

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP No.26931 of 2016 (O&M)**

Date of decision: January 17, 2017

Bunty

...Petitioner

Versus

Union Territory of Chandigarh and others

...Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal  
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr. R.K. Samyal, Advocate  
for the petitioner.**

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**HARINDER SINGH SIDHU, J.**

This petition under Article 226/ 227 of the Constitution of India has been filed impugning order of this Court dated 13.01.2014 (Annexure P-3), whereby, the criminal revision No.1618 of 2013 filed by the Respondent - U.T. Chandigarh against the order of the Trial Court dated 01.02.2013 declaring the petitioner to be a juvenile has been allowed and he has been declared to be a major.

The petitioner along with five others, namely Manoj, Rahul, Arun, Ajit and Harish is accused in FIR No.26 dated 03.02.2012, registered under Sections 302/307/323/147/148/149 IPC at Police Station Sector 36, Chandigarh. During the trial, the petitioner and co-accused Arun filed application stating that at the time of alleged occurrence, they were minors. Stating that they were poor and illiterate and there being no documentary proof of their age, it was requested that ossification test be conducted to

determine their age. The Ld. Trial Court allowed their application vide order dated 04.12.2012. The ossification test was conducted, wherein it was opined that the petitioner and Arun were minors. Based thereon, the petitioner was declared juvenile by the Ld. Trial Court vide its order dated 01.02.2013.

Respondent - U.T. Chandigarh challenged the order by filing Criminal Revision No.1618 of 2013 under Section 401 of the Code of Criminal Procedure, 1973. It was submitted that the petitioner had wrongly stated before the Trial Court that there was no documentary evidence to establish his age, hence, the necessity to undergo ossification test. It was pointed out that the petitioner had produced his school leaving certificate in another case to claim the benefit of being juvenile but had deliberately suppressed the same and opted for ossification test in this case. As per school leaving certificate, his date of birth was 15.11.1991. Thus on the date of the alleged occurrence i.e., 03.02.2012 he was a major. Relying on the aforesaid, the Criminal Revision Petition was allowed by this Court vide order dated 13.01.2014. The order of the Trial Court dated 01.02.2013 was set aside. The petitioner was declared to be a major and his application to declare him as juvenile was dismissed.

The petitioner has assailed the aforesaid order through the present writ petition contending that the order is in patent violation of the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder and is also violative of the rights of the petitioner under Articles 14 and 21 of the Constitution of India.

At the very outset, learned counsel for the petitioner was asked

to address arguments as to how a petition under Article 226/227 of the Constitution to challenge an order of the Ld. Single Judge passed in a Criminal Revision petition under Section 401 of the Code of Criminal Procedure, 1973, was maintainable.

Ld. Counsel relied on the judgments of Hon'ble the Supreme Court in **Champalal Binani Vs. The Commissioner of Income Tax W.B. and others, AIR 1970 SC 645; T.C. Basappa Vs. T. Nagappa and another, AIR 1954 SC 440 and Hari Vishnu Kamath Vs. Ahmad Ishaque and others, AIR 1955 SC 233.**

These judgments do not deal with the issue involved herein. In these cases, various grounds on which a writ of certiorari may be issued by the High Court to quash orders of a Tribunal have been explained; like, where the Court or Tribunal acts in excess of jurisdiction or there is manifest error apparent on the face of proceedings or where there is violation of principles of natural justice etc. These judgments are, thus, of no help to the petitioner.

It has been settled by Hon'ble the Supreme Court that no writ petition, whether under Article 226 or Article 32 of the Constitution, lies to challenge a judicial order of the High Court. Judgments/orders of a single judge of the High Court may be challenged by way of Letters Patent Appeal (where such appeal is maintainable) or may be taken up in appeal before the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution.

In **Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1**, a judicial order of Single Judge of the High Court prohibiting

publication of the reports of the evidence of witnesses in a case of libel being tried before the High Court on the original side was challenged by filing a petition under Article 226 of the Constitution on the ground of being violative of fundamental right under Article 19(1)(a) and (g) of the Constitution. The petition was dismissed by a Division Bench of the High Court on the ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Article 226 of the Constitution. The petitioner then moved the Supreme Court under Article 32 for the enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution. A nine-Judge Bench of Hon'ble the Supreme Court by majority held that a judicial order of a competent court could not be said to be violative of fundamental rights. Even if there was incidental violation, it could not be held to be violative of the fundamental right.

The Hon'ble Supreme Court observed as under:

*“37. The next question which calls for our decision is: does the impugned order contravene the fundamental rights of the petitioners under Article 19(1)? In dealing with this question, it is essential to bear in mind the object with which the impugned order has been passed. As we have already indicated, the impugned order has been passed, because the learned Judge was satisfied that the interests of justice required that Mr Goda should not be exposed to the risk of excessive publicity of the evidence that he would give in court. This order was passed by the learned Judge after hearing arguments from both the parties to the suit. Thus, there is no doubt that the learned Judge was satisfied that in order to be able to do justice between the parties before him, it was essential to grant Mr Goda's request for prohibiting the publication of his testimony*

*in the newspapers from day to day. The question is: can it be said that an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental rights of the petitioners under Article 19(1)?*

*The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1).*

*38. The impugned order is, in a sense, an order of a collateral nature; it has no direct relation with the decision of the dispute which had been brought before the court in the proceedings between the parties. The learned Judge however, thought that in order that he should be able to do full justice*

*between the parties it was necessary to pass the impugned order. Thus, though the order in a sense is collateral to the proceedings which were pending before the court, it was directly connected with the said proceedings inasmuch as the learned Judge found that he could not do justice between the parties and decide the matter satisfactorily unless the publication of Mr Goda's evidence was prohibited pending the trial. The order is not collateral in the sense that the jurisdiction of the Judge to pass that order can be challenged otherwise than by a proceeding in appeal. Just as an order passed by the court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court, so could the impugned order be challenged in appeal under Article 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties, or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Article 19(1), must fail.”*

The Hon'ble Court held that judicial orders passed by the High Courts in relation to proceedings pending before it cannot be corrected by exercise of jurisdiction under Article 32 of the Constitution.

**“64.** *We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected*

*by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Article 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32. The words used in Article 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32; to hold otherwise would be repugnant to the well-recognised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point.”*

The same view was reiterated in a Constiution Bench decision in ***Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388***. Relevant para thereof is as under:

*“7. Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior courts/tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under*

*Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution”.*

In view of the aforesaid settled position, the present petition is dismissed.

**(RAJESH BINDAL)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**January 17, 2017**

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No