

(1989) 07 AHC CK 0100

Allahabad High Court (Lucknow Bench)

Case No: Criminal Revision No. 216 of 1989

Sheo Mangal Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** July 31, 1989**Acts Referred:**

- Constitution of India, 1950 - Article 39
- Juvenile Justice Act, 1986 - Section 2, 20, 3, 38, 39
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1990) 14 ACR 525**Hon'ble Judges:** Rajeshwar Singh, J**Bench:** Single Bench**Advocate:** Imtiyaz Murtaza, for the Appellant;**Final Decision:** Allowed

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**Judgement**

Rajeshwar Singh, J.

A case u/s 302 IPC has been committed to the court of Sessions. There some accused raised objection that they were juveniles under The Juvenile Justice Act, 1986 and they should not be tried by Sessions Court. The Sessions Court rejected that application. So they have approached this Court through an application in revision.

2. The definition of ♦juvenile♦ is given in Section 2(h) of the Act. According to this definition ♦juvenile♦ means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. The definition does not say that this age is to be seen on the date of occurrence. Section 20 deals with inquiry by Juvenile Court against juvenile offenders. It says that where a juvenile accused of an offence appears or is produced before a Juvenile court, it shall make an inquiry. Thus it appears that a juvenile court proceeds where a juvenile appears or is produced before it. It means that the person produced should be juvenile on the date when he

is produced before the juvenile court. However, Section 3 provides that where an inquiry has been initiated against a juvenile and during the course of such inquiry the juvenile ceases to be such, that is he crossed the age limit prescribed for being a juvenile then the inquiry may be continued in respect of such person as if such person had continued to be a juvenile. This means that once the juvenile court has initiated an inquiry, the inquiry will proceed and it will be of no consequence that the juvenile has crossed the prescribed age. So it appears that in order to get benefit of this Act a person should be juvenile when he is produced before a juvenile court and it will not do that he was juvenile on the date of occurrence though he is not juvenile when he is produced before the juvenile court. Of course once inquiry is initiated it will continue even though the person has crossed the age of being juvenile.

3. In Section 3 it has been said that the inquiry may be continued. The word **inquiry** has not been defined in this Act. It has been said in the last clause of Section 2 that all words and expressions used but not defined in this Act and defined in the Criminal Procedure Code shall have the meanings assigned to them in that Code. In Section 2(g) of the Criminal Procedure Code the word **inquiry** has been defined as meaning an inquiry conducted under Criminal Procedure Code by a Magistrate or a court. So, normally it can be argued that in Section 3 of the Act the inquiry means an inquiry under Criminal Procedure Code. If this meaning is accepted then it will mean that Section 3 says that if an inquiry is initiated under Criminal Procedure Code against a juvenile then that inquiry may be continued even if the person ceases to be juvenile. But under the Act an inquiry against a juvenile has to be initiated and continued under the Act and not under Criminal Procedure Code. So, inquiry in Section 3 should mean an inquiry under the Act and not under Criminal Procedure Code. There is no difficulty in placing this meaning because in definition clause it has been said that unless the context otherwise requires the definition given in that Section will have effect. Here as said above, the context requires otherwise. So the word **inquiry** in Section 3 would mean an inquiry under the Act and not an inquiry under the Criminal Procedure Code as defined by Section 2(g) of the Act.

4. u/s 5 of the Act, State Government constitutes a Juvenile court. Section 7 says that a Juvenile court shall have exclusive jurisdiction to deal with all proceedings under the Act. Sub-section (2) of Section 7 provides that where a Juvenile court has not been constituted the powers conferred on the Juvenile court shall be exercised in that area by Judicial Magistrate of I Class or some other functionaries mentioned in that Section.

5. Then we have Section 8. It says that when any Magistrate not empowered to act as a Juvenile Court is of the opinion that a person brought before him under any provision of the Act is a juvenile, he shall record such opinion and forward the juvenile and record of the proceeding to the competent authority having jurisdiction. The competent authority then has to act as if the juvenile was originally

produced before it.

6 According to Section 2(d), ♦competent authority♦ means a Juvenile court. Where no juvenile court is there, then it includes any court empowered under Sub-section 2 of Section 7 to exercise the powers of Juvenile court. Thus, the competent authority is one which has power to act as juvenile court.

7. Section 32 provides what a competent authority has to do when a juvenile is brought before it either originally or on reference u/s 8. It says that when it appears to the competent authority that the person brought before it is a juvenile then it has to make due inquiry as to the age of that person and for that purpose it has to take such evidence as may be necessary and then it has to record a finding that the person is juvenile or not stating his age as nearly as may be. That age is deemed of be a true age of the person.

8. Section 37 provides appeals against an order made by a competent authority. It lies to the court of Sessions. It means that if one is aggrieved by an order of the competent authority determining the age, he can appeal to the court of Sessions. Finally u/s 38 the revision lies to High Court.

9. If a person is held to be juvenile then u/s 20 the Juvenile court can hold an inquiry, the procedure of which is given in Section 39 and it can pass any order provided in Section 21.

10. It is mentioned in the judgment of the Sessions court that a juvenile court for that district is functioning at Lucknow. The Learned Counsel for the revisionists supports this contention and it is not questioned by the Learned Counsel for the State. So, it appears that Juvenile court is there and this order is being passed on this assumption.

11. Under the circumstances, when the ♦revisionists were brought or produced before the Magistrate, who was presumably not empowered to exercise the power of juvenile court, he should have considered the question whether the accused appeared juvenile and if they did appear juvenile, he should have proceeded in accordance with Section 8 and forwarded the juveniles and the record of the proceedings to the competent authority. If it did not strike to the Magistrate, it was the duty of the revisionists themselves to have raised this question before him and made a request. If any party was dissatisfied with the decision, he could go in appeal. But this was not done and the matter reached the Sessions Court. Thus juvenile court has no opportunity of considering the matter, and if the opinion of the Sessions Judge is taken to be final the parties will be deprived of the right of appeal.

12. Of course, the revisionists have themselves failed in raising this point, but the position is that The Juvenile Justice Act, 1986 is a new Act and even lawyers and Judges are yet not well conversant with its provisions what to say of litigants. Thus there was some ground for not raising this point before the Magistrate.

13. Article 39 of the Constitution says that the State shall, in particular, direct its policy towards Securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Supreme Court in the case of Gopinath Ghosh, reported in 1984 Uchchatam Nyayalay Nirnai Sar, page 2, sent the case back for determination of age under another some what similar Act when this question was raised for the first time before the Supreme Court. The Supreme Court also found a note of caution and expressed the view that whenever a Magistrate thinks that the age of an offender is less than 21 years, then he should decide this point after taking evidence before proceeding further. Here what the revisionists say is not absolutely baseless because at the time of granting bail atleast this seems to have been pointed out that these persons are near about minority. Keeping these circumstances in view even if this question was not raised before the Magistrate, it will be proper that the matter is decided according to law and all persons get proper opportunity. For this purpose the commitment will have to be quashed and the Sessions Judge will send back the case to the Magistrate, who shall proceed in accordance with the provisions of The Juvenile Justice Act, 1986, discussed above, especially keeping Section 8 of the Act in view.

14. This revision considered alongwith 482 Code of Criminal Procedure is allowed. The order of the learned Sessions Judge is set-aside and commitment so far as it relates to the revisionists is quashed The Sessions Judge shall send back the matter to the court of Magistrate, who made commitment and that court shall proceed afresh keeping the provisions of Section 8 of the Juvenile Justice Act, 1986 in view.