

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 345 OF 2003

Sainath s/o Dattatraya Parsewar,
Age: 29 years, Occ: Unemployed,
R/o. Itwara, Nanded, Dist. Nanded.

...Applicant

versus

The State of Maharashtra,
At the instance of complainant
Shri. N.R. Bajaj,
Food Inspector, Nanded,
Dist. Nanded.

...Respondent

.....
Mr. V.R. Dhorde, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 16th APRIL, 2016

ORAL JUDGMENT :

Heard Mr. Dhorde, learned Counsel for the applicant/accused, who was convicted for an offence punishable under Section 7(i) read with Section (ia) (a) (c) (j) and (m) and punishable under Section 16(1-A) of the Prevention of Food Adulteration Act and sentenced to suffer rigorous imprisonment for one year and fine of Rs.2000/-, in default to suffer further simple imprisonment for six months, for offence under Section 4-A, punishable under Section 16(1-C) of the Prevention of Food

Adulteration Act and sentenced to suffer simple imprisonment for one month and fine of Rs.500/- in default, to suffer simple imprisonment for one month and for an offence punishable under Section 7(iii) read with Rule 60 and punishable under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act and sentenced to suffer simple imprisonment for six months and fine of Rs.1000/-, in default to suffer further simple imprisonment for two months, in Regular Criminal Case No. 146 of 1994 vide judgment and order dated 30/03/1995, which was the subject matter of appeal at the behest of present applicant in Criminal Appeal No. 39 of 1995, which came to be dismissed on 08/10/2003 by learned Additional Judge, Nanded affirming the judgment delivered by learned Magistrate.

2. At the outset, Mr. Dhorde, learned Counsel for the applicant has invited my attention to the juvenility and availability of privileges under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter shall be referred to 'Act of 2000') and would urge that lower appellate Court has recorded findings that the Act of 2000 is not applicable to the facts of the present case. Learned lower appellate Court has observed that the offence in question took place on 27/11/1992 when the Juvenile Justice Act, 1998 was holding the field. By relying upon the judgment of the Apex Court in the matter of ***Bharat Bhushan vs. State of Himachal Pradesh*** reported

in **2013 ALL MR (Cri) 2199**, learned Counsel for the applicant would submit that the learned appellate Court has recorded incorrect finding as regards retrospective applicability of the Act 2000 which is no more *res integra* and the benefit must be passed on to the present applicant-accused. So as to substantiate his contention, he has invited my attention to paragraphs-8, 9 and 10 of the said judgment, which reads thus :

*“8. We have heard learned Counsel for the parties at some length. The legal position regarding the entitlement of the appellant who was more than 16 years but less than 18 years of age as on the date of commission of the offence on 22nd June, 1993, is in our view settled by the decision of this Court in **Hari Ram v. State of Rajasthan (2009) 13 SCC 211 : [2009 ALL SCR 1381]** This Court has in that case traced the history of the legislation and reviewed the entire case law on the subject. Relying upon the decision of the Constitution Bench of this Court in **Pratap Singh’s, [2005 ALL MR (Cri.) 2258 (S.C.)** case (*supra*), this Court in **Hari Ram’s [2009 ALL SCR 1381]** case (*supra*) reiterated that the question of juvenility of a person in conflict with law has to be determined by reference to the date of the incident and not the date on which cognizance is taken by the Magistrate. Having said that, this Court held that the effect of the pronouncement in **Pratap Singh’s [2005 ALL MR (Cri.) 2258 (S.C.)** case (*supra*) on the second question, viz. whether the 2000 Act was applicable in a case where the proceedings were initiated under the 1986 Act and were*

pending when the 2000 Act came into force, stood neutralised by the amendments to Juvenile Justice (Care and Protection of Children) Act, 2000, by Act 33 of 2006. The amendments made the provisions of the Act applicable even to juveniles who had not completed the age of 18 years on the date of the commission of offence said this Court. Speaking for the Court **Altamas Kabir, J.** (as His Lordship then was) observed:

“58. Of the two main questions decided in *Pratap Singh* 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, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing

sentence upon being convicted.

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68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.”

9. These decisions have been followed in several other subsequent pronouncements of this Court including the decisions of this Court in **Raju and Anr. v. State of Haryana (2010) 3 SCC 235**, **Dharambir v. State (NCT of Delhi) and Anr. (2010) 5 SCC 344 : [2010 ALL MR (Cri)2300(S.C.)**, **Mohan Mali and Anr. v. State of M.P. (2010) 6 SCC 669 : [2010 ALL MR (Cri.) 2289 (S.C.) Jitendra Singh @ Babboo Singh and Anr. v. State of U.P. (2010) 13 SCC 523 : [2010 ALL SCR 2877]**, **Daya Nand v. State of Haryana (2011) 2 SCC 224 : [2011 ALL MR (Cri.) 614 (S.C.)**, **Shah Nawaz v. State of U.P. and Anr. (2011) 13 SCC 751 : [2005 ALL MR (Cri.) 2258 (S.C.) and Amit Singh v. State of Maharashtra and Anr. (2011) 13 SCC 744 : [2012 ALL SCR 380]**

10. The attention of the High Court was, it is obvious, not drawn to the decision in **Hari Ram's case [2009 ALL SCR 1381]** (supra), although the same was pronounced on 5th May, 2009 i.e. almost a year earlier to the pronouncement

*of the impugned judgment in this case. Be that as it may, as on the date the offence was committed the appellant was admittedly a juvenile having regard to the provisions of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98 of the Rules framed under the Juvenile Justice (Care and Protection of Children) Act, 2000. He was, therefore, entitled to the benefit of the said provision, which benefit, it is evident, has been wrongly denied by the High Court only because the High Court remained oblivious of the pronouncement of this Court in **Hari Ram's case [2009 ALL SCR 1381]** case (supra)."*

3. He would then submit that the date of birth of present applicant-accused is 04/03/1976, whereas the alleged offence claimed to have been committed on 27/11/1992. So as to justify his plea of juvenility and passing of benefit under the said Act, he has invited attention of this Court to the extract of admission register issued by the Headmaster of Zilla Parishad High School, wherein it is certified the date of birth of present applicant is, 04/03/1976. He would then invite my attention to certain documents i.e. ration card issued by the competent authority of the State Government.

4. Learned A.P.P. submits that benefits cannot be passed on to the present applicant, as offence committed is prior to giving effect of Act of 2000 and was governed by the Act of 1998. He submits that the criminal revision application be dismissed, as there

are serious allegations against the present applicant.

5. Having bestowed my thoughts to the submissions, it is required to be noted that there is a document, extract of the school admission register issued by Zilla Parishad Primary School, Itwara, Nanded demonstrating admission of the present applicant at Serial No. 5962. The date of admission is shown to be 24/06/1982 and is date of birth as 04/03/1976. The fact remains that the food articles which were sold by the present applicant, the sample therefrom was drawn on 27/11/1992. If the date of birth as 04/03/1976 is considered, then on the date of alleged commission of offence, the age of the applicant could be calculated above 16 years and below 18 years.

6. In the background of above, it is required to be noted that the provisions of Act of 2000 are very much available to the present applicant and it was duty of learned Sessions Judge to evaluate the claim of the applicant in the light of provisions of Section 7(a) and Section 20 of the Act. Learned Counsel for the applicant has rightly invited attention of this Court to the judgment of the Apex Court, in the matter of ***Hari Ram***, cited supra.

7. Learned lower appellate Court by observing that new Act

of 2000 and provisions thereof are not available to this applicant, has committed error of law, which in my opinion is not sustainable. Hence, the said judgment of the dismissal of the appeal passed by the learned Additional Sessions Judge, Nanded on 08/10/2003 passed in Criminal Appeal No. 39 of 1995 is hereby set aside. The said appeal stood restored to the file of learned Additional Sessions Judge, Nanded for deciding afresh in the light of above referred observations. The present applicant undertakes to appear before learned Additional Sessions Judge, Nanded on 06/06/2016 alongwith original certificate depicting the date of birth and learned Additional Sessions Judge, Nanded is directed to evaluate the claim of the applicant about his juvenility after taking recourse to such inquiry as is permissible in law and shall record findings afresh as regards the guilt of applicant-accused. The Additional Sessions, while doing so, shall keep at back of its mind the provisions of Section 20 of the Act of 2000 and the judgment of Apex Court in the matter of ***Hari Ram*** cited supra.

8. The criminal revision application is partly allowed in above terms. There shall be no order as to costs.

[N.W. SAMBRE, J.]