

Devendra Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-10-1998

Reported in : 1998(1)MPLJ529

Judge : Deepak Misra, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 8

Appeal No. : Misc. Cri. Case No. 2290 of 1997

Appellant : Devendra Singh

Respondent : State of M.P.

Advocate for Def. : B.P. Athya, Adv.

Advocate for Pet/Ap. : Ajay Gupta, Adv.

Judgement :

ORDER

Deepak Misra, J.

1. Invoking the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') the petitioner has assailed the order dated 14-8-1996 passed by Judicial Magistrate First Class, Berasia, Bhopal which has been affirmed by the learned Second Additional

Sessions Judge, Bhopal in Criminal Revision No. 138/96 whereby the prayer of the petitioner to treat him as a juvenile has been refused. It is also worth mentioning here that the petitioner has also questioned the propriety of the order dated 2-1-1997 passed by the IX Additional Sessions Judge, Bhopal (the learned trial Judge) wherein he has declined to entertain the prayer of the petitioner for treating him as a juvenile.

2. The facts as have been undraped in the petition are that the petitioner has been arrayed as an accused in connection with a crime instituted for offence punishable under sections 147, 148, 302/149 and 324/149 of Indian Penal Code. He was arrested on 29-7-1996 by the Investigating Agency and was produced before the Judicial Magistrate First Class, Barasia who remanded him to custody. The petitioner filed an application before the learned Magistrate praying therein that he was a juvenile his date of birth being 14-9-1981, and hence he should be sent to Juvenile Court. He produced his 'horoscope' in support of his date of birth and also prayed for conducting the necessary medical test for affirmation of his age. The learned Magistrate rejected the application by order dated 14-8-1996 relying upon the mark-sheet of the petitioner as the same reflected his date of birth to be 11-7-1980. The aforesaid order by the learned Magistrate was challenged in Criminal Revision No. 138/96 before the learned Sessions Judge, Bhopal which eventually came to be disposed of by Learned Second Additional Sessions Judge who affirmed the order by learned Magistrate. Thereafter, the matter was committed to the Court of Sessions which formed the subject-matter of Sessions Trial No. 393/96 before the learned IX Additional Sessions Judge, Bhopal. Before the said Court another attempt was made by the petitioner by filing an application pressing for conducting an enquiry with regard to his age and treat him as a juvenile and pass appropriate orders. The learned Trial Judge by order dated 2-1-1997 rejected the prayer of the petitioner by holding that the date of birth as mentioned in the mark-sheet of the petitioner is 11-7-1980 and, therefore, by the date of incident i.e. 17-7-1996 the petitioner was more than 16 years of age. Being of this view he rejected the prayer of the petitioner.

3. Initially the petitioner had assailed the order dated 2-1-1997 but thereafter by way of amendment, the legality of the earlier orders has also been called in

question.

4. Assailing the propriety of orders passed, Mr. Ajay Gupta, learned counsel for the petitioner has contended that the approach of the Courts below is palpably erroneous inasmuch as they have refused to conduct an enquiry with regard to the age of the petitioner, solely on the basis that the mark-sheet of the petitioner reveals his age to be 11-7-1980. It is strenuously urged by Mr. Gupta that when the affidavit of the Grand-father and the uncle of the petitioner was before the learned Magistrate affirming that at the time of admission in school a wrong date was mentioned just to satisfy the eligibility criteria to get admission, the learned Magistrate erred in law in refusing to conduct an enquiry and that alone vitiates the order passed by him. In support of his submission he has placed reliance on the decisions rendered in the cases of Guman v. State of M. P., 1992 JLJ 375, Bhola Bhagat v. State of Bihar, 1997(8) SCC 720, Rinkoo Khatri v. State of M. P 1997(2) MPLJ 400, Suresh Agrawal v. State of M.P., 1997(2) MPLJ 591, Inder Singh v. State of M.P., 1990 MPLJ 365.

5. Controverting the aforesaid submissions of learned counsel for the petitioner Mr. Athya, learned Government Advocate has contended that once the date of birth has been clearly reflected in the mark-sheet and a photocopy thereof has been produced and the genuineness of the same is not disputed, it is not open to the petitioner to adduce oral evidence in support of his age. It is his further submission that the obtaining factual matrix did not warrant for causing an enquiry, and hence the orders passed by the Courts below are invulnerable.

6. To appreciate the rival contentions raised at the Bar, it is essential to refer to certain provisions of the Act. Section 8 of the Act lays down the procedure to be followed by the Magistrate who has not been conferred power under the Act to finally determine the age of the petitioner. The provision reads as under :-

'Section 8 Procedure to be followed by a Magistrate not empowered under the Act.

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(1) When any Magistrate empowered to exercise the power of a Board or a Juvenile Court under this Act is of opinion that a person brought before him under

any of the provision 'of this Act (otherwise than for the purpose of giving evidence) is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceeding to the competent authority having jurisdiction over the proceeding to the competent authority having jurisdiction over the proceeding.'

(2) The Competent Authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile had originally been brought before it.'

On a bare reading of the aforesaid provision it is crystal clear that the Magistrate is required to record an opinion in regard to the age of a delinquent juvenile and on being satisfied forward the record of the proceeding to the competent Court having jurisdiction over the matter. After the Magistrate forwards the record to the competent Court, then the Juvenile Courts shall proceed with the matter in accordance with the section 8(2) of the Act and after conducting enquiry determine the age of the delinquent juvenile. This view has been taken in the decisions rendered in the case of Suresh Agrawal v. State of M. P. (supra) and Rinkoo Khatri v. State of M. P. (supra). It is to be noted that in the case of Rinkoo Khatri the Court has also expressed the view that the Sessions Judge under section 8 of the Act has jurisdiction to conduct an enquiry and form an opinion as to whether person brought before him is a juvenile or not and refer the case to the Juvenile Court, if he is satisfied on enquiry conducted for formation of opinion. The essential ingredient is the formation of an opinion. In the case of Inder Singh v. State of M. P. (supra) it has also been held that an accused can raise a plea of being a juvenile even before the Court of Session.

7. The question that requires consideration in the case at hand is whether it was open to the petitioner to raise such a plea before the trial Judge after having been unsuccessful in the revision preferred by him. To overcome this technical hurdle Mr. Gupta, learned counsel for the petitioner, as has been indicated before, filed an application for amendment to challenge the orders initially passed by the learned Magistrate and in the revision so that he could address this Court with regard to the indefensibility of the said orders. It is apparent that the learned Trial Judge has rejected the application on selfsame reason. The bedrock for passing

the earlier order is the mark- sheet of the petitioner brought on record. The impugned orders clearly reveal that there has been no enquiry by the Courts below at any point of time to find out the age of the petitioner. The affidavits filed by the grand-father and others have not been taken into consideration. The whole process of formation of opinion as enjoined under section 8 of the Act has been done solely on the basis of the reflection of age in the mark-sheet. The prayer for conducting an ossification test was also not acceded to. Submission of Mr. Gupta is that it was incumbent on the part of the Court of first instance to conduct an enquiry that when a plea was raised that the accused was a juvenile and he was prepared to adduce evidence of his relations to indicate that the age reflected in the mark-sheet was not correct. To buttress his submission he has placed strong reliance on the decision rendered by the Apex Court in case of Bholu Bhagat (supra) wherein the Apex Court has held as follows :-

'When a plea is raised on behalf of an accused that he was a 'child' within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially - oriented legislation, it is an obligation of the Court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to a accused. The Court must hold an enquiry and return a finding regarding the age, one way or the other. The High Courts and the subordinate Courts are expected to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the effort of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated.'

From the aforesaid decision it follows that an enquiry is necessary if the Court entertains any doubt about the age. Mr. Athya, learned Government Advocate has vehemently urged that when the mark-sheet was produced and the genuineness of the same was not questioned there was no necessity on the part of the learned

Magistrate to conduct an enquiry. The crux of the matter is whether production of mark-sheet which reflects the age on the basis of entry in the school admission register would seal the fate of an accused to claim to be a juvenile. It is to be borne in mind, this is not an entry in the Register of Births and Deaths which is maintained in accordance with law, after following due procedure. An admission in the school register cannot have the finality for the purpose of determination of age as there is tendency in the parents to under state the age or sometime to enhance the age. At this juncture I may refer to the decisions rendered in the cases of Brijmohan Singh v. Priyavrat Narayan Singh, AIR 1965 SC 282 and Ram Murti v. State of Harayana, AIR 1970 SC 1020 wherein their lordships have taken a view that the school admission register as to the age of student cannot be treated to be correct, as the guardians do sometime under state the age of children. Similar view has also taken in the case of Bishnudas Behra v. State of Orissa, 1997 Cr.LJ. 2207. This Court in the case of Narendrasingh Bhalsingh v. State of Madhya Pradesh, 1996 MPLJ (41) at page 518 also after analysing the evidence on record opined that the school admission certificate was not trust worthy for the purpose of age. True it is, in some cases the guardian under state the age, but in the present case a plea was taken that the age as stated more than the actual age. This is also not a rare phenomenon. It is to be borne in mind as per the mark-sheet the age of the petitioner was hardly seven days more than 16 years and when he wanted to adduce evidence in support of his age the Court of first instance should have conducted an enquiry.

9. In view of the foregoing analysis, I am of the considered view that the impugned orders do not deserve the stamp of approval of this Court and accordingly they are set aside. As the matter is pending before the IXth Additional Sessions Judge, Bhopal he shall conduct an enquiry with regard to the age of the petitioner and if he, prima facie, forms an opinion, in favour of the accused-petitioner he should transmit the matter to the competent Court as enjoined under the Act. The necessary enquiry for the purpose of formation of opinion under section 8 of the Act should be concluded within six weeks from today. A copy of this order be sent to the learned trial Judge forthwith.

10. Consequently, the Criminal Misc. Case is allowed.

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