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**(1981) 06 CAL CK 0003**

**Calcutta High Court**

**Case No:** None

Debesh Bhattacharya

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** June 4, 1981

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 27, 5
- Penal Code, 1860 (IPC) - Section 302
- WEST BENGAL CHILDREN ACT, 1959 - Section 2

**Citation:** 86 CWN 581

**Hon'ble Judges:** S.N. Sanyal, J; M.K. Mukherjee, J

**Bench:** Division Bench

**Advocate:** Sovanlal Hazra, for the Appellant; A.K. Pal for State, for the Respondent

**Final Decision:** Allowed

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**Judgement**

1. The petitioner was committed to the Court of Sessions, Alipur to stand trial under S. 302 of the Indian Penal Code. Before the trial Judge the petitioner filed an application stating that he was a child within the meaning of S. 2(d) of the West Bengal Children Act, 1960 (hereinafter referred to as the Act) and as such the only court which could try him was that constituted under the Act and not any other court; and the trial before the Court of Sessions was not competent. Relying upon the provisions of S. 5 read with S. 27 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) the learned Judge held that the provisions of the Act stood overruled by S. 27 of the Code and as such the trial of the petitioner before him was competent. Aggrieved by the said order the petitioner moved this Court and obtained the present Rule.

2. To appreciate the contentions of the learned Judge it will be relevant to refer to the provisions of Ss. 5 and 27 of the Code which read as under:

Section 5 - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 27 - Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

3. According to the learned Judge the provision of S. 27 of the Code is specific provision contrary to the provisions of the Act and consequently it is not the special law, viz. the Act which shall govern the trial of the petitioner, but the ordinary law, namely, the Code of Criminal Procedure. The answer to the question raised before us thus boils down to the interpretation of the words "in the absence of a specific provision to the contrary" in S. 5 of the Code.

4. In our considered view S. 27 of the Code is not a specific provision contrary to the Act. On the contrary S. 27 supplements the provision of the Act and it does not supplant. Section 27 in its turn gives jurisdiction to the Court of a Chief Judicial Magistrate and other Courts referred to therein to try the offences not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years. This section does not override the provisions of the Act which expressly empowers the Court constituted under the Act "to try the child" who is alleged to have committed an offence punishable with death or imprisonment for life. By S. 27 of the Code a discretionary power has been given to the Courts mentioned therein and it is for the Courts to decide whether they will exercise the discretion or not; and such discretion is also in respect of offence specified therein. Such being the position in law we must hold that notwithstanding S. 27 of the Code, West Bengal Children Act will apply if the requirements of the said Act are fulfilled so far as the petitioner is concerned. In this view of ours we are fortified by a Division Bench judgment of our Court in the case of Madan Pradhan v. alias Munna v. State of West Bengal reported in 1976(1) CLJ 294 wherein it was held that S. 27 did not in any way affect the provisions of the Act nor did it take away the jurisdiction conferred by the said Act.

5. In the result, the application succeeds and the Rule is made absolute. The impugned order is hereby set aside and the learned Judge is directed to proceed with the application of the petitioner in accordance with law and in the light of the observations made hereinbefore.

6. To expedite the matter, let records be sent down immediately.

S.N. Sanyal, J.

7. I agree.