

Mostafa Ali @ Mostafa Hossain Vs State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: Feb. 18, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 401, 482
Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006 â€” Section 7(A), 7A(1)

Citation: (2008) 4 CHN 573

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: J. Bagchi and Sourav Chatterjee, for the Appellant; K. Ghosh and Subir Banerjee, Jayanta Banerjee and R. Basu Roy for O.P. No. 2, for the Respondent

Judgement

Arunabha Basu, J.

This revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure is directed against the

Order No. 40 dated 25.07.2007 passed by the learned Additional District and Sessions Judge, Raiganj in connection with Sessions Case No. 24

of 2004 (S.T. No. 14 of 2004).

2. Learned Court below rejected the application filed by the petitioner herein on the ground that he is a juvenile in conflict with law.

3. Learned Advocate for the petitioner referred to Section 7(A) of Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 and

submitted that the learned Court below misdirected himself to reject the application only on the ground of alleged delay in filing the application by

the petitioner. It may be pointed out in this context that whenever plea is raised by a person facing trial before the Court of Law that he is a juvenile

within the meaning of the Act, then it is the duty of the Court to decide the point on merit by passing a speaking order.

4. consideration of evidence whether the petitioner is a juvenile within the meaning of the Act or not, without doing that, in any order is passed

rejecting the prayer on grounds that such application is filed belatedly, the learned Court below be committing an act of illegality in passing such

order.

5. Section 7A of the amended Act is reproduced below:

7A. Procedure to be followed when claim of juvenility is raised before any Court.-(1) Whenever a claim of juvenility is raised before any Court or

a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take

such evidence as may be necessary (but not an affidavit) as so to determine the age of such person, and shall record a finding whether the person is

a juvenile or a child or not, stating his age as early as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, as

such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be

so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1) it shall forward the juvenile to the

Board for passing appropriate order, and the sentence if any, passed by a Court shall be deemed to have no effect.

6. The specific provision of the statute as mentioned above provided that the question where a person is juvenile or not whenever raised before a

Court of Law, shall be decide by an enquiry where evidence shall be taken, as may be necessary, the evidence by affidavit has been excluded from

the purview of enquiry u/s 7A of the amended Act.

7. Needless to add that specific provision of the Act clearly indicates that such enquiry is mandatory and the learned Court below to conduct

enquiry and on consideration of evidence, both oral and documentary, is required to come to a positive finding whether the petitioner is a juvenile

within the meaning of the Act or not.

8. It has to be borne in mind that such determination is required for the purpose of trial, as because under the law the juvenile in conflict with law,

cannot be tried together with any adult person in respect of the same offences.

9. This being the position, the impugned order passed by the learned Court below is hereby set aside and quashed.

10. The matter is remitted back to the learned Court below with a direction to conduct necessary enquiry in terms of Section 7A of the amended

Act as mentioned above as expeditiously as possible after giving an opportunity to the petitioner to lead evidence and to decide the matter within a

period of two months from the date of receipt/communication of the order.

11. With this direction, the revisional application is disposed of.

12. There shall be no order as to costs.

13. Criminal Section is directed to supply the certified copy of the Order to the learned Advocate for the parties within three days.