

Sunil Kumar Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 3, 2010

Acts Referred: Constitution of India, 1950 " Article 226

Criminal Procedure Code, 1973 (CrPC) " Section 6

Juvenile Justice (Care and Protection of Children) Act, 2000 " Section 2, 20, 4, 49, 6

Penal Code, 1860 (IPC) " Section 201, 366, 376

Citation: (2010) 4 RCR(Criminal) 414

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: Rishi Malhotra, for the Appellant;

Final Decision: Dismissed

Judgement

Permod Kohli, J.

The petitioner was an accused in FIR No. 233 dated 17.5.1990 registered under Sections 376, 366 and 201 I.P.C. at

P.S. Sadar, Hisar. He was accused of committing rape on the prosecutrix on 16.5.1990. Petitioner was sent to face trial for the aforesaid offence

and was convicted to under go R.I. for 7 years u/s 376 I.P.C. and 4 years u/s 366 I.P.C. vide judgment dated 26.2.1992 by the learned Addl.

Sessions Judge-III, Hisar. A Criminal Appeal No. 102-SB of 1992 filed before the High Court remained unsuccessful having been dismissed vide

judgment dated 1.7.2005. During the pendency of the criminal appeal before this Court, the petitioner made an application being CrI. Misc. No.

38333 of 2004 pleading that he was juvenile at the time of commission of offence. It is stated that the High Court disposed of the appeal without

considering the question of juvenility of the petitioner. On dismissal of his appeal by the High Court, petitioner preferred SLP being SLP (Criminal)

No. 4448 of 2005 before the Hon"ble Apex Court. The Criminal Appeal also came to be dismissed vide order dated 5.9.2005. Being not

satisfied, the petitioner preferred a review petition before the Hon"ble Supreme Court which came to upon provisions of Sections 7-A and 20 of

the Act which are reproduced hereunder:-

7. Procedure to be followed when claim of juvenility is raised before any Court - (1) Whenever a claim of juvenility is raised before any Court or a

Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such

evidence as may be necessary (but not an affidavit) so as to determine the age of such person and shall record a finding whether the person is a

juvenile or a child or not stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and

such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be

so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-Section (1), it shall forward the juvenile to the

Board for passing appropriate orders and the sentence, if any, passed by a Court shall be deemed to have no effect.

20. Special provision in respect of pending cases - Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending

in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been

passed and if the Court finds that the juvenile had committed an offence, it shall record such finding and instead of passing any sentence in respect

of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as

if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

2. Sub-Section (1) of the Section 7-A provides for an inquiry to determine the juvenility of the accused on the date of commission of the offence as

and when any such question is raised before the Court or the Court is of the opinion that the accused person was juvenile on the date of

commission of offence. Proviso to sub-Section 1 further empowers the Court to recognize the factum of juvenility at any stage, even after final

disposal of the case and to determine such claim in accordance with the provisions of the Act and the Rules even if the juvenile ceased to be so on

or before the commencement of the act. This Act came into force on the date of its publication in the Central Govt. Gazette i.e. 1.4.2001 vide

S.O. 177 (E). Section 20 of the Act further applies the provisions of this Act even on pending cases. Thus, from the conjoint reading of proviso to

Section 7-A and Section 20, it can be conveniently gathered that the provisions of this Act will be attracted even if, the commission of offence had

taken place prior to the operation of this Act.

3. It is also not in dispute that the juvenility of the accused can be determined even after the final disposal of the case. Thus, the competent Court

has the jurisdiction to determine the juvenility of the petitioner irrespective of upholding the conviction by the Hon"ble Apex Court. From the

persual of the prayer made in this petition, it appears that the petitioner is seeking a direction to the Govt. to determine his juvenility by holding an

inquiry and then to pass an appropriate order in regard to his conviction for the criminal offence for which he has been sentenced and convicted

finally.

4. The contention on behalf of the petitioner is that the High Court in exercise of its writ jurisdiction can definitely issue a Mandamus to the Govt. to

determine the question of juvenility of the petitioner.

5. With a view to appreciate the contention of the petitioner relevant provisions of the Act have been examined. Section 7-A permits raising of the

issue of juvenility before any Court. It is, thus, contented that the Court includes the High Court, exercising writ jurisdiction under Article 226.

Further reference is made to Rule 12 of the Rules framed under the Act. Rule 12 deals with the procedure to be followed in determination of the

age. The same is reproduced hereunder:-

12. Bail of juvenile - (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or

appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable

grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or

psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-Section (1) by the officer incharge of the police station, such officer

shall cause him to be kept only in an observation home in the prescribed manner until he can brought before a Board.

(3) When such person is not released on bail under sub-Section (1) by the Board it shall, instead of committing him to prison, make an order

sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the

order.

6. Clause 1 of Section 7-A obligates the Court to make an inquiry and determine the age of the accused person whenever a claim of juvenility is

raised before it. The Court contemplated u/s 7-A has not been defined under the said Act. Section 2, however, lays down that where words and

expressions defined used in the Act but not defined therein and defined in the Code of Criminal Procedure, shall have the meaning as assigned in

the code. Thus, for purposes of definition of the Court one has to fall back on the Code of Criminal Procedure to find out the definition of the

expression Court envisaged u/s 7-A. Section 6 of the Code of Criminal Procedure under Chapter 2 deals with the constitution of criminal Courts

and offices. Section 6 reads as under:-

6. Classes of Criminal Courts. Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every

State, the following classes of Criminal Courts, namely:-

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrate.

7. Thus, the Court for purposes of Section 7-A could be any class/category of Court exercising criminal jurisdiction which inter alia includes the

High Court as well. Thus, the question of juvenility can be decided by the Court of Sessions, Judicial Magistrates of the 1st Class, Judicial

Magistrate IInd Class and Executive Magistrates including the High Court exercising the criminal jurisdiction. It appears that the High Court can

also decide the question of juvenility but while exercising criminal jurisdiction. Chapter 2 of the Code of Criminal Procedure deals with the

constitution of the criminal Courts only. In my humble opinion the petitioner should have approached any class or category of criminal Court as

defined u/s 6 for purposes of Section 7-A and not the writ Court. Learned counsel for the petitioner has further relied upon the judgments of the

Hon"ble Apex Court reported as 2009 (3) RAJ 414 : 2009(2) RCR (Cri) 878 titled as Hari Ram v. State of Rajasthan and another. In this case

the Hon"ble Supreme Court has held that The Juvenile Justice (Care and Protection of Children) Act, 2000 has retrospective operation. It has

further been observed that the age of an accused person can be determined by the Court or Board by seeking the evidence. The relevant

observations are contained in para 34, which are as under:-

34. Sub-Section (1) of Section 49 vests the Competent Authority with power to make due inquiry as to the age of a person brought before it and

for the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a finding as to whether the person is a

juvenile or a child or not, stating his age as nearly as may be. Sub-Section (2) is of equal importance as it provides that no order of a Competent

Authority would be deemed to have become invalid merely on account of any subsequent proof that the person, in respect of whom an order is

made, is not a juvenile or a child, and the age recorded by the Competent Authority to be the age of the person brought before it, would, for the

purpose of the Act, be deemed to be the true age of a child or a juvenile in conflict with law. Sub-Rule (3) of Rule 12 indicates that the age

determination inquiry by the Court or Board, by seeking evidence, is to be derived from:

- (1) the matriculation of equivalent certificates, if, available and in the absence of the same;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a Panchayat.

8. It is, thus, argued that the age of the petitioner is supported by matriculation certificate and the State should be directed to determine the age of

the petitioner. Section 7-A clearly provides for holding an inquiry, so is the position under Rule 12(3) which enjoins upon the Court or the Board a

duty to conduct an inquiry by seeking evidence by obtaining the matriculation or equivalent certificates, date of birth certificates, date of birth

certificate from the school and such other evidence. Section 7-A also clearly empowers the Court dealing with the matter to hold an inquiry by

taking evidence. Similarly, Rule 12 sub-Rule 1 also empowers the Court or the Board or Committee referred to in Rule 19 to determine the age of

the juvenile in conflict with law by taking evidence. There is no provision whereunder the State can determine the age of the accused claiming to be

juvenile at the time of commission of offence. Thus, the Mandamus sought by the petition is misconceived. The State or any of its agency has no

authority or jurisdiction to determine the age of juvenile. It is only the criminal Court dealing with the matter at any stage or the Board constituted

u/s 4 or a Committee constituted under Rule 19 of the Rules framed under the Act which is competent to determine the age of the accused claiming

to be juvenile.

In view of the above position, this petition is dismissing with liberty to the petitioner to approach any of the for as prescribed u/s 7-A read with

Rule 12(1) of the Juvenile Justice (Protection & Care of children) Act, 2000 and Rules framed thereunder.