

THE GAUHATI HIGH COURT AT GUWAHATI
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)

C I R C U L A R

Dated: 3rd of September, 2020

The Hon'ble Gauhati High Court has been pleased to issue the following directions in respect of cases registered under the POCSO Act for the guidance of all Judicial Officers and all concerned:

1. No Magistrate, except the Magistrate before whom an arrested person is produced for the first time under Section 167 (1) of Cr.P.C. (the first remanding Magistrate), has jurisdiction to deal with any case under the POCSO Act including the power to remand, after being remanded by the first remanding Magistrate.
2. For further remand beyond 15 days, the first remanding Magistrate has to forward the accused to the Special Court, as only the "Special Court" has the exclusive jurisdiction to take cognizance and try the offence under the POCSO Act.
3. Ideally, when the "Special Court" is in session on any working day, any arrested person under the Act should be produced before the "Special Court", rather than the Magistrate, if that is not going to cause undue delay in production.
4. Only the "Special Court" has jurisdiction to take cognizance of the offences under the POCSO Act, as provided under Section 33(1) of the POCSO Act. Since, the Special Court can take cognizance of any offence under Section 33(1) of the Act without the accused being committed to it for a trial, there is no need for the Magistrate to commit an accused to the Special Court for trial. Committal by the Magistrate is not required.
5. The word "Magistrate" mentioned under Sub-section (2) of Section 25 of the POCSO Act, is to be understood/construed as the "Special Court". And hence, the question of any Magistrate furnishing copy of the documents specified under Section 207 of the Code upon final report being filed by the police under section 173 of the Code, under Section 25(2) of the Act does not arise, as the said function will be discharged by the Special Court after the police has filed the final report as contemplated under Section 173 of the Code to the Special Court.
6. Under the Code of Criminal Procedure, 1973, a complaint can be filed before a Magistrate/Court having jurisdiction to take cognizance. Since no Magistrate can take cognizance and only the Special Court can take cognizance of an offence

under the Act and also try the same, a complaint regarding commission of offence under the POCSO Act can be filed only before the "Special Court" and not before any Magistrate.

7. For recording of statement of the victim u/s 164 Cr.P.C. and confessional statement of accused person, the Investigating officer may make such prayer before the Special Judge who in turn shall direct the Chief Judicial Magistrate/SDJM (M) to entrust any Magistrate to record such statement of the victim or the accused as the case may be.

By Order,

Sd/- R.A. Tapadar

REGISTRAR (JUDICIAL)

Memo No. HC. VI/03/2016/ 553- 656 /STT Dated: 3rd September, 2020

Copy to:

1. The Registrar General, Gauhati High Court, Guwahati.
2. The Registrar (Vig/Admn/Estt), Gauhati High Court, Guwahati.
3. The Director, Judicial Academy, Assam.
4. The Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, Gauhati High Court, Guwahati.
5. The Registrar, Gauhati High Court, Kohima Bench, Kohima/ Aizawl Bench, Aizawl/Itanagar Bench, Naharlagun. He/She is requested to circulate the Notification amongst the Judicial Officers of his/her respective State.
6. The District & Sessions Judge, _____ . He/She is requested to circulate the Notification amongst the Judicial Officers under his/her jurisdiction.
7. The Director General of Police, Assam/Nagaland/Mizoram/Arunachal Pradesh. He/She is requested to circulate the Notification amongst the Officers in his/her respective State.
8. The Joint Registrar (_____), Gauhati High Court, Guwahati.
9. The Director, Law Research Institute, Gauhati High Court, Guwahati.
10. The Deputy Registrar (_____), Gauhati High Court, Guwahati.
11. The Asstt. Registrar (_____), Gauhati High Court, Guwahati.
12. The Librarian-cum-Research Officer, Gauhati High Court, Guwahati.
13. The P.S to Hon'ble Mr./Mrs. Justice _____, Judge, Gauhati High Court, Guwahati.
14. The Project Manager, Computer Section, Gauhati High Court, Guwahati. He is requested to upload this Notification in the website of Gauhati High Court.
15. The Admn. Officer (J), _____, Gauhati High Court, Guwahati.

R. A. Tapadar
03.09.20

REGISTRAR (JUDICIAL)

03/09/2020