In Re: Sessions Judge

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Court : Kerala

Decided On : Jun-16-1994

Reported in : 1995CriLJ330

Judge : K. Sreedharan and; K.J. Joseph, JJ.

Acts : Indian Penal Code (IPC) - Sections 3(1), 450, 376 and 506; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 14, 20 ; Juvenile Justice Act, 1986 - Sections 5, 21, 39; Children Act, 1960

Appeal No. : Criminal Reference No. 1 of 1994

Appellant : In Re: Sessions Judge

Advocate for Pet/Ap. : P. Ramakrishnan Nair, Amicus Curiae;Addl. Director General of Prosecution K.C. Peter

Judgement :

Sreedharan, J.

1. This reference is made by the learned Sessions Judge, Kalpetta. In a Sessions Case before him, a juvenile, aged below 15 years, stands charged with offences punishable under Sections 450, 376 and 506(ii) of the Penal Code and also under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter referred to as 'the 1989 Act'. The question

referred is whether the said Juvenile is to be tried by a Sessions Court or by the Court established under the Juvenile Justice Act, 1986, hereinafter referred to as 'the 1986 Act'.

2. The allegation made by the prosecution against the juvenile, who has been brought to Court as the accused, is that on 8-1 -1993 at about 5.00 P.M. he criminally trespassed into the house of one Sandhya, aged 14 years, who is a member of the Scheduled Tribe, threatened her with death and then committed rape on her.

3. Since the accused brought before the Sessions Court is aged only 15 years, he is a 'juvenile' as defined under the 1986 Act. As per that Act, the offences committed by the juvenile should be inquired into by a Juvenile Court and he is not to be tried by any court. Section 39 of the 1986 Act deals with the procedure in inquiries, appeals and revisions arising from the decision of the Juvenile Court. As per the provisions of the 1986 Act, the offender who has been brought-before the Sessions Court can only be proceeded against by a Juvenile Court, established under the 1986 Act.

4. The 1986 Act came into force with effect from 2-10-1987. So, offences committed by juveniles subsequent to that date can only be inquired into by Juvenile Courts established under the 1986 Act. While that Act continues to be in force, the 1989 Act was enacted and it came into force with effect from 30-1-1990. Section 14 of the 1989 Act states that for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under that Act. Pursuant to that provision, Government of Kerala issued notifications specifying the Sessions Court of various districts as the Special Court to try offences under that Act. Sessions Court, Kalpetta is one such Court notified as the Special Court. Section 20 of the 1989 Act states that save as otherwise provided in the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law. The question now before us is whether

Section 20 of the 1989 Act will have overriding power over provisions contained in 1986 Act. In other words, if a juvenile, who happens to be a member of the forward community, commits any of the offences enumerated in Section 3 as atrocities to a member of the Scheduled Castes and Scheduled Tribes, is to be tried by the Special Court notified under the 1989 Act? If the offender happens to be a juvenile, as per the 1986 Act that offender should be dealt with by the Juvenile Court established under the 1986 Act.

5. Section 27 of the Code of Criminal Procedure states that any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders. From this, it would appear that if the offence committed by a person below the age of 16 years is one punishable with death or imprisonment for life, Section 27 will not apply and that offender will have to be tried by competent court and not by the Chief Judicial Magistrate. But, this is not the legal position as far as the juveniles are concerned, because of the provision contained in the 1986 Act. 'Juvenile' has been defined in the 1986 Act as 'a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years'. 'Offence' has also been defined under the 1986 Act as means 'an offence punishable under any law for the time being in force'. So, Under the 1986 Act, an offence committed by a juvenile can be, any offence punishable under any law irrespective of the nature of the sentence that can be imposed on the offender who commits that offence. If the juvenile commits an offence, he is to be dealt with by the Juvenile Courts established under the 1986 Act. That Court is not to hold a trial of the case; but only to inquire into the offence as provided by the 1986 Act. 1986 Act has been enacted for the care, treatment etc. of the juvenile and for adjudication of certain matters and other dispositions. There is no theory of punishment imported into that Act. The whole thrust is on the protection, development and rehabilitation of the juvenile. Juvenile cannot be sent to prison. Bail cannot be refused and the maximum that happens is juvenile delinquents are given to the care of either the probation officer or in the care of a parent or some fit

person or institution. This is done not as punishment but as a step for their rehabilitation. They suffer no disqualification even if the offence is proved. From these it can safely be concluded that Parliament totally excluded the jurisdiction of ordinary courts in relation to juvenile offenders. In other words, jurisdiction of all other courts established under law is ousted and it is solely conferred on Juvenile Courts in so far as juvenile offenders are concerned.

6. Section 5 of the 1986 Act provides for the constitution of Juvenile Courts. As per that Section, the State Government, by notification in the Official Gazette, is to constitute for any specified area one or more Juvenile Courts for exercising the powers and discharging the duties conferred or imposed on such courts in relation to delinquent juveniles. The establishment of such Courts as per the notification is to be notwithstanding anything contained in the Code of Criminal Procedure, 1973. Such Court should consist of such number of Metropolitan Magistrates or Judicial Magistrates of First Class forming a Bench as the State Government thinks fit. One among them shall be designated as Principal Magistrate. That Bench shall have the power conferred by the Code of Criminal Procedure on a Metropolitan Magistrate or Judicial Magistrate of First Class. That Court is to be assisted by a panel of two honorary social workers, of whom at least one shall be a woman. Decision of that Court must be based on the opinion of the majority. When there is no such majority, the opinion of the Chairman or of the Principal Magistrate shall prevail. In holding the inquiry, the Juvenile Court should follow, as far as may be, the procedure laid down by the Code of Criminal Procedure in summon cases.

7. As per the provisions of the 1986 Act, no juvenile can be sentenced to imprisonment. Nor can be he detained in prison. A juvenile can only be sent to the special home, where the juveniles are to be detained. Section 21 of 1986 Act mandates that in no case the period during which a juvenile can be sent to special home be beyond the time when the juvenile attains the age of eighteen years in the case of a boy and twenty years in the case of a girl. According to Section 22, when the Juvenile Court finds that a juvenile above the age of fourteen committed a grave offence and detention in the special home is not feasible, the Juvenile Court may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the order of the State

Government. On receipt of such report, the State Government has to make arrangements in respect of that juvenile as it deems proper. The delinquent may then be detained. The period of such detention shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed by him. These provisions of the 1986 Act make it abundantly clear that the Parliament wanted to extend special care, protection, treatment, development and rehabilitation to juveniles. When such an intention has been expressed by the Parliament, unless the Parliament by specific enactment provides otherwise the court will have to give full effect to the provisions contained in the 1986 Act.

8. A survey of the provisions contained in the 1986 Act shows that juveniles are not to be tried for any offence even by the Juvenile Court; but that Court has to make an inquiry into the alleged offence committed by the juvenile. The reason for enacting such a provision in relation to the juveniles can be seen from the statement of objects and reasons given by the Parliament. It is worthwhile to read a portion of the statement of objects and reasons given therein:--

The justice system as available for adults is not considered suitable for being applied to juvenile. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal system and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

With this objects and reasons, Parliament enacted the 1986 Act. Can the provisions of the 1986 Act be treated as given a go-by when the Parliament enacted the 1989 Act ?

9. The 1989 Act was enacted to check and deter crimes against the members of the Scheduled Caste and Scheduled Tribe communities committed by non-Scheduled Castes and non-Scheduled Tribes. The provisions of the 1989 Act aims at giving protection to the members of the Scheduled Caste and Scheduled Tribe communities against whom atrocities are being committed. A reading of the

provisions of 1989 Act will show that the Act was concerned with the victims of the crimes. It is not concerned with the offenders who perpetrate crimes against the members of the Scheduled Castes and Scheduled Tribes. In order to protect the victims, Section 20 was enacted, giving an overriding provision vis-a-vis the provisions contained in all the existing enactments. That overriding power, according to us, cannot be extended to nullify the provisions contained in the 1986 Act, which deals with juveniles who are offenders. The 1989 Act is not concerned with the offenders. So it cannot have any impact on 1986 Act which is concerned with juvenile offenders. The 1986 Act is a special enactment which deals with juvenile offenders. The provisions of that Act cannot be nullified by the 1989 Act which deals with an entirely different field. In this view we hold that the 1989 Act cannot override the provisions of the 1986 Act which specifically deal with juvenile offenders.

10. In Antaryami Patra v. State of Orissa, 1993 Cri LJ 1908, a question arose as to whether a juvenile who was prosecuted for offence under the Narcotic Drugs and Psychotropic Substances Act is to be released on bail and tried as per the provisions of that Act or under the Juvenile Justice Act, 1986. A learned single Judge of the Orissa High Court took the view that the provisions of the Narcotic Drugs and Psychotropic Substances Act will prevail over the Juvenile Justice Act and that the juvenile who was prosecuted was not to be released on bail. We find it difficult to agree with that view for the reasons stated hereinbefore. With respect we decline to agree with the observations made by the learned Judge.

11. In view of what has been stated above, we answer the reference in the following terms:--

The Juvenile, who has been charged with offences punishable under Sections 450, 376 and 506(ii) of the Penal Code and also under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to be tried by a Juvenile Court as provided under the Juvenile Justice Act, 1986. We are also pf the opinion that the provisions contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 will not have any over-riding effect over the provisions contained in the Juvenile Justice Act, 1986.

12. Since the offence alleged against the juvenile was committed way back on 8-1-1993 and the victim happens to be a member of the Scheduled Caste/Scheduled Tribe community, we direct the Court below to take urgent steps to have the case disposed of as expeditiously as possible, in accordance with the observations made earlier in this order.

13. Before parting with this case we express our sincere appreciation to the help rendered by Sri K.C. Peter, Addl. Director General of Prosecution and Sri P. Ramakrishnan Nair who appeared as Amicus Curiae on our request.