Baljinder Singh Vs State of Haryana and another

Criminal Rev. No. 1826 of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 20, 2009

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 302

Citation: (2009) 4 RCR(Criminal) 603

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: Kapil Aggarwal, for the Appellant; Ajay Singh Ghangas, DAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Mahesh Grover, J.
In this revision petition, which is directed against the order dated 23.8.2008 passed by the learned Addl. Sessions

Judge, Ambala, the petitioner is alleged to have committed an offence u/s 302 IPC and a case was registered against him and one Gopal Singh.

The alleged occurrence took place on 4.8.1999 and the FIR was registered on 5.8.1999. The petitioner moved an application under the

provisions of Juvenile Justice Act pleading that he was juvenile on the date of the commission of the offence and, therefore, was entitled to the

protection of the Act.

2. The Magistrate before whom the proceedings under the Act were initiated held an inquiry under the provisions of the Act. He went into the

matter and concluded that on the date of occurrence i.e. 4.8.1999 the Juvenile Justice Act, 1986 was in force and as per the definition given in this

Act under Clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of 16 years or a girl who had not attained

the age of 18 years. It rejected the contention of the petitioner that since the new Act of 2000 which came into existence in 2006 has given a

retrospective effect to the act according to S. 20 and explanation appended thereto and therefore the benefit was available to the petitioner.

Rather, he concluded that since in April 2001 the petitioner was not a juvenile and he was more than 18 years of age, the prayer of the petitioner

was declined.

In appeal, the order of the learned Magistrate was affirmed on the parity of the same reasoning.

3. Assailing the aforesaid order learned counsel for the petitioner contended that the impugned order is patently erroneous as the Court had to see

as to whether the child was juvenile on the date of commission of offence and not on the date of coming into force of the Act. Reliance was placed

on Hari Ram v. State of Rajasthan, 2009 (2) RCR Cri 878 : 2009 (3) RAJ 414.

4. On the other hand, learned counsel for the State has placed reliance on a judgment of the apex court rendered in Ranjit Singh v. State of

Haryana, 2008 (4) RCR Cri 543 : 2008 (5) RAJ 494 to contend that this matter has been categorically considered and the benefit of the juvenile

could not be afforded to the petitioner.

I have heard the learned counsel for the parties.

5. The case relied upon by the learned counsel for the respondent was (sic) considered in Hari Ram''s case (supra) which has been relied upon by

the learned counsel for the petitioner. In paras 40 & 41 of the said judgment the Supreme Court observed as follows :-

40. In the instant case, the appellant was arrested on 30.11.1998 when the 1986 Act was in force and under Clause (h) of Section 2 a juvenile

was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the

enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen

years of age which was given prospective prospect. However, as indicated hereinbefore after the decision in Pratap Singh''s case (supra), Section

2(l) was amended to define a juvenile in conflict with law to mean a juvenile who is alleged to have committed an offence and has not completed

eighteen years of age as on the date of commission of such offence; Section 7A was introduced in the 2000 Act and Section 20 thereof was

amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice

Act, 2000. Section 7A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as

has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules

framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. Accordingly, a juvenile who had

not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the

provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

41. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act whereby the Proviso and

Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other

criminal proceedings in respect of a juvenile in conflict with law the determination of juvenility of such a juvenile would be in terms of clause (i) of

Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was

committed.

6. The paras 44 and 45 the Supreme Court has further observed as under :-

44. We, therefore, allow the appeal and set aside the order passed by the High Court and in keeping with the provisions of Sections 2(k), 2(l), 7A

of the Juvenile Justice Act, 2000 and Rules 12 and 98 of the Juvenile Justice Rules, 2007, hold that since the appellant was below 18 years of age

at the time of commission of the offence, and also when the Juvenile Justice Act, 2000, came into force, the provisions of the said Act would apply

in his case in full force.

45. The matter is accordingly remitted to the Juvenile Justice Board, Ajmer, for disposal in accordance with law, within three months from the date

of receipt of a copy of this order, having regard to the fact that the offence is alleged to have been committed more than ten years ago. If, however,

the appellant has been in detention for a period which is more than the maximum period for which a juvenile may be confined to a Special Home,

the Board shall release the appellant from custody forthwith.

7. Since the matter has now conclusively been answered in Hari Ram"s case (supra), I am of the considered opinion, that the present petition

deserves to be accepted and the impugned order deserves to be set aside.

8. Accordingly, the present petition is accepted and the impugned order is set aside and the matter is remitted back to the revisional court for

decision in the same terms.