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Lakhan Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-31-2008

Reported in : 2009(1)MPHT208

Judge : N.K. Mody, J.

Appellant : Lakhan

Respondent : State of M.P.

Disposition : Petition allowed

Judgement :
ORDER

N.K. Mody, J.

1. This order shall also govern the disposal of Cr.R. No. 436/08, as in both these revisions parties are one and the same and the order under challenge is also relating as to whether the petitioner is juvenile or not.

In Cr.R. No. 436/08 the order under challenge is dated 8-1-2008 passed by JMFC, Indore in the MJC No. 221/07, whereby the learned Trial Court has held that the age of the petitioner is more than 18 years. In Cr.R. No. 738/08 the order under challenge is dated 30-4-2008 passed by Juvenile Court, Indore Criminal Case No. 249/07. A copy of this order be also retained in the record of Cr.R. No. 436/08.

2. Short facts of the case are that the petitioner is an accused for an offence punishable under Sections 395 and 397 of IPC for which S.T. No. 366/07 is pending, in which the date of offence is dated 28-3-2007. Another case is pending against the petitioner is for the offence punishable under Sections 302, 394 and 397 of IPC, wherein the date of offence is 29-3-07 and for which S.T. No. 367/07 is pending. Third case pending against the petitioner is for the offence punishable under Sections 394 and 397 of IPC, wherein the date of offence is dated 28-3-2007, which has been registered as S.T. No. 368/07. All the aforesaid cases are pending in the Court of Sessions Judge, Indore. Before the Sessions Court it was alleged that the date of birth of petitioner is 1-3-1990, therefore, the petitioner was juvenile on the date of offence. Hence, it was prayed that an inquiry be made regarding the date of birth of the petitioner. Learned Sessions Judge sent the matter before the Juvenile Justice Board for holding an inquiry regarding the age of the petitioner. After holding the inquiry by the impugned order passed in both the cases, learned Court below held that the petitioner is not juvenile, against which present petitions have been filed.

3. A preliminary objection was raised by the Counsel for the respondent that against the impugned order the remedy of appeal is available under Section 52 of Juvenile Justice (Care and Protection of Children) Act (hereinafter referred to as 'the Act'), hence the revision petition itself is not maintainable.

4. Learned Counsel for the petitioner submits that remedy of appeal is not available to the petitioner and even if the remedy of appeal is available, then too the petitioner can directly approach to this Court under Section 53 of the Act.

5. Learned Counsel submits that Section 52 of the Act lays down that a person aggrieved by an order passed by Competent Authority under the Act may prefer an appeal to the Court of Sessions. As per Sub-section (2) of Section 52 of the Act, the appeal is prohibited if the order passed by Board or the Competent Authority is of acquittal in respect of the juvenile alleged to have committed an offence and any order made by a Committee in respect of a finding that a person is not a neglected juvenile. Since the case of the petitioner is not covered under the proviso, therefore, the appeal is maintainable. However, an aggrieved person

can approach this Court direct as well by challenging the propriety of any order. Therefore, the objection relating to maintainability of the revision petition is overruled.

6. Learned Counsel submits that no opportunity of adducing evidence was given to the petitioner. It is submitted that number of documents were filed by the petitioner to prove that as per the academic record of the petitioner his date of birth is 1-3-90. Learned Counsel submits that learned Court below committed error in giving undue weightage to the medical evidence and not taking into consideration the documentary evidence regarding the date of birth submitted by the petitioner. For this contention reliance was placed on a decision of this Court in the matter of Ummed Singh v. State of M.P. 2007(5) M.P.H.T. 227 : 2007 (3) MPWN 37, wherein it has been held that sometime school record and statements of parents deserve acceptance.

7. Reliance was also placed in the matter of Bhoop Ram v. State of U.P. : 1990 CriLJ2671 , wherein, in a case where the school certificate was produced by the accused showing that the accused was below 16 years on relevant date and also there was no material throwing doubt on entries in school certificate, the Hon'ble Apex Court has held that the school certificate cannot be rejected on surmise that it is not unusual for parents to understate age of their children at the time of school admission. It was also held that medical certificate is based on estimate and possibility of error cannot be ruled out. Reliance was also placed on a decision in the matter of Anuj Singh v. State of M.P. 2007 (3) MPWN 77, wherein this Court has observed that upon ossification test accused found 18 years and six months of age, it was held that test carries margin of error of two years and such error is to be taken in favour of accused, thus he is juvenile.

8. On the strength of the aforesaid arguments learned Counsel for the petitioner submits that the order passed by learned Court below be set aside and the petitioner be held as juvenile.

9. Learned Counsel for the respondent submits that after due appreciation of evidence on record learned Court below has found that the petitioner is not juvenile, which requires no interference.

10. From perusal of the record it appears that the order under challenge in Cr.R. No. 436/08 is dated 8-1-2008, passed by JMFC, Indore, while from the certified copy of order dated 30-4-2008, which is under challenge in Cr.R. No. 738/08, it is not clear that who has passed that order, as the name of the Court who has passed the order is missing from the certified copy. Let a Photostat copy of the order dated 30-4-2008 which is under challenge in Cr.R. No. 738/08 be sent to District Judge, Indore with a direction to call the explanation of copying section within three weeks that how such type of certified copy has been issued which does not disclose the designation of the Court who has passed the order under intimation to this Court.

11. The word 'Juvenile' has been defined under Section 2(k) of the Act, according to which the 'juvenile' or 'child' means a person who has not completed eighteenth year of age. Section 4 of the Act deals with the Juvenile Justice Board. As per Sub-section (2) of Section 4 of the Act, 'A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class and the Magistrate on the Board shall be designated as the Principal Magistrate.

12. From perusal of the order dated 8-1-2008 which is under challenge in Cr.R. No. 436/08, it appears that the same is passed by JMFC, Indore and not by the Board. From perusal of the order dated 30-4-2008 passed in Cr.R. No. 738/08, it cannot be said that the order has been passed by the Board. Apart from this, it appears that no opportunity was given to the petitioner to cross-examine all the medical evidence, which was adduced before learned Court below and also no opportunity was given to the petitioner to adduce further evidence to prove his date of birth as 1-3-1990 in addition of the educational evidence.

13. In the facts and circumstances of the case, both the petitions are allowed and the impugned orders passed by learned Court below are set aside with the following directions:

(i) That the matter shall be placed before the Juvenile Justice Board and the petitioner shall be given full opportunity to adduce evidence by examining the mother, father and brothers and sisters of the petitioner. Apart from this the petitioner shall also furnish the record of place of birth of petitioner and his brothers and sisters. Petitioner shall also be given an opportunity to cross-examine the doctor who has given the medical evidence about the age of the petitioner.

(ii) After completion of the evidence, the Board shall decide the application in presence of the petitioner after observing his age by physical appearance.

(iii) Since it is being claimed that the petitioner is juvenile, therefore, if an appropriate application is filed the petitioner be permitted to be represented through Counsel.

(iv) The inquiry shall be completed as early as possible within a period of six weeks so that the sessions trial which is pending should not affect adversely.

(v) State is directed to keep petitioner present before Juvenile Board on the first date of its sitting in the week commencing from 18-8-2008.

14. With the aforesaid directions both the revision petitions stands disposed of.

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