

Mohd. Lais Vs. State

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Court : Delhi

Decided On : Feb-17-1993

Reported in : 1993(2)Crimes542; 49(1993)DLT689; 1993(25)DRJ377

Judge : Sat Pal, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 7(3)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 3036 of 1992

Appellant : Mohd. Lais

Respondent : State

Advocate for Pet/Ap. : K.K. Sud and; R.D. Jolly, Advs

Judgement :

Sat Pal, J.

(1) In this case the petitioner was arrested under section 452/302 Indian Penal Code on 19th November, 1990 in connection with the murder of one Suit. Zamila Begum. After he was committed to the Court of Session turn trial, the petitioner moved an application before the learned Additional Sessions Judge for his release on bail on the ground that he was below 16 years of age' on the date of commission of offence. While dealing with this application the learned Additional Sessions Judge was of the view that it would be in the interests of Justice to firstly

determine the age of the petitioner and, therefore, he held an enquiry under section 32 of the [Juvenile Justice Act, 1986](#) (hereinafter referred to as 'the Act'). In the aforesaid enquiry evidence was recorded and after hearing the learned counsel for the parties, the learned Additional Sessions Judge by his order dated 26th June, 1992 held that the petitioner was juvenile at the time of commission of offence under section 8 of the Act and directed that the record of proceeding of the petitioner be forwarded to the Court of Juvenile Justice for trial according to law.

(2) When the case was forwarded to the Court of Juvenile Justice vide order dated 13th July, 1992 (he said Court decided to hold an enquiry under section 32 of the Act to determine the exact age of the petitioner on the date of the alleged commission of offence. The learned Court of Juvenile Justice thereafter got examined the age of the petitioner on the basis of physical, dental and radiological examination from Maulana Azad Medical College and relying on the said report rejected the application of the petitioner for bail vide order dated 15th September, 1992. It was also held in this order that the petitioner cannot claim the benefit of section 18 of the Act for grant of bail till enquiry for determining the exact age on the alleged date of commission of offence is completed.

(3) In the present petition, the petitioner has challenged the order dated 13th July, 1992 for initiating fresh enquiry to ascertain the age of the petitioner and has also prayed for his release on bail till the disposal of the case.

(4) Mr. K.K. Sud, learned counsel for the petitioner submitted that in terms of section 7 of the Act, the Board or a Juvenile Court constituted under : the Act has power to deal exclusively with all proceedings under the Act relating to neglected juveniles or delinquent juveniles, as the case may be. He also drew my attention to sub-section (3) of section 7 which reads as under:-

'(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 Sessions, when the proceeding comes before them in appeal, revision or otherwise.'

(5) Relying on sub-section (3) of section 7 of the Act, he submitted that the learned Additional Sessions Judge can exercise the powers of Board or Juvenile Court

when the proceeding comes before him in appeal, revision or otherwise. The contention of the learned counsel for the petitioner was that in terms of the words 'or otherwise' while dealing with the application of the petitioner turn bail, the learned Additional Sessions Judge decided to conduct an enquiry under section 32 of the Act to determine the age of the petitioner. The learned counsel further submitted that since on the basis of the enquiry held by the learned Additional Sessions Judge, he came to the conclusion that the petitioner was juvenile at the time of commission of offence, the Court of Juvenile Justice had no jurisdiction to conduct the enquiry afresh. He also submitted that even under the 'rule of issue estoppel' the Court of Juvenile Justice could not hold the enquiry afresh after a proper enquiry having already been conducted by the learned Additional Sessions Judge. In support of his submissions the learned counsel turn the petitioner has placed reliance on a decision of the Calcutta High Court in Sunil Das and another vs. State of West Bengal, (1992) CCR2524 and two decisions of Allahabad High Court in Nadeem @ S.M. Nusrat Ali vs. State of U.P., 1 (1992) Ccr 716 and Mahboob Ahmad vs State of U.P., 3 (1992) Ccr 3077.

(6) Learned counsel turn the petitioner urged another contention that under section 38 of the Act the State could have challenged the order passed by the learned Additional Sessions Judge by way of filing a revision petition but in the present case no revision petition was filed against the order dated 26th June, 1992 passed by the learned Additional Sessions Judge and as such the said order has become final.

(7) Mr. Jolly, learned counsel for the State submitted that in terms of section 7(3) of the Act the Court of Session could exercise the power conferred on the Board or Juvenile Court only when the proceeding of a case comes before it in appeal or revision. He, therefore, submitted that since in the present case the learned Additional Sessions Judge was not dealing with any revision or appeal filed on behalf of any of the parties, he had no jurisdiction to give a finding regarding determination of the age of the petitioner under section 32 of the Act. He further submitted that in any case the order passed by the Court of Juvenile Justice was appealable and as such there was no justification for the petitioner to approach this Court under sections 482 and 439 Criminal Procedure Code .

(8) I have given my thoughtful consideration to the facts of the case and arguments advanced by the learned counsel for the parties and I am of the view that the order dated 26th June, 1992 passed by the learned Additional Sessions Judge holding that the petitioner was juvenile, is valid and legal as the same has been passed by the learned Additional Sessions Judge in exercise of powers conferred upon him under section 7(3) of the Act. I do not find any force in the submissions made by the learned counsel for the State that such an order could be passed by the Court of Session only when the proceeding comes before the said court in appeal or revision. The words 'or otherwise' clearly show that the learned Additional Sessions Judge could pass such an order in a proceeding even other than appeal or revision before him. I find support in the view taken by me from the decision of Calcutta High Court in the case of Sunil Das (supra). In this case a learned Single Judge of Calcutta High Court held that the learned Sessions Judge by embarking on an enquiry about the age of the petitioners instead of referring the matter to the Juvenile Court at that stage did nothing wrong and rather he adopted the correct procedure.

(9) As a result of the above discussion the order dated 13th July, 1992 passed by the Court of Juvenile Justice directing fresh enquiry under section 32 of the Act is set aside. The learned Court of Juvenile Justice is, however, tried to hear the application of the petitioner for bail afresh keeping in view the order dated 26th June, 1992 passed by the learned Additional Sessions Judge whereby it was held that the petitioner was juvenile at the time of commission of offence. The petition stands disposed of.