

Before Hon'ble H. S. Bedi, Dr. Sarojnei Saksena & S. C. Malte, JJ.
JANTA SINGH,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Crl. M. No. 9322-M of 1993

September 21, 1995

Narcotic Drugs & Psychotropic Substances Act, 1985 as amended by Act No. 2 of 1989 with effect from 29th May, 1989—Sec. 36-A (1)(b)—Code of Criminal Procedure, 1973—Sec. 167—Grant of remand beyond a period of 15 days—Legality of—Till constitution of special Courts, a Judicial Magistrate can give remand of the accused beyond a period of 15 days under section 167 (2) of the Code as he is empowered to exercise this power under section 36-A of the N.D.P.S. Act—Provisions of Section 37 of the Act relating to grant of bail do not over-ride the provisions of Section 167(2) of the Code—Interpretation of statutes—Precedent—Judicial propriety—Conflicting decisions of Full Benches of other High Courts—It is not appropriate that a Division Bench to comment upon the same—Matter should be decided by Full Bench.

AS PER REFERENCE ORDER DATED 30TH NOVEMBER, 1993

That this controversy should be resolved by a Full Bench of this Court as it would not be appropriate for the Division Bench to comment upon the views taken by the Full Benches of the Kerala and Orissa High Courts.

Held, that interpretation would be such as would advance intentment and thwart the mischief it was enacted to suppress and to keep the path of access to justice through court unobstructed.

(Para 6)

Further held, that when construing statutes enacted in the national interest, we have necessarily to take broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the broad national interest, whose advancement is proposed by the legislation.

(Para 7)

Further held, that in Section 36-A(i)(b) and (c) of the Act, there is a clear mention of section 167(2) of the Code for the exercise of this power. Concededly in the State of Punjab as well as in Haryana and U.T. Chandigarh Administration Special Courts are not constituted under Section 36 of the Act. Thus, if an accused or suspected person of the commission of an offence under the Act is forwarded to a Magistrate for remand under Section 167(2) of the Code as provided in Section 36-A(1)(b) of the Act, the Magistrate

may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15/7 days in the whole. It further provides that where such Magistrate considers "Upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction." Under Section 36A(1)(c) of the Act, the Special Court may exercise, in relation to the person forwarded to it under clause (c) the same power which a Magistrate having jurisdiction to try case, may exercise under Section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section.

(Para 15)

Further held, that a plain interpretation of these provisions is that such Magistrate is empowered to grant remand only upto 15/7 days, as the case may be, and thereafter he has no jurisdiction to grant remand of such an accused. Further remand beyond 15/7 days can only be granted by a special Court. If this interpretation is to be accepted, this will create an anomolous position. It cannot be assumed that legislature in its wisdom has left vacuum at this juncture. Though special provision is made for the constitution of a Special Court under Section 36 of the Act, but till Special Court is constituted, this power to detain an accused in custody is to be exercised by some Court.

(Para 16)

Further held that though in Section 36-A(1)(b) words "from time to time" are not incorporated as they are used in Section 167(2) of the Code, but by giving a harmonious construction to section 36-A(1)(b) these words can be read to have been intended there, because under section 167(2) of the Code the Magistrate is empowered to grant remand from time to time as he thinks fit for a term not exceeding 15 days in the whole till he considers that he has no jurisdiction to try the case or commit it to trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Under Section 36-A(1)(b) also if after giving remand of 15/7 days in the whole the Magistrate considers his further detention unnecessary, he may forward the accused to the Special Court. Thereafter, the Special Court may exercise power under section 167(2) of the Code and take cognizance of the case without it being committed to it. Hence in the absence of the constitution of Special Court, the Magistrate is empowered to grant remand to such persons under section 167(2) of the Code read with Section 36-A(1)(b) till the investigation is completed and the case is committed to the Court of Session.

(Para 17)

Further held, that as Special Courts are not constituted in the State of Punjab, after the initial remand of 15/7 days the accused or suspected person should be forwarded by the concerned Magistrate to the Court of Session, as under Section 36-D the Sessions

Court is empowered to try such offences till such Special Courts are constituted. We apprehend this interpretation cannot be accepted. As we have discussed above, the power to grant remand can be exercised by any authority only when it is specifically conferred upon it by any law.

(Para 18)

Further held, that only the power of trial is given to the Court of Session. If the legislature intended to give the power under Section 36(A)(1)(c) & (d) also to Court of Session, it would have made a reference to section 40-A(1) (c) and (d) also in Section 36-D, as both these provisions were amended added in this Act by Amending Act No. 2 of 1989. Thus, by giving a harmonious construction to these provisions, in our considered view, special power to order custody of a person accused of or suspected of the commission of an offence under the Act is initially given to a Magistrate under section 36-A(1)(b) and thereafter it is given to Special Court under Section 36-A(1)(c) of the Act. This power is not given to the Court of Session under Section 36-D of the Act.

(Para 18)

Further held, that as Special Courts are not constituted under Section 36 of the Act, the Magistrate has power to grant remand of a person accused of or suspected of the commission of an offence under this Act under section 167(2) of the Code. Thus the proviso to section 167(2) of the Code also comes into operation and it becomes evident that the Magistrate has power to grant remand upto 90/60 days to such persons till Special Courts are constituted in the State of Punjab. As soon as the Special Courts are constituted under Section 36 of the Act, the Judicial/Executive Magistrate shall have power to grant remand only for 15/7 days as provided under Section 36-A(1)(b) of the Act and thereafter the accused is to be forwarded to the Special Court under section 36-A(1)(c) of the Act and the Special Court shall have jurisdiction to take cognizance of the offence without the case being committed to it.

(Para 20)

Further held, that till Special Court is constituted a Judicial Magistrate can give remand of the accused beyond a period of 15 days under section 167(2) of the Code as he is empowered to exercise this power under Section 36-A of the Act.

(Para 20)

Further held, that the provisions of Section 37 of the Act relating to grant of bail do not override the provisions of Section 167(2) of the Code.

(Para 22)

P. S. Dhaliwal, Advocate, for the Petitioner.

M. S. Gill, AAG, Punjab, for the Respondent.

JUDGMENT DATED 30TH NOVEMBER, 1993 : PASSED BY
DIVISION BENCH

Jai Singh Sekhon, J. (Oral)

To resolve the controversy between the ratio of the decision of the Full Bench of Kerala High Court in *Berlin Joseph v. State* (1) and the Full Bench of Orissa High Court in *Banka Das and others v. State of Orissa* (2), regarding the provisions of clause (b) of Sub-section (1) of Section 36-A of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") vis-a-vis the provisions of Section 167 of the Code of Criminal Procedure 1973, with regard to the legality of grant of remand beyond the period of fifteen days in all, A. P. Chowdhri, J. had recommended to the Hon'ble Chief Justice for referring the matter to a larger Bench. Under these circumstances, the case has now come up before this Bench.

We consider it expedient, in the interest of justice, that this controversy should be resolved by a Full Bench of this Court as it would not be appropriate for the Division Bench to comment upon the views taken by the Full Benches of the Kerala and Orissa High Courts. Mr. Cheema has also referred to the Full Bench decision of Madhya Pradesh High Court in *Ram Dayal v. Central Narcotic Bureau, Gwalior* (3), wherein similar view, as taken by the above-referred Full Bench of the Orissa High Court in *Banka Das's case* (supra), has been taken.

Under these circumstances, we consider it desirable to request the Hon'ble Chief Justice for constitution of a Full Bench to resolve the above-referred controversy. We propose to frame the following questions for adjudication of the Full Bench :—

- (i) Whether a Judicial Magistrate can give remand of the accused beyond a period of fifteen days in all the indicated in Section 46-A(1)(b) of the Act ? and
- (ii) Whether the provisions of Section 37 of the Act relating to grant of bail override the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 ?

(1) 1992 (2) Crimes 352.

(2) 1993 (2) Recent Criminal Reports 285.

(3) 1993 (1) Recent Criminal Reports 264.

JUDGMENT DATED 21ST NOVEMBER, 1995 : PASSED BY
FULL BENCH

Dr. Mrs. Sarojnei Saksena, J.

(1) The factual matrix of CrI. Misc. No. 9322-M of 1993 is that the petitioner-accused was arrested under section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act) for keeping in his possession 10 Kgs of poppy husk without a requisite licence. He was produced before Judicial Magistrate 1st Class, Mansa, for remand. Initially he was remanded to police custody and later on to judicial custody. His bail application was declined by the Additional Sessions Judge, Bathinda. In the aforesaid CrI. Misc. petition the petitioner's learned counsel contended that under clause (b) of sub-section (1) of section 36-A of the Act the Judicial Magistrate could not grant remand beyond the period exceeding 15 days in the whole. Hence the order of remand granted by the Judicial Magistrate rendered the petitioner's detention illegal and on this count he is entitled to bail. He placed reliance on a Full Bench decision of Kerala High Court in *Berlin Joseph v. State* (4).

(2) The prayer was opposed by the Assistant Advocate-General, Punjab, who contended that a Full Bench of Orissa High Court in *Banka Dass and others v. State of Orissa* (5), has taken a contrary view. There upon the learned Single Judge, considering the direct conflict of opinion with regard to the interpretation of section 36-A (1)(b) of the Act, came to the conclusion that the matter be placed before Hon'ble the Chief Justice for referring it to a larger Bench. Accordingly, the matter was placed before a Division Bench of this Court.

(3) This Division Bench by its order dated November 30/1993/ before which a Full Bench of Madhya Pradesh High Court in *Ram Dayal v. Central Narcotic Bureau, Gwalior* (6), was also referred to, thought it fit that in view of the aforementioned three Full Bench decisions, a Full Bench of this Court be constituted to resolve the above-referred controversy. The Division Bench framed the following questions for adjudication by the Full Bench :—

(4) 1992 (2) Crimes 353.

(5) 1993 (2) R.C.R. 285.

(6) 1993(1) R.C.R. 264.

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- (i) Whether a Judicial Magistrate can give remand of the accused beyond a period of fifteen days in all as indicated in Section 36-A(1)(b) of the Act ? and
- (ii) Whether the provisions of Section 37 of the Act relating to grant of bail override the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 ?
- (4) Thus, this Full Bench was constituted to adjudicate upon the above-referred two questions.

(5) Before grappling with the problems posed before us, it is necessary to look into the legislative history of the Act. From a comprehensive survey of the provisions and the objects of the enactment, it is obvious that this Act was enacted to provide stringent provisions for control and regulation of trafficking of narcotic drugs and psychotropic substances. The legislative intent to make the provisions more stringent and to thwart attempts by the accused to slip through the loopholes is apparent from Act No. 2 of 1989 coming into force with effect from May 29, 1989, which *inter alia* substituted sections 36, 36-A to 36-D and 37 of the Act.

(6) Statutes imposing penalty and punishment are to be strictly construed. To enforce a penalty it must be clear that the case is within the letter and spirit of the statute. However, the language of the Parliament although not to be extended beyond its fair construction is not to be interpreted in so slavishly literal a way as to stultify the manifest purpose of the legislature. The intention of the legislature must be given effect to as expressed in the language of the provisions. Where, however, usual meaning of a language falls short of the whole object of the legislature, a more extended meaning may be given to the words if they are fairly susceptible of it. (See *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal* (7). In other words, interpretation would be such as would advance intentment and thwart the mischief it was enacted to suppress and to keep the path of access to justice through court unobstructed.

(7) Another principle of interpretation of statutes is that when the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the

legislature. In doing so a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases - Per Dening L.J. in *Seaford Court Estates v. Asher* (8). This view was approved by the Supreme Court in *P. K. Uuni v. Nirmala Industries* (9). In view of *M. Pentiah v. Muddala Veeramallappa* (10) and *American Home Products Corporation v. Mac Laboratories Pvt. Ltd.* (11), the principle of interpretation of statutes is that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. In *M/s Girdhari Lal and Sons v. Balbir Nath Mathur* (12), the Apex Court has further clarified this rule of interpretation that plain words of the statute should be interpreted according to their plain meaning. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written words is necessary. When construing statutes enacted in the national interest, we have necessarily to take broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the broad national interest, whose advancement is proposed by the legislation - as per *Life Insurance Corporation of India v. Escorts Limited* (13).

(8) While keeping these principles of interpretations in view and also keeping in mind that considering this gnawing menace of drug trafficking and abuse tending increasingly to destroy the very fibre of our society in all alarming proportion, this Act was enacted and later on amended in 1989 in order to provide more teeth and muscle to the anti-drug measures, we shall deal with the aforesaid questions.

(9) To facilitate a clear understanding of these provisions, it is necessary to advert to the language of the relevant sections, which are as under :—

(8) (1949) 2 ALLER 155.

(9) A.I.R. 1990 S.C. 933.

(10) A.I.R. 1961 S.C. 1107.

(11) A.I.R. 1986 S.C. 137.

(12) A.I.R. 1986 S.C. 1499.

(13) A.I.R. 1986 S.C. 1370.

36. CONSTITUTION OF SPECIAL COURTS.—(1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

36-A. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) All offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government ;

(b) where a person accused of or suspected of the Commission of an offence under this Act is forwarded to a Magistrate under Sub-section (2) or Sub-section (2-A) of the Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate

Provided that where such Magistrate considers :—

(i) When such person is forwarded to him as aforesaid ;
or

(ii) upon or at any time, before the expiry of the period of detention authorised by him

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction ;

- (c) the Special Court may exercise, in relation to the person forwarded to it under Clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section ;
- (d) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial.
- (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.
- (3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to 'Magistrate' in that section included also a reference to a 'Special Court' constituted under Section 36.

36-D. Transitional provisions :

- (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 until a Special Court is constituted under Section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Sessions :

Provided that offences punishable under Sections 26, 27 and 32 may be tried summarily.

- (2) Nothing in sub-section (1) shall be construed to require the transfer to a Special Court of any proceeding in relation to an offence taken cognizance of by a Court of Session under the said sub-section (1) and the same shall be heard and disposed of by the Court of Session.

37. *Offences to be cognizable and non-bailable :*

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) :—

(a) every offence punishable under this Act shall be cognizable ;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless :—

(i) The Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor oppose the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

- (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.

(10) Section 167 of the Code of Criminal Procedure (in Short, the Code) referred to in Section 36-A of the Act is also reproduced below :—

“167. Procedure when investigation cannot be completed in twenty-four hours

- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the Police Station or the Police Officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to

the nearest Judicial Magistrate a copy of the entries in the dairy hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

- (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole ; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction ;

Provided that :

- (a) the Magistrate may authorise the detention of the accused person, otherwise, than in the custody of the Police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding :—
- (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten year ;
- (ii) Sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that chapter."

(11) Further, Section 4(2) of the Code provides that all offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing

with such offences. As per section 5 of the Code, nothing contained in the 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.

(12) In *Berlin Joseph's case* (supra) a Full Bench of the Kerala High Court considered the provisions of sections 32-A, 36-A to 36-D and 37 of the Act and section 167(2) of the Code and it held that section 36 "contains three sub-sections. In the first sub-section, after providing that offences under NDPS Act shall be tried by special Court constituted by the Government, it enables a Magistrate to order detention of the accused forwarded to him under section 167(2) of the Code. Here the same powers as contained in Section 167(2) of the Code are repeated with the only alteration that the court to which the accused is to be forwarded next is the special Court constituted under the NDPS Act." Thereafter it proceeded to hold that Section 37 of the Act does not override Section 167(2) of the Code (which pertains to the second question referred to us).

(13) A Full Bench of Orissa High Court in *Banka Das's case* (Supra) held that when an accused is arrested for an offence under the Act, the Magistrate can remand the accused to Police custody for a maximum period of fifteen days either by a single order of remand or by more than one order. It further held that further detention of accused if warranted has to be necessarily to the judicial custody and not otherwise. For this view, the learned Judges of the Full Bench of Orissa High Court relied on *Chagahti Satyanarayan v. State of Andhra Pradesh* (14). While interpreting section 36-A of the Act, their Lordships further held that the Magistrate can remand the accused to judicial custody from time to time but each time it shall not exceed 15 days, but such remand in judicial custody shall not exceed 60/90 days depending upon nature of the offence. This Full Bench also held that the provisions of section 37 override the provisions of section 167(2) of the Code (which pertains to the second question referred to us for adjudication).

(14) A Full Bench of Delhi High Court in *Rakesh Kumar v. The State* (15), has also considered these provisions and has held that till the special Courts are constituted, the accused or the

(14) A.I.R. 1986 S.C. 2130.

(15) 1994 (2) Recent C.R. 538.

suspected person arrested for commission of the offences under the Act are to be dealt with under the provisions of the Code as they are to be tried by a Court of Session. Under the provisions of the Code a Metropolitan Magistrate has the jurisdiction and power under section 167 (2) to order detention of such accused to judicial custody for 15 days at a time till the challan is filed and the accused are committed to the Court of Session. It further held that as soon as the Special Courts are constituted under section 36-A(1)(b) the Magistrate would have only authority to order detention for 15 days in the whole and thereafter only Special Court shall have power to order detention of such accused or persons in custody by taking resort to provisions of section 167(2) of the Code as contemplated by section 36-A(i)(c) of the Act.

(15) In *Natabar Parida v. State of Orissa* (16), the Apex Court has mandated that the Court will have no power of remand of an accused to any custody unless the power is conferred by law. Thus, the power to grant remand must, therefore, be traced to some provisions of the statute. In section 36-A(i) (b) and (c) of the Act, there is a clear mention of section 167(2) of the Code for the exercise of this power. Concededly in the State of Punjab as well as in Haryana and U.T. Chandigarh Administration, Special Courts are not constituted under section 36 of the Act. Thus, if an accused or suspected person of the commission of an offence under the Act is forwarded to a Magistrate for remand under section 167(2) of the Code as provided in section 36-A(1)(b) of the Act, the Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15/7 days in the whole. It further provides that where such Magistrate considers "Upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction." Under section 36A (1) (c) of the Act, the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try case, may exercise under section 167 of the Code of relation to an accused person in such case who has been forwarded to him under that section.

(16) Petitioner's learned counsel contended that a plain interpretation of these provisions is that such Magistrate is empowered to grant remand only upto 15/7 days, as the case may be, and thereafter he has no jurisdiction to grant remand of such an accused.

Further remand beyond 15/7 days can only be granted by a special Court. If this interpretation is to be accepted, this will create an anomalous position. It cannot be assumed that legislature in its wisdom has left vacuum at this juncture. Though special provision is made for the constitution of a Special Court under section 36 of the Act, but till Special Court is constituted, this power to detain an accused in custody is to be exercised by some Court.

(17) A plain reading of section 36-A (1) (b) and (c) of the Act makes it clear that if Special Courts are constituted in any State, such an accused or suspected person is to be produced before a Magistrate for remand and such Magistrate is empowered to grant remand upto 15/7 days, as the case may be, but if he considers his further remand necessary, then he is empowered to grant further remand but if he considers his further remand unnecessary, such person is to be forwarded to the Special Court. Though in section 36-A (1) (b) words "from time to time" are not incorporated as they are used in section 167 (2) of the Code, but by giving a harmonious construction to section 36-A (1) (b) these words can be read to have been intended there, because under Section 167(2) of the Code the Magistrate is empowered to grant remand from time to time as he thinks fit for a term not exceeding 15 days in the whole till he considers that he has no jurisdiction to try the case or commit it to trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Under Section 36-A(1)(b) also if after giving remand of 15/7 days is the whole the Magistrate considers his further detention unnecessary, he may forward the accused to the Special Court. Thereafter, the Special Court may exercise power under Section 167(2) of the Code and take cognizance of the case without it being committed to it. Hence in the absence of the constitution of Special Court, the Magistrate is empowered to grant remand to such persons under Section 167(2) of the Code read with Section 36-A (1) (b) till the investigation is completed and the case is committed to the Court of Session.

(18) It is further argued by the petitioner's learned counsel that as Special Courts are not constituted in the State of Punjab, after the initial remand of 15/7 days the accused or suspected person should be forwarded by the concerned Magistrate to the Court of Session, as under section 36-D the Sessions Court is empowered to try such offences till such Special Courts are constituted. We apprehend this interpretation cannot be accepted. As we have discussed above, the power to grant remand can be exercised by

any authority only when it is specifically conferred upon it by any law. For a speedy trial of such offences, Special Courts are constituted under section 36 of the Act. Power to detain such accused or suspected persons in custody is given to Special Court constituted under section 36 by section 36-A (1) (c). In this context, the words used in section 36-D are very material, which have been reproduced in the earlier part of this judgment. Only the power of trial is given to the Court of Session. If the legislature intended to give the power under section 36-A (1) (c) & (d) also to Court of Session, it would have made a reference to section 36-A (1) (c) and (d) also in Section 36-D, as both these provisions were amended and added in this Act by Amending Act No. 2 of 1989. Thus, by giving a harmonious construction to these provisions, in our considered view, special power to order custody of a person accused of or suspected of the commission of an offence under the Act is initially given to a Magistrate under Section 36-A (1) (b) and thereafter it is given to Special Court under section 36-A (1) (c) of the Act. This power is not given to the Court of Session under section 36-D of the Act.

(19) Further, the Apex Court has held in *Union of India v. The Misharasi and others* (17), as under :—

“8. Section 36-A makes it clear that a person accused of or suspected of the commission of an offence under the N.D.P.S. Act is to be forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of Section 167 Cr.P.C. and the Special Court constituted under Section 36 of the Act exercise, in relation to the person so forwarded to it, the same power which a Magistrate having jurisdiction may exercise under Section 167 Cr.P.C. in relation to an accused person forwarded to him under that Section. The clear reference to the power of the Magistrate under Section 167 Cr.P.C., particularly sub-section (2) thereof, is an indication that no part of sub-section (2) of Section 167 of the Code is inapplicable in such a case unless there be any specific provision to the contrary in the N.D.P.S. Act. This conclusion is reinforced by some other provisions of the N.D.P.S. Act. Section 36-C says that “save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1937 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings

before a Special Court." This also indicates that the provisions in the Code of Criminal Procedure relating to bail and bonds are applicable to the proceedings before a Special Court under the N.D.P.S. Act "save as otherwise provided in this Act." Section 51 also says that the provisions of the Code of Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act. Except for Section 37 of the N.D.P.S. Act, no other provision of the N.D.P.S. Act is relied on to contend that there is any inconsistent provision in the N.D.P.S. Act to exclude the applicability merely of the proviso to sub-section (2) of Section 167 of the Code is made expressly applicable by Section 36-A of the N.D.P.S. Act."

(20) From this point of view also, as Special Courts are not constituted under section 36 of the Act, the Magistrate has power to grant remand of a person accused of or suspected of the commission of an offence under this Act under section 167(2) of the Code. Thus the proviso to section 167(2) of the Code also comes into operation and it becomes evident that the Magistrate has power to grant remand upto 90/60 days to such persons till Special Courts are constituted in the State of Punjab. As soon as the Special Courts are constituted under section 36 of the Act, the Judicial/Executive Magistrate shall have power to grant remand only for 15/7 days as provided under section 36-A (1) (b) of the Act and thereafter the accused is to be forwarded to the Special Court under section 36-A (1) (c) of the Act and the Special Court shall have jurisdiction to take cognizance of the offence without the case being committed to it. Thus, we answer question No. (i) in these words :—

Till Special Court is constituted a Judicial Magistrate can give remand of the accused beyond a period of 15 days under section 167(2) of the Code as he is empowered to exercise this power under section 36-A of the Act.

(21) So far as the other question is concerned, it is needless to refer to the authorities relied upon before the Division Bench as the Apex Court in *Thamisharasi's* case (supra) has held : —

"13. Accordingly, provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the

Code and imposes limitations on granting of bail in addition to the limitations under the Code of the Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of section 167 Cr.P.C. which operates in a different field relating to the total period of custody of the accused permissible during investigation."

(22) Thus, the answer to question No. (ii) is that the provisions of Section 37 of the Act relating to grant of bail do not override the provisions of Section 167(2) of the Code.

(23) While parting with the judgment, we hope and expect that the States of Punjab and Haryana and Union Territory Chandigarh Administration would constitute Special Courts under section 36 of the Act as soon as it is possible for them to do so. The matter is now remitted to the Single Judge for decision on merits on the bail application. Copy of this judgment be sent to Home Secretaries of these States for information.

R.N.R.

Before Hon'ble S. P. Kurdukar, C. J., G. C. Garg & V. K. Bali, JJ.

SACHIN GAUR,—Petitioner.

versus

PUNJABI UNIVERSITY, PATIALA & ANOTHER,—Respondents.
C.W.P. No. 9979 of 1995

October 12, 1995

Constitution of India, 1950—Art. 226—Sant Longowal Institute of Engineering and Technology—Prospectus-cum-Information Brochure, 1995—Clauses 3.3 & 3.5—Admission to Engineering College—Clause 3.5 providing for selection strictly on merit determined in the Entrance Test—Cut of date is not arbitrary—Petitioner though high in merit in the entrance test has no right to admission if he does not fulfil the eligibility conditions before the prescribed date—Cut of date for admissions is sacrosanct and cannot be changed afterwards otherwise it would result in non-finalisation of admission—Court suggesting that for future in admissions gap between