

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42199 of 2018

Arising Out of PS. Case No.-311 Year-1988 Thana- JAHANABAD District- Jehanabad

Rabindra Prasad @ Rabindra Yadav S/o Late Rajdeo Yadav @ Rajdeo Singh,
R/o Vill.- Majhanpura, P.S.- Jehanabad, Distt.- Jehanabad.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kulanand Jha

For the Opposite Party/s : Mr.Sri Brajendra Nath Pandey

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-12-2019

1. Heard Sri Alok Kr. Choudhary, the learned counsel for the petitioner assisted by Sri Nagendra Kumar, learned Advocate-on-Record and Smt. Anita Kumari Singh, the learned A.P.P. for the State.

2. The present petition has been filed for quashing the order dated 02.05.2018 passed by the District Juvenile Justice Board, Jehanabad/ Arwal in case no. 302 (J) of 2018 (arising out of Jehanabad PS case no. 311 of 1988), whereby and whereunder the learned Juvenile Justice Board has rejected the application of the petitioner for being declared juvenile.

3. The brief facts of the case are that as per the written report of the informant namely Jagdeo Yadav, the aforesaid case bearing Jehanabad PS case no. 311 of 1988 was registered,



wherein it has been alleged that on the date and time of occurrence, the brother of the informant and his son as well as others were harvesting rice crops and in the meantime, the informant had gone there to over-see the same, whereafter the accused persons including the petitioner herein had arrived there, armed with rifle, gun and *garasa*. The accused persons had then shot dead the father and brother of the informant as also had assaulted other members of the prosecution side resulting in them receiving grievous injury. As far as the petitioner is concerned, he along with two other accused persons is said to have assaulted the nephew of the informant namely Yadu Yadav by the barrel of the gun on his forehead and back.

4. It appears that the learned court below had taken cognizance in the matter, whereafter charges were framed against the accused persons and the trial is pending consideration before the learned trial court and is yet to be completed.

5. It further appears that during the pendency of the trial, the petitioner had filed a petition raising the issue of him being a juvenile/ minor at the time of the incident. The learned trial court is stated to have referred the matter to the Juvenile Justice Board for deciding the issue of juvenility.



6. It is contended by the learned counsel for the petitioner that the date of birth of the petitioner is 13.07.1971, hence he was about 17 years, 04 months and 15 days old on the date of occurrence i.e. 28.11.1988. The learned counsel for the petitioner has submitted that in support of the contention of the petitioner being a juvenile, the matriculation certificate issued by the Bihar School Examination Board on 25.08.1987 was also produced before the learned Juvenile Justice Board to show that the petitioner's date of birth is 13.07.1971.

7. However, the learned Juvenile Justice Board by the impugned order dated 02.05.2018, has rejected the case of the petitioner for being declared a juvenile on the ground that as per **Section 2(h) of Juvenile Justice Act, 1986**, “ *A Juvenile means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.* ”

8. The learned Juvenile Justice Board has thus concluded that as per the **1986 Act**, since the petitioner was more than 16 years of age as on the date of occurrence, he cannot be considered to be a juvenile.

9. The learned counsel for the petitioner has submitted before this Court that the reasoning of the Juvenile Justice Board in its judgment dated 02.05.2018, is fallacious and



has been passed without considering the provision of the prevailing law in force i.e. the ***Juvenile Justice Act, 2000***. In this connection, the learned counsel for the petitioner has referred to ***Sections 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000***, which is reproduced hereinbelow :-

“ 2 (k) “juvenile” or “child” means a person who has not completed eighteenth year of age;

2(l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.”

10. The learned counsel for the petitioner has further referred to a judgment rendered by the Hon’ble Apex Court in the case of ***Hari Ram v. State of Rajasthan and Another, reported in (2009) 13 SCC 211***, paragraphs no. 28, 29, 59, 60, 68 and 69 whereof, are reproduced hereinbelow :-

“ 28. One of the problems which has frequently arised after the enactment of the Juvenile Justice Act, 2000, is with regard to the application of the definition of “juvenile” under Sections 2(k) and (l) in respect of offences alleged to have been committed prior to 01.04.2002 when the Juvenile Justice Act, 2000 came into force, since under the 1986 Act, the upper age limit for male children to be considered as



juveniles was 16 years.

29. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 01.04.2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him.

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 01.04.2001, 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.

60. The instant case is covered by the amended provisions of Sections 2(k), 2(l), 7-A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the



provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case, Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the introduction of the Juvenile Justice Rules, 2007.

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.

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.”

11. Another judgment which has been relied upon, is the one reported in **(2014) 12 SCC 341 (Ketan Kumar Gopal Bhai Tandel v. State of Gujarat)**, paragraphs no. 5 and 6 whereof, are reproduced hereinbelow :-



“ 5. We have gone through the judgment of the trial court as well as that of the High Court and also the oral and documentary evidences adduced in this case and we find no reason to interfere with the order of conviction passed by the trial court, confirmed by the High Court. Learned counsel for the appellant has also not canvassed the correctness or otherwise of the order of conviction but confined his arguments, as already indicated, on the plea of juvenility. The question posed in this case is no longer res integra. On exhaustive survey of the previous judgments on the point this Court in Dharambir v. State (NCT of Delhi) and Another (2010) 5 SCC 344 held as follows:

“It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000 read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen 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 is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted. In the view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan.”

6. This Court, when the matter came up for hearing, directed the Sessions Judge,



Valsad (Gujarat) to find out the age of the appellant on the date of occurrence of the crime. The Sessions Judge vide his report dated 11.04.2011 stated that the appellant was not juvenile on the date of occurrence i.e. 06.05.1995. Such a view was taken by the Sessions Judge on the basis of the 1986 Act. If we apply the provisions of the 1986 Act then the appellant was not a juvenile on the date of the crime but if we apply Sections 2(k), 2(l), 7-A, 20 and 49 of the 2000 Act read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the Rules') 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 is raised after they have attained the age of 18 years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted."

12. The learned counsel for the petitioner has lastly referred to a recent judgment rendered by the Hon'ble Apex Court in the case of ***Ashok Kumar v. State of Uttar Pradesh [(2018) 15 SCC 277]***, paragraphs 2, 4, 8 and 9, whereof are reproduced hereinbelow :-

"2. The learned Senior Counsel appearing on behalf of the appellant placed reliance upon the judgment of this Court in Hari Ram v. State of Rajasthan wherein this Court



interpreted Sections 2(k), 2(l), 7-A and 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended by Act of 2006) claiming benefit of juvenility for the appellant contending that as on the date of the commission of offence on 24.12.1980 he has not attained the age of 18 years as per his date of birth i.e. 07.07.1964. Therefore, the benefit of Section 2(k) “juvenile” was determined under Section 20 of the Act. By virtue of the Explanation to Section 20 of the Act, he is entitled for the benefit. The finding recorded by the learned trial Judge that his date of birth is 07.07.1964 was on the basis of the school records as well as school certificate. This fact has attained finality, not disputed by the respondent, and that finding has been affirmed by the High Court in the appeal filed by the appellant. The correctness of the concurrent finding is under challenge by the respondent in these proceedings.

4. The said question, after considering the rival legal submissions made at the Bar with reference to the aforesaid statutory provisions of the 2000 Act, was answered by recording its reasons at paras 68 and 69 which read thus :

“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.



69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed”.

8. In view of the contentions of both the learned Senior counsel for the parties and foregoing reasons, we have to hold that the appellant is entitled for the benefit of the juvenility. In view of the aforesaid pronouncement of law made by this Court in Hari Ram case of which relevant portion is extracted above, we are required to set aside the impugned judgment of conviction and sentence and we do so.

9. Accordingly, we allow the appeal and remit the matter to the Juvenile Justice Board, District Etava, to exercise its power under Section 15 for the purpose of conducting enquiry and dispose of the same within six weeks from the date of receipt of the copy of this judgment. Taking into consideration the age of the appellant and also the fact that he underwent sentence for 34 months pursuant to the order of conviction and sentence passed by the learned trial



Judge, exercise shall be made by the Board within the time stipulated and pass appropriate order after conducting the enquiry.”

13. Thus, the learned counsel for the petitioner has submitted that the law, as has been postulated now, is that on a conjoint reading of ***Sections 2(k), 2(l), 7(A), 20 and 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000***, it is absolutely crystal clear that all the persons who were below the age of 18 years on the date of commission of offence, prior to 01.04.2001 i.e. the date of coming into force of the ***Juvenile Justice (Care and Protection of Children) Act, 2000***, would be treated as juveniles, even if they were more than 16 years of age but below the age of 18 years as on the date of commission of the offence. Hence, it is submitted that since the petitioner, in the present case, was 17 years 04 months and 15 days of age as on the date of commission of offence i.e. 28.11.1988, he is entitled to be treated as a juvenile for the purposes of the trial.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also considering the relevant provisions of the ***Juvenile Justice (Care and Protection of Children) Act, 2000***, apart from considering the law laid down by the Hon'ble Apex Court in the case of ***Hariram (supra), Ashok Kumar (supra) and Ketan***



Kumar Gopal Bhai Tandel (supra), this Court is of the view that the provisions of the ***Juvenile Justice (Care and Protection of Children) Act, 2000*** would be fully applicable in the present case, inasmuch as on the date and time of commission of the offence i.e. on 28.11.1988, the petitioner was below 18 years of age. Accordingly, the impugned order dated 02.05.2018 passed by the District Juvenile Justice Board, Jehanabad/ Arwal in case no. 302(J) of 2018 is set aside and the matter is remanded to the District Juvenile Justice Board, Jehanabad/ Arwal for disposal in accordance with law.

15. The present petition stands allowed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.03.2020
Transmission Date	NA

