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IN THE SEYCHELLES COURT OF APPEAL

**IN THE MATTER OF:
REFERENCE BY THE ATTORNEY GENERAL
UNDER SECTION 342(A)
OF THE CRIMINAL PROCEDURE CODE (CAP 54)**

Reference No.1 of 2000

[Before: Ayoola, P., Silungwe & De Silva JJA]

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Mr. R. Govinden, State Counsel for the Attorney General
Miss. K. Domingue for the Respondent

JUDGMENT OF THE COURT

(Delivered By Justice de Silva)



The Attorney General has referred to this Court for its opinion in terms of section 342(A)(1) of the Criminal Procedure Code, a point of law which arose in a criminal proceeding before the Supreme Court: A girl who was a "child" within the meaning of the Children Act (Chapter 28) was charged with the offence of murder contrary to section 193 of the Penal Code. Before the charge was read to the respondent and before her plea was recorded, learned State Counsel submitted before the Supreme Court that there was a conflict between the provisions of section 225 of the Criminal Procedure Code and section 93(1) of the Children Act. In view of the inconsistency between the two provisions of law, learned State Counsel further submitted that there was a doubt as to whether it was the Juvenile Court or the Supreme Court which had jurisdiction to hear the case. He accordingly invited the Court to give a ruling on this matter. After hearing submissions, the Supreme Court ruled that the case should be tried by the Supreme Court with a jury.

Learned Counsel for the respondent raised a preliminary objection to the reference made by the Attorney General in terms of section 342(A)(1) of the Criminal Procedure Code. The contention was that it was not competent for the Attorney General to make the

reference to this Court because “a criminal proceeding” had not commenced before the Supreme Court, inasmuch as the charge had not been read to the respondent and her plea had not been recorded. This submission is devoid of merit, for it overlooks the distinction between the commencement of a “criminal proceeding” and the commencement of a “trial”. The proceedings before the Supreme Court clearly show that a complaint has been made to the Court and that the respondent had been brought before the Court on summons served on her. Therefore a “criminal proceeding” within the meaning of section 342(A)(1)(b) of the Criminal Procedure Code had commenced before the Supreme court.

It was further submitted that the “reference” made by the Attorney General amounted to an “abuse of process” and that this court was being treated as “an advisory body”. This submission too is unacceptable for the reason that section 342(A)(1) of the Criminal Procedure Code expressly and unambiguously provides that “the Attorney General may, if the Attorney General desires the opinion on a point of law which arose in a criminal proceeding, refer the point ... where the point of law arose in a criminal proceeding before the supreme Court... to the Court of Appeal for its opinion on the point of law. (emphasis added) It is not disputed that the question which arose for consideration was on “a point of law”. The section itself therefore clearly contemplates a reference being made by the Attorney General to this Court for its opinion on a point of law. It is an “enabling” provision of law.

For these reasons the preliminary objections are overruled.

We now turn to the point of law which has been referred to this Court. It arises upon what learned State Counsel submitted was a “conflict” between section 225 of the Criminal Procedure Code and Section 93(1) of the Children Act. Section 225 of the Criminal Procedure Code reads as follows:

“Every case in which the accused is charged with murder, or with an offence for which he is liable on conviction to the punishment of death, shall be tried by the Supreme Court with a jury in accordance with this part” (Part VIII). This section was brought into operation on 2nd May 1982.

On the other hand, section 93(1) and (2) of the Children Act (Chapter 28) which was brought into operation on 15th July 1982 reads thus:-

(1) "A court when hearing charges against a child, unless the child is charged jointly with any other person who is not a child, -

- (a) shall consist of the Judge or Magistrate as the case may be, and one man and one woman appointed by the President by notice in the Gazette; and*
- (b) shall sit either –*
 - (i) in chambers; or*
 - (ii) on different days or at different times from those at which the ordinary sittings are held.*

(2) A Court sitting under the conditions specified in sub-section (1) is called a Juvenile Court."

On a consideration of the two provisions of law set out above, it is relevant to note that section 225 of the Criminal Procedure Code is a general provision of law which sets out the mode of trial of any person charged with the offence of murder. It applies to all persons irrespective of the age of the accused. On the other hand, the Children Act is an enactment which provides, inter-alia, for the care, custody, maintenance and welfare of "children" within the meaning of the Act. A "child" is defined in section 2 of the Act. "Child ... means a person under 18 years of age and includes a young person". A "young person" is defined as "a person of 14 years of age or over but under 18 years of age". It is therefore a special enactment directed towards a particular class of persons, namely, a "child" within the meaning of section 2 of the Act.

Viewed in this light, it appears to us that the "conflict" between the two provisions of law is only apparent and not real. No question of an implied repeal of section 225 of the Criminal Procedure Code by section 93 of the Children Act arises. Craies on Statute Law (6th edition at page 373) states the principle thus;

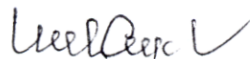
"If a subsequent statute merely creates an exemption or exception from the operation of a previous statute ... the previous statute is not necessarily repealed".

*This passage occurs under the sub-title "Curtailment without repeal".
(emphasis added).*

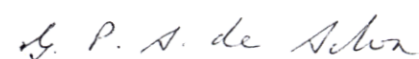
We are of the opinion that both provisions of law should be read together. When so read, it is our view that the application of the general provision contained in section 225 of the Criminal Procedure Code is restricted, inasmuch as it does not extend to the trial of a "child", within the meaning of the Children Act, charged with the offence of murder. In other words, section 93(1) and (2) of the Children Act limits the applicability of the general words of wide import in section 225 of the Criminal Procedure Code.

We are accordingly of the opinion that the provision of law applicable to the instant case is section 93(1) and (2) of the Children Act and the proper forum is the Juvenile Court.

We wish to add that it is desirable to amend the relevant statute so that this matter may be put beyond argument.


E. O. AYoola
PRESIDENT


A.M. SILUNGWE
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated this 3rd day of *November* 2000.