

**Ashok Kumar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Feb-21-1990

**Reported in :** 1990WLN(UC)86

**Judge :** M.B. Sharma, J.

**Appeal No. :** S.B. Cr. Rev. Petition No. 164 of 1988

**Appellant :** Ashok Kumar

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**M.B. Sharma, J.**

1. In assessing the judgment dated 4-8-1988 of the learned Addl. Sessions Judge, Sikar, the learned Counsel for the petitioner has put in the fore front an argument that at the time when the offence was committed, though the accused petitioner was the owner of the Firm M/s Ashok Kumar and Company but he was a minor aged about 14 years and in fact his father Gordhan Lal was looking after the business of the firm. He contends that because the accused at the time of the offence had not reached the age of 16 years he could have only been tried by the children's court under the Rajasthan Children Act, 1970 (for short 'the Act').

Learned Counsel for the petitioner contends that though no objection was taken before the trial court, it was still the duty of the trial court also to see as to what was the age of the accused and whether he should be tried by that court or by the Children Court under the provisions of the Act.

2. It will appear from the perusal of the complaint which was tiled by the enforcement Inspector in the court of the learned Magistrate that the age of the accused was not mentioned in it. From the statement of Shri Tulsi Ram (PW 6), it will appear that at the time when he, the enforcement Inspector Mr. Tulsi Ram visited the business premises of M/s Ashok Kumar and Company, the accused petitioner was not present and his father Gordhan Lal, Manager of the firm was present. Today, the learned Counsel for the petitioner has filed an application along with the mark-sheet of Secondary Education Board Rajasthan for the Secondary Examination, 1980 bearing serial No 045246. The date of the birth of the petitioner entered therein is 7-7-1963. It will, therefore, be clear that on 25-11-1977 the petitioner had not even completed 15 years of age and in fact was 14 years and few months old. When the statement of the accused petitioner was recorded Under Section 313 Cr. PC on 12-5-1983, the accused petitioner gave his age as 19 years and the estimation of the court in respect of the age of the accused was also 19 years. The statement of the accused as aforesaid had been being recorded after about 6 years of the occurrence, it can be said that the age of the accused was 14 years at the time of the occurrence and that tallies with the date of the birth recorded in the Secondary School's marksheet referred to earlier. Argument was advanced before the learned appellate court that the accused was 16 years of age-at the time of the occurrence, but the learned appellate court in para 10 of its judgment said that there is no satisfactorily proved about it. The Supreme Court in the case of Umesh Chandra v. State of Rajasthan 1982 Cr LR(SC) 259 referring to the provisions of Sections 21 and 26 of the said Act said that:

Ordinarily the oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be

prepared at any time to suit the needs of a particular situation.

3. In the instant case, when even the estimation about the age of the accused petitioner of the court, as entered in the statement of the accused Under Section 313 Cr.PC was 19 years on 12-5-1988, there could have been no doubt, and there is no reason why the learned appellate court did not place reliance on the aforesaid estimation and why it did not infer that on the day of occurrence the accused petitioner was aged about 14 years. As stated earlier that even the marksheet has been filed where in the date of the birth of the accused petitioner has been recorded and now there can be no doubt that it was the accused petitioner who was 14 years of age on the day of the occurrence. It appears to me that though the name of the firm was M/s Ashok Kumar and Company and Ashok Kumar might be proprietor of the firm but it was his father who was only managing the affairs of the firm. From the marksheet which has been referred to earlier, it can be said that the accused appeared in Higher Secondary School in the year 1980 and therefore in the year 1977 he should have been reaching in 7th or 8th Class. Therefore in my opinion it can be said that the accused was not and could not be managing the affairs of the firm, he was aged of 14 years and the therefore, he could only have been tried by the Children Court under the Act.

4. It was the Children Act which was applicable at the time when the offence was committed and the Juvenile Justice Act, 1986 only came in force sometime in the year 1987, 'Child' is defined in Section 2 (d) of the Act and means a boy who has not attained the age of eighteen years. There can be no disputed that so far as an offence committed by a child as aforesaid is concerned the exclusive jurisdiction vests in the Children Court. A bare reading of Section 8 will show that procedure to be followed by a Magistrate not empowered under the Act is given. When any Magistrate not empowered to exercise the powers of a Board or a Children's Court under the Act is an opinion that a person brought before him under any of the provisions of the Act is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

5. I would have sent the case back for trial to the Children Court, but the offence in of the year 1977 and the nature of the offence also is not such, more so, the M/s Ashok Kumar and Company had obtained a license as appears on the record. I am not inclined to send the case back to the Children Court for trial.

6. Consequently, I hereby allow this revision set aside the judgment dated 13-9-1983 of the learned Chief Judicial Magistrate, Sikar as well as dated 4-5-1988 of the learned Add I. Sessions-Judge, Sikar. The conviction of the accused petitioner Under Section 3/7 of the Essential Commodities Act is set aside and the sentence is also set aside He is on bail, need not surrender to his bail bonds which shall stand cancelled. Fine, if any deposited by the accused petitioner shall be refunded to the accused petitioner.

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