

Govind Vs. State of Madhya Pradesh

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Court : Madhya Pradesh Gwalior

Decided On : Jul-13-2011

Judge : G.D. Saxena, J.

Acts : [Code of Criminal Procedure \(CrPC\) 1973](#) - Sections 397, 401, 398; Indian Penal Code (IPC) - Sections 302, 452, 147, 148, 149, 323, 324, 325; Juvenile Justice Act - Section 32(1)

Appeal No. : Criminal Revision No.561/2011

Appellant : Govind

Respondent : State of Madhya Pradesh

Advocate for Def. : Shri R.K.Shrivastava, Adv.

Advocate for Pet/Ap. : Shri Rajmani Bansal, Adv.

Judgement :

(1) This revision petition under Section 397/401 of the Code of Criminal Procedure 1973 is directed against an order dated 13 th May 2011 in Criminal Revision No. 21/2011 passed by the Fourth Additional Sessions Judge (Fast Track) Guna, M.P. allowing thereby the revision filed by the State of Madhya Pradesh while setting aside the order passed in Criminal Case No.217/10 dated 23/11/10 of the Judicial Magistrate First Class, Guna and remanding the case to that court for redetermine the age of the accused after following the procedure laid down in Rule 12(3) of the

Juvenile Justice (Care and Protection) Act, 2007.

(2) The facts necessary for the disposal of this petition are that a Crime No.217/10 was registered against the accused-petitioner Govind for commission of offence punishable under Sections 302, 452, 147, 148, 149, 323, 324 and 325 of I.P.C. by police station Dharnabda for causing death of one Hukum Singh and injuring persons namely, Geetabai, Ramjane, Bana Sahab Madurn on 22 nd October, 2010 at around 9 in the night, in village Kanerachak and after investigation, the accused was taken into custody. During investigation, it was pleaded by the accused that he was a juvenile at the time of commission of offence. On submission by him an application under Section 12 of the said Act, he was sent for medical examination and after getting report about him of juvenile, his case was transmitted to the Juvenile Board vide order dated 23/11/10 for proceeding further in accordance with the provisions. It was this order, which was challenged by the respondent-State in a revision before the Revisional court. The Revisional court without issuing notice and hearing the accused-petitioner (herein) set aside the finding of its subordinate court and remitted the case back for re-determination of his age. Hence, this revision before this court.

(3) The learned Counsel for the petitioner contended that the said order is passed against the provisions of Section 398 of Cr.P.C., as no opportunity of hearing was given to the accused-petitioner before reaching at a conclusion. It is further argued that the learned revisional court did not even think it proper to make an enquiry as contemplated under Section 32 of the Act and straightway set aside the order of the trial court. Hence, the impugned order is patently illegal,arbitrary and deserves to be set aside.

(4) On the other hand, the learned Panel Lawyer for the State supported the impugned order and contended that no such illegality has been committed as pointed out by the counsel for the petitioner and the revision deserves dismissal.

(5) Needless to add here that the powers conferred on the Board 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 an appeal, revision or otherwise. As regards procedure to be followed by the Magistrate not empowered under the Act reads as

is below:-

'7. Procedure to be followed by a Magistrate not empowered under the Act.- (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under Sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

It would further be necessary to reproduce Section 49 of the said Act.

Section 49 :- Presumption and determination of age:-(1) where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of the competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not juvenile or the child, and the age recorded by the competent authority to be the age of the person so brought before it shall for the purpose

of this Act, be deemed to be the true age of that person.'

(6) A plain reading of the aforesaid provisions makes it clear that insofar as a juvenile in conflict with law is concerned, the Juvenile Justice Board has exclusive power to deal with such a juvenile in respect of the proceedings under the said Act. Furthermore, by virtue of Section 7 if a Magistrate who is not empowered to exercise the powers of the Juvenile Justice Board, is of the opinion that a person brought before him is a juvenile then he is required to record such an opinion without delay and forward the juvenile and the record of the proceedings to the competent authority having jurisdiction under the Act. The meaning of this is clear that where any Magistrate who is not functioning as a Juvenile Justice Board feels that a person brought before him is a juvenile he has to record such an opinion and send such juvenile to be dealt with by the competent authority. Section 7(2) provides that after the juvenile has been sent to the competent authority, the latter shall hold the 'inquiry' as if the juvenile or the child had originally been brought before it. This 'inquiry' has reference to the inquiry to be conducted by the Board under Section 14 of the Act and does not have reference to the inquiry for determination of age of a person under Section 49 of the said Act.

(7) Going by that principle, if during the trial of a case in a Criminal Court any question of juvenility of any accused is raised before the Court it becomes incumbent upon the court to make a preliminary enquiry in the matter and form an opinion as to whether the person concerned is a juvenile and if the opinion is affirmative in that event the case has to be referred to the Juvenile Court for being dealt with under the Juvenile Justice Act, in which case the Juvenile Court shall make due enquiry under Section 32(1) of the Juvenile Justice Act about age of the person and record a finding whether the person concerned is a juvenile or not.

(8) A reading of the aforesaid extracts makes it clear that it is well within the powers of the Sessions Court to embark upon an inquiry as to the age of a person instead of rejecting the order passed by the trial court.

(9) At this juncture, it would be useful to refer the decision of the Apex court in the case of In the case of Jitendra Ram alias Jitu v. State of Jharkhand (AIR 2006 SC 1933), the Hon. Apex court held :-

“We are, however, not oblivious of the decision of this Court in *Bhola Bhagat v. State of Bihar* [(1997) 8 SCC 720], wherein an obligation has been cast on the court that where such a plea is raised having regard to the beneficial nature of the socially-oriented legislation, the same should be examined with great care. We are, however, of the opinion that the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records.

The provisions of a beneficial legislation should ordinarily be given effect to. However, we may notice that the appellant is literate. Presumably he attended some school. However, no certificate of his date of birth or any other proof as regard his date of birth is available on records. No other material apart from the estimate of the court has been brought to our notice. In the absence of any material on record, we cannot arrive at a definite conclusion that the appellant as on the date of commission of the offence was a child within the meaning of the said Act.

(10) The enunciation of the aforesaid decision goes to indicate that even in the absence of an enquiry under the Act, the Sessions Court, after the case is committed to it has the power to make an enquiry and determine the age of the accused if it considers it necessary in the interests of justice or a prayer is made in that behalf. The opinion of the Sessions Court should support from a definite finding with regard to the age of the accused based upon an inquiry conducted by it, which is not a situation in the instant case.

(11) As discussed above, the order in the present case was passed by the revisional court in a manner inconsistent with the rules of natural justice and in violation of the statutory rules prescribing the mode of enquiry as contemplated under the Code as well as Act. It appears that the court was influenced by

irrelevant considerations where no reasonable person could ever have arrived at. In other words, the conclusion on the very face of it is so wholly arbitrary and capricious. The proviso to Section 398 of Cr.P.C. is imperative and enjoins that an opportunity should be given to the accused to show cause why further inquiry should not be ordered and a disregard of the same is an illegality and in any case such an irregularity seriously prejudices an accused who is ordered to be proceeded against it.

(12) In view of the above, the order passed by the Revisional court dated 13/5/11 is hereby set aside. The revision is allowed. The matter is remitted back to the revisional court, heading the Board, with a direction to redetermine the age of the accused-petitioner, as on the date of commission of the alleged offences, in accordance with law, enunciated above. In the event he is found to be juvenile within the meaning of the Act, he shall be dealt with accordingly. However, if he is not found to be so, he would face trial under the ordinary criminal law. The inquiry shall be completed expeditiously, preferably within a period of one month of receipt of a copy of this judgment.

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