge (POCSO) transferred the matter to the Court of competent jurisdiction for trial and disposal. The order was passed apparently on the ground that the learned Special Judge by his order came to a finding that the ages of prosecutrix is 18 (eighteen) years and above at the time of the incident. The learned Special Judge, therefore, was of the opinion that the POCSO Court will not have jurisdiction to pronounce any verdict in the matter. The matter was placed before the learned Session Judge on the basis of the said order dated 30-11-2022.

Mr. N. Syngkon, learned Counsel appearing for the petitioner contends that the impugned order dated 30-11-2022 is *ex-facie* illegal, inasmuch as, the learned POCSO Court had no jurisdiction or power to transfer the matter to any other Court of competent jurisdiction. He further contends that it was totally improper for the learned Special Judge to place the case records before the any other Court after holding the entire trial lasting for over 4 (four) years, thereby subjecting the petitioner to face another trial. The submission made by Mr. N. Syngkon, learned counsel for the petitioner *prima facie* appears to be correct in the sense that whether the learned Special Judge (POCSO) had any authority to transfer the matter to any other competent Court in accordance with law.

For the reasons aforesaid, an *interim order* is called for. The order dated 30-11-2022 passed by the learned Special Judge in Special Session Case No. 24 of 2020 under Section 3(a)/4 POCSO Act and subsequent order dated 26-06-2023 passed by the learned Session Judge, Jowai in Session Case No. 11 of 2023 will remain stayed till the returnable date.

Resultantly, further proceeding in the entire matter shall remain stayed till the returnable date.

Mr. S. Sengupta, learned Addl. Senior GA for the State-respondent shall be ready with necessary instructions in the matter so that the matter can be disposed of on the next date.

List Accordingly.

Judge

Meghalaya
09.08.2023
"Biswarup PS"

