

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 19th OF MAY, 2025

MISC. CRIMINAL CASE NO.1133/2025

**IN REFERENCE VS. MEMO NO.454/2024 BHOPAL DATED
23/11/2024**

Appearance:

**Shri Anil Khare, Senior Advocate with Shri A.J. Mathew,
Advocate appears as *Amicus Curiae*.**

**Shri Deepesh Joshi, Special Public Prosecutor for
National Investigation Agency.**

.....
Reserved on: 01.04.2025

Pronounced on: 19.05.2025

ORDER

It is a reference made by the learned Principal District & Sessions Judge, Bhopal seeking guidance as to which court shall try the S.T.No.187/2024 (State v. Sayed Meer Hussain) which is pending against a juvenile in conflict with law under Sections 120-B, 122, 307, 326, 324 of IPC; Sections 3/4 of the Explosive Substances Act; Sections 150, 151 of Railways Act; Section 4 of Public Property (Prevention) Act; and Sections 16(b), 18, 25, 38 and 39 of Prevention of Unlawful Activities Act, whether it should be tried by the Special Judge under NIA Act or it should be tried by Children's Court.

2. The original case was registered by the National Investigation Agency (for brevity “NIA”) as Special Case No.4/2017 (State v. Atif Mujaffar and others) and is pending before the Special Judge (NIA Act).

3. As per the reference made, the Sessions Trial No.187/2024 arising out of the case registered by NIA after making investigation and filing charge-sheet on 08.08.2017 under various provisions of law, as noted above. A Court i.e. XXIC D & ASJ, Bhopal is notified for the trial of case registered by NIA as per the Law Department’s notification No.1976 dated 08.05.2024 and on the basis of same, it was being tried by the said Court. An application was moved before the Special Court by juvenile in conflict with law, wherefrom it has been observed that on the date of incident, the said juvenile was less than 18 years of age, therefore, case was sent to the Juvenile Justice Board for disposal according to law. It was therefore registered as RCT No.365/2024 and the Principal Magistrate, Juvenile Justice Board, Bhopal has passed an order dated 28.04.2024 with the observation that although the juvenile on the date of incident was only 17 years of age, but he was physically and mentally fit and was competent enough to understand the consequences of the offences committed and with the aforesaid observations, the case was transferred under Section 18(3) of Juvenile Justice (Care and Protection of Children) Act, 2015 (in brevity ‘JJ Act’ or ‘Act, 2015’) to the court constituted under Section 25 of the Commissions for Protection of Child Rights Act, 2005 (for brevity ‘Act, 2005’) and a notification issued by the State Government in that regard declaring the said Court as Children’s Court, but that was not for notified court under NIA Act. As per the said notification, the Court of Session in each Session Division of the State is specified as Children’s

Court for speedy trial of offences against children or of violation of child rights. But, the said Court is not a notified Court under the NIA Act and as such reference has been made so as to ascertain which Court will try the case; whether it is the Court notified under NIA Act or it is the Children's Court notified as per Section 25 of Act, 2005.

4. Shri Deepesh Joshi, Special Public Prosecutor, appeared on behalf of the National Investigation Agency and argued that the case has to be tried by the Court notified under the NIA Act. He submitted that the National Investigation Agency Act, 2008 is a special legislation and under Section 11, the powers are vested with the Central Government to designate the Courts of Session as Special Court in consultation with the Chief Justice of the High Court by way of a notification in the official gazette for the trial of scheduled offences. He further submitted that Section 13 provides for a non-obstante clause whereby it has been provided that notwithstanding anything contained in the Code, every scheduled offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed. He also submitted that the scheduled offences under the NIA Act are serious in nature which involves national security, interest and sovereignty of the State and in order to deal with such serious situation, a special procedure has been laid down under the NIA Act. According to him, the offence involved in the case at hand falls under this category of serious and heinous offence regarding which the trial should be conducted by a Special Court constituted under the NIA Act.

5. Conversely, Shri Anil Khare, learned senior counsel assisted by Shri A.J. Mathew, Advocate, in the capacity of amicus curiae urged that the trial should be conducted by the Children's Court. To reinforce

Shri Khare placed reliance on the decisions in the cases of **National Investigation Agency v. Amritpal Singh 2022 SCC Online Punjab & Haryana 3315** and **National Investigation Agency v. Abid Mushtaq Mir 2024 SCC Online J&K 589**. Shri Khare submitted that as per Section 18(3) of the Act, 2015, where the Board after preliminary assessment under Section 15 passes an order that there is a need for trial of a child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. He further submitted that the jurisdiction has been vested to the Children's Court by virtue of Section 18(3) and no other Court/Special Court can have jurisdiction in this regard. He also submitted that Section 1(4) of the Act, 2015 provides for a non-obstante clause by providing that this Act shall apply to all the matters concerning children in need of care and protection and children in conflict with law including apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and also procedure and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection. The Act, 2015 has come into force w.e.f. 15.01.2016 and Section 1(4) has overriding effect on any other legislation apart from the fact that it is also not only a special legislation but also later in point of time and, therefore, jurisdiction would vest only in the Children's Court and in no other Court. Thus, according to Shri Khare, it is clear that the matter though investigated by NIA and registered the offence, but considering the other circumstances and the fact that one of the accused was juvenile, although treated to be an adult for the purpose of trying the offence and as such Section 18(3) of Act, 2015, it is to be tried by the Children's Court.

6. I have considered the submissions of the learned counsels and also perused the respective provisions of different enactments attracting in the issue involved in this case.

7. Before forming any opinion, it is imperative to quote the provisions of certain sections as under:-

Section 1(4) of Act, 2015

XXX

XXX

XXX

Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including:

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;*
- (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.*

Section 18(3) of Act, 2015

XXX

XXX

XXX

Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 25 of the Commissions for Protection of Child Rights Act, 2005

Children's Courts.-*For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:*

Provided that nothing in this section shall apply if-

- (a) a Court of Session is already specified as a special court; or*
- (b) a special court is already constituted, for such offences under any other law for the time being in force.*

8. Now, this Court is required to consider the scope of Juvenile Justice Act. The legislative action for providing protection to children

had always been very dynamic and progressive. During the period of last three decades, three legislations pertaining to juveniles were enacted by the Parliament in succession. Juvenile Justice Act, 1986 was repealed by the Juvenile Justice Act, 2000 which came into force w.e.f. 01.04.2001 and thereafter, the Juvenile Justice Act, 2000 was repealed by the Juvenile Justice (Care & Protection) Act, 2015 which came into force w.e.f. 15.01.2016. The legislature in its wisdom substituted new comprehensive legislations in order to augment the care, protection and need of the juveniles since the legislations were beneficial legislations apart from being self-contained Codes. A Constitution Bench of Hon'ble Supreme Court in *Partap Singh v. State of Jharkhand [(2005) 3 SCC 551]* dealt with the scope of Juvenile Justice Act, 1986 and 2000. The issue involved was as to whether the date of occurrence will be reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced before the Court/competent authority and whether the Act of 2000 will be applicable in case a proceeding was initiated under Act of 1986 and pending when the Act of 2000 was enforced with effect from 01.04.2001. The preamble as well as statement of objects and reasons were discussed and it was observed that the whole object of the Act is to provide for care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles and that it was a settled law that interpretation of the statute of a beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation. The objects of juvenile justice legislations were discussed and it was observed that the purpose of a juvenile justice legislation is to

provide succour to the children who were being incarcerated along with adults and were subject to various abuses. The Hon'ble Supreme Court observed that Juvenile Justice Act is not only a beneficent legislation but also a remedial one. The term 'Juvenile' must be given a definite connotation. A person cannot be a juvenile for one purpose and an adult for other purpose. The Courts lean strongly against any construction which tends to reduce a statute to a futility. The relevant portion of the aforesaid judgment is reproduced as under:—

*8. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. **It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.***

(emphasis supplied)

*21. As stated hereinabove the whole object of the Acts is to provide for the care, protection, treatment, development and rehabilitation of juveniles. **The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation ie. to give benefit to the juveniles.***

(emphasis supplied)

43. The purpose of the juvenile justice legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. It would be in the fitness of things that appreciation of the very object and purpose of the legislation is seen with a clear understanding which sought to bring relief to juvenile delinquents.

44. The problem of juvenile justice is, no doubt, one of tragic human interest so much so in fact that it is not confined to this country alone but cuts across national boundaries. In 1966 at the Second United Nations Congress on the Prevention of Crime and Treatment of Offenders at London this issue was discussed and several therapeutic recommendations were adopted. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice, the Juvenile Justice Act came into existence in 1986. A review of the working of the then existing Acts both State and parliamentary would indicate that much greater attention was found necessary to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults could not be considered suitable for being applied to juveniles. There is also need for larger involvement of informal

system and community-based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

70. This argument cannot be accepted for more than one reason. **The said Act is not only a beneficent legislation, but also a remedial one.** The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded. In essence, Rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The meaning of the expression “juvenile” used in a statute by reason of its very nature has to be assigned with reference to a definite date. The term “juvenile” must be given a definite connotation. **A person cannot be a juvenile for one purpose and an adult for other purpose.** It was, having regard to the constitutional and statutory scheme, not necessary for Parliament to specifically state that the age of juvenile must be determined as on the date of commission of the offence. The same is inbuilt in the statutory scheme. The statute must be construed having regard to the scheme and the ordinary state of affairs and consequences flowing therefrom. The modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility, that is, whether a child, by virtue of his or her individual discernment and understanding can be held responsible for essentially antisocial behaviour.

(emphasis supplied)

75. The statute, it is well known, must be construed in such a manner so as to make it effective and operative on the principle of *ut res magis valeat quam pereat*. The courts lean strongly against any constructions which tend to reduce a statute to a futility. When two meanings, one making the statute absolutely vague, wholly intractable and absolutely meaningless and the other leading to certainty and a meaningful interpretation, are given, in such an event the latter should be followed. (See *Tinsukhia Electric Supply Co. Ltd. v. State of Assam* (1989) 3 SCC 709, *Andhra Bank v. B. Satyanarayana* (2004) 2 SCC 657 and *Indian Handicrafts Emporium v. Union of India* (2003) 7 SCC 589).

9. The Act, 2015 is therefore more protective and supportive legislation as compared to the earlier Acts. There is a progressive change in the language of the preamble and reference is also made to the Hague Convention in respect of inter-country adoption and other related international instruments. The specific provisions for ‘abandoned child’ have been introduced changing the classification of heinous offence and

new provisions for Children's Court apart from enhancement of punishment for juveniles against the heinous crime has been effected in the new legislation of 2015. Apart from the same, the scope of overriding clause under Section 1(4) has also been enlarged.

10. Now, it is required to see the effect of non-obstante clauses provided under Section 1(4) of the Act, 2015. The said provision has already been reproduced above for the purpose of reference. It provides that the Act will have overriding effect upon any other law for the time being in force and the provisions of this Act shall apply to the matters concerning children in need of care and protection as well as children in conflict with law. The scope of the same has also been stated in Section 1(4) to include apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and also procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection. This provision is somewhat similar kind of provision which was also inserted by way of amendment in the year 2006 w.e.f. 22.08.2006 in the old Act of 2000 but the present provision under the new Act of 2015 is more elaborative and illustrative. The provision can be analyzed by dissecting the same as follows:

- (i) The Act of 2015 shall override **any other law** for the time being in force.*
- (ii) The Act applies to all matters concerning in need of care and protection.*
- (iii) The Act also applies to children in conflict with law.*
- (iv) The areas of operation whereby this Act applies will include apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection.*
- (v) The scope of areas of operation as aforesaid are inclusive in nature and are therefore not exhaustive.*

11. As compared to earlier provision under 2000 Act, the aforesaid areas have now been mentioned in the clause itself. The non-obstante clause in the new Act of 2015 therefore becomes much more clarificatory, illustrative and unambiguous in nature reflecting the intention of legislature.

12. In *Maruti Udyong Ltd. v. Ram Lal (2005) 2 SCC 638* it was held by Hon'ble Supreme Court that it is well settled that when both statutes containing non-obstante clauses are special statutes, then an endeavour should be made to give effect to both of them. In case of conflict, the latter shall prevail. Reference was also made to the earlier judgment of the Supreme Court in *Solidaire India Ltd. v. Fairgrowth Financial services* (Supra).

13. In the light of the aforesaid specific provision contained under Section 1(4) of the Act, 2015, the scope and effect of non-obstante clause needs to be further discussed.

14. A non-obstante clause is normally incorporated in a section at the beginning of a statute which gives an overriding effect over a provision or an Act which is specifically mentioned in the provision itself. In a normal language it would also mean that inspite of the provisions of some other provisions or some other Act, the enactment in which the non-obstante clause has been incorporated will operate and a conflict, if any, gets fully resolved. The language used in the non-obstante clause is of utmost importance. It can provide for overriding effect over other provisions of the Act or any other law for the time being in force and therefore, the language used therein needs to be given effect. A non-obstante clause is always used as a contradistinction to the phrase 'subject to'. Furthermore the effect of a non-obstante clause is

similar to that of 'proviso' or an 'exception' but the aforesaid two expressions are used normally for the purpose of interpreting and giving effect to a particular provision in a particular statute.

15. In the present case, the expression used by the legislature in its wisdom while incorporating a non-obstante clause under Section 1(4) is clear and unambiguous when it provides that it will have an overriding effect upon 'any other law for the time being in force'. Apart from the same, the Act, 2015 also provides for various provisions pertaining to apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law. The inclusive clauses of Section 1(4) would further substantiate the intention of legislature to mean that in the aforesaid areas as well and without any doubt the operation of the present Act of 2015 shall prevail and will have an overriding effect over any other law for the time being in force. Although the description of the aforesaid areas is inclusive in nature and not exhaustive but the intention of legislature speaks for itself. It is a fundamental rule of construction that normally no provision or word should be considered to be either superfluous or redundant and the Courts must always presume that the legislature has inserted every part thereof with a purposeful legislative intention and must be given effect.

16. The Hon'ble Supreme Court in *Sarwan Singh v. Kasturi Lal* [(1977) 1 SCC 750 : AIR 1977 SC 265] observed that the object and purpose of a legislation assumes greater relevance if the language of the law is obscure and ambiguous. When there is a conflict of two or more laws which operate in same field and they contain non-obstante clauses, then they have to be decided in reference to the object and

purpose of the laws under consideration. For resolving such inter se conflicts, one another test may also be applied through a persuasive force of such a test but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one.

17. In *Union of India v. G.M. Kokil* [1984 Supp. SCC 196 : AIR 1984 SC 1022], it was observed by the Hon'ble Supreme Court that it is well-known that a non-obstante clause is a legislative device which is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

18. In *Chandravarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447] the Hon'ble Supreme Court observed that it is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject.

19. In *Yakub Abdul Razak Memon v. The State of Maharashtra, through CBI, Bombay* [(2013) 13 SCC 1], the Hon'ble Supreme Court dealt with the cases pertaining to Bombay bomb blast under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'TADA Act'). The issue with regard to conflict of laws was also considered. One of the appellants in that case was of the age of about 17 years and 3 months on the date of commission of offence and an argument was raised on his behalf that he ought to have been dealt with under the Act, 2000 and the provisions of TADA Act

were not applicable to him. There were two different legislations and both of them contained non-obstante clause. The TADA Act was of the year 1987 but it was repealed in the year 1995, although the incident had taken place in Bombay in the year 1993 which was prior to the repeal of the Act. Section 25 of the TADA Act provided for an overriding clause wherein it was provided that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. The Act, 2000 which was enacted after the incident and after the repeal of the TADA Act did not originally have any non-obstante clause for giving an overriding effect to any other law. However, Act, 2000 was amended w.e.f. 22.08.2006 wherein Section 1(4) was added by way of an amendment which gave an overriding effect to the Act over other statutes. In this way, both the statutes i.e. TADA Act and Act, 2000 contained non-obstante clauses and had an overriding effect upon each other. The Hon'ble Supreme Court referred to two maxims for the purpose of examination of issue which are as follows:

1. Leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws)

2. Generalia specialibus non derogant (a general provision does not derogate from a special one)

20. It was further observed by the Hon'ble Supreme Court that the principle that the later Act would prevail over the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to

be dealt with by the specific provision rather than the later general one. It was further observed that where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein. While referring to another judgment of Supreme Court in ***Employees Provident Fund Commissioner v. Official Liquidator of Esskay Pharmaceuticals Ltd.*** [(2011) 10 SCC 727], it was further observed that the Court had earlier held that the non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. The non-obstante clause must be given effect to, to the extent the legislature intended and not beyond the same. Reference was also made to the declaration of the rights of the child adopted by the United Nations on 20.11.1959 which provides that the child by reason of his physical and mental immaturity needs special safeguards and care including his appropriate legal protection before as well as after birth. Reference was also made to the United Nations adopted the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) dated 29.11.1985 and India is a signatory to the declaration and effectively participated in bringing the declaration into force. The Rules guide the States to protect children's rights and respect their needs during the development of separate and particular system of juvenile justice. It is also in favour of meeting the best interests of the child while conducting any proceedings before any authority. If children are processed through the criminal justice system, it results in the stigma of criminality and this in fact amplifies criminality of the child. The Rules say that depriving a

child/juvenile of his liberty should be used as the last resort and that too, for the shortest period. These Rules direct the juvenile justice system to be fair and humane emphasising the well being of child. It was further observed that the objects and reasons of the Act, 2000 reveal that the Act is in consonance with the provisions under Article 21 read with clause (f) of Article 39 of the Constitution of India which provides that the State shall direct its policy towards securing the children or give opportunities and facilities to develop in a healthy manner and in conditions of freedom, dignity, childhood and youth are protected against exploitation and against moral and material abandonment. It was further observed that there can be no doubt that the JJ Act is beneficial in nature i.e. socially oriented legislation. Para No. 1535 of *Yakub Abdul Razak Memon* (Supra) is reproduced as under:—

*1535. Therefore, there can be no doubt that the JJ Act is **beneficial in nature** i.e. socially oriented legislation. In case the provisions are not complied with, the object of its enactment would be frustrated.*

(emphasis supplied)

21. The first and foremost submission made by Shri Joshi pertaining to Section 11 and 13 of the NIA Act, 2008 which revolves around the issue of jurisdiction of Court. Section 11 of NIA Act, 2008 provides for the power of the Central Government to designate the Court of Sessions as Special Courts which has already been done in the State of Punjab. Section 13 provides for jurisdiction of Special Courts and opens with a non-obstante clause by providing that every scheduled offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed. In the Schedule of the NIA Act, vide entry No. 2, the UAPA Act has been inserted. The present FIR and the charges framed are also under the provisions of

UAPA Act. It is the argument of the learned counsel for the petitioner that in view of the aforesaid specific provisions, whenever an offence pertains to UAPA Act it has to be tried by a Special Court under the NIA Act in view of Section 13 of the Act. However, on the other hand, the argument raised by the learned counsel for the respondent was that by virtue of Section 1(4) of the Act, 2015 the non-obstante clause provided therein has an absolute overriding effect upon any other law for the time being in force which includes the NIA Act, 2008.

22. A perusal of Section 13 of the NIA Act would show that the non-obstante clause provides for overriding effect upon the 'Code' and does not provide any overriding effect over any other law for the time being in force. In other words, the overriding effect is to the limited extent only. The expression 'Code' has also been defined under Section 2(b) of the NIA Act to mean the Criminal Procedure Code, 1973. The language used in Section 13(1) by the legislature in its wisdom is clear and unambiguous. The intention of the legislature was to give the provisions of NIA Act an overriding effect over the Code of Criminal Procedure only. On the other hand, a perusal of Section 1(4) of the JJ Act, 2015 would show that it provides that the Act has an overriding effect upon **any other law for the time being in force**. Furthermore, the operation of overriding effect has also been clarified and illustrated by including apprehension, detention, **prosecution, penalty** or **imprisonment**, rehabilitation and social reintegration of children in conflict with law. The present is a case pertaining to child in conflict with law. The language used by the legislature in its wisdom in Section 1(4) is also clear and unambiguous. Furthermore, while listing the areas of operation of non-obstante clause which are non-exhaustive, a

clarificatory projection has been made so as to avoid any confusion or doubt and to make the provision more apparent and unambiguous. The importance of the areas so provided in the inclusive clause will become more clear when compared with the amended provisions of Section 1(4) of JJ Act, 2000. Both the provisions are reproduced below in a tabulated form.

<i>JJ Act, 2000</i>	<i>JJ Act, 2015</i>
<i>Section 1(4)</i> <i>Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.</i>	<i>Section 1(4)</i> <i>Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-</i> <i>(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;</i> <i>(ii) procedures and decisions or orders relating to rehabilitation, adoption, reintegration, and restoration of child in needs of care and protection.</i>

23. A comparison of both the provisions would show that although the intention of legislature in both the enactments of 2000 and 2015 was the same i.e. to give an overriding effect to the JJ Act over any other law for the time being in force, However, in Section 1(4) of JJ Act, 2015, the scope has been extended even to matters concerning children in need of care and protection which was absent in JJ Act of 2000. The areas of operation of non-obstante clause has also been elaborated and classified. Therefore, it is not only an improvement by way of

clarification but also reflects strong intention of the legislature by inserting Section 1(4) in the JJ Act, 2015 in a more elaborate form. On the other hand, Section 13(1) of the NIA Act does not provide for any overriding effect over the provisions of the JJ Act.

24. Apart from the same, the preamble of the JJ Act, 2015 clearly provides that the Act is to consolidate and amend the law relating to children in need of care and protection by catering to their basic need through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the **adjudication and disposal of matters in the best interest of children** and for their rehabilitation through processes provided and **institutions and bodies established herein under** and for matters connected therewith or incidental thereto.

25. While discussing the juvenile issue, the Hon'ble Supreme Court in *Yakub Abdul Razak Memon* (supra) observed that there is no doubt that JJ Act is beneficial in nature and is socially oriented legislation and in case the provisions are not complied with, the object of its enactment would be frustrated. However, while resolving the conflict between the JJ Act, 2000 and TADA Act, 1987, it was observed that Section 1(4) of JJ Act, 2000 was added w.e.f. 22.08.2006 which gave overriding effect over other statutes. However, the other statutes in that case was TADA Act which was not in existence and was repealed much before coming into force of the amendment of 22.08.2006. Since the overriding effect was provided over other statutes and TADA Act stood repealed much before the same, it could not be said that JJ Act, 2000 will have an overriding effect upon the TADA Act. In the present case, both the NIA Act, 2008 and JJ Act, 2015 are in operation. The later

in point of time is JJ Act which provides for clear cut non-obstante over any other law for the time being in force whereas Section 13 of the NIA Act provides for non-obstante clause giving an overriding effect only upon the Code of Criminal Procedure and therefore, this Court is of the view that the JJ Act, 2015 will have an overriding effect over the NIA Act, 2008.

26. On a mature consideration of the above discourse as well as the legal position, especially considering the effect of Section 1(4) of Act, 2015, it is hereby held that when the FIR is registered under a Scheduled Act prescribed under the NIA Act and a juvenile has been directed to be tried as an adult by the Children's Court, then the **jurisdiction to try the case would vest in Children's Court** and not in the Special Judge under the NIA Act.

27. The reference is answered accordingly.

28. M.Cr.C. stands disposed of.

29. Before parting, I would like to thank Mr. Anil Khare, Senior Advocate, who by the dint of his legal experience and profound knowledge, has assisted this Court in answering the question under reference.

(SANJAY DWIVEDI)
JUDGE