2024 INSC 447

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2668 OF 2024
(Arising out of SLP (Crl.) No. 9052 of 2021)

NATIONAL INVESTIGATION AGENCY
NEW DELHI … APPELLANT(S)

VERSUS

OWAIS AMIN @ CHERRY & ORS. … RESPONDENT(S)

J U D G M E N T

M. M. Sundresh, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by the Division Bench of the High Court of Jammu & Kashmir at Jammu in Criminal Appeal (D) No.11/2020 dated 27.04.2021 by which the judgment rendered by the Special Judge, National Investigation Agency (NIA) (3rd Additional Sessions Judge) Jammu, has been confirmed in part, while remitting the issue pertaining to the charges framed under Sections 306 and 411 of the Jammu and Kashmir State Ranbir Penal Code SVT., 1989 (hereinafter referred to as "**RPC, 1989**") along with Section 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "**UAPA, 1967**") for taking cognizance afresh.

3. Heard Mr. S.V. Raju, learned Additional Solicitor General appearing for the appellant, and Mr. D. Mahesh Babu, learned counsel appearing for the respondents. We have also perused the written submissions placed on record by the respondents.

BRIEF FACTS

4. A case was registered against the respondents in Case Crime No. 39/2019 under Sections 307, 120-B, 121, 121-A and 124-A of RPC, 1989, Sections 4 and 5 of the Explosive Substances Act, 1908, and Sections 15, 16, 18 and 20 of the UAPA, 1967 by the jurisdictional police.

5. The said case was re-registered by the appellant as RC-03/2019/NIA/JMU on 15.04.2019, subsequent to the order dated 12.04.2019, passed by the Ministry of Home Affairs (MHA), Government of India. A complaint dated 20.09.2019 was conveyed by the District Magistrate, Ramban by way of a communication to the NIA Court in tune with Sections 196 and 196-A of the Code of Criminal Procedure SVT., 1989 (hereinafter referred to as "**CrPC, 1989**"). Pursuant to the said complaint dated 20.09.2019, investigation was duly completed by the appellant and a chargesheet was filed on 25.09.2019.

6. Accordingly, the respondents were charge-sheeted for the offences under Sections 306, 309, 307, 411, 120-B, 121, 121-A and 122 of RPC, 1989, Sections 16, 18, 20, 23, 38 and 39 of UAPA, 1967, Sections 3 and 4 of Explosive Substances Act, 1908 and Section 4 of the Jammu & Kashmir

Public Property (Prevention of Damage) Act, 1985, for making an attempt to ambush and ram the convoy of Central Reserve Police Force (CRPF) personnel by a Santro car laden with explosives. Before their attempt could succeed, a blast occurred resulting in the respondents fleeing from the place of occurrence.

7. While taking cognizance, the Special Judge, NIA entertained the arguments of the respondents. Accordingly, he held that the complaint, as conveyed by the District Magistrate on 20.09.2019, was not in the prescribed form, and therefore does not satisfy the mandate as contemplated under Section 4(1)(e) of CrPC, 1989.

8. After holding so, the Special Judge, NIA proceeded to conclude that no cognizance can be taken for the offences charged under Sections 121, 121-A and 122 of the RPC, 1989 as the procedure contemplated under Section 196-B of CrPC, 1989 has not been followed. Furthermore, cognizance was also not taken for the offence committed under Section 120-B of RPC, 1989 for the reason that neither was there any authorization, nor was there any empowerment as required under Section 196-A of CrPC, 1989. Resultantly, cognizance was taken for the remaining offences.

9. Aggrieved by the decision of the Special Judge, NIA, both the appellant and the respondents filed their respective appeals. The Division Bench of the High Court of Jammu and Kashmir was pleased to hold that the

Special Judge, NIA was wrong on two counts, namely, that the complaint made was in accordance with Section 4(1)(e) of CrPC, 1989, and in view of the discretion available under Section 196-B of CrPC, 1989, there is no question of undertaking any mandatory preliminary investigation.

10. The High Court went on to uphold the finding of the Special Judge, NIA on the question of authorization or empowerment as required under Section 196-A of CrPC, 1989, after satisfying itself with the answer given by the officer concerned, who was physically present before it.

11. Incidentally, for the remaining offences for which cognizance was taken, the High Court remitted the case to the Special Judge, NIA for its satisfaction before deciding to take cognizance for the offences punishable under Sections 306 and 411 of RPC, 1989 and Section 39 of UAPA, 1967. Insofar as this issue is concerned, due exercise has already been undertaken by the Special Judge, NIA and therefore, it is academic in nature. In fact, the Special Judge, NIA has taken cognizance for the offences punishable under Sections 121, 121-A and 122 of RPC, 1989, along with Sections 306 and 411 of RPC, 1989, and under Section 39 of UAPA, 1967. Thus, we are not inclined to go into those offences for which the trial is pending at an advanced stage.

12. This leaves us with the only question to be decided in the appeal, which is on the applicability of Section 196-A of CrPC, 1989 vis-à-vis the

provisions and mandate contained in the Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC, 1973**").

13. For the sake of convenience, we have extracted the relevant provisions contained in CrPC, 1989 and the Code of Criminal Procedure, 1898 (hereinafter referred to as "**CrPC, 1898**"):

Section 4 of the CrPC, 1989

> **"4. Definitions**. — (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context: —
>
> xxx xxx xxx
>
> (e) **"Complaint". — "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence but it does not include the report of a police-officer"**
>
> (emphasis supplied)

Section 196 of the CrPC, 1989

> **"196. Prosecution for offences against the State**.—No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code except section 127, and section 171-F, so far as it relates to the offence of personation, or punishable under section 108-A, or section 153-A, or section 294-A, or section 295-A or section 505 of the Ranbir Penal Code, **unless upon complaint made by order of, or under authority from the Government or District Magistrate or such other officer as may be empowered by the Government in this behalf."**
>
> (emphasis supplied)

Section 196-A of the CrPC, 1989

> **"196-A. Prosecution for certain classes of criminal conspiracy**.
> No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120-B of the Ranbir Penal Code, —

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence, to which the provisions of section 196 apply, unless upon complaint made by order of, or under authority from the Government or some officer empowered by the Government in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, life imprisonment or rigorous imprisonment for a term of two years or upwards, unless the Government, or District Magistrate empowered in this behalf by the Government has, by order in writing, consented to the initiation of the proceeding

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply, no such consent shall be necessary."

(emphasis supplied)

Section 196A of the CrPC, 1898

"**Section 196A. Prosecution for certain classes of criminal conspiracy**.—No Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code,

(1) **in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of Section 196 apply, unless upon complaint made by order or under authority from the State Government or some officer empowered by the State Government in this behalf**, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal consipracy is one to which the provisions of sub-section (4) of Section 195 apply no such consent shall be necessary."

(emphasis supplied)

14. Section 4(1)(e) of CrPC, 1989 defines a complaint. Such a complaint includes an allegation made either orally or in writing. Certainly, there is no prescribed format for making a complaint, as even an oral allegation constitutes a complaint.

15. As per Section 196 of CrPC, 1989 which deals with the offences committed against the State, a jurisdictional court shall take cognizance only upon a complaint made by the order of, or under the authority from the Government, or a District Magistrate, or such other officer as empowered by the Government for the aforesaid purpose. Thus, Section 196 of CrPC, 1989 forecloses any other methodology than the one provided thereunder. The compliance is mandatory, failing which a Court cannot take cognizance under Section 196 of CrPC, 1989.

16. Section 196-A of CrPC, 1989 only deals with specified classes of criminal conspiracy for the purpose of prosecution. Section 120-B of RPC, 1989 deals with an offence pertaining to conspiracy, which is *pari materia* to Section 120B of the Indian Penal Code, 1860. Sub-section (1) of Section 196-A of CrPC, 1989 speaks of the object of the conspiracy *qua* an illegal act other than an offence, a legal act by illegal means, or an offence to which Section 196 of CrPC, 1989 applies. For taking cognizance of such an offence, a complaint can only be made either by an order of the Government, or under its authority, or by an officer empowered by it. In

the case of Section 196-A of CrPC, 1989, cognizance of a complaint can be taken by a Court only after satisfying itself of the due compliance of sub-section (1) of Section 196-A of CrPC, 1989 with respect to competence of the authority.

17. Though Sections 196 and 196-A of CrPC, 1989 seem to be similar insofar as the authority competent to convey a complaint is concerned, under Section 196 of CrPC, 1989, a District Magistrate can lodge it by himself, whereas, the same provision is not available under Section 196-A of CrPC, 1989. We may also note that Section 196-A of CrPC, 1989 is *pari materia* to Section 196A of CrPC, 1898.

THE JAMMU AND KASHMIR REORGANISATION ACT, 2019

18. We place reliance on the following provisions of the Jammu & Kashmir Reorganisation Act, 2019 (hereinafter referred to as "**the Act, 2019**") which are extracted below:

Section 95 of the Act, 2019

> **"95. Territorial extent of laws** - (1) **All Central laws in Table 1 of the Fifth Schedule to this Act, on and from the appointed day, shall apply in the manner as provided therein, to the Union Territory of Jammu and Kashmir and Union Territory of Ladakh**.
>
> (2) All other laws in Fifth Schedule, **applicable to existing State of Jammu and Kashmir immediately before the appointed day, shall apply in the manner as provided therein, to the Union Territory of Jammu and Kashmir and Union Territory of Ladakh**."
>
> (emphasis supplied)

Fifth Schedule, Table 1 of the Act, 2019

"THE FIFTH SCHEDULE

(*See* Sections 95 and 96)

TABLE 1

CENTRAL LAWS MADE APPLICABLE TO THE UNION TERRITORY OF JAMMU AND KASHMIR; AND UNION TERRITORY OF LADAKH

S. No.	Name of the Act		Section/Amendments
1.	The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
2.	The Administrative Tribunal Act, 1985.		clause (*b*) of sub-section (2) of section 1 shall be omitted.
3.	The Anand Marriage Act, 1909.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
4.	The Arbitration and Conciliation Act, 1996.		Proviso to sub-section (2) of section 1 shall be omitted.
5.	The Prohibition of *Benami* Property Transactions Act, 1988.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
6.	The Charitable Endowment Act, 1890.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
7.	The Chit Funds Act, 1982.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
8.	The Code of Civil Procedure, 1908.		Clause (*a*) of sub-section (3) of section 1 shall be omitted.
9.	**The Code of Criminal Procedure, 1973.**		**In sub-section (2) of section 1, words, "except the State of Jammu and**

			Kashmir" shall be omitted."

(emphasis supplied)

Fifth Schedule, Table 3 of the Act, 2019

TABLE 3
STATE LAWS INCLUDING GOVERNOR'S ACTS WHICH ARE REPEALED IN UNION TERRITORY OF JAMMU AND KASHMIR; AND UNION TERRITORY OF LADAKH

S. No.	Name of the Act	Act/Ordinance No.
1.	The Jammu and Kashmir Accountability Commission Act, 2002.	XXXVIII of 2002
2.	The Jammu and Kashmir Advocates Welfare Fund Act, 1997.	XXVI of 1997
3.	The Jammu and Kashmir Agricultural Income Tax Act, 1962.	XXI of 1962
4.	The Jammu and Kashmir State Agricultural Produce Marketing Regulation Act, 1997.	XXXVI of 1997
5.	The Jammu and Kashmir Anand Marriage Act, 1954.	IX of 2011
6.	The Jammu and Kashmir Animal Diseases (Control) Act, 1949.	XV of 2006
7.	The Jammu and Kashmir Apartment Ownership Act, 1989.	I of 1989
8.	The Jammu and Kashmir Arbitration and Conciliation Act, 1997.	XXXV of 1997
9.	The Jammu and Kashmir Arya Samajist Marriages (Validation) Act, 1942.	III of Svt. 1999
10.	The Jammu and Kashmir Ayurvedic and Unani Practitioners Act, 1959.	XXVI of 1959
11.	The Jammu and Kashmir Banker's Books Evidence Act, 1920.	VI of 1977
12.	The Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010.	V of 2010
13.	The Jammu and Kashmir Boilers Act, Samvat, 1991.	IV of Svt. 1991
14.	Buddhists Polyandrous Marriages Prohibition Act, 1941.	II of 1998
15.	The Jammu and Kashmir Cattle Trespass Act, 1920.	VII of 1977
16.	The Jammu and Kashmir Charitable Endowments Act, 1989.	XIV of 1989
17.	The Jammu and Kashmir Chit Funds Act, 2016.	XI of 2016

18.	The Jammu and Kashmir Christian Marriage and Divorce Act, 1957.	III of 1957
19.	The Jammu and Kashmir Cinematograph Act, 1933.	XXIV of 1989
20.	Code of Civil Procedure, Samvat 1977.	X of Svt. 1977
21.	**Code of Criminal Procedure, Samvat 1989.**	**XXIII of Svt. 1989**

(emphasis supplied)

19. The Act, 2019 came into effect from 31.10.2019, which was the appointed day as per Notification No. S.O. 2889(E) dated 09.08.2019. Section 95 of the Act, 2019 speaks of the application of the Central Laws to the Union Territory of the Jammu & Kashmir and Union Territory of Ladakh. The aforesaid notification provides a date of application i.e., 31.10.2019, for the implementation of the Fifth Schedule of the Act, 2019.

20. A perusal of Table 1 and Table 3 of the Fifth Schedule would clearly show that CrPC, 1973 would govern the field only from the appointed day and consequently the CrPC, 1989 stands repealed. To reiterate, it would come into effect only from the appointed day, and therefore has got no retrospective application. To make this position clear, the CrPC, 1973 shall be pressed into service from 31.10.2019 onwards, and thus certainly not before the appointed day.

THE 2019 ACT VIS-À-VIS THE JAMMU AND KASHMIR REORGANISATION (REMOVAL OF DIFFICULTIES) ORDER, 2019

21. We place reliance on Section 103 of the Act, 2019 and Para 2(13) of the Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019 (hereinafter referred to as "**the Order, 2019**") which are extracted below:

Section 103 of the Act, 2019

> **"103. Power to remove difficulties. — (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty:**
> Provided that no such order shall be made after the expiry of a period of five years from the appointed day.
> (2) Every order made under this section shall be laid before each House of Parliament."
>
> (emphasis supplied)

Para 2(13) of the Order, 2019

> **"2. Removal of difficulties**. —The difficulties arising in giving effect to the provisions of the principal Act have been removed in the following manner, namely—
>
> xxx xxx xxx
>
> **(13) The Acts repealed in the manner provided in Table 3 of the Fifth Schedule, shall not affect—**
>
> **(*a*) the previous operation of any law so repealed or anything duly done or suffered there under;**
> **(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed;**
> **(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or**
> **(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,**
>
> **and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed."**
>
> (emphasis supplied)

22. Section 103 of the Act, 2019 confers power upon the President of India to remove any difficulty that might arise in giving effect to the provisions of the Act, 2019. It has been conferred, so as to facilitate the application of new laws, which replaced the then existing ones.

23. In exercise of the powers conferred under Section 103 of the Act, 2019, the Order, 2019 was promulgated on 30.10.2019, with the appointed day being 31.10.2019. It was accordingly introduced after completion of the procedure contemplated under Section 103 of the Act, 2019.

24. Para 2(13) of the Order, 2019 concerns itself with the circumstances under which the earlier laws would not be affected. It does not merely deal with the previous operation of any law, but also any right, obligation or liability, apart from any penalty, forfeiture or punishment incurred. Sub-clause (d) of Clause 13 deals with the position *qua* an investigation in respect of any such right or obligation as mentioned in sub-clauses (a) to (c). However, an addition has been made to the effect that when an investigation, legal proceeding or remedy, for anything done under the old law which is inclusive of CrPC, 1989, the same would continue as if the Act, 2019 had not been passed. It is not only the *continuation* that has been facilitated, but also the *initiation*.

25. The aforementioned paragraph not only speaks of a mere right, but also about an obligation. Such an obligation or a right can either be with an individual, or a State, as the case may be. When the State undertakes the

exercise of investigating an offence, it does so on behalf of the public. Thus, any investigation in currency at the time of repealing of any statute, as mentioned in Table 3 of the Fifth Schedule, followed by the introduction of the Act, 2019, shall continue under CrPC, 1989. However, the application of law thereon would be the CrPC, 1973. While so, the CrPC, 1973 cannot be made applicable when the earlier one (i.e. CrPC, 1989) was still in force.

26. It is to be noted, that a mere non-compliance of an earlier procedure mentioned in the repealed Code by itself would not enure to the benefit of an accused, the procedure being a curable one, depending upon the facts and circumstances of the case. To put it differently, apart from the question of prejudice, an investigating agency is not debarred from proceeding further after complying with the omission committed earlier, by taking recourse to the repealed Code i.e., CrPC, 1989. It is for this reason, that the Order, 2019 with specific reference to Para 2(13) has been introduced in exercise of the power conferred under Section 103 of the Act, 2019.

27. A similar issue was dealt with, way back in the year 1929 by the High Court of Calcutta in **Nibaran Chandra v. Emperor, 1929 A.I.R. 1929 Calcutta 754.** Considering the said issue, Justice Mukherjee had rightly found a way out by giving liberty to the prosecution to proceed afresh, under Section 196A of CrPC, 1898:

> **"**The petitioners have been convicted under S. 120-B, I.P.C. Petitioner 1 has also been convicted under S. 384, I.P.C. and No. 2 under S. 384/114, I.P.C. **The ground upon which this rule has been issued is that the trial was vitiated as the sanction contemplated by S. 196-A, Criminal P.C. had not been accorded by the Local Government to the prosecution of the petitioners under S. 120-B, I.P.C.** Now the object of the conspiracy having been to commit an offence under S. 384, I.P.C., which is a non-cognizable offence the Court could not take cognizance of the said offence without the sanction of the Local Government or of the District Magistrate empowered in that behalf. In the explanation which the learned Magistrate has submitted in answer to the rule he has suggested that the convictions under Ss. 384 and 384/114, I.P.C. as against the petitioners 1 and 2 respectively may be maintained and that the sentence passed on them may be treated as having been passed under the said sections. Apart from anything else, this course, in my opinion, is likely to result in prejudice to the petitioners. They had been put on their trial in respect of offences under Ss. 384 and 384/114 along with a charge under S. 120-B. It is just possible and indeed it is not unlikely that a good deal of evidence that was adduced on behalf of the prosecution in this case in order to establish the charge of conspiracy would not be relevant as against the petitioners on the substantive charges under Ss. 384 and 384/114, I.P.C. The trial held on charges which do not require sanction along with such as are not cognizable without sanction under S. 196-A, Criminal P. C., cannot be separated in this way.
>
> I am accordingly of opinion that this rule should be made absolute and the convictions and sentences passed on the petitioners should be set aside and the fines if paid by them should be refunded. **It will be open to the prosecution to proceed afresh against the petitioners in respect of the charges under Ss. 384 and 384/114, I.P.C. or even as regards the charge under S. 120-B, I.P.C. provided that the requisite sanction under S. 196-A, Criminal P. C. has been duly obtained**. Such retrial, if it is to take place, will be held before some Magistrate other than the learned Magistrate who has already dealt with this case.
>
> *Rule made absolute*."
> (emphasis supplied)

SUBMISSIONS

28. Mr. S.V. Raju, learned ASG appearing for the appellant submitted that as the Act, 2019 had come into force, the impugned judgment is liable to be set aside.

29. *Per contra,* Mr. D. Mahesh Babu, learned counsel appearing for the respondents, by placing reliance upon the written arguments submitted that the impugned judgment correctly dealt with the legal position which was prevailing at the relevant time. When the complaint was conveyed, the CrPC, 1989 was in force. The repealing took place thereafter. The retrospective application of a procedural law is fairly well settled, and the procedure cannot be made retrospectively applicable. Even the Act, 2019 does not specifically state that the CrPC, 1973 will apply retrospectively. On a conjoint reading of Section 103 of the Act, 2019, along with the Order, 2019, with particular reference to Para 2(13)(d), it is abundantly clear that the CrPC, 1989 ought to have been applied, as there was no dispute with respect to the non-compliance, which was duly recorded by the Court. Therefore, the impugned judgment will have to be sustained.

DISCUSSION

30. As stated, CrPC, 1989 stood repealed with effect from 31.10.2019 (i.e. the appointed day). On the very same day, the Act, 2019 came into existence. Therefore, the submission of Mr. S.V. Raju, that there is no need for getting the appropriate sanction or empowerment as mandated under Section 196-A of CrPC, 1989 cannot be countenanced.

31. There is nothing to infer either from the Act, 2019 or the Order, 2019 that CrPC, 1973 will have a retrospective application. However, the Order,

2019 did take into consideration all the difficulties that might arise by facilitating the continuance thereunder. We have no difficulty in holding that while an investigation could continue after its initiation under the CrPC, 1989, by way of the application of the CrPC, 1973, it cannot be stated that even for a case where there was a clear non-compliance of the former, it can be ignored by the application of the latter.

32. Para 2(13) confers sufficient power on the investigating agency to deal with such a situation. While we are holding that the requirement of an authorization or an empowerment is mandatory for conveying a complaint, it being at the conclusion of investigation, would not preclude the investigating agency from complying with it thereafter. It is an approval from an appropriate authority of the investigation having been completed. We are not dealing with the case where an approval is declined or rejected. Rather, it is a case where an authority has failed to exercise the said power in granting an authorization. Thus, we are in complete agreement with the reasoning adopted by the High Court of Calcutta in **Nibaran Chandra (*supra*).**

33. If we were to hold that even by way of a prospective application, notwithstanding the non-compliance under the CrPC, 1989, the appellant shall be permitted to prosecute the respondents, we would only be applying CrPC, 1973 retrospectively, which as discussed is not permissible.

ON FACTS

34. On facts, it is an omission caused by the appellant which needs to be rectified. It being a curable defect, would not enure to the benefit of the respondents, particularly when they are yet to be charged in the absence of such sanction or empowerment. At this stage, it is pertinent to reiterate that the complaint was conveyed by the District Magistrate, Ramban to the Special Judge, NIA on 20.09.2019. Further, the investigation stood completed with the filing of the chargesheet on 25.09.2019. Whereas, the appointed day for the Act, 2019 was 31.10.2019. Hence, on the day when the investigation stood completed, the CrPC, 1989 was in force within the Union Territory of Jammu & Kashmir.

35. In such view of the matter, we are inclined to set aside the impugned judgment insofar as it confirms the judgment of the Special Judge, NIA, in not taking cognizance for the offence punishable under Section 120-B of the RPC, 1989. Accordingly, we give liberty to the appellant to comply with the mandate of Section 196-A of the CrPC, 1989, by seeking appropriate authorization or empowerment as the case may be. Needless to state, if such a compliance is duly made, then the Trial Court shall undertake the exercise of taking cognizance, and proceed further with the trial in accordance with law.

36. The appeal is accordingly allowed in part. Pending Applications, if any, stand disposed of.

..……..J.
(M. M. SUNDRESH)

…… J.
(S. V. N. BHATTI)

NEW DELHI;
MAY 17, 2024