

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220

CRR-4554-2017

Date of Decision: 10.02.2023

Nitesh

.....*Petitioner*

Versus

State of Haryana and Anr.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Anshumaan Dalal, Advocate
for the petitioner.

Mr. R.S. Nain, DAG, Haryana.

GURBIR SINGH, J (ORAL)

Revision is filed against the order dated 18.08.2017 passed by the learned Additional Sessions Judge, Sirsa, whereby application moved by the petitioner for treating him a juvenile and sending his case to the Principal Magistrate Juvenile Justice Board was dismissed on the ground that as per matriculation certificate, the age of the petitioner was 16 years, 8 months and 19 days at the time of occurrence. It is observed that in view of Section 15 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "2005 Act"), the petitioner was having sufficient mental capacity to understand the consequences of his acts and case FIR No. 227 dated 18.07.2014 under Section 306 and 323 IPC, Police Station Ellenabad registered against the petitioner and others.

As per allegations, Dheeraj committed suicide and suicide note was also found near his dead body. Challan was presented against one Manphool and on application filed under Section 319 Cr. P.C, the petitioner and three other accused were summoned to face trial.

Learned counsel for the petitioner submits that the occurrence took place on 18.07.2014. Date of birth of the petitioner is 29.11.1997 and he was less than 18 years of age at that time. The Juvenile Justice Act (Care and Protection of Children) Act, 2015 was amended and came into force on 15.01.2016. The learned trial Court failed to take into consideration that the said Act was not amended retrospectively and the petitioner being juvenile could not be tried with the other accused who were adults. He further submits that other three accused have already been acquitted by the learned trial Court vide judgment dated 16.01.2020. The trial against the petitioner was separated.

Learned State counsel has opposed the petition but has not disputed that the Juvenile Justice (Care and Protection of Children) Act, 2015, came into force on 15.01.2016. He has also not disputed that vide judgment dated 16.01.2020, three co-accused have already been acquitted by the learned Additional Sessions Judge, Sirsa (hereinafter referred to as 'Act 2 of 2016'). The Act (2 of 2016) is a special Act and was enacted for a special purpose.

As per provisions of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, whenever a claim of juvenility is raised before any Court, the Court shall take such evidence as may be necessary so as to determine the age of such person. The petitioner was found to be less than 18 years at the time of occurrence. Learned trial Court, keeping in view the provisions of Section 15 of 2005 Act passed the order that in view of the provisions contained under Section 18 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2000, the petitioner be tried as adult. The trial Court failed to take into consideration the

provisions of Section 25 of Act, 2015 (2 of 2016) which is as under:-

*'Special provision in respect of pending cases:-
Notwithstanding anything contained in this Act, all
proceedings in respect of a child alleged or found to be
in conflict with law pending before any Board or court
on the date of commencement of this Act, shall be
continued in that Board or court as if this Act had not
been enacted.'*

The occurrence took place prior to the amendment of Juvenile Justice (Care and Protection of Children) Act, 2015. The challan in this case was filed on 06.08.2015 against the co-accused. Thereafter during the pendency of the trial, an application was moved for summoning the petitioner and other accused under Section 319 Cr. P.C. The learned trial Court was required to give definite finding that provision of Section 25 of the Act was not applicable in this case and then only it could declare to try the petitioner with the accused who were adult.

Consequently, order dated 18.08.2017 is hereby set aside.

Taking note of the fact that the matter is quite old, learned trial Court is directed to decide the application of the petitioner afresh within a period of two months within receipt of certified copy of this order.

Disposed of.

10.02.2023

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**(GURBIR SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No