IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WP NO. 27645(W) OF 2014

DISTRICT CIVIL BAR ASSOCIATION, PURBA MEDINIPUR DISTRICT COURT AND ANOTHER

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the Petitioners:	Mr Bikash Bhattacharyya, Sr Adv., Mr Bhaskar Hutait, Adv.
For the State:	Mr Sadhan Roy Chowdhury, Adv., Mr Ansar Mandal, Adv., Mr Sabir Ahamed, Adv., Mr Supriya Chattapadhyay, Adv., Mr Jahar Lal Dutta, Adv.
For the Respondent Nos. 2 to 4:	Mr Kishore Dutta, Sr Adv., Ms Sumita Shaw, Adv.

Hearing concluded on: December 12, 2014.

BEFORE

SANJIB BANERJEE, Judge
Date: December 17, 2014.

SANJIB BANERJEE, J. : –

In the present proceedings under Article 226 of the Constitution, the petitioners question the propriety of the decision of this High Court pursuant to which the powers exercised by the Sessions Judges in this State have been required to be exclusively exercised in respect of certain matters by the

Additional Sessions Judges stationed at some sub-divisions. The petitioners are associations of practising advocates of Purba Medinipur.

It is necessary first to see the decision of the High Court as reflected in the relevant resolution of the Administrative Committee meeting of May 11, 2011:

> "… 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 statue specifically provides that such applications/suits will be decided by the District Judges as *persona designata*."

The above resolution of the High Court was clarificatory in nature as the original decision of the High Court adopting the Administrative Committee resolution of June 9, 1999 had given rise to several queries.

On September 22, 2011 a notification was published in the official gazette by the State government reflecting the decision of the High Court adopting the Administrative Committee resolution of June 9, 1999. Such notification of September 22, 2011 provided, inter alia, that,

> "… 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 …"

The remainder of the notification as published in the official gazette is not relevant for the present purpose as no argument has been made in respect of matrimonial suits covered thereby.

On September 6, 2014, the District Judge, Purba Medinipur, addressed a letter to the office-bearers of the Bar associations in Tamluk that in terms of the High Court decision and the State government notification published in the official gazette on September 22, 2011, "the matters within the jurisdictions of Contai and Haldia Sub-divisions as covered by those letters of the Hon'ble Court and the Notification of the Govt. of West Bengal are not entertainable in the Sadar Sub-Division as at present the Courts of Additional Dist. & Sessions Judges are functioning in Contai and Haldia Sub-Divisions. …"

The legal issue that is raised by the petitioners is that the decision of the High Court and the notification of the State government issued pursuant thereto are in derogation of the provisions of the Code of Criminal Procedure, 1973, particularly the second proviso to Section 9(3) thereof as applicable in this State. The substance of the petitioners' contention, shorn of the legal argument, is that it is impermissible to allow filing of criminal matters that ought to be before a Court of Session before any Judge other than the Sessions Judge. They suggest that they have no quarrel with Additional Sessions Judges being appointed to share the workload of Sessions Judges, but when the Code mandates the carriage of certain matters before the Sessions Judge presiding over a Court of Session, the filing of such matters before any Additional Sessions Judge stationed in the sub-divisional headquarters would be impermissible as the institution of the matters has only to be before the Sessions Judge, who is generally stationed in the *sadar* or district headquarters.

Curiously, the petitioners agree that upon the receipt of any matter that is required to be filed in the Court of Session, the Sessions Judge may assign it to any Additional Sessions Judge or Assistant Sessions Judge; but they insist that the Additional Sessions Judges or Assistant Sessions Judges would otherwise have no authority to receive such matters directly. In a convoluted way, the argument appears to be that if it has been felt to be expedient in the interests of justice that all matters relating to a particular sub-division that ought to be filed

before the Court of Session should be adjudicated by the Additional Sessions Judge stationed at the sub-divisional headquarters, such Additional Sessions Judge may do so as long as he does it upon the matters, individually or generically, being assigned to him by the Sessions Judge; but the filing of such matters has only to be before the Sessions Judge and not directly before the Additional Sessions Judge.

In support of the legal issue canvassed by the petitioners, they refer to Section 9 of the Code and what they perceive to be the exclusive domain of the Sessions Judge presiding over a Court of Session thereunder. In such context, Section 9 of the Code, including the provisos to sub-section(3) thereof as applicable in this State, needs to be seen:

> "**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.
>
> 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 section 116, 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.
>
> (4) The Sessions Judge 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 division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its 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."

The petitioners suggest that the Code recognises only one Court of Session for every sessions division and for such Court of Session to be presided over by a Judge who is referred to as the Sessions Judge. While the petitioners agree that the jurisdiction of a Sessions Judge to adjudicate matters can be shared with Additional Sessions Judges and Assistant Sessions Judges as recognised in Section 9(3) of the Code, the petitioners seek to make a distinction between the filing or the receipt of a matter and the exercise of jurisdiction over the same. The petitioners assert that if the Code requires any matter to be carried to a Court of Session, then it necessarily implies that the filing of the relevant appeal or application will be before the Sessions Judge, though the Sessions Judge may assign the matter by any special or general order to any Additional Sessions Judge or Assistant Sessions Judge. The main thrust of the petitioners' argument is that notwithstanding the recognition of the authority of the Additional Sessions Judges and Assistant Sessions Judges in the Code, such Additional Sessions Judges and Assistant Sessions Judges only enjoy jurisdiction concurrent with

the Sessions Judge to the extent work is allotted to them by the Sessions Judge; and not to the exclusion of the Sessions Judge. In a roundabout way, the petitioners seek to assert that notwithstanding the notification of September 22, 2011, the Sessions Judge cannot be denuded of his exclusive authority to receive matters that the Code or any other law permit him to receive; but he may delegate the duty of adjudication of such matters to any Additional Sessions Judge or Assistant Sessions Judge while always having the option of adjudicating such matters himself.

In support of such legal argument, the petitioners refer, in particular, to the second proviso of Section 9(3) of the Code as applicable in this State. They perceive that the notification of September 22, 2011 as interpreted by the District Judge, Purba Medinipur, in her letter of September 6, 2014 addressed to the Bar is erroneous and plainly contrary to the second proviso to Section 9(3) of the Code as it amounts to the derogation of the power exercisable by the Sessions Judge under the Code.

The petitioners rely on a Division Bench judgment of this Court reported at (1978) CrLJ 1497 (*The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mansur Ali*). In such reported case, the two legal issues which were formulated by the Court were as to whether the bail granted to the accused by the Sessions Judge was without jurisdiction since the trial had been transferred to an Assistant Sessions Judge who had refused the bail; and, whether in the absence of any specific provision in the Code giving jurisdiction to the Sessions Judge for considering a prayer for bail after it had been rejected by the Assistant Sessions Judge in seisin of the sessions trial, the order impugned was without jurisdiction. Though the distinction between the two questions framed cannot be immediately fathomed, the logic in the decision rendered thereon is appealing and, with respect, inarguably sound. The Division Bench reasoned that since the Code had not equated the position of the Additional Sessions Judge with that of the Sessions Judge in every situation, when Section 439 thereof referred only to

the High Court and the Court of Session, the expression "Court of Session" used therein meant "the Court of Sessions presided over by the Sessions Judge and does not include any Court presided over by either an Additional Sessions Judge or an Assistant Sessions Judge subject, however, to sub-sec. (5) of S.9 of the Code."

The petition is opposed primarily by the State. The State first refers to the judgment in *Mansur Ali* to suggest that it is no longer good law in view of the 1988 amendment to the Code as introduced in this State. The State asserts that since the 1988 amendment to the Code has not been questioned by the petitioners and the first proviso to Section 9(3) of the Code introduced by such amendment deals specifically with the situation that fell for consideration in the 1978 judgment of *Mansur Ali*, there is no case to answer. The State refers to Section 7 of the Code and the authority of the State to alter the limits or the number of sessions divisions and districts under sub-section (2) thereof; and, the authority of the State to divide any district into the sub-divisions and to alter the limits or number of such sub-divisions under sub-section (3) thereof. The State says that the only qualification to the State wielding its authority under sub-sections (2) and (3) of Section 7 of the Code is that it requires consultation with the High Court.

The notification of September 22, 2011 as published in the official gazette on the same day, maintains the State, was as per the suggestion of the High Court as accepted by the State. The State submits that in view of the overarching authority of the State under Section 7 of the Code and the specific mandate to the High Court to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session under Section 9(3) of the Code, the propriety of either the notification or the accurate interpretation thereof by the District Magistrate, Purba Medinipur, cannot be called into question.

Section 6 of the Code specifies four classes of criminal courts to be constituted in every State other than the High Court and courts constituted

under any law. Section 7 of the Code provides for territorial divisions and, loosely speaking, recognises every district to be a sessions division and permits the territorial limits of the sessions divisions to be altered. In addition, Section 7(3) of the Code permits the State government in consultation with the High Court to "divide any district into sub-divisions" and to "alter the limits or the number of such sub-divisions". The word "sub-division" is defined in Section 2*(v)* of the Code to mean a sub-division of a district. Section 7(1) of the Code equates a sessions division with a geographical district in the ordinary case.

What cannot be lost sight of in the context of the present discussion is that the material part of the notification of September 22, 2011 that has been assailed herein provides for Additional District and Sessions Judges located at the sub-divisional headquarters to have the requisite power of accepting the filing of "appeals, applications …" The grievance of the petitioners is that the filing should be exclusively before the Sessions Judge though the hearing of the appeals or applications or the like can be before any Additional Sessions Judge to whom the matter may be assigned or transferred by the Sessions Judge, without the Sessions Judge lacking the authority to hear out the matter himself.

The position in law considered in *Mansur Ali* was as it obtained prior to the 1988 amendment as introduced in this State. The judgment cannot be understood to have said that the authority under Section 439 of the Code in so far as it pertains to a Court of Session can, in no circumstances, be exercised by an Additional Sessions Judge. The decision proceeded on the basis of how Section 9 of the Code stood at the relevant point of time. Indeed, the following sentence in paragraph 10 of the report would indicate that the expression "Court of Session" would include a court presided over by an Additional Sessions Judge or an Assistant Sessions Judge if there is any provision in the Code to such effect:

> "10. … But if there is any provision in the Code the language of which implies without any ambiguity that the Court of Session includes a court presided over by the Additional Sessions Judge or an Assistant Sessions

Judge, it may be read as such in a wider sense to include such courts exercising the jurisdiction of a Court of Session. …"

In the context of Section 439 of the Code, the 1988 amendment to the Code in the State implies without any ambiguity that the expression "Court of Session" in, inter alia, Section 439 of the Code includes a court presided over by the Additional Sessions Judge in a sub-division. The 1988 amendment, and particularly the first proviso to Section 9(3) of the Code, covers not only appeals and applications as referred to in the impugned notification of September 22, 2011 and the letter of September 6, 2014, but also takes within its fold "cases and proceedings in the Criminal Courts in that sub-division. …" The width of the authority vested in Additional Sessions Judges by the first proviso to Section 9(3) of the Code has to be viewed in the light of Section 209*(a)* of the Code also being covered thereby.

Though the validity of the 1988 amendment to the Code as applicable in this State has not been challenged by the petitioners herein, the purpose of such amendment and its effect may be briefly alluded to. In 1988 the State legislature introduced two Bills for amending the Code of Criminal Procedure, 1973 in its application in this State. West Bengal Act XXIV of 1988, by which, inter alia, Section 9 of the Code was amended, received the Presidential assent and was published in the *Calcutta Gazette* on March 14, 1989. The other amending Bill of 1988 culminated in West Bengal Act XXV of 1990 and received the Presidential assent on January 14, 1991. West Bengal Act XXV of 1990 amended Section 438 of the Code in its application in this State, primarily to set a time-limit for the disposal of applications thereunder. If the two amending Bills introduced in the State legislature around the same time are viewed together, it would be evident that by Act XXIV of 1988 the other workload of Sessions Judges in the State was lessened by providing for Additional Sessions Judges in the sub-divisions in a district to exercise complete authority in respect of cases and proceedings pertaining to that sub-division, but such provision did not confer any authority of the Court of Session on Additional Sessions Judges under Section 438 of the

Code. Section 438(1) of the Code, in its application in this State, was substantially amended by Act XXV of 1990 to provide, inter alia, a time- limit for the disposal of applications thereunder by previously having lessened the workload of the Sessions Judges. The second Entry in List III under Schedule VII to the Constitution has placed "Criminal Procedure" in the Concurrent List. Though, apparently, the amending Act XXIV of 1988 may not have introduced any provision of law repugnant to the Code enacted by the Parliament, it seems that Presidential assent thereto was obtained by way of abundant caution in view of Article 254 of the Constitution that permits any provision of law made by a State legislature in respect of a matter enumerated in the Concurrent List to prevail over any provision of an earlier law made by Parliament if the State law is repugnant to the Parliament law.

The argument put forth on behalf of the petitioners in questioning the legality of the impugned notification of September 22, 2011 or the interpretation thereof by the letter of September 6, 2014 issued by the District Judge, Purba Medinipur, does not appeal since the first proviso to Section 9(3) of the Code as applicable in this State has conferred the entire authority of the Sessions Judge on the Additional Sessions Judge heading a sub-division in a district in respect of the matters covered thereby. Further, the second proviso to Section 9(3) of the Code as applicable in this State, on which the primary challenge herein is founded, refers to an Additional Sessions Judge and a Sessions Judge in the same breath, implying a sense of equality of the authority and jurisdiction exercised by the two in the context of Section 9(3) of the Code. This element of equality is not foreign to the Code as elsewhere therein, inter alia, in Section 400 of the Code, the powers of a Sessions Judge under Chapter XXX of the Code have been expressly permitted to be exercised by an Additional Sessions Judge "in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge." Chapter XXX of the Code provides for reference and revision and includes the authority of any Sessions Judge to call for and examine the records of any proceedings before any inferior criminal court

situate within his local jurisdiction for the purpose of satisfying 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. The extent of authority of an Additional Sessions Judge and the position of such office being equated with that of a Sessions Judge may also be gleaned from, inter alia, Section 28(2) of the Code that permits a Sessions Judge or an Additional Sessions Judge to pass any sentence authorised by law, but makes any sentence of death passed by either to be subject to confirmation by the High Court. Section 28 figures in Chapter III of the Code, pertaining to power of courts.

Once it is accepted that the Code recognises, even if in certain circumstances, the extent of authority to be exercised by an Additional Sessions Judge to be equal to that of a Sessions Judge, the necessary corollary that follows is that if there is a general order of the Sessions Judge for certain categories of matters that ought to be heard by the Sessions Judge to be heard by an Additional Sessions Judge, logically, the filing of such matters covered by the general order should also be before the relevant Additional Sessions Judge. Again, if a Sessions Judge by a general order can require certain matters on the basis of territorial considerations to be taken up by one or more Additional Sessions Judges, the High Court that exercises superintendence and control over the district judiciary can call upon a Sessions Judge by a special order, or all Sessions Judges by any general order, to assign matters by a general order to Additional Sessions Judges in sub-divisions based on the principle of territoriality; which, ordinarily, implies the situs of the relevant police station within the geographical territory of the sub-division.

Articles 227 and 235 of the Constitution mandate the exclusive power of superintendence over all courts in the territories in relation to which a High Court exercises jurisdiction and control of a High Court over the courts subordinate to it. The nature of superintendence exercised by a High Court over

all courts throughout the territory in relation to which it exercises jurisdiction under Article 227 of the Constitution and the extent of control of a High Court over courts subordinate to it permit the decision of the High Court reflected in the resolutions of its Administrative Committee of June 9, 1999 and May 11, 2011 as adopted by this High Court. Even though the legality of such resolutions have been questioned by the petitioners herein without reference to the *suprema lex* and the rationale of such decisions has not been assailed, constitutional norms - as opposed to the feudal form of justicing - demand the rationale to also be tested. The drift of the resolutions and the interpretation put forth by the District Judge indicates the pursuit of a public policy of preventing forum-shopping and providing for an element of certainty as to the situs of appeals and applications without leaving room for any ambiguity and consequential abuse. The purpose appears to be wholesome and not arbitrary.

If the petitioners accept that the consequence of the first proviso to Section 9(3) of the Code as applicable in this State is that certain cases and proceedings covered thereby have *per force* an identified and solitary station, it defies logic why appeals and applications pertaining to matters of a particular sub-division should not be confined to the Additional Sessions Judge in that sub-division. Again, if the petitioners accept that upon filing an appeal or an application before a Court of Session presided over by a Sessions Judge, such Sessions Judge may assign, transfer or delegate the appeal or application or the like to one or more Additional Sessions Judges, whether by any general or special order, by virtue of the general order reflected in the District Judge's interpretation of the notification of September 22, 2011 in her letter of September 6, 2014, it cannot be perceived why the entire process pertaining to appeals, applications and the like, including the filing thereof, cannot be required to be before the Additional Sessions Judge at the head of the criminal courts' pyramid in a sub-division of a district.

The larger public policy that the impugned notification and the appropriate interpretation thereof by the District Judge promote is to bring justice closer to

the doorsteps of a litigant within the parameters of territorial jurisdiction as recognised in criminal jurisprudence. Merely because a less-developed country and a less-developed State than what India and West Bengal are today – and the consequent lack of infrastructure at the sub-divisional headquarters – had imposed constraints on the fanning out of courts and an element of centralisation and concentration of activity in the district headquarters, it cannot be said that courts should not be brought closer home to litigants and persons connected with the investigation based on the principles of territorial jurisdiction as envisaged in criminal law.

The challenge fashioned by the petitioners, both to the impugned notification of September 22, 2011 and to the interpretation thereof as reflected in the letter of September 6, 2014 issued by the District Judge, Purba Medinipur, fails. Both the notification and the accurate understanding thereof are in tune with the language and ethos of the Code and the larger constitutional principles to which they must conform. 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.

Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Sanjib Banerjee, J.)