
Devendra Singh Vs State of M.P.

M. Cr. C. No. 2290 of 1997

Court: Madhya Pradesh High Court

Date of Decision: March 10, 1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 482#Juvenile Justice Act, 1986 â€” Section 8, 8(2)#Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 302, 324

Citation: (1998) CriLJ 3654 : (1998) 2 MPJR 56

Hon'ble Judges: Dipak Misra, J

Bench: Single Bench

Advocate: Ajay Gupta, for the Appellant; B.P. Athya, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

Invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") the petitioner has

assailed the order dated 14-8-96 passed by Judicial Magistrate First Class, Barasia, Bhopal which has been affirmed by the learned Second

Additional Sessions Judge, Bhopal in Criminal Revision No. 138/96 whereby the prayer of the petitioner to treat him as a juvenile has been

refused. It is also worth mentioning here that the petitioner has also questioned the propriety of the order dated 2-1-97 passed by the IX

Additional Sessions Judge, Bhopal (the learned trial Judge) wherein he has declined to entertain the prayer of the petitioner for treating him as a

juvenile.

The facts as have been undraped in the petition are that the petitioner has been arrayed as an accused in connection with a crime instituted for

offences punishable under Sections 147 148 302/149 and 324/149 of the Indian Penal Code. He was arrested on 29-7-96 by the Investigating

Agency and was produced before the Judicial Magistrate First Class, Barasia who remanded him to custody. The petitioner filed an application

before the learned Magistrate praying therein that he was a juvenile, his date of birth being 14-9-81 and hence he should be sent to Juvenile Court.

He produced his "horoscope" in support of his date of birth and also prayed for conducting the necessary medical test for affirmation of his age.

The learned Magistrate rejected the application by order dated 14-8-96 relying upon the mark-sheet of the petitioner as the same reflected his

date of birth to be 11-7-80. The aforesaid order by the learned Magistrate was challenged in Criminal Revision No. 138/96 before the learned

Sessions Judge, Bhopal which eventually came to be disposed of by learned Second Additional Sessions Judge who affirmed the order by learned

Magistrate. 1 "hereafter, the matter was committed to the Court of Session which formed the subject-matter of Sessions Trial No. 393/96 before

the learned IX Additional Sessions Judge, Bhopal. Before the said Court another" attempt was made by the petitioner by filing an application

pressing for conducting art enquiry with regard to his age and treat him as a juvenile and pass appropriate orders. The learned Trial Judge by order

dated 2-1-97 rejected the prayer of the petitioner by holding that the date of birth as mentioned in the marksheet of the petitioner is 11-7-80 and,

therefore, by the date of incident i.e. 17-7-96 the petitioner was more than 16 years of age. Being of this view he rejected the prayer of the

petitioner.

Initially the petitioner had assailed the order dated 2-1-97 but thereafter by way of amendment, the legality of the earlier orders has also been

called in question.

Assailing the propriety of orders passed, Mr. Ajay Gupta, learned counsel for the petitioner has contended that the approach of the Courts below

is palpably erroneous inasmuch as they have refused to conduct an enquiry with regard to the age of the petitioner, solely on the basis that the

mark-sheet of the petitioner reveals his age to be 11-7-80. It is strenuously urged by Mr. Gupta that when the affidavit of the grand-father and the

uncle of the petitioner was before the learned Magistrate affirming that at the time of admission in school a wrong date was mentioned just to satisfy

the eligibility criteria to get the admission, the learned Magistrate erred in law in refusing to conduct an enquiry and that alone vitiated the order

passed by him. In support of his submission he has placed reliance on the decisions rendered in the cases of Guman v. State of M.P. 1992 Jab LJ

375, Bhola Bhagat Vs. State of Bihar, , Rinkoo Khatri Vs. State of M.P. and Another, , Suresh Agrawal v. State of M.P. (1997) 2 MPLJ 591,

Inder Singh v. State of M.P. 1990 MPLJ 365.

Controverting the aforesaid submissions of learned counsel for the petitioner Mr. Athya, learned Government Advocate has contended that once

the date of birth has been clearly reflected in the mark-sheet and a photocopy thereof has been produced and the genuineness of the same is not

disputed, it is not open to the petitioner to adduce oral evidence in support of his age. It is his further submission that the obtaining factual matrix

did not warrant for causing an enquiry and hence the orders passed by the Courts below are invulnerable.

To appreciate the rival contentions raised at the Bar, it is essential to refer to certain provisions of the Act. Section 8 of the Act lays down the

procedure to be followed by the Magistrate who has not been conferred power under the Act to finally determine the age of the petitioner. The

provision reads as under :-

Section 8, Procedure to be followed by a Magistrate not empowered under the Act-

(1) When any Magistrate empowered to exercise the power of a Board or a juvenile Court under this Act is of opinion that a person brought

before him under any of the provision of this Act (otherwise than for the purpose of giving evidence) is a juvenile, he shall record such opinion and

forward the juvenile and the record of the proceeding to the competent authority, having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under Sub-section (1) shall hold the inquiry as if the juvenile had originally been

brought before it.

On a bare reading of the aforesaid provision it is crystal clear that the Magistrate is required to record an opinion in regard to the age of a

delinquent juvenile and on being satisfied forward the record of the proceeding to the competent Court having jurisdiction over the matter. After

the Magistrate forwards the record to the competent Court, then the Juvenile Court shall proceed with the matter in accordance with Section 8(2)

of the Act and after conducting enquiry determine the age of the delinquent juvenile. This view has been taken in the decisions rendered in the case

of Suresh Agrawal v. State of M.P. (1997 (2) MPLJ 591)(supra) and Rinkoo Khatri Vs. State of M.P. and Another, . It is to be noted that in the

case of Rinkoo Khatri the Court has also expressed the view that the Sessions Judge u/s 8 of the Act has jurisdiction to conduct an enquiry and

form an opinion as to whether person brought before him is a juvenile or not and refer the case to the Juvenile Court, if he is satisfied on enquiry

conducted for formation of opinion. The essential ingredient is the formation of an opinion. in the case of Inder Singh v. State of M.P. (1990 MPLJ

365) (supra) it has also been held that an accused can raise a plea of being a juvenile even before the Court of Session.

The question that requires consideration in the case at hand is that whether it was open to the petitioner to raise such a plea before the Trial Judge

after having been unsuccessful in the revision preferred by him. To overcome this technical hurdle Mr. Gupta, learned counsel for the petitioner, us

has been indicated before, filed an application for amendment to challenge the orders initially passed by the learned Magistrate and in the revision

so that he could address this Court with regard to the indefensibility of the said orders, it is apparent that the learned Trial Judge has rejected the

application of self-same reason. The bedrock for passing the earlier order is the mark-sheet of the petitioner brought on record. The impugned

orders clearly reveal that there has been no enquiry by the Courts below at any point of time to find out the age of the petitioner. The affidavits filed

by the grand-father and others have not been taken into consideration. The whole process of formation of opinion as enjoined u/s 8 of the Act has

been done solely on the basis of the reflection of age in the mark-sheet. The prayer for conducting an ossification test was also not acceded to.

Submission of Mr. Gupta is that it was incumbent on the part of the Court of first instance to conduct an enquiry that when a plea was raised that

the accused was a juvenile and he was prepared to adduce evidence of his relations to indicate that the age reflected in the mark-sheet was not

correct. To buttress his submission he has placed strong reliance on the decision rendered by the Apex Court in case of Bhola Bhagat Vs. State of

Bihar, wherein the Apex Court has held as follows (at pp. 395-96 of Cri LJ):-

When a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes

obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the

question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead

evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the Court where such a plea is

raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the

provisions to an accused. The Court must hold an enquiry and return a finding regarding the age, one way or the other. The High Courts and the

subordinate Courts are expected to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the

effort of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated.

From the aforesaid decision it follows that an enquiry is necessary if the Court entertains any doubt about the age. Mr. Athya, learned Government

Advocate has vehemently urged that when the mark-sheet was produced and the genuineness of the same was not questioned there was no

necessity on the part of the learned Magistrate to conduct an enquiry. The crux of the matter is whether production of mark-sheet which reflects

the age on the basis of entry in the school admission register would seal the fate of an accused to claim to be a juvenile. It is to be borne in mind,

this is not an entry in the Register of Births and Deaths which is maintained in accordance with law, after following due procedure. An admission in

the school register cannot have the finality for the purpose of determination of age as there is tendency in the parents to understate the age or

sometime to enhance the age. At this juncture I may refer to the decisions rendered in the cases of Brij Mohan Singh Vs. Priya Brat Narain Sinha

and Others, and Ram Murti Vs. State of Haryana, wherein their Lordships have taken a view that the school admission register as to the age of

student cannot be treated to be correct, as the guardians do sometime understate the age of children. Similar view has also been taken in the case of

Bishnudas Behera Vs. State of Orissa, . This Court in the case of Narendra Singh Vs. State of Madhya Pradesh, also after analysing the evidence

on record opined that the school admission certificate was not trustworthy for the purpose of age. True it is, that in some cases the guardian under

states the age, but in the present case a plea was taken that the age stated was more than the actual age. This is also not a rare phenomenon. It is to

be borne in mind as per the mark-sheet the age of the petitioner was hardly seven days more than 16 years and when he wanted to adduce

evidence in support of his age the Court of first instance should have conducted an enquiry.

In view of the foregoing analysis, I am of the considered view that the impugned orders do not deserve the stamp of approval of this Court and

accordingly they are set aside. As the matter is pending before the IXth Additional Sessions Judge, Bhopal he shall conduct an enquiry with regard

to the age of the petitioner and if he, prima facie, forms an opinion, in favour of the accused petitioner he should transmit the matter to the

competent Court as enjoined under the Act. The necessary enquiry for the purpose of formation of opinion u/s 8 of the Act should be concluded

within six weeks from today. A copy of this order be sent to the learned trial Judge forthwith.

Consequently, the Criminal Misc. Case is allowed.