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Sant Das Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-04-2002

Reported in : 2003CriLJ3424

Judge : U.S. Tripathi, J.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 5 and 6(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 437 and 439

Appeal No. : Crl. Misc. Writ Petn. No. 4777 of 2002

Appellant : Sant Das

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.P. Singh, Adv.

Judgement :
ORDER

U.S. Tripathi, J.

1. This writ petition under Article 226 of the Constitution of India has been filed for issue of writ of certiorari quashing the order dated 8-8-2002 passed by the Sessions Judge, Fatehpur in Criminal Misc. Case No. 69 of 2002, for issue of writ

or direction in the nature of mandamus declaring the petitioner as juvenile and for issue of writ or direction of mandamus commanding the respondents to lodge the petitioner in Child Care Home as provided under Juvenile Justice (Care and Protection of Children) Act, 2000 and to pass order releasing the petitioner from jail.

2. The facts giving rise to this writ petition in short, are that on 9-6-2002 one Amar Singh lodged an F.I.R. against the applicant at Police Station, Dhata, District Fatehpur with the allegation that on 9-6-2002 at about 7.15 A.M. the applicant caused fire arm injury on Gulab Singh by a country made pistol, when the latter was cleaning his Maruti Van on the public hand pump in village Jam, P. S. Dhata. On basis of above report a case at crime No. 126 of 2002 was registered under Sections 307/506, I.P.C. against the applicant. Subsequently, the injured Gulab Singh died and case was converted under Section 302, I.P.C.

3. During pendency of investigation of the case on 13-6-2002 the applicant moved an application before the Sessions Judge for surrender in the Court. On the above application the learned Sessions Judge called for report from the police station concerned. On receipt of the report of the police the applicant was taken into custody on 22-6-2002. After being taken into custody the applicant moved an application before the Sessions Judge on 22-6-2002 for releasing him on bail on the grounds inter alia that he was 16 years 5 months 4 days old on the date of occurrence. During pendency of above bail application on 5-7-2002 the applicant moved another application before the Sessions Judge to declare him juvenile on the ground that his date of birth was 5-1-1986 and Chief Medical Officer had given certificate that he was 17 years old. Report of Chief Medical Officer and Radiologist were also annexed with the application.

4. It was contended before the learned Sessions Judge that since no Board as required by Section 5 of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter called the Act') had been constituted by the State Government, the power of Board may be exercised by the Sessions Judge as provided under Section 6(2) of the Act.

5. The learned Sessions Judge on hearing the learned counsel for the applicant, ADGC (Crl) and other lawyers held that the Sessions Judge may exercise power conferred on the Board by virtue of provisions of Section 6(2) of the Act, when the proceeding comes before it in appeal, revision or otherwise, in accordance with the provisions of law. Since the bail application ought to have been moved before Magistrate first under Section 437 Cr. P.C. and after its rejection by the Magistrate it may be moved before Sessions Judge under Section 439 Cr. P.C. The bail application in the case was directly moved before Sessions Judge and application for declaring applicant as juvenile was moved in said bail application. The bail application and the application for declaring the applicant as juvenile, therefore, were not proceeding which came before him (Sessions Judge) in accordance with law. Therefore, the Sessions Court in such bail application could not exercise the power conferred on the Board under Section 6(2) of the Act. With these findings the learned Sessions Judge rejected both the applications (for bail and for declaring the applicant as juvenile) by the impugned order dated 8-8-2002.

6. The above order has been challenged in this writ petition.

7. Heard Sri S. P. Singh, learned counsel for the applicant and the learned AGA for the respondents and perused the record.

8. The learned counsel for the applicant contended that by virtue of Section 6(2) of the Act, Sessions Judge has power to exercise the power conferred on Board and therefore, the learned Sessions Judge wrongly held that he has no power to exercise the function of Board.

9. The relevant provision of Sub-section (2) of Section 6 of the Act reads as under :--'(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Sessions, when the proceeding comes before them in appeal, revision or otherwise.'

10. The contention of the learned counsel for the applicant was that the words appeal, revision or 'otherwise' are used independently and therefore the word 'otherwise' shall be interpreted independently, than appeal or revision and it cannot be interpreted that the otherwise is in relation to words 'when the

proceeding comes before them'.

11. This question was considered by this Court in a single Judge decision in the case of Naseem v. State of U. P., (1995) 19 All Cri R 33 : (1995 All LJ 1473), while interpreting the provisions of Section 7(3) and Section 32 of Juvenile Justice Act. The provisions of Section 7(3) of Juvenile Justice Act read as under:--

'7 (3). The powers conferred on the Board or Juvenile Court by or under this Act may also be exercised by the High Court and the Court of Session when the proceeding comes before them in appeal, revision or otherwise.'

12. The wordings of Section 7(3) of the Juvenile Justice Act were analogous to wordings of Section 6(2) of the Act. On considering the various cases this Court held in the case of Naseem v. State of U.P. (supra) held that the intendment of the Act (Juvenile Justice Act) by constituting the special Court of Magistrate for dealing with the delinquent juvenile is made clear by express stipulation under Sub-section (3) of Section 7 of the Act that the power conferred on the Board or the Juvenile Court by or under this Act may also be expressed by the High Court and the Court of Session when the proceeding comes before them in appeal, revision or otherwise. Otherwise indicated any other proceeding either in the form of trial, bail application or application under Section 482 Cr. P.C. or even in writ jurisdiction. Consequently, the determination of age of accused person claiming himself to be a juvenile can be determined on an inquiry by taking evidence in any appeal, revision or any other proceeding either by the High Court or by the Court of Sessions wherever such a question is raised and the Court is competent to decide the proceeding after recording afinding of the age of the accused persons and if it is found necessary to refer the case of the accused held to be juvenile to the Juvenile Court, and the latter will proceed on the basis of that finding that accused had been held to be juvenile and deal with him in accordance with the Act. But it shall not hold fresh inquiry into the question of age for a fresh determination of age under Section 32 read with Section 8 of Juvenile Justice Act. Therefore, the words 'otherwise' occurring in Section 6(2) of the Act cannot be interpreted that High Court or the Court of Sessions have power to exercise all powers of the Board independently i.e. whether the proceeding comes before

them in appeal, revision or otherwise or not. Therefore, this contention cannot be accepted.

13. It was further contended that the State Government has issued direction in letter No. 1297/60-1-98-1/16 (2)/97 to all District Magistrates of U.P. authorising them to get the power of Section 6(2) of the Act exercised by concerned District and Sessions Judge, and the above authorisation was issued by virtue of power conferred on State Government by Section 66 of the Act. On going through the above letter I find that the above letter cannot be said a delegation or direction. It is simply a letter issued by Secretary Mahila and Bal Vikas Anubhag-1 to all District Magistrates of Uttar Pradesh that in the absence of constitution of Board, they may get the powers of person exercised by concerned District and Sessions Judges. The letter was not addressed either to Sessions Judge or to the Registrar of this Court. It cannot be interpreted as delegation of the power conferred by the State Government. Moreover, above letter was also not issued with the concurrence of the High Court and therefore is not applicable to District and Sessions Judges. Moreover, it also does not confer any power of the Board upon District and Sessions Judge. It is simply a direction to the District Magistrates and not more than it.

14. Now the question arises, in the absence of constitution of Board, which authority should exercise the powers of the Board. I made inquiry from the Registry of this Court and was told that no direction has been issued in this regard on administrative side. In the case of Mohd. Amir v. State of U.P., (2002) 45 All Cri C 94, single Judge of this Court has held that therefore, in the absence of the constitution of the Board, the applicants may move application for bail before the Magistrate having jurisdiction under Section 437, Cr.P.C. and in the case the same is rejected, they may move application under Section 439, Cr.P.C. before the Sessions Judge and also before the High Court. It is not disputed that Juvenile Board has not been constituted, in any district specially in the district Fatehpur. Therefore, in the absence of any Board, the power of Magistrate under Cr. P. C. can be exercised and the applicant may move bail application before the Magistrate concerned under Section 437, Cr.P.C. taking plea of juvenile and in case it is rejected he may move bail application before Sessions Judge and this

Court in which plea of juvenile may be raised.

15. The petition is, therefore, finally disposed of with the above direction.

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