* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\# **CNR No. DLHC010085422026**
\+ CRL.REF. 1/2026
COURT ON ITS OWN MOTION .....Petitioner
Through: Mr.Jai Sahai Endlaw, Adv. (*Amicus Curiae*) with Ms.Shambhavi Kala, Mr.Ishaan Saraswat and Ms.Rukmini Rajagopal, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent
Through: Mr.Amol Sinha, ASC (Criminal) with Mr.Kshitiz Garg, Adv.
Mr.Rohan Jaitley, CGSC with Mr.Akshay Sharma, Mr.Dev Pratap Shahi, Mr.Varun Pratap Singh and Mr.Yogya Bhatia, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

NAVIN CHAWLA, J.

1. This reference has been registered pursuant to the order dated 24.01.2026 passed by the learned Additional Sessions Judge-06 (POCSO), South East District, Saket Court in SC 741/2025, titled ***State v. Uday Kumar,*** arising out of FIR No. 479/2021, Police Station

Lajpat Nagar, referring the following questions under Section 436 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS') (erstwhile Section 395 of the Code of Criminal Procedure, 1973 [in short, 'Cr.P.C.']) for our consideration:-

> ***"Q.1) Whether Section 86(4) of the JJ Act be read with retrospective effect or with prospective effect.***
> ***Q.2) Whether the General Offences under BNS/IPC, wherein one of the victim is minor shall be considered as Offences against Children as defined under Section 2(b) r/w Section 25 of CPCR and should be tried by the Children's Court or by the Court as specified for the said offence under BNS/IPC?"***

2. The above questions have arisen in view of the amendment of Section 86 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (in short, 'JJ Act, 2015') by the Juvenile Justice Amendment Act No. 23 of 2021 with effect from 01.09.2022. Prior to its amendment, Section 86 of the JJ Act, 2015 read as under:-

> *"**86 Classification of offences and designated court. -***
> *(1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children's Court.*
> *(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.*
> *(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and*

triable by any Magistrate."

3. A reading of the above would show that, depending on the period for which a person found guilty of an offence under the JJ Act, 2015 could be punished, the case was triable either by a Children's Court or by a Magistrate of First Class or by any Magistrate.

4. Post the Amendment Act, Section 86 of the JJ Act, 2015, now reads as under:-

> *"**86. Classification of offences and designated court. -***
> *(1) Where an offence under this Act is punishable with imprisonment for a term of more than seven years, then, such offence shall be cognizable and non-bailable.*
> *(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable.*
> *(3) Where an offence, under this Act is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable and bailable.*
> *(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or the Commission for Protection of Child Rights Act, 2005 or the Protection of Children from Sexual Offences Act, 2012, offences under this Act shall be triable by the Children's Court."*

5. In terms of Section 86(4) of the JJ Act, 2015 (as amended), therefore, all offences under the said Act, irrespective of the period for which the person found guilty of such offence may be ordered to be imprisoned, are now triable exclusively by the Children's Court.

6. Section 2(20) of the JJ Act, 2015 defines the Children's Court to mean a Court established under the Commissions for Protection of

Child Rights Act, 2005 (in short, 'CPCR') or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such Courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act. We reproduce Section 2(20) of the JJ Act, 2015 hereinbelow:-

> *"2.* ***In this Act, unless the context otherwise requires,*** *-*
>
> *xxx*
>
> *(20) "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;"*

7. Children's Court is established under Section 25 of the CPCR Act, which reads as under:-

> ***"25. 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. In exercise of the above power, *inter alia*, a notification bearing F. No. 61(6)/(State Commission)/A D-I/DWCD/2007/10197-223

dated 04.08.2010 was issued by the Government of NCT of Delhi, specifying the Courts of Additional Sessions Judge-01 at each Police District as Children's Court '*for the trial of offences against children or of violation of child right*' for the National Capital Territory of Delhi.

9. The learned Additional Sessions Judge, in the reference order, referring to the judgments of the Supreme Court in ***Hitendra Vishnu Thakur and Others Etc. v. State of Maharashtra and Others***, 1994 SCC (4) 602; ***Keshavan Madhava Menon v. The State of Bombay***, 1951 SCC 16; ***Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Others***, (1953) 1 SCC 299; and ***CIT v. Dhadi Sahu***, 1994 Supp. (1) SCC 257, was of the opinion that if the trial in pending cases instituted before the amendment to Section 86 of the JJ Act, 2015 and pending adjudication before the Court of Judicial Magistrate First Class, are transferred to the Children's Court, the right of first appeal of the accused/State gets adversely affected, as earlier, the first appeal against such an order would have been maintainable before the Court of Sessions; however, if the trial is so transferred, it shall lie only before the High Court. The learned Additional Sessions Judge, therefore, has raised the first question for our opinion as to whether Section 86(4) of the JJ Act, 2015, post its amendment, should be read with retrospective effect so as to be applicable to also all the cases pending before the Court of Magistrate of First Class or only with prospective effect, that is, cases instituted after the amendment.

10. In our opinion, the answer to the above question of law raised by the learned Additional Sessions Judge lies in a well-accepted principle of interpretation of statutes, which is, that a change in the forum of a trial is a procedural matter and, therefore, a statute which brings about a change in the same is presumed to be retrospective in the absence of a contrary intention. The same, however, is subject to an exception where, along with the change of forum, there is also a change in a vested right of appeal or otherwise of a party. In such a case, unless a contrary intention emerges from the Statute, such Statute is deemed to be prospective in nature.

11. In this regard, we shall first refer to the judgment of the Supreme Court in ***Hitendra Vishnu Thakur*** (supra), wherein the Supreme Court summarized the principles governing the retrospective operation of an Amending Act, as under:

> *"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:*
>
> > *(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its*

> *application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*
> *(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*
> *(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.*
> *(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*
> *(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

12. In ***Neena Aneja v. Jai Prakash Associates Ltd.***, (2022) 2 SCC 161, the Supreme Court carried out a detailed study of the issue of the retrospective application of an Amending Act bringing about a change in forum and the precedents applicable thereto, while considering the issue of whether a complaint which was filed and registered under the Consumer Protection Act, 1986 before the new Consumer Protection Act, 2019 came into force has to be entertained under the provisions of the erstwhile legislation. In answering the said issue, the Supreme Court held as under:-

> *"72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity-a clear position of law has emerged: a change in forum lies in the realm*

> *of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in New India Assurance, Maria Cristina, Hitendra Vishnu Thakurs, Ramesh Kumar Soni and Sudhir G. Angur. More recently, this position has been noted in a three-Judge Bench decision of this Court in Manish Kumar v. Union of India. However, there was a deviation by a two-Judge Bench decision of this Court in Dhadi Sahu….."*

13. In ***Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel Pvt. Ltd. and Others***, 2023 SCC OnLine SC 1378, the Supreme Court again considered the above issue and held as under:-

> *"18. We shall now come to the issue of retrospective application and change of forum. As discussed, when a statute is amended on an issue pertaining to a forum for adjudication, it being procedural takes effect retrospectively. A party to a lis does not have any vested right of forum as against action. In the absence of any substantive right being subsumed by a particular forum, one has to give retrospective application."*

14. From the above, it would be evident that where the amendment brings about only a change in the forum for adjudication, it being a procedural matter, such amendment will take effect retrospectively and, therefore, shall apply to pending proceedings.

15. As noted hereinabove, the above principle is, however, subject to an exception where the change of forum is also coupled with a change of right to appeal or otherwise, from a reading of a statute, a contrary intent is found. Such intent was found by the Supreme Court

in ***Dhadi Sahu*** (supra), wherein, while penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961, on being referred to the Inspecting Assistant Commissioner under Section 274(2), were pending, an amendment to Section 274(2) of the Act was made with effect from 01.04.1971, wherein it was provided that where the sum exceeds Rs. 25,000/-, such reference shall be made to the Inspecting Assistant Commissioner. The Court, in answering whether the said provisions would have retrospective effect, observed as under:-

> *"**20.** It will be noticed that the amending Act did not make any provision that the references validly pending before the Inspecting Assistant Commissioner shall be returned without passing any final order if the amount of income in respect of which the particulars have been concealed did not exceed Rs 25,000. This supports the inference that in pending references the Inspecting Assistant Commissioner continued to have jurisdiction to impose penalty. The previous operation of Section 274(2) as it stood before April 1, 1971, and anything done thereunder continued to have effect under Section 6(b) of the General Clauses Act, 1897, enabling the Inspecting Assistant Commissioner to pass orders imposing penalty in pending references. In our opinion, therefore, what is material to be seen is as to when the references were initiated. If the reference was made before April 1, 1971, it would be governed by Section 274(2) as it stood before that date and Inspecting Assistant Commissioner would have jurisdiction to pass the order of penalty.*
>
> ***21.** It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested*

> *right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums.*
>
> *xxxxxx*
>
> ***26.*** *Surely the amending Act does not show that the pending proceedings before the court on reference abate.*
>
> ***27.*** *We are thus of the considered view that the advisory opinion given by the High Court to the question referred to it was wrong and the answer should be in favour of the appellant and it is held that the Inspecting Assistant Commissioner to whom the case was referred prior to April 1, 1971 had jurisdiction to impose the penalty. The view expressed by the Allahabad High Court in CIT v. Om Sons and the Karnataka High Court in CIT v. M.Y. Chandragi1o does not, therefore, lay down the correct law."*

16. A reading of the above would, however, show that the question before the Supreme Court was more about whether the proceedings which had been initiated prior to the amendment would abate because of the amendment. The Supreme Court answered the question in the negative. The judgment in ***Dhadi Sahu*** (supra) has also been doubted in ***Neena Aneja*** (supra), by observing as under:-

> *"72…..The decision in Dhadi Sahu propounded a position that:*
>
> > *"21. ... no litigant has any vested right in the matter of procedural law but where the question is of change of forum*

> *it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal." (emphasis supplied)*
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> *In taking this view, the two-Judge Bench did not consider binding decisions. Dhadi Sahul failed to consider that the saving of pending proceedings in Mohd. Idris and Manujendra Dutt was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed Dhadi Sahu, to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute."*

17. As noted hereinabove, the above principle of a change of forum being only procedural in nature and, therefore, having a retrospective effect, is also subject to an exception where not only the forum is changed, but also the right to appeal is curtailed, in which case, unless a contrary intention appears, the amendment would be prospective. In this regard, we may only refer to the judgments of the Supreme Court in ***Himachal Pradesh State Electricity Regulatory Commission and***

Another v. Himachal Pradesh State Electricity Board, (2014) 5 SCC 219; ***Videocon International Limited v. Securities and Exchange Board of India***, (2015) 4 SCC 33; and ***ECGC Limited v. Mokul Shriram EPC JV***, (2022) 6 SCC 704.

18. In ***Hoosein Kasam Dada (India) Limited*** (supra), the Supreme Court held that the amendment to Section 22(1) of the C.P. and Berar Sales Tax Act, 1947, imposing a restriction on the assessee's right of appeal by requiring the assessee to deposit the entire assessed tax as a condition precedent to the admission of his appeal was not purely procedural and, therefore, not retrospective.

19. In the present case, the learned Additional Sessions Judge was of the opinion that, by the change of forum from the Magistrate of the First Class to the Children's Court, the forum of right to appeal shall also be changed. While this may be true, however, in terms of Section 101(5) of the JJ Act, 2015, read with Section 415 of the BNSS/ Section 374 of the Cr.P.C., there is no curtailment of the right to appeal for the accused. It is again only the forum that changes and, instead of the appeal lying before the Court of Sessions, it would now lie before the High Court.

20. The learned Additional Sessions Judge had also referred to the right of appeal of the State. Before the amendment, an offence under the JJ Act, 2015 punishable with imprisonment of three years and above but not more than seven years, was stated to be cognizable and non-bailable, and was triable by a Magistrate of First Class. If the accused was acquitted in such a case, the State could file an appeal before the Court of Session under Section 419(1)(a) of the BNSS/

Section 378 of the Cr.P.C. without seeking leave. Now that the trial is before the Children's Court, the appeal of the State will lie before this Court under Section 419(1)(b) of the BNSS, with the leave of this Court as mandated by Section 419(3) of the BNSS. We do not find the above reason sufficient to disregard the intent of the legislature to mandate that all offences under the JJ Act, 2015 must be tried by a Special Court that is a Children's Court. The intent of the legislature is gathered from a bare literal reading of the amended Section 86(4) of the JJ Act, 2015, which provides that notwithstanding anything contained in *inter-alia* the Cr.P.C., offences under the JJ Act, 2015 shall be triable by the Children's Court.

21. In this regard, we may make useful reference to the judgment of the Supreme Court in ***Ramesh Kumar Soni v. State of MP***, (2013) 14 SCC 696, wherein, again, due to an amendment in the First Schedule of the Code of Criminal Procedure, 1973, by the Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007, offences punishable under Sections 467, 468 and 471 of the Indian Penal Code were made triable only by the Court of Sessions. The Supreme Court held the same to be retrospective in nature, by observing that any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. It was held that the appellant therein could not claim a vested right to the forum of his trial, as no such right is recognised.

22. The view we have taken is also the view of the Kerala High Court in ***Vaheeda v. State of Kerala***, 2024 SCC OnLine Ker 5425 and in ***Mini Mathew v. State of Kerala,*** 2024 SCC OnLine Ker 6868.

23. In view of the above, we answer Question No. 1 by holding that Section 86(4) of the JJ Act, 2015 has a retrospective effect, meaning thereby, that even the trials which are pending before the Judicial Magistrate of the First Class under the unamended Act, shall be transferred to the Children's Court by virtue of Section 86(4) of the JJ Act, 2015, post its amendment.

24. Now, coming to the second question of whether general offences under the Bharatiya Nyaya Sanhita, 2023/Indian Penal Code, 1860 (in short, 'BNS' and 'IPC'), wherein one of the victims is a minor, shall be considered as '*offences against children*' as defined under Section 2(b) read with Section 25 of the CPCR and should be tried by the Children's Court, our answer is to the negative.

25. Section 86(4) of the JJ Act, 2015 is applicable only to '*offences under this Act*'. Therefore, it is only for offences under the JJ Act, 2015, that the trial would now be conducted only by the Children's Court. For general offences, even though one of the victims is a minor, there is no mandate in Section 86(4) of the JJ Act, 2015, to transfer such trials to the Children's Court.

26. Section 25 of the CPCR also does not create an exclusive forum to try offences against children or for violation of child rights. In fact, the CPCR does not even define "offences against children" or "violation of child rights". The jurisdiction of the Courts to try the

offences flows from the Cr.P.C. or the special Acts like the Protection of Children from Sexual Offences Act, 2012 or even the JJ Act, 2015. There is no provision in the CPCR which makes the forum of Children's Court the exclusive forum, notwithstanding what is contained in the other Acts/Statutes. A similar view has been taken by the Madhya Pradesh High Court in ***Presiding Officer, Children's Court and Sessions Judge, East-Nimar Khandwa v. Vinod S/o Kishanlal Gawli***, 2012 SCC OnLine MP 6106, which observed as under:-

> *"**7.** Questions No. (2), (3) & (4) require analogous consideration as the matters included therein overlap each other. Primary question before us would be whether all the offences defined under any Penal Law, if committed in relation to a child, would amount to offence against the child and whether all the rights of a child described in Convention on the rights of Child or National Charter for Children, 2003 would be cognizable and triable by the Court of Session specified under the Act? Apparently if it is so, it would create chaos and also result in flooding of the Sessions Court with all such types of cases which are not exclusively triable by it in which a child alone or with other adult person or persons is victim. For example, if a child is dashed by a scooter and a case under section 279 I.P.C. is registered on his report, should it be sent to Sessions Court for trial merely because the victim is a child. In our view, it would be a preposterous situation.*
>
> *xxxxxx*
>
> ***17**. The Act in question does not define offences against the children, therefore, it can be assumed that if any offence under the Penal Code or any other law is committed against or in relation to child, it would be offence against the child, but there may be myriads of criminal*

> *cases in which a child is affected. Would it not lead to absurdity if all those cases are sent to Sessions Court for trial. In our opinion, that cannot be the intention of Legislature. Only those cases of serious nature in which Government or the authority concerned proceeds for prosecution on the recommendation of Commission can be tried by the specified Sessions Court. Since the normal procedure provided under the Code of Criminal Procedure has not been excluded by the Act, all other cases affecting a child shall proceed in accordance with the procedure provided in the Code."*

27. In view of the above, we answer Question No. 2 by holding that general offences under the BNS/IPC, even where one of the victims is a minor, unless otherwise provided by any other Statute, is not exclusively triable only by a Children's Court established under Section 25 of the CPCR.

28. In view of the above, our specific answers to the questions raised are as under:-

Q.1) ***Whether Section 86(4) of the JJ Act be read with retrospective effect or with prospective effect?***

Ans. Section 86(4) of the JJ Act, 2015 has a retrospective effect, meaning thereby, that even the trials which are pending before the Judicial Magistrate of the First Class under the unamended Act, shall be transferred to the Children's Court by virtue of Section 86(4) of the JJ Act, 2015, post its amendment.

Q.2) ***Whether the General Offences under BNS/IPC, wherein one of the victim is minor shall be considered as Offences against Children as defined under Section 2(b) r/w***

Section 25 of CPCR and should be tried by the Children's Court or by the Court as specified for the said offence under BNS/IPC?

Ans. The offences under the BNS/IPC, even where one of the victims is a minor, unless otherwise provided by any other Statute, is not exclusively triable only by a Children's Court established under Section 25 of the CPCR.

29. We must also note that the view taken by us is in tune with the one canvassed by the learned counsels for the Union of India as well as the Government of NCT of Delhi.

30. The reference is disposed of in the above terms.

31. Before we end, we must express our gratitude to Mr. Jai Sahai Endlaw, Advocate, appointed as the learned *Amicus Curiae* by us, for rendering assistance in answering the above questions.

32. Let a copy of this judgment be communicated to the Reference Court for further proceedings in the matters pending before it.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

NOVEMBER 23, 2026/*rv/hn*