(2016) 10 PAT CK 0077

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 251 of 2016.

District Bar Association, Civil Court, Patna through its General Secretary Arvind Kumar Sinha, Son of Late Ramchandra Prasad Singh, R/o Mohalla - Tarkeshwar Path, Chiraiyantal, P.S. - Kankarbagh, District - Patna - Petitioner @HASH The State of Bihar thro — APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 27, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 10(3), Section 194, Section 209, Section 438, Section 439, Section 465

Citation: (2017) 1 AICLR 756 : (2017) CriLJ 1 : (2016) 4 PLJR 874 : (2017) 1 RCRCriminal 373

Hon'ble Judges: I.A. Ansari, CJ., Navaniti Prasad Singh and Chakradhari Sharan Singh, JJ.

Bench: Full Bench

Advocate: Dinu Kumar, Ritu Raj, Rajesh Kumar Singh, Arvind Kumar Sharma, Manoj Kumar, Santosh Kumar, Advocates, for the Petitioner in CWJC No. 251 of 2016; Devendra Kumar Singh, Abhay Kumar, Rabindra Kumar Sinha, Advocates, for the Petitioner in CWJC No. 3429 of 20

Final Decision: Dismissed

Judgement

I.A. Ansari, C.J. - Can a High Court, in exercise of its power under Article 227 of the Constitution of India, direct that an application, seeking pre-arrest bail or anticipatory bail, under Section 438 of the Code of Criminal Procedure (in short "Code"), shall be filed in the office of the Sessions Judge of the Sessions Division, who would appropriately distribute such applications amongst the senior Additional

Sessions Judges including those posted in Sub-Divisional Courts? This question, takes us to another question and the question is: What is the distinction between a Sessions Judge, on the one hand, and the Court of Session on the other? This question takes us to yet another question and the question is: How a Sessions Judge is different from an Additional Sessions Judge or an Assistant Sessions Judge?

2. The questions, posed above, have been thrown up by the present applications made, under Article 226 of the Constitution of India, in the form of public interest litigation, by the District Bar Association, Patna, and the Patna City Bar Association, Patna, putting to challenge the Circular issued, in this regard, by the High Court, on 21.09.2015, and, the consequential order, dated 23.09.2015, published by the Sessions Judge, Patna.

3. We have heard Mr. Dinu Kumar, learned counsel for the petitioner in CWJC No.251 of 2016, and Mr. Devendra Kumar Singh, learned counsel for the petitioner in CWJC No.3429 of 2016. We have also heard Mr. Anjani Kumar, learned Additional Advocate General No.6, and Mr. Satyabir Bharti, learned counsel appearing on behalf of the Registry of the High Court.

4. Before I enter into the merit of the present public interest litigations, we must point out that though a number of Circulars, issued by this Court, were put to challenge in the present writ petitions, Mr. Dinu Kumar, learned counsel appearing, for petitioner of CWJC No.251 of 2016, and Mr. D.K. Sinha, appearing, learned counsel for the petitioner of CWJC No.3429 of 2016, have made it clear that petitioners keep their challenge confined only to the Circular, dated 21.09.2015 (Annexure-3) issued by the Registrar General, Patna High Court, addressed to all the District & Sessions Judge of the State of Bihar, and the order, dated 23.09.2015, (Annexure-5), issued by the District & Sessions Judge, Patna.

5. Considering the nature of challenge, which these public interest litigations pose, the Circular, dated 21.09.2015, is reproduced below in extenso:

"Letter No. 54260-54296/Rules Deptt.

Dated, Patna, 21st September, 2015

To,

All the District and Sessions Judge of the State of Bihar

Subject: Distribution of anticipatory bail applications.

Sir,

I am directed to say that the Hon''ble Court by its Resolution dated 15.09.2015 has been pleased to resolve that the General Letter No.01 of 1986 (Criminal) issued by this Court to all the District & Sessions Judges in Bihar, dated 12th February,1986 be recalled and they be informed that all the anticipatory bail applications under

Section 438 of the Code of Criminal Procedure, shall be filed before the Sessions Judge, who would appropriately distribute anticipatory bail applications, amongst the senior Additional District and Sessions Judges including those posted in Sub-divisional Courts.

I am, therefore, to request you that the above directions should be strictly followed by all concerned.

Yours faithfully,

Sd/-

Registrar General"

6. Closely following the issue of the Circular, dated 21.09.2015, aforementioned, the learned Sessions Judge, Patna, issued the order, dated 23.09.2015, (Annexure-5), which reads thus:

"OFFICE OF DISTRICT & SESSIONS JUDGE, PATNA

(Administrative side)

ORDER No. 127/Dt. 23.09.2015

Perused the direction of the Hon''ble High Court communicated through Letter No.54260-54296 Rules Department dated 21st September, 2015, in the matter of filing and hearing of Anticipatory Bail Petitions.

The Hon''ble Court has directed that the Anticipatory Bail Application U/s 438 Cr.P.C. shall be filed before the Sessions Judge and the Sessions Judge would appropriate distribute among the Addl. District & Sessions Judge including those posted in Sub-Divisional Courts.

Barh Sub-Divisional Court is about 65 KM away from the District Headquarter. Therefore, it would be inconvenient for the litigants to file Anticipatory Bail Applications at Patna and thereafter go back for hearing of the same at Barh. In the past, there was practise that Anticipatory Bail Applications were being filed at the Barh Court itself.

Hence, considering the convenience of the litigants, it is directed that from 01.10.2015 onwards all Anticipatory Bail Applications arising from the Territorial Jurisdiction of Barh Sub-Division shall be filed in the name of the District & Sessions Judge, Patna at Camp Court, Barh itself. The District Judge would hear those applications at the Barh Court itself on dates notified before hand or in absence of sitting of the District Judge at Barh, the senior most Addl. District & Sessions Judge, Barh, shall her those Anticipatory Bail Applications on all working days according to convenience.

A register of filing of Anticipatory Bail Application shall be maintained by the Court of senior most Addl. District & Sessions Judge, Barh, itself.

Informed to all concern including the Bar Association, Patna and Barh.

Sd/-

(Birendra Kumar)

District & Sessions Judge, Patna

Memo No. 9695-9703/Admn. Dated Patna, the 23 Sept., 2015

Copy forwarded to the Judge-in-charge/Secretary, Bar Association, Patna/Patnacity/Danapur/Barh/The System Officer, Computer Room, Civil Courts, Patna, for information and needful.

By Order

Sd/-

I/c Registrar, Civil Courts, Patna

23.09.2015"

7. Assailing the Circular, dated 21.09.2015, aforementioned, learned counsel for the petitioner(s) submits that under Section 438 of the Code, every Court of Session has been empowered to issue directions for pre-arrest/anticipatory bail and, therefore, the High Court?s Circular aforementioned directing that the applications, seeking pre-arrest/anticipatory bail, shall be filed before the Sessions Judge, who, shall, in turn, distribute such applications amongst the senior Additional Sessions Judges, is wholly without jurisdiction, and calls for interference in exercise of this Court?s powers under Article 226 of the Constitution of India.

8. Resisting these public interest litigations, Mr. Satyabir Bharti, appearing on behalf of the High Court, submits that it is the Sessions Judge, who, in a Sessions Division, controls the filing and distribution of applications seeking pre-arrest/anticipatory bail and, therefore, the High Court is completely justified in issuing the direction, which it has issued by means of the Circular, dated 21.09.2015. The consequential order, dated 23.09.2015, published by the learned Sessions Judge, Patna, according to Mr. Satyabir Bharti, learned counsel, is in tune with the Circular, dated 21.09.2015, and is, therefore, valid and does not suffer from any legal infirmity.

9. Our search for correct answers to the questions, posed above, bring us, first, to the scheme of the Code, relating to the trial of a case, by a Court of Assistant Sessions Judge or Additional Sessions Judge, on the one hand, and the Court of the Sessions Judge, on the other. For this purpose, not only the provisions of the new Code (as contained in the Code of Criminal Procedure, 1973), but also the relevant provisions of the Code of Criminal Procedure, 1898, (in short, "the old Code or the

Code of 1898") need to be taken note of.

10. Since it is Section 209 of the Code, where under a case is committed to a Court of Session for trial, let me take note of Section 209, which, I find, reads as under:

"209. Commitment of case to Court of Session when offence is triable exclusively by it.- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall -

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail remand the accused to custody until such commitment has been made.

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of,

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

11. From a careful reading of the provisions of Section 209, what transpires is that a Magistrate shall commit a case to the Court of Session if the offence is triable exclusively by a Court of Session. Does the expression "Court of Session", appearing in Section 209, mean a Sessions Judge alone or does the expression "Court of Session", occurring in Section 209, include Additional and Assistant Sessions Judges is, now, the moot question.

12. For answering the question as to whether the expression "Court of Session", which appears in Section 209, does or does not include, within its fold, Additional Sessions Judges and/or Assistant Sessions Judges, it may be noted that the expression "Court of Session" has not been defined in the new Code nor was the expression "Court of Session" defined in the old Code.

13. Bearing in mind what is indicated above, let me, now, turn, to Section 6, which reads as under:

"6. Classes of 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 Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrate;

(iii) Judicial Magistrate of the second class; and

(iv) Executive Magistrate."

14. A cautious reading of Section 6 shows that an Additional Sessions Judge or Assistant Sessions Judge has not been specifically made a Court of Session in the first category of Courts as contained in Section 6, which makes provisions for only Court of Session. Hence, if the expression ''Court of Session'' is held not to include Additional and/or Assistant Sessions Judges, then, these Courts would not be regarded as a Court of Session.

15. Necessarily, therefore, a Court of Session shall, ordinarily, mean not only the Sessions Judge''s Court, but also the Courts of Additional and Assistant Sessions Judges.

16. It is, now, necessary to take note of Section 7 of the Code, which states thus: Territorial divisions.-

"(1) Every State shall be a sessions division or shall consist of sessions divisions : and every Sessions division shall, for the purpose 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 division 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."

17. From a careful reading of Section 7, it becomes clear that every State shall be a Sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purpose of the new Code, be a district or consist of several districts and that every metropolitan area shall, for this purpose, be a separate sessions division and district.

18. What, thus, clearly follows from Section 7 of the new Code is that a State may have one sessions division or several sessions divisions and every such sessions division may either consist of one district or more than one district.

19. How a "Court of Session" is established and what is the jurisdiction of a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge are found contained in Section 9 of the Code, which reads:

"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 Judges 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 divisions and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Sessions shall ordinarily hold this 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."

20. From the reading of Section 9, what emerges is that Sub-section (1) of Section 9 empowers the State Government to establish a Court of Session for every Sessions division and Sub-section (2) of Section 9 requires that every Court of Session shall be presided over by a Judge to be appointed by the High Court. There can be, therefore, no dispute with regard to the fact that the Sessions Judge of Patna is the Sessions Judge of the Court of Session in the sessions division of Patna. Sub-section (3) of Section 9 enables the High Court to appoint Additional Sessions Judge and/or Assistant Sessions Judge to exercise jurisdiction in the Court of Session.

21. Thus, the scheme of the new Code is that there will be one Court of Session for every sessions division. Obviously, therefore, every Court of Session, constituted for a sessions division, would be presided over by a Sessions Judge. In addition thereto, the High Court may appoint Additional Sessions Judges and/or Assistant Sessions

Judges to exercise jurisdiction in such a Court of Session. Section 9(5) states that where the office of the Sessions Judge is vacant, the High Court may make arrangement for the disposal of any urgent application, which is, or may be, made or pending, before such Court of Session, by Additional Sessions Judge or Assistant Sessions Judge, or, if there be no Additional Sessions Judge 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.

22. From a patient reading of the provisions contained in Section 9, it is plain that there will be one Sessions Judge presiding over the Court of Session for every sessions division and that if there be Additional Sessions Judge and/or Assistant Sessions Judge, appointed by the High Court, their appointment would be to only to exercise jurisdiction in the Court of Session.

23. As indicated in Section 9, an Additional Sessions Judge or Assistant Sessions Judge cannot, therefore, be regarded as a Sessions Judge, for, while a Sessions Judge presides over the Court of Session, constituted for a sessions division, an Additional Sessions Judge or Assistant Sessions Judge merely exercises jurisdiction in such a Court of Session.

24. Notwithstanding, however, the fact that an Additional or Assistant Sessions Judge cannot be regarded as a Sessions Judge, the fact remains that their Courts too, unless can be shown otherwise, fall within the expression "Court of Session".

25. Thus, in a sessions division, apart from the Court of Session, which is presided over by the Sessions Judge, an Additional and/or Assistant Sessions Judge can be appointed to discharge functions of the Court of Session.

26. Clearly, therefore, the Additional or Assistant Sessions Judge will not be a Sessions Judge, but, by virtue of their appointment as Additional or Assistant Sessions Judge, they nevertheless exercise jurisdiction in a Court of Session and must, ordinarily and unless the context, otherwise, requires, be regarded as a Court of Session.

27. That there lies a distinction between a Sessions Judge, on the one hand, and an Additional or Assistant Sessions Judge, on the other, becomes transparent, when one carefully reads Section 381 of the new Code, which states as under:

"381. Appeal to Court of Session how heard.

(1) Subject to the provisions of Sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second-class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate 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 special order, direct him to hear."

28. On a careful reading of Section 381(2) of the new Code, it becomes clear that an Additional Sessions Judge or Assistant Sessions Judge or a Chief Judicial Magistrate can hear ''only'' such appeals as the Sessions Judge of the sessions division may, by general special order, make over to him for hearing or as the High Court may, by special order, direct him to hear.

29. Thus, in the face of clear language used in Section 381, one cannot but conclude that the hearing of an appeal by an Additional Sessions Judge or an Assistant Sessions Judge or a Chief Judicial Magistrate would be wholly without jurisdiction and order(s) passed, on hearing of such an appeal, would be nullity unless the appeal had been made over to him by the Sessions Judge for hearing or unless the High Court had directed him to hear the appeal.

30. Bearing in mind the distinction between a Sessions Judge, on the one hand, and an Additional or Assistant Sessions Judge, on the other, which Section 381 clearly brings out, let me, now, revert to the question as to whether a trial by an Additional or Assistant Sessions Judge of a case, exclusively triable by a Court of Session, would be a mere irregularity or wholly without jurisdiction if the case has been directly committed by a Magistrate to such an Additional or Assistant Sessions Judge or without the same having been made over to him for trial by the Sessions Judge of the sessions division or without the case having been directed by the High Court to be tried by him.

31. My quest for an answer to the momentous question brings me to Section 209 and Section 193 of the new Code, which read as follows:

"193. Cognizance of offences by Courts of Session.

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been " committed to it by a Magistrate under this code.

209. Commitment of case to Court of Session when offence is triable, exclusively by it.- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of Section 207 or Section 208 as the case may be, the case to the Court of Section, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment had been made;

(b) subject to the provisions of this Code relating to bail remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

32. A combined reading of Sections 209 and 193 makes it clear that a Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate. If the provisions of Section 209 were read in the light of the provisions of Section 193, it becomes clearer that Section 209 requires a Magistrate to commit a case, which discloses commission of an offence, triable exclusively by a Court of Session, to a Court of Session and it is only then that the Court of Session can take cognizance of such an offence.

33. The question, now, is as to whether the expression "Court of Session", which occurs in Sections 209 and 193, must necessarily be read to mean a Sessions Judge alone, or can this expression "Court of Session" be held to include an Additional or Assistant Sessions Judge too?

34. My search for an answer to the above question takes me to Section 194 of the new Code, which reads, "194. Additional and Assistant Sessions Judge to try cases made over to them. An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division" may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

35. At the first blush, Section 194 appears to convey that an Additional Sessions Judge or an Assistant Sessions Judge derives no jurisdiction to take, as a Court of original jurisdiction, cognizance of an offence exclusively triable by a Court of Session unless the Sessions Judge of the division, by a general or special order, makes over to him such a case for trial or unless the High Court, by special order, directs him to try the case and that a trial, held in violation of the provisions of Section 194, would ipso facto be without jurisdiction and make the finding of guilt or otherwise, reached in such a trial, illegal and ineffective. Is this the correct position of law?

36. An effective answer to the question, posed above, cannot be given unless the provisions of Sections 193 and 194 of the new Code are compared with Section 193 of the old Code. I may point out that Section 193 of the Code of 1898 contained two sub-sections. While Sub-section (1) of Section 193 has been made Section 193 in the new code, Sub-section (2) of Section 193, with a strikingly noticeable amendment, has been turned into presently enacted Section 194.

37. In order to appreciate correctly the change, pointed out above, one has to carefully read, as a whole, Section 193 of the Code of 1898, and, particularly, Sub-section (2) thereof, which read as under:

"193. Cognizance of offences by Courts of Session. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the State Government by general or special order may direct them to try, or 12 [***] as the Sessions Judge of the division, by general or special order may make over to them for trial."

(Emphasis is applied)

38. When the provisions, contained in Sub-section (2) of Section 193 of the old Code, are read in the light of what Section 194 of the new code, now, contains, there appears to be three distinct changes, which have been made by the Parliament, while enacting Section 194.

39. In Sub-section (2) of Section 193, the State Government had the power to direct, by general or special order, an Additional or Assistant Sessions Judge to try cases, which are exclusively triable by a Court of Session. While enacting Section 194, the Parliament has withdrawn this power from the State Government and vested in the High Court the power, which earlier rested in the State Government. However, while so vesting the power in the High Court, the High Court has not been given the general power to direct trial of cases by an Additional or Assistant Sessions Judge; rather, the High Court can, now, direct an Additional or an Assistant Sessions Judge to try cases only by a special order and not by a general order. The more important change, which Section 194 has introduced into the scheme of the new Code, is that under Subsection (2) of Section 193, while an Additional or Assistant Sessions Judge could have tried ''only'' such cases, which were made over to him, by general or special order of the Sessions Judge of the division or the cases, which were directed to be tried by him by the order of the State Government, the Parliament has chosen to omit the word ''only'', while enacting Section 194, indicating thereby that the exclusive nature of jurisdiction, which the State Government or the Sessions Judge had exercised in the past by virtue of the provisions of Sub-section (2) of Section 193 stands withdrawn and Section 194 merely clarifies, now, that an Additional or Assistant Sessions Judge can try a case if the Sessions Judge of the division makes over the case to him, by special or general order, for trial or if the High Court, by special order, directs him to try.

40. The fallout of the above discussion is that under Sub-section (2) of Section 193 of the old Code, an Additional or Assistant Sessions Judge could try a case ''only'' when

the State Government, by general or special order, directed him to try or when the Sessions Judge of the division, by general or special order, made over to him for trial. Subsection (2) of Section 193 of the old code, thus, made it abundantly clear that unless the case was either made over for trial by the Sessions Judge or directed by the State Government to be tried, as indicated hereinbefore, an Additional or Assistant Sessions Judge derived no jurisdiction to take cognizance of such a case if the offence was exclusively triable by a Court of Session.

41. The limitation, which the use of the word ''only'', appearing in Section 193(2), had imposed on the powers of an Additional or Assistant Sessions Judge to try case, has, now, been dispensed with in Section 194.

42. No wonder, therefore, that a three Judge Bench, in **H.N. Rishbud v. State of Delhi, 1955 CriLJ 526**, while holding that trial follows cognizance and cognizance is preceded by investigation and that taking of cognizance, on the basis of an invalid investigation, does not nullify the cognizance or trial held on the basis of such investigation, made it nevertheless clear that the language of Section 190 of the Code (i.e., old code) was in marked contrast with that of Sections 193 (now, Sections 193 and 194) and 195 to 199, for the latter Sections, namely, Sections 193 (i.e., Section 193 and 194 of the new Code) regulate competence of the Court and bars its jurisdiction in certain cases except in compliance therewith. The decision, thus, left it to no doubt that Section 193 (of the old Code) regulates competence of the Court and barred its jurisdiction to try a case except in compliance therewith.

43. What logically follows from the above discussion is that under Section 193 of the old Code, an Additional or Assistant Sessions Judge could not have taken cognizance of an offence exclusively triable by a Court of Session unless the case was made over to him for trial either by the State Government or by the Sessions Judge of the division in terms of Sub-section (2) of Section 193. It is in this legal perspective that the decisions in **Kamaleswar Singh v. Dharamdeo Singh [AIR 1957 Pat 375 (FB)]** and **Nima Tshering Bhutia v. State of Sikkim, reported in 1981 CriLJ 1391**, need to be considered and when it is so considered, it becomes apparent that an Additional or Assistant Sessions Judge was held competent to try a sessions triable case ''only'' when the case was made over to him for trial either by the Sessions judge of the division or by the State Government. In fact, in Nima Tshering Bhutia (supra), the Court, had observed,

"10....if without using such expression ''only'' it was merely provided that Additional Sessions Judge shall try such cases and hear such appeals as the State Government may direct or as the Sessions Judge may make over to them for trial or hearing then it could have been argued that when a case or appeal is to be and can be tried or heard by a Court of Sessions, the trial or hearing thereof by an Addl. Sessions Judge even without such direction or making over, might not have amounted to any breach of any mandatory provisions. But when the Legislature has expressly and affirmatively provided that Addl. Sessions Judges shall try or hear only such case or

appeals as the State Government may direct or the Sessions Judge may make over the Legislature must be deemed to have provided impliedly and negatively that the Additional Sessions Judge shall not try or hear any other case or appeal. And if the provisions, therefore, have such an obligatory mandate and, therefore really go to create jurisdiction and regulate the competence of Addl. Sessions Judges to try cases or to hear appeals, a breach thereof would strike at the very root of jurisdiction."

44. From what had been observed in Nima Tshering Bhutia (supra), it becomes clear that had the expression ''only'' not been used in Section 193 of the old Code, trial of a case by an Additional or Assistant Sessions Judge would not have become ipso facto without jurisdiction. To put it a little differently, but for the word ''only'', which had occurred in Section 193(2) of the old Code, trial by an Additional Sessions Judge of a Sessions case, which had been directly committed to him by a Magistrate, would not have been without jurisdiction.

45. A microscopic reading of Sub-section (2) of Section 193, in the old code, made it more than abundantly clear that an Additional or Assistant Sessions Judge could have tried ''only'' such sessions triable cases, which were made over to him for trial by the Sessions Judge of the division or which were directed to be tried by him by the State Government. The use of the expression ''only'' in Sub-section (2) of Section 193 of the old Code was, thus, of paramount importance in determining the competence of an Additional or Assistant Sessions Judge to try a case, which disclosed commission of an offence exclusively triable by a Court of Session.

46. One may point out that the dictionary meaning of the word ''only'' is ''no other''. The word ''only'' is used for the purpose of conveying exclusive nature of the power exercisable by a person or authority. That the use of the word ''only'', in legislation, reflects exclusiveness is a judicially recognised fact.

47. One may, with regard to the above, readily refer to **Hari Ram v. Babu Gokul Prasad (AIR 1991 SC 427)**, wherein Section 166 of Madhya Pradesh Land Revenue Code, 1954, came up for interpretation. Section 166 of the Code of Madhya Pradesh Land Revenue Code read,

"166. Any person who holds land for agricultural purposes from a tenure holder and who is not an occupancy tenant under Section 169 or as protected lessee under the Berar Regulation of Agricultural Leases Act, 1951, shall be ordinary tenant of such land.

Explanation section - For the purposes of this

(i) any person who pays lease money in respect of any land in the form of crop share shall be deemed to hold such land;

(ii) any person who cultivates land in partnership with the tenure holder shall not be deemed to hold such land;

(iii) any person to whom only the right to cut grass or to graze cattle or to grow Singhara (Trapa bispinosa) or to propagate or collect lac is granted in any land shall not be deemed to hold such land for agricultural purposes.

48. In Hari Ram (supra), Section 166 showed that any person, who holds land for agricultural purposes from a tenure holder and who is not an occupancy tenant under Section 169 or is not a protected lessee under the Berar Regulation of Agricultural Leases Act, 1951, shall be ordinary tenant of such a land. Answering the question as to whether a person, who has a mere right to cut grass or to graze cattle or to grow singhara (Trapa bispinosa) or to propagate or collect tax, shall be deemed to hold such a land for agricultural purposes, the Supreme Court observed, "The word ''only'' in Explanation (ii) is significant. It postulates that entire land should have been used for the purposes enumerated. If part of the land was used for cultivation, then the land could not be deemed to have been granted for cutting grass only. It has been found that out of 5 and odd acres of land, the land under cultivation was 2 acres. Therefore, the negative clause in Explanation (ill) did not apply and the appellant became ordinary tenant under Section 166."

49. The decision, in Hari Ram (supra), makes it clear that the use of the word ''only'' reflects exclusiveness and conveys negativity of the power meaning thereby that had a case, under the new Code, not been made over for trial to an Additional or Assistant Sessions Judge by the Sessions Judge "of the division or had the State Government not directed a case to be tried by an Additional or Assistant Sessions Judge, such a Judge derived no jurisdiction to try such a case, under the old Code, as a Court of Session, for Sub-section (2) of Section 193 used the word ''only''.

50. Let me, now, turn to the case **Bhatia International v. Bulk Trading S.A., reported in [2002] 2 SCR 411**, wherein a three Judge Bench considered the effect of the omission of the word ''only'' used in the UNCITRAL Model Law. Article 1(2) of the UNCITRAL Model Law reads, "The provisions of this law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State. As against what Section 1(2) aforementioned reads, Sub-section (2) of Section 2 of the Arbitration and Conciliation Act, 1996 states, "This part shall apply where the place of arbitration is in India."

51. From a bare reading of Section 1(2) of the UNCITRAL vis-a-vis Section 2(2) of the Arbitration and Conciliation Act, 1996, it becomes transparent that in Sub-section (2) of the Arbitration and Conciliation Act, 1996, the word ''only'' stands omitted. It was contended in Bhatia International (supra) that India had purposely not adopted Article 1 (2), as a whole, of Article 1(2) of UNCITRAL Model Law and, hence, Section 9 would not apply to arbitral proceedings, which took place outside India. Reacting to the submissions so made, the Supreme Court observed and held, "Thus Article 1(2) of the UNCITRAL Model Law uses the word "only" to emphasise that the provisions of that law are to apply if the place of Arbitration is in the territory of that State. Significantly, in Section 2(2) the word ''only'' has been omitted. The omission of this

word changes the whole complexion of the sentence. The omission of the word "only" in Section 2(2) indicates that this sub-section is only an inclusive and clarificatory provision. As stated above, it is not providing that provisions of Part I do not apply to arbitrations which take place outside India. Thus there was no necessity of separately providing that Section 9 would apply."

52. The observations made above, in Bhatia International (supra), clearly show that the omission of the word ''only'', in sub-section (2) of Section 2, was treated by the Supreme Court to have changed the whole complexion of the sentence. The Supreme Court accordingly pointed out, in Bhatia International (supra), that with the omission of the word ''only'', the provisions of Sub-section (2) of Section 2 had become inclusive and clarificatory and had not, therefore, retained its exclusive characteristic.

53. It is, thus, clear that while enacting Section 194 of the new Code, since the word ''only'', which had appeared in Sub-section (2) of Section 193 of the old Code, has been omitted by the Parliament, the effect is that though, ordinarily, an Additional or Assistant Sessions Judge shall not try a case, which discloses commission of an offence exclusively triable by a Court of Session, if the case has not been made over to him for trial by general or special order of the Sessions Judge of the sessions division or unless the High Court directs such a Additional or Assistant Sessions Judge to try the case, yet a trial by an Additional or Assistant Sessions Judge, in contravention of the provisions of Section 194 and/or on the basis of case having been committed to him by a Magistrate under Section 209, would not be without jurisdiction, void and ab initio would not necessarily render the findings reached, on such a trial, completely illegal or void.

54. It is also extremely important to note that the 5th Law Commission, while making its recommendations, which brought changes in the language of Section 193(2) of the old Code, had not suggested any change in the language of Section 193(2), which has been made Section 194 in the new Code. The Parliament, however, deliberately dropped the use of the word ''only'', while enacting Section 193(2) of the old Code as Section 194 of the new Code. The omission of the word ''only'', in Section 194, cannot, therefore, be said to be insignificant or immaterial.

55. The conclusion, therefore, which is inescapable, is that ordinarily, an Additional or Assistant Sessions Judge shall not take cognizance of a case, which discloses commission of an offence, which is exclusively triable by a Court of Session unless such a case has been made over to him by the Sessions Judge or by the High Court, as indicated hereinbefore, for trial. However, as a corollary thereto, it cannot be held that the trial of an accused in a case, which has not been made over, for trial, to an Additional or Assistant Sessions Judge by an order of the Sessions Judge of the division or by the High Court, would be wholly without jurisdiction and non est in law. It further follows that the expression "Court of Session", occurring in Sections 209 and 193, includes not only a Sessions Judge, but also an Additional or Assistant

Sessions Judge.

56. The impression that the omission of the word ''only'', while converting Sub-section (2) of Section 193 of the old Code into Section 194 of the new Code, was not an accidental omission, but a deliberate act of codification becomes transparent if one takes into account the provisions of the Code, both old as well as new, which relate to hearing of appeals. For this purpose, Section 409 of the old Code and Section 381 of the new Code are reproduced herein below.

Section 409 of the old Code:

"409. Appeals to Courts of Session how heard.- (2) Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge:

Provided that no such appeal shall be heard by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by any Magistrate of second or third class.

(2) An Additional Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Section 381 of the new Code:

"381. Appeal to Court of Session how heard.

(1) Subject to the provisions of Sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second-class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, or Assistant Sessions Judge or a Chief Judicial Magistrate 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 special order, direct him to hear."

57. When Section 381(2) of the new Code is read in the light of Section 409(2) of the old Code, it becomes clear that the Parliament has, while enacting Section 381(2), retained the word ''only'', which occurred in Section 409(2). Obviously, therefore, an Additional Sessions Judge or Assistant Sessions Judge or a Chief Judicial Magistrate can hear "only" such appeals as the Sessions Judge of the sessions division may, by general or special order, make over to him for hearing or as the High Court may, by special order, direct him to hear. The language, used in Section 381, makes the legislative intent clear and the legislative intent is that the hearing of an appeal by

an Additional Sessions Judge or Additional or an Assistant Sessions Judge or a Chief Judicial Magistrate is wholly without jurisdiction and would be nullity unless the appeal has been made over to him for hearing by the Sessions Judge or unless the High Court directs him to hear.

58. Thus, while the Parliament has retained, in Section 381(2), the word "only" (which occurred in Section 409 of the old code) in respect of the exercise of appellate jurisdiction of the Additional Sessions Judge or Assistant Sessions Judge, the Parliament has done away with the word "only", which had occurred in Section 193 (2) of the old Code, while making provisions for trial of Sessions cases under Section 194 of the new Code.

59. The glaringly noticeable change, which I have noticed above, makes it transparent that an appeal cannot be heard by anyone other than a Sessions Judge to whom the appeal has to be preferred unless the Sessions Judge, by general or special order, makes over the appeal preferred to him, as Sessions Judge, to an Additional or Assistant Sessions Judge or a Chief Judicial Magistrate, as the case may be, for hearing or unless the High Court directs any of them to hear the appeal; but in a sessions triable case, it is, now, not impossible for an Additional or Assistant Sessions Judge to try such a case if it has been directly committed to him by a Magistrate for trial though such shall not be the normal or general practise. Thus, the Additional or Assistant Sessions Judge does not suffer from complete lack of jurisdiction to try a case, which has been directly committed to him by a Magistrate.

60. Had the Parliament intended that the Additional or Assistant Sessions Judge shall have no jurisdiction to try a case unless it has been made over to him by a Sessions Judge to whom the case has been committed or unless the High Court has directed such an Additional or Assistant Sessions Judge to try, the Parliament would have retained the word ''only'' even in Section 194, which has replaced Section 193(2) of the old Code, as the Parliament has done, while enacting Section 381 of the new Code out of Section 409 of the old Code.

61. The conclusions, reached above, are fortified if one carefully reads the recommendations of the 5th Law Commission, contained in its 41st Report, in this regard and subsequent enactment of Section 194 vis-a-vis Section 193(2) of the old Code and Section 381 vis-a-vis Section 409 of the old Code, which run thus:

"15.85. Sub-section(2) of Section 193 provides that Additional Sessions Judge and Assistant Sessions Judge shall try such cases only as the State Government may direct them to try or as the Sessions Judge of the division may make over to them for trial. It appears unnecessary to bring the State Government into what is, mainly, a matter of distribution of work among the Courts in district, a matter of day-to-day control of the work of the Court which as pointed out by the Supreme Court, must rest with the High Court. In Bombay, the power of the State Government to issue directions under this provision is exercisable only in consultation with the High

Court. Even this restricted power need not be retained with the State Government. As it is, the distribution of cases is mainly attended to by the Sessions Judges and they should continue to do so under the overall control of the High Court. We recommend that the sub-section may be amended to read, "(2). An Additional Sessions Judge or Assistant Sessions Judge shall try such cases only as the Sessions Judge of the division, by general or special order, may make over to him for trial or as the High Court, by special order may direct him to try."

62. From what has been observed by the Law Commission, it becomes clear that the system of making over a case for trial to an Additional or Assistant Sessions Judge by order of the Sessions Judge is a day-to-day affair and aims at providing control of the work of the Courts. It does not, as such, relate to jurisdiction of the Court; rather, the system or the scheme, which the Code so contemplates, concerns discipline under the overall supervision and control of the High Court. Though the Law Commission did not suggest any change in the language of Section 193(2), which has, now, been made Section 194, nor it did suggest any change in the language of Section 409(2), which has been made Section 381(2), what is, however, curious to note is that while the Parliament retained the word ''only'' in respect of hearing of appeal under Section 381(2), it has dispensed with the use of the word ''only'' in the case of Section 194 meaning thereby that while an appeal cannot be heard by an Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate unless the same has been made over to him for hearing by the Sessions Judge or has been directed to be heard by him by the High Court, a sessions triable case can be tried by an Additional or Assistant Sessions Judge on being directly committed to any of them by a Magistrate. If such trial is in terms of the order of the Sessions Judge or the High Court under Section 194, there is absolutely no irregularity; if, however, a case is committed to an Additional or Assistant Sessions Judge without any order having been passed, in this regard, by the Sessions Judge or the High Court, then, such committal is an irregularity. Such an irregularity will not be interfered with, in appeal or revision, unless such error or irregularity has occasioned failure of justice and unless objection to such irregularity has been taken at the earliest opportunity, for, Section 465 of the new Code reads as under:
"465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or Other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

63. From a careful reading of Section 465, it becomes clear that unless an objection to an irregularity is taken at an earlier stage of the proceeding and unless, in the opinion of the Court, failure of justice has, in fact, been occasioned by such irregularity or error, such irregularity would not be interfered with in revision.

64. What emerges from the above discussion is that though, ordinarily, a case cannot be tried by an Additional or Assistant Sessions Judge unless the same has been made over to him by the Sessions Judge or has been directed to be tried by him by the High Court, the trial of an accused, if held, by an Additional Sessions Judge or a Assistant Sessions Judge, for an offence, which such a Judge has the power to try, would not stand completely vitiated; rather, such a trial would be an irregularity or an error and it may attract, in a given case, Section 465.

65. The impression that a ''Court of Session'', ordinarily, includes not only Sessions Judge, but also Additional or Assistant Sessions Judges is strengthened from the fact that Section 376(b) of the new Code lays down that where a Court of Session passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding rupees two hundred or of both, there shall be no appeal by a convicted person against such sentence of imprisonment or fine.

66. The expression ''Court of Session'', which occurs in Section 376(b), thus, includes not only a Sessions Judge, but also an Additional or Assistant Sessions Judge. This does not, however, mean, I must hasten to add, that a Sessions Judge stands on the same footing as does an Additional or Assistant Sessions Judge. In fact, Section 10 specifically makes an Assistant Sessions Judge subordinate to the Sessions Judge for such sessions division. Section 10(2) specifically lays down that the Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges. The expression "distribution of business" is very definitive and conveys the meaning the business originates in the Court of Session presided over by the Sessions Judge. Now, since Additional Sessions Judges and Assistant Sessions Judges also exercises jurisdiction over Court of Session, Section 10(2) empowers the Sessions Judge to distribute the business among the Assistant Sessions Judges. No such power has been vested upon Additional Sessions Judges by the Code and hence a necessary inference can be drawn that business does not originate in the Court of Additional Sessions Judge.

67. Though there is no provision making the Additional Sessions Judge subordinate to Sessions Judge, Section 408 of the new Code empowers the Sessions Judge to transfer any case from any criminal Court, in his sessions division, to another criminal Court. Similarly, Section 409 of the new Code empowers the Sessions Judge

to withdraw any case or appeal from, or recall any case or appeal, which he has made over to, Additional or Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him. The only limitation on this power of withdrawal is that a Session Judge''s power to withdraw any case or appeal from Court of the Additional Sessions Judge is possible only when the trial of the case or hearing of the appeal has not commenced.

68. What emerges from the above discussion is that while the Court of Session would necessarily include an Additional or Assistant Sessions Judge, the expression ''Sessions Judge'', under the scheme of the new Code, may not include Additional or Assistant Judge. This becomes all the more clear if one takes into account the provisions of Section 397, which empowers the High Court and Sessions Judge to exercise revisional jurisdiction. This Section (Section 397) reads as follows:

"397. Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation: All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub section and of Section 398.

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

69. In the light of the language used in Section 397, it is clear that had the scheme of the Code not made any provision for exercise of revisional jurisdiction by an Additional Sessions Judge, revisional power would have been exercisable under Section 397 by only the High Court and Sessions Judge and not by Additional or Assistant Sessions Judge.

70. The question, therefore, is as to how does an Additional Sessions Judge exercise revisional jurisdiction?

71. The answer to the above question is found contained in Section 400 of the new Code, which reads as under:

"400. Power of Additional Sessions Judge.

An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge."

72. From a minute reading of Section 400, it becomes clear that unless a Sessions Judge transfers a revision petition, by general or special order, to an Additional Sessions Judge, an Additional Sessions Judge derives no jurisdiction to exercise such a power, for, Section 397 does not use the expression ''Court of Session'', but Sessions Judge. Similarly, in Section 381(2), the Code does not use the expression ''Court of Session'', but Sessions Judge. The same is the case under Section 194 too.

73. As against what have been indicated above, Sections 438 and 439 of the new Code speak of Court of Session. If the expression ''Court of Session'', occurring in Sections 438 and 439, be not read to include an Additional or Assistant Sessions Judge, it would not be possible for an Additional or Assistant Sessions Judge to exercise jurisdiction under Sections 438 and 439.

74. The scheme of the Code, however, shows that ordinarily, it is only the High Court and the Sessions Judge, who can exercise powers under Sections 438 and 439 inasmuch as the overall control of administration, in a given sessions division, rests in the Sessions Judge. Wherever the Code intended that the power can be exercised only by a Sessions Judge, the Code has used the expression "Sessions Judge" and not "Court of Session". An Additional or Assistant Judge can exercise power under Sections 438 and 439 only when an order is made, in this regard, by a Sessions Judge. Such and order can be made over under Section 10(3) of the Code, which reads,

"10. Subordination of Assistant Sessions Judges....(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application."

75. From a careful reading of Section 10(3), it becomes clear that ordinarily, it is the Sessions Judge, who has to hear urgent applications under Sections 438 and 439 of the Code and that it is only in the event of his absence or his inability to act that an Additional or Assistant Sessions Judge may exercise jurisdiction under Section 438 and/or 439, the authority to exercise jurisdiction under Section 438 and 439 can be given to an Additional or even Assistant Sessions Judge not necessarily when the Sessions Judge is absent, but also when he is unable to attend to such application for some other reason. The inability to act, as envisaged in Section 10(3), may be due to pressure of work or for a variety of other reasons; but unless there is a specific order under Section 10(3), it is not possible for even an Additional Sessions Judge to

directly take up an application for pre-arrest/anticipatory bail under Sections 438 of the new Code.

76. What crystallizes from the above discussion is that the expression ''Court of Session'', which occurs in the new Code, is contextual in nature. While, ordinarily, the expression ''Court of Session'' would include not only the Sessions Judge, but also Additional or Assistant Judge, the expression Sessions Judge, unless the context, otherwise, requires, cannot be treated to include an Additional or Assistant Sessions Judge. While the Sessions Judge presides over the sessions-division, an Additional or Assistant Sessions Judge merely exercises jurisdiction in a Court of Session. The overall control of administration, in a given sessions division, as already noticed above, rests in the Sessions Judge. Wherever the Code intended that the power can be exercised only by a Sessions Judge, the Code has used the expression "Sessions Judge" and not "Court of Session".

77. What further emerges from the discussion held above, as a whole, that while an appeal cannot be heard by an Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate unless the same has been made over to him for hearing by the Sessions Judge or has been directed to be heard by him by the High Court, a sessions triable case can be tried by an Additional or Assistant Sessions Judge on being directly committed to any of them by a Magistrate. If such trial is in terms of the order of the Sessions Judge or the High Court under Section 194, there is absolutely no irregularity; if, however, a case is committed to an Additional or Assistant Sessions Judge without any order having been passed, in this regard, by the Sessions Judge or the High Court, then, such committal is an irregularity. Such an irregularity will not be interfered with, in appeal or revision, unless such error or irregularity has occasioned failure of justice.

78. What further becomes clear from a critical analysis of the scheme of the new Code is that a Magistrate shall not, on his own, commit any sessions triable case to an Additional or Assistant Sessions Judge. If a sessions triable case is committed by a Magistrate, on his own, to an Additional or Assistant Sessions Judge, then, such an error must be objected to at the earliest possible opportunity or else, the error may not be made a ground for interference with a finding of guilt or otherwise reached, on the basis of a trial so held, if no failure of justice is shown to have been occasioned by such an error.

79. It may be pointed out that Article 227 of the Constitution of India vests in the High Court a power of superintendence over sub-ordinate Courts and Tribunals. This power of superintendence is both, judicial and administrative. In the case of **Shalini Shyam Shetty v. Rajendra Shankar Patil, reported in (2010) 8 SCC 329**, the Supreme Court, while analysing the scope and ambit of powers under Article 227, held that the object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as that it does not bring justice into any disrepute. The power

of interference, under Article 227 of the Constitution of India, is to be kept to the minimum to ensure that the wheels of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. The relevant observations, appearing in this regard, are reproduced below; 49 (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

80. Because of what have been discussed and pointed out above, we do not find that the Circular, dated 21.09.2015, issued by this Court, on its administrative side, suffers from any legal infirmity and, therefore, even the order, dated 23.09.2015, issued by the learned Sessions Judge, Patna, cannot be faulted at.

81. I, therefore, uphold the Circular, dated 21.09.2015, as well as the order, dated 23.09.2015, aforementioned.

82. In the result and for the reasons discussed above, these public interest litigations fail and shall accordingly stand dismissed.

Navaniti Prasad Singh, J. - I agree.

Chakradhari Sharan Singh, J. - I agree.