

Ratnadeep Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Aug-25-2014

Judge : S.S. Shinde & M.T. Joshi

Appeal No. : Criminal Application No. 1816 of 2014 In Criminal Appeal No. 290 of 2013

Appellant : Ratnadeep

Respondent : The State of Maharashtra

Judgement :

S.S. Shinde, J.

1. The applicant/appellant is prosecuted for the offence punishable under Section 302 of I.P. Code and convicted by the learned Addl. Sessions Judge, Nilanga in Sessions Case No.16 of 2011 vide judgment and order dated 9th July, 2013. The applicant/appellant filed Criminal Appeal No.290 of 2013. By order dated 21st August, 2013, the said appeal is admitted.

2. It is the case of the applicant that the applicant had filed Criminal Application No.4750 of 2013 under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short Act of 2000). This Court, after hearing both the parties, passed order dated 15th January, 2014 directing the Juvenile Justice Board, Latur, to initiate inquiry in respect of the age of the applicant within the four

corners of the relevant Act and the Rules and conclude the same, as expeditiously as possible, as stated in Rule 12 of the said Rules.

Pursuant to the order dated 15th January, 2014, the applicant submitted the copy of the Criminal Application No.4750 of 2013 before the Juvenile Justice Board and thereafter, the Juvenile Justice Board, Latur has initiated an inquiry and vide its judgment and order dated 20th February, 2014 declared that, on the date of alleged incident i.e. on 24th October, 2010, the applicant was juvenile.

It is the case of the applicant that, considering the above mentioned facts and circumstances of the case, it clearly reveals that, on perusal of the documentary evidence placed on record by the applicant before the Juvenile Justice Board, Latur, the Board has declared that on the alleged date, the applicant was juvenile and therefore, in the interest of justice, the conviction awarded by learned Addl. Sessions Judge, Nilanga in Sessions Case No.16 of 2011 vide judgment and order dated 9th July, 2013 is required to be quashed and set aside.

3. Learned counsel appearing for the applicant/appellant invited our attention to the averments in the present application and also grounds in the Appeal memo and in particular, ground nos.8, 12 and 13. He submitted that the date of birth of the appellant is 29th December, 1992 and the date of alleged commission of the offence is 26th October, 2010 and therefore, on the date of commission of offence i.e. on 26th October, 2010, the appellant's age was 17 years 9 months and 27 days. He further submitted that in the case of **Subodh Nath and anr. Vs. State of Tripura, (2013) 4 SCC 122**, the Hon'ble Supreme Court held that the claim of juvenility can be raised before any Court and therefore, considering the facts and circumstances of the present case, the appellant is entitled to raise the claim of juvenility before this Court. He submitted that the appellant was juvenile on the date of alleged commission of the offence and therefore, the judgment and order dated 9th July, 2013 in Sessions Case No.16 of 2011 deserves to be quashed and set aside.

4. Learned A.P.P. fairly conceded that the inquiry in respect of whether, the appellant was juvenile on the date of commission of the offence, has gone into by learned Principal Magistrate, Juvenile Justice Board, Latur in Juvenile Application

No.2 of 2014 and the appellant has been declared as juvenile. He submits that the said order dated 20th February, 2014 passed by learned Principal Magistrate, Juvenile Justice Board, Latur in Juvenile Application No.2 of 2014 is not assailed by the State and the State is not intending to challenge the said order before any forum. He invited our attention to the affidavit-in-reply filed by one Shri.Zumbarao s/o. Hariba Londhe, working as Assistant Police Inspector, Aurad Shahajani Police Station, Dist.Latur and also affidavit-in-reply filed by Dr. Ashwini d/o. Suryabhan Shelar, working as Sub-Divisional Police Officer, Sub-Division Nilanga, Dist.Latur.

5. We have heard learned counsel appearing for the appellant and also learned A.P.P. for the State, at length. With their able assistance, we have perused the averments in the application, grounds taken in the appeal memo, impugned judgment and order passed by learned trial Court and also the original record made available for perusal.

6. Upon careful perusal of the judgment and order passed by learned trial Court, it appears that, the appellant did not raise the point before the trial Court that on the date of commission of the offence, he was juvenile. Therefore, the trial Court proceeded to decide Sessions Case No.16 of 2011 on merits and convicted the accused/appellant as indicated in paragraph 1 hereinbefore.

7. The appellant did file Criminal Application No.4750 of 2013 praying therein for issuing appropriate order or direction to initiate an inquiry in respect of his age and to give benefit as per the provisions of the Act of 2000. The said application was heard and decided by this Court on 15th January, 2014 thereby directing the Committee constituted under the relevant Rules, to initiate inquiry in respect of the age of the applicant, within the four-corners of the relevant Act and Rules and conclude the same within the time stipulated in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

8. Accordingly, learned Principal Magistrate, Juvenile Justice Board, Latur, initiated an inquiry and by its judgment and order dated 20th February, 2014 in Juvenile Application No.2 of 2014, declared the applicant Ratnadeep s/o. Jalaba Dhawale as juvenile. As already observed, the respondents have filed affidavits-in-reply and stated that the State is not intending to challenge the order passed by

learned Principal Magistrate, Juvenile Justice Board, Latur.

9. The appellant filed present Criminal Application No.1816 of 2014 and prayed that in the light of the law laid down by the Hon'ble Supreme Court in the case of Subodh Nath and another (supra), the judgment and order dated 9th July, 2013 in Sessions Case No.16 of 2011 passed by the learned Addl. Sessions Judge, Nilanga, deserves to be set aside.

10. In the case of Subodh Nath and another (supra), appellant no.2 therein was less than eighteen years of age on the date of occurrence. The Hon'ble Supreme Court considered the plea of the said appellant and held that he was less than eighteen years on the date of occurrence and therefore, was juvenile within the meaning of Section 2(k) of the said Act. It appears that the Hon'ble Supreme Court considered various documents placed on record by appellant no.2 therein and after considering the judgment in the case of **Hari Ram Vs. State of Rajasthan, (2009) 13 SCC 211** and the provisions of Sections 7A and 20 of the Act of 2000 and considering the age of appellant no.2 was below eighteen years, the Hon'ble Supreme Court allowed the appeal of appellant no.2, set aside the impugned judgment of the High Court and the judgment of the trial Court qua appellant no.2, and remitted the matter to Juvenile Justice Board of North Tripura District for disposal in accordance with the provisions of Act of 2000.

11. In the light of the discussion hereinabove and in the facts of the present case, on the date of commission of the offence, the appellant was below eighteen years of age and to that effect, there is a declaration by the learned Principal Magistrate, Juvenile Justice Board, Latur, in Juvenile Application No.2 of 2014 by its judgment and order dated 20th February, 2014. It is not necessary for us to go into the judgment and findings recorded by learned trial Court on merits since, the appeal is to succeed on the ground that the appellant was juvenile on the date of commission of the offence and therefore, his case should have been adjudicated by the Juvenile Justice Board constituted under the Act of 2000.

12. Considering the judgment of the Hon'ble Supreme Court in the case of Subodh Nath and another (supra) and the provisions of Sections 7A and 20 of the Act of 2000 and considering that, the appellant was below eighteen years of age as per

the inquiry held, the impugned judgment and order dated 9th July, 2013 passed by learned Addl. Sessions Judge, Nilanga in Sessions Case No.16 of 2011 will have to be set aside and the case will have to be remitted to the Juvenile Justice Board concerned, for disposal of the appellant's case in accordance with the provisions of the Act of 2000.

13. In the result, the impugned judgment and order dated 9th July, 2013 passed by learned Addl. Sessions Judge, Nilanga in Sessions Case No.16 of 2011 is set aside and the matter is remitted to the Juvenile Justice Board, Latur, for disposal in accordance with the provisions of the Act of 2000, within four months from receipt of copy of this judgment.

14. The Criminal Application and also the Criminal Appeal stand disposed of accordingly.

15. The Registry to send the original Record and Proceedings to the Juvenile Justice Board at Latur, forthwith.

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