

Khannu Vs. State of U.P. Thur. Principal Secy.,home Deptt. and Another

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Court : Allahabad

Decided On : Oct-26-2010

Judge : Raj Mani Chauhan, J.

Appeal No. : U/S 482/378/407 No. - 4179 of 2010

Appellant : Khannu

Respondent : State of U.P. Thur. Principal Secy.,home Deptt. and Another

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Rishad Murtaza, Adv

Judgement :

1. Heard learned counsel for the petitioner and learned Additional Government Advocate for the State as well as perused the documents available on record.
2. This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been filed by the petitioner for quashing the impugned order dated 06.9.2010 passed by the learned Additional Sessions Judge, Court No. 8, Raebareli in Sessions Trial No. 91/1988 (State v. Khannu & Others) whereby the learned Additional Sessions Judge has rejected the application 64-Kha moved by the accused for declaring him to be juvenile.

3. The only question involves in this revision is the legality of the impugned order passed by the learned Additional Sessions Judge, Court No. 8, Raebareli in Sessions Trial No. 91/1988 (State v. Khannu & Others) whereby the learned Additional Sessions Judge has rejected the application moved by the accused for treating him to be juvenile. Therefore, with the consent of learned Additional Government Advocate this petition is being disposed of finally without issuing notice to the Opposite Party No. 2 to curtail the delay in trial of the Sessions Trial pending against the accused-petitioner before the Trial Court.

4. The submission of learned counsel for the petitioner is that during the pendency of the trial the accused moved an application for declaring him to be juvenile which has been rejected by the learned Additional Sessions Judge mainly on the ground that the sessions trial pending against the accused is one of the oldest session trials and the accused had moved the application at a belated stage, it appears that he just to delay the hearing of the trial had moved the application.

5. Learned counsel for the petitioner submits that originally the Investigating Officer has submitted charge-sheet against the accused for the offences under Sections 323/324 IPC which was triable by the Magistrate consequently the learned Magistrate concluded the case and held the accused guilty for the offences under Sections 323/324/308 IPC and convicted them accordingly. The judgment and order passed by the learned Magistrate was challenged by the accused before the Sessions Judge in appeal which was allowed by the learned Additional Sessions Judge and the case was remanded back to the learned Magistrate with the direction to reframe the charges against the accused and commit the case the court of Sessions for trial. The accused challenged the order of the learned Additional Sessions Judge in revision which was dismissed by the High Court upholding the judgment and order passed by the learned Additional Sessions Judge. During the pendency of the trial the accused moved an application to declare him to be juvenile on the date of occurrence which has been rejected by the learned Additional Sessions Judge mainly on the ground that it was dilatory tactics of the accused.

6. Learned counsel submits that the application moved by the accused could not be rejected only on the ground that it was moved by the accused to delay the hearing of the sessions trial. Learned counsel submits that as per provision of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act'), an accused can raise the plea of juvenility at any stage even in appeal too and if he raises such claim, his claim has to be enquired into by the court concerned and the point of juvenility has to be decided by the court. In this case, the accused had moved an application for declaring him to be juvenile. Therefore, it was the obligatory on the part of the Trial Court to dispose of his application on merit after making inquiry as provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 'Rules'). Therefore, the impugned order passed by the learned Additional Sessions Judge is illegal and is liable to be quashed and the matter deserves to be remanded back to the Trial Court with the direction to decide the claim of the juvenility raised by the accused after holding an inquiry as provided under Rule 12 of the Rules. Learned counsel for the petitioner in support of his argument has placed reliance upon a case Mohan Mali and Another v. State of Madhya Pradesh reported in [(2010) 3 Supreme Court Cases (Cri) 208] decided by the Hon'ble Apex Court.

7. Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate although opposed the revision and supported the impugned order passed by the learned Additional Sessions Judge but fairly accepts that the learned Additional Sessions Judge has not disposed of the application moved by the accused in accordance with Rule 12 of the Rules and rejected the application of the accused for declaring him to be juvenile only on the ground that it was his dilatory tactics. The Trial Court in view of the provision under Section 7A of the Act was expected to dispose of the application moved by the accused on merit after holding inquiry as provided under Rule 12 of the Rules.

8. I have given thoughtful consideration to the submissions advanced by learned counsel for the petitioner and learned Additional Government Advocate as well as perused the impugned order.

9. From a perusal of the impugned order, it appears that the learned Additional Sessions Judge has rejected the application moved by the accused for declaring him to be juvenile mainly on the ground that it was dilatory tactics of the accused while Section 7A of the Act provides that the accused may raise claim of juvenility before the court at any time even after disposal of the case. If such claim is raised by the accused before the court, it will enquired into the matter in accordance with the provision under Section 12 of the Rules and will decide the age of the accused at the time of occurrence. The provision under Section 7A of the Act is being extracted below:

7A. Procedure to be followed when claim of juvenility is raised before any court: -
(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not as an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

10. Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

11. Rule 12 of the Rules prescribes the procedure for making an inquiry and determining the age of the accused as to whether he was juvenile or not on the date of occurrence. The Rule 12 of the Rules is being extracted below:

"12. Procedure to be followed in determination of Age.- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child of a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie, on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat'

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the

margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i),(ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

12. In view of the above, the Trial Court was expected to dispose of the application moved by the accused for declaring him to be juvenile on merit after making an inquiry as provided under Rule 12 of the Rules but the learned Additional Sessions Judge has rejected the application moved by the accused without conducting any

inquiry as per provision under Section 7A of the Act read with Rule 12 of the Rules only on the ground that accused was adopting dilatory tactics. The impugned order is, therefore, bad in the eyes of law liable to be quashed and matter deserves to be remanded back to the learned Additional Sessions Judge to decide the application afresh in the light of observation made hereinabove.

13. The petition is, therefore, allowed.

14. The impugned order passed by the learned Additional Sessions Judge, Court No. 8, Raebareli in Sessions Trial No. 91/1988 (State v. Khannu and Others) rejecting the application of the accused to declare him to be juvenile is set-aside and the matter is remanded back to the learned Additional Sessions Judge to decide the application moved by the accused for declaring him to be juvenile afresh keeping in view the observations made hereinabove.

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