

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11841 of 2013

Arising Out of PS.Case No. -97 Year- 1998 Thana -FATUHA District- Patna

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1. Satish Mahto @ Satish Kumar S/O Suresh Mahto R/O Village -
Machoriayama, P.S. Fatuha, District - Patna

2. Shailesh Kumar @ Shailesh Mahto S/O Suresh Mahto R/O Village -
Machoriayama, P.S. Fatuha, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Raj Ballabh Singh (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 14-05-2015 Heard the learned counsel for the petitioners and the

learned A.P.P. for the State.

This criminal miscellaneous application under Section 482 Cr.P.C. has been filed by the petitioners for quashing the order dated 06.02.2013 passed by Additional Sessions Judge III, Patna City in Fatuha P.S. Case No.97 of 1998 giving rise to Sessions Trial No.30A of 1999 under Section 302, 307, 109/34 I.P.C. and also Section 27 of Arms Act.

The offence is said to have been committed on 29.05.1998. The petitioners filed application before the Sessions Court for declaring them as juvenile and sending the case for trial before the Juvenile Justice board according to the Juvenile Justice



Act, 2000. The learned Additional Sessions Judge by the impugned order held that the date of birth of petitioner No.1 according to the matriculation certificate is dated 18.02.1981 and the date of birth of petitioner No.2 is dated 01.03.1982 who had not completed 18 years of age on the date of commission of the offence. However, applying the decision of the Hon'ble Supreme Court in the case of **Pratap Singh v. State of Jharkhand and Another, (2005) 3 Supreme Court Cases 551** held that since both the petitioners had completed the age of 18 years on the date of commencement of the Juvenile Justice Act, 2000 which came into force on 01.04.2000, the Act of 2000 will not apply rather the Juvenile Justice Act of 1986 will apply.

The learned counsel for the petitioners submitted that the court below has gravely erred in holding that the Juvenile Justice Act, 2000 will not apply. According to the learned counsel, after the decision of the Supreme Court in Pratap Singh's case(supra), the Juvenile Justice Act, 2000 was amended in the year 2006 by Amendment Act No.33 of 2006 wherein the definition of "juvenile in conflict with law" has been given that means a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence.



Perused the order passed by the Sessions Court. It appears that the court below on the basis of the matriculation certificate recorded a clear finding that they had not completed 18 years of age on the date of commission of the offence i.e. 29.05.1998. However, the court below has held that in the case of *Pratap Singh v. State of Jharkhand and another*, (2005) 3 Supreme Court Cases 551, it has been held that 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 01.04.2001. It may be mentioned here that subsequently, the Juvenile Justice Act, 2000 was amended by Act No.33 of 2006. Therefore again, this question as to whether in these type of cases where the person who has not completed the age of 18 years on the date of commission of the offence and proceeding under the 1986 Act is continuing whether the provision of the Juvenile Justice Act, 2000 will be applicable on him or not was considered by the Supreme Court in the case of **Hari Ram v. State of Rajasthan and another**, (2009) 13 Supreme Court Cases 211 = (2010) 1 Supreme Court Cases (Cri.) 987 and the Supreme Court in this case considering all the decisions earlier rendered by the Supreme Court including the case of *Pratap Singh* at paragraph



58 held that “of the two main questions decided in Pratap Singh’s case, one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralized by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provision of the Act were also made applicable to juveniles who had not completed 18 years of age on the date of commission of the offence.” The Supreme Court also held that “the intention of the legislature was reinforced by the amendment effected by the amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein it has been clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2(l) even if the juvenile ceases to be so on or before the date of commencement of this Act and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed.”

Now, therefore, the question raised by the petitioners in this criminal miscellaneous application has already been

answered by the Supreme Court in the case of Hari Ram(supra).

In such circumstances, the court below has wrongly applied the ratio of the case of Pratap Singh which was rendered prior to the Amendment Act 33 of 2006.

Accordingly, I allow this criminal miscellaneous application and the impugned order passed by the court below is hereby set aside. It is made clear that the Juvenile Justice (Care and Protection of Children) Act, 2000 is applicable to the petitioners in this Sessions case.

(Mungeshwar Sahoo, J)

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