SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Arjun Ram Vs. State of Rajasthan

Arjun Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/765247

Court : Rajasthan

Decided On : Apr-06-1998

Reported in : 1998CriLJ4375; 1999(3)WLC292; 1998(1)WLN261

Judge : Amaresh Ku. Singh, J.

Acts : Juvenile Justice Act, 1986 - Sections 7(3), 8 and 32; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 173 and 482

Appeal No. : Cri. Misc. Petn. No. 163 of 1998

Appellant : Arjun Ram

Respondent : State of Rajasthan

Advocate for Def. : Snehlata Joshi, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the impugned orders passed by the Additional Chief Judicial

Magistrate, Nagaur and the Additional Sessions Judge, Nagaur.

2. This petition has been filed by Arjun Ram who is the father of accused Prem Raj. It appears that Additional Chief Judicial Magistrate, Nagaur took cognizance of the offence punishable Under Section 302 1PC on the basis of the report submitted by the police Under Section 173 Cr. P. C. According to prosecution, accused Prem Raj committed the murder of his younger brother Ramesh. Before the case was committed to the Court of Sessions by the Additional Chief Judicial Magistrate. Nagaur, an application was filed by Arjun Ram. father of accused Prem Raj, on 8th January, 98 in the Court of Additional Chief Judicial Magistrate, Nagaur, praying that the case be sent to the Juvenile court as the accused was a 'juvenile' on the date of occurrence. The application was filed Under Section 8 of the Juvenile Justice Act, 1986.

3. The Additional Chief Judicial Magistrate, Nagaur gave opportunity to the parties to produce evidence about the age of the accused Prem Raj. Arjun Ram A.W. 1 and Smt. Kamla A.W.2 were examined on oath. Entries of the School Register were also produced in evidence. Medical examination of accused Prem Raj was also got done and the Medical Board opined that the age of the accused Prem Raj was between 13 to 14 years. After hearing both the parties, the learned Additional Chief Judicial Magistrate, Nagaur rejected the application dated 8th January, 98 filed by Arjun Ram. The ground for rejection was that in the opinion of the learned Additional Chief Judicial Magistrate, Nagaur the case of Prem Ram was not a 'juvenile' in view of the school certificate showing that his date of birth was 20th July, 1981.

4. A revision petition was filed against the order dated 19th January, 98 passed by the Additional Chief Judicial Magistrate, Nagaur. The revision petition was registered at No. 9/90. After hearing the parties, the learned Additional Sessions Judge rejected the revision petition vide order dated 24th February, 98.

5. Feeling aggrieved by the orders passed by the learned Additional Chief Judicial Magistrate and the learned Additional Sessions Judge, Nagaur, the petitioner has approached this Court Under Section 482 Cr. P. C.

6. The learned counsel for the petitioner has submitted that in view of the report given by the Medical Board, the age of accused Prem Raj, who is the son of the petitioner was between 13 to 14 years on the date of occurrence and therefore, there was a prima facie case for an inquiry by the competent authority Under Section 32 of the Juvenile Justice Act, 1986. It is further submitted by him that the preliminary inquiry conducted by the learned Additional Chief Judicial Magistrate, Nagaur cannot be deemed to be an inquiry conducted by a competent authority Under Section 32 of the Juvenile Justice Act, because the learned Additional Chief Judicial Magistrate was not exercising the powers of a 'competent authority', while conducting the inquiry and disposing of the same vide order dated 19th Janauary, 98. On the above grounds, the learned counsel for the petitioner has submitted that in this case it was necessary for the competent authority to conduct an inquiry about the age of the accused Prem Raj and since this course has not been adopted, suitable orders need be passed so that the protection, which may be available to the petitioner's son in the event he is found to be a 'juvenile', may not be denied to him.

7. The learned counsel for the petitioner has further submitted that after the passing of the order dated 24th February, 98 by the learned Additional Sessions Judge, Nagaur, the case was committed to the Court of Additional Sessions Judge by the Additional Chief Judicial Magistrate and under the Juvenile Justice Act, the Additional Sessions Judge is competent to conduct an inquiry about the age of the accused, if the facts and circumstances necessitate such an inquiry Under Section 32 of the Juvenile Justice Act. It is therefore, prayed by the learned counsel for the petitioner that the impugned orders dated 19th January, 98 and 24th February, 98 be quashed and the Additional Sessions Judge, Nagaur be directed to conduct an inquiry Under Section 32 of the Juvenile Justice Act to find out whether the accused Prem Raj is or is not a 'juvenile' and in case, it is established by an inquiry that Prem Raj is a 'juvenile', the learned Additional Sessions Judge be directed to proceed in accordance with law.

8. The learned Public Prosecutor has admitted that the case stands committed to the learned Additional Sessions Judge,-Nagaur.

9. It is not controverted by the learned Public Prosecutor that the learned Additional Chief Judicial Magistrate, Nagaur was not exercising the powers of a competent authority when the preliminary inquiry about the age of the petitioner was conducted.

10. I have carefully considered the facts and circumstances of the case. In Gopinath Ghosh v. The State of West Bengal, 1984 Cri LJ 168 (SC) : AIR 1984 SC 237 the Hon'ble Supreme Court observed at page 172 of Cri LJ :-

We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be for obtaining creditworthy evidence about age. The Magistrate may as well cal 1 upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex Court and the return journey to the grass-root Court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation therein indicated.

11. In view of the observations of the Hon'ble Supreme Court, as soon as it is brought to the notice of a Court that the accused is below 21 years of age, it is necessary to conduct an inquiry in order to ascertain the age of the accused on the date of the occurrence.

12. After coming into force of the Juvenile Justice Act, 1986, accused, who are covered by definition of 'juvenile' cannot be tried by ordinary Courts. They can be tried by Juvenile Courts only. After considering the provisions of the Juvenile Justice Act, 1986, this Court in Balbir Singh v. State of Rajasthan, 1994 Cri LJ 2750, observed at page 2755 :-

After the above discussions, the legal position on the issues raised in this petition may be summarised as under :-

(i) For the determination of age, to decide whether an accused is a juvenile or not, a inquiry is a must to be made by the competent authority by giving an opportunity to the parties to adduce oral and documentary evidence and also a right to cross-examine to the opposite party;

(ii) The inquiry can be made by a Magistrate if he is empowered to exercise the power of the Board or Juvenile Court, otherwise he will have to forward the accused and the record of the proceeding to the Juvenile Court having jurisdiction over the proceeding;

(iii) The High Court or the Court of Session can exercise the power of the Board or a Juvenile Court, which also includes an inquiry for determination of age of the accused, when the proceeding comes before them in appeal, revision or otherwise, so after commitment of the case the concerned Court of Session can determine the age of the accused to decide whether he was a juvenile or not ?

13. In view of above observations, it must be said that after the commital of the case to the Court of Session, the Sessions Judge is not only authorised to conduct an inquiry Under Section 32 of the Juvenile Justice Act, it is the duty of the Court of Session to conduct such an inquiry in order to ascertain the age of the accused on the date of occurrence so that in the event the accused is found to be a 'juvenile', he may be forwarded to the Juvenile Court for trial according to law.

14. In the instant case, the learned Additional Chief Judicial Magistrate, Nagaur, who rejected the application dated 8th January, 98 moved by the petitioner, by his order dated 19th January, 98, was not exercising the powers of the competent authority when the inquiry was conducted by him. The learned Additional Sessions Judge while hearing the revision petition does not appear to have conducted any inquiry Under Section 32 of the Juvenile Justice Act to himself independently ascertain the age of the accused. For above reasons, the orders dated 19-1-98 passed by the Additional Chief Judicial Magistrate and the order dated 24-2-98 passed by the Additional Sessions Judge, Nagaur cannot be said to be orders

passed Under Section 32 of the Juvenile Justice Act. Consequently, those orders deserve to be quashed and are hereby quashed and set aside.

15.. The case has already been committed to the Court of learned Additional Sessions Judge, Nagaur who can exercise the powers of the competent authority Under Section 32 of the Juvenile Justice Act by virtue of the provisions contained in Sub-section (3) of Section 7 of the Juvenile Justice Act. It is therefore, directed that the learned Additional Sessions Judge, Nagaur shall conduct an inquiry for the purpose of ascertaining the age of the accused Prem Raj as on the date of occurrence and in case, accused Prem Raj is found to be a 'juvenile' on the date of occurrence. the learned Additional Sessions Judge, Nagaur shall proceed in accordance with the provisions of Juvenile Justice Act, 1986.

The petition is disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com