

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRAN/1/2022
in
CRR 1086 of 2022**

**Dr. Nirmal Maji
Vs.
Dr. Kunal Saha**

**For the petitioners : Mr. Biplab Guha, Adv.,
Mr. Saibalendu Bhowmick, Adv.,
Mr. Rajsekhar Basu, Adv.,
Mr. Avik Ghatak, Adv.,
Mr. Soham De Dhara, Adv.**

**For the Registrar (Judicial Service)
: Mr. Saikat Banerjee, Adv.,
Ms. Juin Dutta Chakraborty, Adv.,
Mr. U.K Roy, Adv.**

**For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu, Adv.**

Judgement on : 29.07.2022.

Bibek Chaudhuri, J.

In the instant revision, legality, validity and propriety of the order dated 24th March, 2022 passed by the Learned Judge, Special Court, West Bengal (MP's and MLA's cases), Bidhannagar in Special Case No. 51/2018, original Case No.

C/CNS/415 of 2017 for the offence punishable under Sections 500/501 of the Indian Penal Code has been challenged.

It is stated by the petitioner that the petitioner had been arraigned as one of the accused persons in Complaint Case No. C/CNS/415 of 2017 initiated at the instance of the opposite party being the complainant alleging commission of offences punishable under Sections 500/501/120B of the Indian Penal Code.

Suffice it to state for the purpose of disposal of the instant revision that in Writ Petition(s) (Civil) No.(s) 699/2016 (Ashwani Kumar Upadhyay –Vs.- Union of India), the Hon'ble Supreme Court vide order dated 14th December, 2017 was pleased to direct the State Governments of the country to set up Fast Track Courts (12 in all) in consultation with the High Courts to dispose of 1581/1571 cases presently pending against the elected MPs/MLAs. It was further directed that the said special Court would start functioning from 1st March, 2018 in a fast track manner for speedy disposal of the cases instituted against the elected MPs/MLAs.

By the High Court, Appellate Side, Calcutta Notification No. 1380A dated 6th March, 2018, it was intimated to all the District Judges of West Bengal including Andaman and Nicobar Islands and the Chief Judge, City Sessions Court that a new special Court in the rank of District Judge (Entry Level) has been established for trial of pending cases involving MPs and MLAs. The District Judges in the State of West Bengal and Andaman and Nicobar Islands and the Chief Judge, City Sessions Court, Calcutta were further directed to transfer

pending case records relating to MPs and MLAs to the temporary Special Court for disposal. Accordingly, all pending cases against elected MPs and MLAs as of 6th March, 2018 were transferred lock, stock and barrel to the said Special Court.

Be it mentioned here that initially seat of the Special Court was at Barasat in the district of North 24-Parganas and subsequently, it was shifted to the permanent site at Mayukh Bhawan, Salt Lake vide Notification No. 433-RG dated 27th January, 2021. It is not in dispute that all the cases, both sessions triable and magisterial triable were transferred to the aforesaid Special Court for fast track trial and disposal.

Subsequently, on 24th November, 2021, in IA No. 149484/2021 in Writ Petition (Civil) No. 699/2016 (Ashwani Kumar Upadhyay -Vs.- Union of India & Anr.) the Hon'ble Supreme Court passed an order clarifying further the order dated 4th December, 2017 with the following direction:-

"11. ...We further direct that the cases triable by Magistrates which are pending before the Sessions Court in view of the circular dated 16th August, 2019 shall stand transferred to the Court of competent jurisdiction. However, the entire record and proceedings shall be transferred to the Court of the designated Magistrate and the proceedings shall commence during the stage which has been reached prior to the transfer of the proceedings, as a consequence of which the trial shall not have to commence afresh."

Thus, the Hon'ble Supreme Court vide order dated 24th November, 2021 was pleased to reiterate that the Magistrate

triable cases instituted against the elected M.P.s. and M.L.A.s shall be disposed of by the Special Magisterial Courts and the Sessions triable cases would be tried and disposed of by the learned Special Judge having Sessions power to conduct the Sessions cases instituted and pending against the elected M.P.s and M.L.A.s.

It is contended by the learned advocate for the petitioner/accused that after the order dated 24th November, 2021 passed by the Hon'ble Supreme Court in the aforesaid matter, the learned Sessions Judge had no jurisdiction to try the Magistrate triable case. Therefore, the learned advocate for the petitioner sent a letter dated 23rd December, 2021 and 4th March, 2022 to the learned Registrar General, High Court, Calcutta to move this Court in its Administrative Side for designating a Court of the learned Judicial Magistrate, First Class as the Special Court for trial of Magistrate triable cases pending against the elected M.P.s and M.L.A.s. Till date, however, no such Court is established either by creation of a Special Court of the Magistrate, First Class in the State of West Bengal or by designating an existing Court of the Judicial Magistrate, First Class as the Special Court to try the said cases.

Learned advocate for the petitioner further submits that on 24th March, 2022, the petitioner filed an application praying for postponement or adjourn the trial of Special Case No.51 of 2018 arising out of Case No.C/CNS/415/2017 on the ground that the said case has been filed by the opposite party under Sections 500/501/120B of the Indian Penal Code being the

offences exclusively triable by the learned Judicial Magistrate, First Class. After the order passed in I.A. No.149484/2021 in Writ Petition (Civil No.699 of 2016) on 24th November, 2021, the learned Special Judge has no jurisdiction to continue with the trial of the aforesaid Magistrate triable case.

The learned Special Judge vide order impugned rejected the aforesaid prayer made by the petitioner on the ground that the complaint case was filed in the year 2017. The case was transferred to the Special Court on 20th March, 2018. The accused was examined under Section 251 of the Code of Criminal Procedure on 24th September, 2021. The first witness was examined on 20th November, 2021 and cross-examination of the said witness is deferred. Therefore, there is no impediment to proceed with the trial of the said case by the learned Special Judge.

Learned advocate for the petitioner placing reliance on the Full Bench decision of the Hon'ble Supreme Court in **A. R. Antulay versus R.S. Nayak and Another** reported in **(1988) 2 SCC 602** submits that even the Hon'ble Supreme Court by its direction can not confer jurisdiction on the High Court to try any case which it did not possess such jurisdiction under the scheme of the Act. When an accused has not been ordered to be tried by a procedure mandated by law, jurisdiction of a Court to try a case cannot be conferred even by a judicial order passed by any of the higher Courts. Conferring jurisdiction to a Court not vested with it by a statute is violative of Article 21 of the Constitution.

Paragraph 92 of **A. R. Antulay's** case (supra) is relevant and quoted below:-

92. *Article 139-A of the Constitution authorises this Court to transfer cases from a High Court to itself or from one High Court to another and is therefore, not relevant for our purpose. Section 406 of the Code empowers this Court to transfer cases and appeals by providing:*

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

*(3) ****

The offences alleged to have been committed by the accused here are either punishable under the Penal Code or under Act 2 of 1947, both of which could have been tried in an appropriate court under the Criminal Procedure Code; but Parliament by the Criminal Law Amendment Act 46 of 1952 (1952 Act for short) amended both the Penal Code as also the Criminal Procedure Code with a view to providing for a more speedy trial of certain offences. The relevant sections of the 1952 Act are Sections 6, 7, 8, 9 and 10. For convenience, they are extracted below:

6. Power to appoint Special Judges.— (1) The State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely,—

(a) an offence punishable under Section 161, Section 162, Section 163, Section 164, Section 165 or Section 165-A of the Penal Code, 1860 or Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947);

(b) any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898 (5 of 1898).

7. Cases triable by Special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), or in any other law the offences specified in sub-section (1) of Section 6 shall be triable by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area by such one of them as may be specified in this behalf by the State Government.

(3) When trying any case, a Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure, 1898 (5 of 1898), be charged at the same trial.

8. Procedure and powers of Special Judges.—(1) A Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (5 of 1898), for the trial of warrant cases by Magistrates.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so tendered shall, for the purposes of Sections 339 and 339-A of the Code of Criminal Procedure, 1898 (5 of 1898), be deemed to have been tendered under Section 338 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

(3-A) In particular, and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Sections 350 and 549 of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to the proceedings before a Special Judge, and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate.

(4) A Special Judge may pass upon any person convicted by him any sentence authorized by law for punishment of the offence of which such person is convicted.

9. Appeal and revision.—The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 (5 of 1898) on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court.

10. Transfer of certain pending cases.—All cases triable by a Special Judge under Section 7 which, immediately before the commencement of this Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases.

On the ratio of the Seven Judge Bench decision of this Court in the State of W.B. v. Anwar Ali Sarkar [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] the vires of this Act are not open to challenge. The majority of the learned Judges in Anwar Ali Sarkar case [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] expressed the view that it was open to the legislature to set up a special

forum for expedient trial of a particular class of cases. Section 7(1) has clearly provided that offences specified in sub-section (1) of Section 6 shall be triable by the Special Judge only and has taken away the power of the courts established under the Code of Criminal Procedure to try those offences. Section 10 of the Act required all pending cases on the date of commencement of the Act to stand transferred to the respective Special Judge. Unless there be challenge to the provision creating exclusive jurisdiction of the Special Judge, the procedural law in the Amending Act is binding on courts as also the parties and no court is entitled to make orders contrary to the law which are binding. As long as Section 7 of the Amending Act of 1952 hold the field it was not open to any court including the apex court to act contrary to Section 7(1) of the Amending Act.”

In **Rajasthan State Road Transport Corpn. and Others versus Zakir Hussain** reported in **(2005) 7 SCC 447**, the Hon’ble Supreme Court was pleased to hold that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of Court (see para 21 of the report). The same principle is laid down in **Rajasthan SRTC and Others versus Ramdhara Indoliya** reported in **(2006) 6 SCC 287** (see paragraph 4 of the report). On the self-same issue, the learned advocate for the petitioner refers to another decision in the case of **Manmohan Attavar- versus- Neelam Manmohan Attavar** reported in **2017 (7) Supreme 412**.

Thus, it is finally submitted by the learned advocate for the petitioner that the learned Special Judge cannot try a magistrate triable offence for the simple reason that it has no jurisdiction to try such offence. Therefore, the impugned order ought to be set aside and the trial of Special Case No.51 of 2018 is required to be postponed till creation of Special Magisterial Court for magistrate triable cases.

Since the matter relates to establishment of a Special Magistrate's Court to try the cases pending against the M.P.s. and M.L.A.s, a Co-ordinate Bench vide order dated 4th April, 2022 directed the petitioner to implead Registrar (Judicial Service), High Court, Calcutta as one of the O.P.s whose presence was considered to be necessary for not only disposal of the present revision but to decide the issue taking a holistic approach so far as it relates to trial of cases triable by the Court of Magistrate instituted against the elected M.P.s and M.L.A.s.

The Registrar (Judicial Service) is represented by Mr. Saikat Banerjee, learned Advocate. Mr. Banerjee has filed a compilation of the High Court's record to show the action taken by the High Court Administration to comply with the direction of the Hon'ble Supreme Court in WP (Civil) 699 of 2016. It appears from the said compilation that the Registrar (Judicial Service) placed the copy of the order dated 24th November, 2021 passed in WP (Civil) 699 of 2016 communicated to him by electronic mail by Mr. Vijay Hansaria, learned Amicus Curie in the aforesaid matter on 2nd November, 2021 (2nd December, 2021?), letter of request made by Mr. Biplab Guha, Advocate, High Court, Calcutta on behalf of the petitioner herein addressed to the Hon'ble The Chief Justice, High Court, Calcutta, by a note sheet praying for appropriate direction and/or passing necessary order as the Hon'ble The Chief Justice, High Court, Calcutta deemed fit and proper.

As directed by the Hon'ble The Chief Justice, High Court, Calcutta, the matter was placed before the Administrative Committee of the High Court in its meeting dated 12th April, 2022, i.e., after a lapse of about four months, as item No.9.

The said item No.9 was disposed of by the Administrative Committee of the High Court at Calcutta in the following manner:-

Item No.9

Matter		Decision
Prayer of Sri Biplab Guha, Ld. Advocate on behalf of Dr. Nirmal Mazi, MLA for setting up of Special Magistrate Court and transfer of cases to such courts and e-mail dated 02.11.2011 of Sri Vajay Hansaria, Amicus Curie, on W.P. Civil No.699/2016 furnishing the order dated 24.11.2011 of the Hon'ble Apex Court for constitution of Court both at Sessions and Magistrate level to try cases involving MPs and MLAs with a letter dated 04.03.2022 of Sri Biplab Guha.		Approved

It appears from the decision of the Administrative Committee in its meeting dated 12th April, 2022 that the Administrative Committee approved constitution of court both at Sessions and Magistrate level to try cases involving M.P.s and M.L.A.s in the State of West Bengal.

On careful scrutiny of the decision of the Administrative Committee of this Court under its inherent power under Section 482 of the Code of Criminal Procedure, it is found that the Administrative Committee of this Court, though approved constitution of Special Court at the magistrate level to try cases involving M.P.s and M.L.A.s,

did not take any decision as to whether one existing court of the learned Judicial Magistrate, First Class would be designated as the Special Court to try all pending Magistrate triable cases against elected M.P.s and M.L.A.s in the State of West Bengal or a new court of the Judicial Magistrate, First Class would be created by enhancing the cadre strength in the cadre of West Bengal Judicial Services, Civil Judge (Junior Division/Judicial Magistrate) First Class.

Thus, the direction of the Hon'ble Supreme Court vide order dated 24th November, 2021 could not be complied with by setting up a Special Court in the rank of the Judicial Magistrate, First Class. The aforesaid incomplete decision taken by the Administrative Committee in its meeting dated 12th April, 2022 compelled the Registrar (Judicial Service) to place the matter once again before the Hon'ble The Chief Justice, High Court, Calcutta by a note sheet dated 10th May, 2022. The Registrar (Judicial Service) made the following prayer in the said note sheet dated 11th May, 2020:-

"In view of the above conspectus, the matter is placed before Your Lordship for consideration whether the same may again be deliberated by the Administrative Committee of the Hon'ble Court for deciding the policy on the following issues in view of the direction of the Hon'ble Supreme Court of India in WP (Civil) 699/2016 (Aswini Kumar Upadhyay Vs. Ors. Vs. Union of India & Ors.):

- (i) Designation/ creation of Magistrate level Courts for trial of criminal cases involving MPs and MLAs.*
- (ii) Transfer of cases triable by a Magistrate only under present law but presently pending before the existing Special Court at Mayukh Bhavan.*

(iii) *To consider the letters dated 23.12.2021 and 04.03.2022 of Sri Biplab Guha, Ld. Advocate appearing for the accused in Special Case No. 51/2018 and Special Case No.233/2018 pending before Special Court*

Or

Your Lordship may pass any other Order(s) as Your Lordship may deem fit and proper."

The Hon'ble The Chief Justice directed the matter to be placed before the Administrative Committee of the High Court at Calcutta. Till date, however, the said matter has not been placed before the Administrative Committee for deliberation and decision.

Thus, it is crystal clear that the direction of the Hon'ble Supreme Court has not been complied with by this Court vide order dated 24th November, 2021 in WP (Civil) 699 of 2016. At the time of final hearing of the instant revision a report was called for from the Registrar (Judicial Service), High Court, Calcutta as to the number of pending Magistrate Triable Criminal Cases in the State of West Bengal as on this date. The Registrar (Judicial Service) submitted a report on the basis of a written communication made by the learned Special Judge, (M.Ps and M.L.As), West Bengal that total number of 58 Magistrate Triable Cases are pending for disposal as on 26th July, 2022.

In view of the decision in **A. R. Antulay's** case (supra) followed by **Rajasthan State Road Transport Corporation** (supra), **Rajasthan SRTC** (supra) and **Manmohan Attavar** (supra) and specific direction made by the Hon'ble Apex Court in its order dated 24th November, 2021 in WP (Civil) 699 of 2016, a Sessions Judge

cannot try a Magistrate Triable Case. Therefore, the impugned order dated 24th March, 2022 passed by the learned Judge, Special Court in Special Case No.51 of 2018 suffers from patent illegality and it is liable to be set aside.

At the same time, this Court expresses its grave concern that in spite of the order of the Hon'ble Supreme Court dated 24th November, 2021 having been communicated to this Court by the learned Amicus Curie by electronic mail dated 2nd December, 2021, this Court in its administrative side could not take a decision as to whether a new court in the rank of Judicial Magistrate First Class would be set up or one of the existing courts in the rank of Judicial Magistrate, First Class would be designated as the Special Court to try pending Magistrate Triable Cases instituted against the elected M.P.s and M.L.A.s. Trial of not only Special Case No.51 of 2018, but also other 57 Magistrate Triable Cases is being delayed due to the reason that the High Court in its Administrative Side could not take a complete and workable decision with regard to establishment of and/or conferring special jurisdiction to one of the existing courts of the Judicial Magistrate First Class to try the above mentioned special class of cases. As per the report, submitted by the Registrar (Judicial Service), High Court, Calcutta, only 58 Magistrate Triable Cases are pending. As per the existing ACR system and the administrative decision, the Judicial Magistrate dispose of on an average 15 criminal cases in a month. Thus, arithmetically it would take not more than 4/5 months to dispose of all pending Magistrate Triable Cases against the M.P.s and M.L.A.s by a Magistrate First Class. But for the decision of the Administrative Committee which could have very well been taken in

the meeting dated 12th April, 2022, all these cases are pending till date.

Dr. Kunal Saha, private opposite party/complainant submits that he is a non-resident Indian residing in United State of America. He has come to Calcutta all the way from United States of America primarily to conduct and adduce evidence in Special Case No.51 of 2018. It is also submitted by him that when the learned Special Judge has already commenced trial of Special Case No.51 of 2018, he may be directed to conduct the trial of the aforesaid case and conclude the hearing expeditiously. In support of his contention, he refers to an order passed by the Hon'ble Supreme Court in Transfer Petition (Crl) 194 of 2001 on 9th January, 2002 (**Malay Ganguly vs. Sukumar Mukherjee & Ors**). It is contended by the opposite party that the Hon'ble Supreme Court directed the trial court to dispose of the pending case expeditiously on day to day basis.

This Court cannot pass any such order as prayed by the opposite party in view of the fact that the learned Special Judge having sessions power to try sessions triable cases lacks jurisdiction to try a Magistrate Triable Cases. When there is lack of jurisdiction, it strikes at the very root of the exercise and lack of jurisdiction is distinct from mere error in exercise of jurisdiction. Want of jurisdiction may shift the proceeding rendering it and the orders passed therein a nullity. On the contrary, a mere error in exercise of jurisdiction does not shift the legality and validity of the proceeding and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. The above view is consistent since the decision rendered by the Hon'ble Supreme Court in **Hira Lal Palani vs. Sri Kali Nath** reported in **AIR**

1962 SC 199. Hira Lal Palani (supra) was subsequently followed by the Hon'ble Supreme Court in **Sri Budhia Swain & Ors vs. Gopinath Deb & Ors.** reported in **(1999) 4 SCC 396**. The above principle is squarely applicable both in civil and criminal proceeding. Therefore, the learned Sessions Judge lacks jurisdiction to try a Magistrate Triable Case this Court cannot pass any order as prayed by the opposite party in his submission because jurisdiction cannot be conferred to a court by a judicial order.

While this Court has no other alternative but to hold that the impugned order dated 24th March, 2022 passed in Special Case No.51 of 2018 is illegal and liable to be set aside, it holds with great pain that the trial of the Special Case No.51 of 2018 is being delayed as a result of failure on the part of this Court to take appropriate and timely decision in its administrative side conferring jurisdiction to an Officer in the rank of Judicial Magistrate, First Class to try all pending cases against elected M.P.s and M.L.A.s in the State of West Bengal. Therefore, while allowing the instant revision by setting aside the impugned order dated 24th March, 2022, this Court holds that the learned Special Judge (M.P.s and M.L.A.s) at Bidhannagar lacks jurisdiction to try Special Case No.51 of 2018 or any other Magistrate Triable Cases which were transferred to the said Court on the basis of the order passed by the Hon'ble Supreme Court in Writ Petition No. (Civil) 699 of 2016.

Right to a speedy trial is a constitutional mandate and most valuable fundamental right. It is the solemn duty of the judiciary to dispense justice without delay and all endeavour should be made for speedy and effective disposal of cases. To quote the Hon'ble Justice Krishna Iyer, "our justice system even in grave cases, suffers from

slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision, speedy justice is component of social justice since the community, as a whole is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

It is due to administrative delay in conferring jurisdiction to a court to try particular class of pending cases, trial of some special class of cases is stuck, it is the high time to act positively in its judicial side.

Therefore, the Registrar (Judicial Service), High Court, Calcutta is specifically directed to place this order immediately before the Hon'ble The Chief Justice, High Court, Calcutta requesting his Lordship to take a decision on Administrative Side with regard to designating a court of the learned Judicial Magistrate, First Class to try all pending Magistrate Triable Cases in the State of West Bengal instituted against the elected M.Ps and M.L.As.

The Registrar (Judicial Service) is further directed to submit a compliance report within 15 days from the date of communication of this order, failing which this Court will consider as to whether by passing a judicial order, a Court of the learned Judicial Magistrate, First Class would be designated as the Special Court to try the above mentioned class of cases.

List the matter on 17th August, 2022 under the heading "to be mentioned."

(Bibek Chaudhuri, J.)