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(1984) 09 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 3641 M of 1984

Dhan Singh and another	APPELLANT
Vs	
State of Haryana and another	RESPONDENT

Date of Decision: Sept. 18, 1984

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (1985) 1 ILR (P&H) 292 : (1985) 87 PLR 145

Hon'ble Judges: M.M. Punchhi, J

Bench: Single Bench

Advocate: S.S. Rathore, for the Appellant; Jailnder Sharma, for A.G. Haryana and Mr. M.L. Saini, for the Respondent

Final Decision: Allowed

Judgement

M.M. Punchhi, J.
In this petition u/s 482 of the Code of Criminal Procedure, it is required of this Court to let the Petitioners participate in an inquiry to determine the age of Sher Din Respondent No. 2 for the purposes of Haryana Children Act, 1974.

2. Briefly stated, the facts are that on 5.3.1981, the misting of a minor girl aged 5/6 years, named Nirmala Devi, was reported at Police Station Gharaunda. Later on 9.4.1981, a first information report under Sections 302/376/201, Indian Penal Code, was registered against Sher Din Respondent No. 2. Suggestion was made therein that he had committed forcible intercourse with the minor girl; caused her death and caused disappearance of the evidence of the crime The accused was brought before the Chief Judicial Magistrate, Karnal for being committed to the Court of Session to stand his trial. It transpired that the Court of the Chief Judicial Magistrate itself was "the Children Court" for purposes of the Haryana Children Act, 1974. A doubt having arisen in his mind, the learned Chief Judicial

Magistrate undertook an inquiry to determine the age of the Respondent, la the process he required the prosecution and the accused to lead evidence Surprisingly, the prosecution itself examined Majid, the father of the accused, as P.W. 1 and also tendered in evidence, Exhibit P.1, the birth certificate suggested relating to the accused. The accused, only on the other hand, relied upon his school leaving certificate. The learned Chief Judicial Magistrate, however, did not take care to invite participation of the complainants, the present Petitioners, in the said proceedings. On the evidence recorded, he came to the conclusion that Sher Din accused Respondent was a child. He rejected birth certificate, Exhibit P.1, on the sole ground that therein the name of tha accused did not figure The birth certificate disclosed that a son by the name of Nanha was born to Majid son of Badlu of village Gudha on 18.10.1963 Majid had, however, in his statement suggested that his son was about 15 years of ago and was his eldest son who was born at village Gudha. The school leaving certificate, Exhibit D.A., however, disclosed that the date of birth of the accused was 15 1.1966. So approximately there was 2-(sic)/4 years difference between Exhibit D.A. and P.1. Relying on Exhibit D.A., the learned Chief Judicial Magistrate held that Sher Din accused-Respondent Wat a child as the occurrence had taken place, at suggested by the investigation on 3.3.1981.

3. Dhan Singh one of the Petitioners, filed an application on 11 1.1982 requesting the Chief Judicial Magistrate to review his afore-referred to order dated 3.9.1981. The prayer was declined on 11.2.1982 by the Chief Judicial Magistrate. Thereupon, Dhan Singh Petitioner supported by the State filed a revision petition before the Court of Session to seek upsetting of the order of the Chief Judicial Magistrate dated 11.2.1982. The learned Sessions Judge took the view that since the original order dated 3.9.1981 had not been challenged by any party at any stage, revision against order dated 11.2.1982 could not bring to the Petitioners the desired relief. On the dismissal of the petition, the Petitioners Dhan Singh and the first informant Prem Singh have approached this Court u/s 482 of the Code of Criminal Procedure primarily contending that the Petitioners as "Complainants" should have been associated in the proceedings for inquiry for determination of the age of the accused-Respondent.

4. The provisions of the Haryana Children Act envisage setting up of a Children Court, and in the absence of one being set up, the powers of that Court art to be exercised by a Judicial Magistrate Ist Class specially nominated by the Sessions Judge. I had occasion to observe in Surjit Singh v. State of Haryana and others (1983) 10 Cri. L.T. 78, that the Chief Judicial Magistrate; Karnal seemingly was such a nominated Court. As said before the accused-Respondent in a regular way was brought before the Chief Judicial Magistrate to be committed to the Court of Session. And this gave occasion for the learned Chief Judicial Magistrate to go into the question as to whether the accused Respondent was a child within the meaning of the aforesaid Act or not

5. A Children Court in relation to delinquent children comes within the compass of "competent authority" as defined u/s 2(h) of the Act. Section 27 requires that save as provided in the said Act, no person shall be present at any sitting of a competent

authority, except (a) an officer of the competent authority, or (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers; and (c) such other persons as the competent authority may permit to be present. Now this provision envelopes a whole lot of people who can be parties to the proceedings. The point to be considered herein is whether the complainants were persons directly concerned in the inquiry or were otherwise such other persons which the competent authority could have permitted to be present for the purpose. As said before, the Children Court did not afford any opportunity to the complainant-Petitioners to participate in the inquiry. They as persons aggrieved, on account of the commission of the crime to my mind, appeared, if not persons directly concerned in the inquiry at least such other persons who would be interested in the inquiry. The provisions of the Haryana Children Act tends to take out children less than 16 years of age as delinquents practically outside the penal net of the law. The inquiry as such is crucial not only from the partisan point of view but also from the social point of view. It requires to be broad based as the circumstances of the case permit. To have left the complainants totally in the dark of this aspect of the case, especially when they were requited to depose against the accused-Respondent at the trial, would be to my mind lead to failure of justice. Thus, an opportunity was required by the Children Court to be given to the complainants for participating, in the inquiry to determine the age of the accused Respondent. Even the procedure adopted by the learned Magistrate, seems to me rather odd. The prosecution was allowed to put in the father of the accused as witness to prove his age At was expected, the father did depose in favour of his son that he was a child. Intrinsically, however, his evidence does not seem to have been marshalled with birth certificate, Exhibit P 1, when the learned Magistrate chose to prefer instead the school leaving certificate. Much could be said on either side for their comparative value. Had the complainants been a party to the inquiry, they could well have highlighted the preponderance of evidence to be in favour of holding that the accused-Respondent was not a child within the meaning of the Act. Thus, I am of the considered view that the inquiry conducted in that regard was vitiated. Further from the file summoned, I find that not a single prosecution witness has so far been examined Thus, for all practical purposes, the trial is at the initial stages and no prejudice would be caused to the accused-Respondent in having the inquiry afresh about his age in the presence of the complainants

6. For the foregoing reasons, this petition is allowed. The orders declaring the accused-Respondent as child are quashed remitting the matter back to the learned Chief Judicial Magistrate to readied the question in the pretence of the complainants, the accused and the prosecution, in accordance with law Parties through their counsel are directed to put in appearance before the learned Chief Judicial Magistrate, Karnal on 11.10.1984.