(2014) 07 AHC CK 0106

Allahabad High Court

Case No: Criminal Revision No. 2653 of 2003

Bijendra		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: July 21, 2014

Acts Referred:

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2, 20
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2014) 3 ACR 3061 : (2014) 8 ADJ 338

Hon'ble Judges: Vijay Lakshmi, J

Bench: Single Bench

Advocate: Mohan Tiwari, Advocate for the Appellant

Judgement

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Vijay Lakshmi, J.

By means of this revision, the revisionist has challenged the legality of the judgment and order dated 11.8.2003 passed by Additional Sessions Judge, Fast Track Court No. 5, Deoria in S.T. No. 132 of 2000, State v. Vijendra, whereby the learned Additional Session Judge, has refused to separate the file of revisionist on the basis of his plea of juvenility. Heard Sri Mohan Tiwari, learned counsel for the revisionist and learned A.G.A. appearing on behalf of the State and perused the record.

Some background facts in brief are that an application alongwith an affidavit was filed by the revisionist before the learned Additional Session Judge, Deoria praying to separate his file from the rest of the accused. The applicant/revisionist prayed that he being a juvenile on the date of occurrence, his file be sent to Juvenile Justice Board for disposal. In the affidavit annexed with the application, it was stated that the date of birth of the revisionist, as mentioned in the High School Certificate being

20.10.1982, he was below 18 years of age on the date of occurrence, alleged to have taken place on 18.2.2000 so he was a juvenile on the day of occurrence. In support of his pleadings the applicant/revisionist filed his High School Certificate in original.

However, learned Additional Session Judge rejected his application by the order impugned on the following grounds:

1. The applicant had surrendered in the Court on 25.3.2000 but he did not take the plea of juvenility on that date.

2. The date of occurrence is 18.2.2000 and on such date the Juvenile Justice (Care and Protection of Children) Act, 2000 was not in force. As this Act has come into force on 1.4.2001, in this case the provision of old Act of 1986 would apply.

3. In the old Act, in order to declare a person a juvenile, his age should have been less than 16 years whereas the applicant (revisionist) was of 17 years three month and 28 days on the date of occurrence. Therefore he cannot be held to be a Juvenile.

2. Learned Additional Sessions Judge has relied on a case law in Arninkdas v. State of Bihar, 2000 SCC 482 and has held that the relevant date for determining the age of an accused who is taking plea of juvenile, would be the date when he, for the first time appears before the Court and not the date of offence. One more ground on which the application of the revisionist has been rejected by lower Court is that the applicant/revisionist has not raised the plea of juvenility on the date when he had surrendered before the Court.

3. Aggrieved by the aforesaid order, the revisionist has come before this Court and has questioned its legality on the following grounds:

(1) That the learned lower Court has not considered the fact that the revisionist was a minor on the date of occurrence and has ignored the certificate of High School filed by him.

(2) The view taken by the Court below regarding the relevant date for declaring a person a juvenile, is against the legal position but the Court below without application of his judicial mind and without keeping in view the legal provisions, has passed the impugned order which is liable to be set aside.

4. After hearing the learned counsel for the revisionist, learned A.G.A. and considering the legal provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, I am of the considered view that the present revision deserves to be allowed and the impugned order dated 11.8.2003 is liable to be set aside.

5. The legal provision with regard to cases which were pending on the date of coming into force of Juvenile Justice Act, 2000 is provided under Section 20 of Juvenile Justice (Care and Protection of Children) Act, 2000 which is reproduced below.

Section 20:

"Special provision in respect of pending cases.--Notwithstanding anything contained in this Act, all proceedings in respect of 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 has 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."

Explanation.--In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provision had been in force, for all purposes and at all material times when the alleged offence was committed.

6. The aforesaid provision leaves no scope for any doubt that the Juvenile Justice (Care and Protection of Children) Act, 2000 has been given retrospective effect. The explanation appended to the section clearly provides that the determination of juvenility shall be in terms of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force when the alleged offence was committed.

Clause (1) of Section 2, which defines "a juvenile in conflict with law" reads as under:

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

7. In the wake of clear and unambiguous legal provisions quoted above the view taken by the learned lower Court that as the applicant/revisionist was major at the time when he was first produced before the Court so he cannot be held juvenile, appears to be manifestly incorrect.

8. The second ground on which the application of the revisionist was rejected by the lower Court was that he had not raised the plea of juvenility earlier on the date when he had surrendered before the Court.

The aforesaid reason given by the learned lower Court is against the well-settled legal position and the view expressed by Hon''ble the Apex Court in a catena of judgments that the plea of juvenility can be taken up at any stage even at the stage of the appeal.

9. In Babloo Pasi v. State of Madhya Pradesh, 2007 Cr. L.J. (NOC) 17 (MP), which was a case under Sections 302/ 34 I.P.C., plea of juvenility had not been raised before the Trial Court and it was first raised before the Appellate Court it was held that such plea can be raised even at the appellate stage.

10. In Sayyed Mirazuddin alias Miraz v. State (NCT of Delhi), 2006 Cri. L.J. 1403, it has been held that if on account of either ignorance or penury, a person is unable to take the plea of being a juvenile or the said question has not been inquired into, the same can be taken up at any stage including the stage of appeal. In the wake of above mentioned legal exposition, the impugned order is liable to be set aside and is hereby set aside accordingly.

The case is remanded back to the lower Court with a direction to hold an enquiry with regard to the age of applicant/revisionist on the date of commission of the offence and it is found that the applicant/revisionist was a juvenile within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000, then to proceed with the matter according to law.