

Latha Vs. the Inspector of Police,

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Court : Chennai

Decided On : Apr-27-2012

Judge : S.Rajeswaran; M.Vijayaraghavan, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 149; Juvenile Justice (Care and Protection of Children) Act 2000 - Sections 2(1), 2(k), 2(12), 7(A), 15, 20, 49, 64; Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 98; The Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001 ; [Constitution of India](#) - Article 226

Appeal No. : Habeas Corpus Petition (MD) No.1001 of 2011

Appellant : Latha

Respondent : The Inspector of Police,

Advocate for Def. : Mr.T.Mohan, Adv

Advocate for Pet/Ap. : Mr.R.Alagumani, Adv

Judgement :

Prayer

Writ Petition under Article 226 of the [Constitution of India](#) praying for issuance of a writ of habeas corpus directing the respondents to produce the body and person of the Petitioner's husband by name Kundumani @ Pitchai Kani, son of Chinnasamy,

aged about 45 years (now confined at Madurai Central Prison as life convict) before this Court and set him at liberty, by extending the benefits to the detenu under Juvenile Justice (Care and Protection of Children) Act.

ORDER

(Order of the Court was made by S.RAJESWARAN,J)

1. The petitioner is the wife of one Kundumani, who is one of the convict in S.C.Nos.56 and 57 of 1985 on the file of the Sessions Judge, Madurai North at Dindigul. In both the cases, the said Kundumani has been arrayed as Accused No.3. After trial in both the cases, among other offences, he was convicted under Section 302 read with 149 IPC and sentenced to undergo life imprisonment in each case, by common judgment dated 28.08.1985 and both the sentences were ordered to run concurrently. The appeal preferred by the said accused was also dismissed by this Court, confirming the conviction and sentenced imposed on him and now he is undergoing the imprisonment imposed on him in Central Prison, Madurai.

2. Claiming that her husband was a juvenile at the time of commission of the offence in both the cases and therefore he is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000, (in short "the Act")the Petitioner has come forward with this habeas corpus petition seeking release of her husband.

3. According to the petitioner, the original name of her husband is Pitchaikani and his nick name is Kundumani and to that effect the Village Administrative Officer as well as the Headmaster of TELC Primary School, M.Kallupatti, have issued certificates. It is further stated that the date of birth of his husband is 01.09.1967 and the alleged occurrence is said to have taken place on 24.07.1984 and as such he was only 16 years, 8 months and 23 days old on the date of the commission of the offence and therefore he is a juvenile on the date of commission of offence and he is entitled to get the benefit of Sections 2(k) 2(12) 7-A, 20 and 49 of the Act. With the above contentions, the present petition has been filed.

4. Among many grounds raised, learned counsel appearing for the Petitioner raised preliminary objection with regard to the age of the detenu/convict at the time of the offence committed. According to him, at the time of the offence committed, the detenu was a juvenile. Therefore, pending main habeas corpus petition, on an application filed by the petitioner in M.P.(MD)No.1 of 2011, this Court, in and by order dated 05.01.2012, directed the Principal District and Sessions Judge, Dindigul, to hold an enquiry to determine the age of the petitioner's husband, the detenu/convict, on the date of commission of the offence, namely 24.07.1984 and submit a report. Accordingly, the learned Principal District and Sessions Judge, Dindigul District, has held an enquiry and analysed evidence collected and submitted a Report vide D.No.1241, dated 20.02.2012, determining the date of birth of detenu as 01.09.1967 and his age at the time of commission of offence i.e. on 24.07.1984, as 16 years, 10 months and 24 days. As to the name of the accused/detenu Kundumani, the District Judge has observed that the accused/detenu Kundumani is having another name 'Pitchaikani', as stated by the witnesses during his enquiry, namely P.W.1 and P.W.3 to P.W.7 and as found in documents marked as Exs.P-6 and P-8.

5. After referring to the report of the learned District Judge, Dindigul, the learned counsel for the petitioner would contend that the convict/detenu was a juvenile, having not completed the age of 18 years, at the time of commission of offence and therefore, he is entitled to the benefit under the Juvenile Justice (Care and Protection of Children) Act 2000, amended by Act 33 of 2006. According to him though cases have been disposed of and the detenu is undergoing imprisonment and having not completed the age of 18 years on the date of occurrence, the plea of juvenility can be raised before any Court or at any stage and even after disposal of the cases.

6. In order to appreciate the contention of the petitioner, it is pertinent to refer to the relevant the provisions of the Act. Section 2(k), 2(l), 7(A), 20 and 64 of the Act read as follows: "2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age; 2(l)"juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence; 7-A. Procedure to be followed

when claim of juvenility is raised before any Court.- (1) Whenever 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 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: Provided that a claim of juvenility may be raised before any Court and it shall be recognised 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 order, and the sentence, if any, passed by a Court shall be deemed to have no effect."

20. Special provision in respect of pending cases-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of the juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

64. Juvenile in conflict with law undergoing sentence at commencement of this Act. - In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special

home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act."

7. Juvenile Justice (Care and Protection of Children) Act, 2000 came into force on 01.04.2001. This Act replaced the old Juvenile Justice Act 1986. Section 2(k) of the Act 2000 defined Juvenile as a person who has not completed 18th year of age. However, in the old Act the Juvenile was defined as a person who has not completed 16th year of age. Under Section 2(l) the Juvenile conflict with law was defined as a Juvenile who is alleged to have committed an offence and has not completed 18th year of age as on the date of commission of such offence. However, Section 2(k)(l) was inserted by the amending Act of 33 of 2006 with effect from 22.08.2006. Earlier, Section 2(k)(l) stood as "Juvenile in conflict with law means a juvenile who is alleged to have committed an offence".

8. However, Section 20 provided a special provision in respect of pending cases as on 01.04.2001. It was common knowledge that on the date of commencement of the new Act i.e., on 01.04.2001, the cases against the juvenile in conflict with law were pending as initiated under the old Act, 1986. Therefore, to deal with those cases, pending under 1986 Act when the Act 2000 came into operation, a special provision was incorporated. According to this provision, if any proceeding was pending on the date of the Act 2000, the same has to be concluded under the provisions of the Old Act. However, it has been further provided that if the finding is recorded that the concerned Juvenile committed the alleged offence, no sentence is to be passed, instead the concerned Juvenile along with that finding is to be sent to the Juvenile Board and the Board then pass appropriate order under the new Act. [See Lallan Singh Vs. State of U.P. 2002 (4) Allahabad (Cri.) LR 947.] Therefore, at that time, when the new Act came into force, it did not take effect retrospectively. However, a question was raised whether the plea of being a Juvenile to be taken at a later stage. The Supreme Court and all the High Courts have held the juvenility may be claimed at any stage of the trial even in the appellate stage. Therefore, Section 7(A) of the Act was inserted by the amendment Act 33 of 2006 with effect from 22.08.2006. Under this Section the Supreme Court in Kurpith Singh Vs. State of Panjab (2005 12 SCC 615) held that an accused convict may be permitted at all stages to satisfy the judicial

conscience of the court that he was a juvenile on the date of alleged commission of the offence for which he might have been charged and ultimately convicted. If it is established that indeed that he was the juvenile on the date the matter would be referred to the concerned Juvenile Justice Board from the stage of finding of the guilt. It would now be the Board which would pass appropriate order against convict have regard to the provisions of the Act.

9. In 2005 3 SCC 551 (Pradap Singh Vs State of Jharkant) the Supreme Court discussed in detail the applicability of Section 2(k),(l), 20 and 64 of the Act and held that the provisions of the Act 2000 would be applicable to those cases, initiated and pending trial/enquiry for the offence committed under the Act 1986 provided that the person had not completed 18 years of age as on 01.04.2001.

10. In 2008 1 MLJ (Cri.) 1378 (SC) (Balu @ Bakthavatchalu Vs. State of Tamil Nadu) in a Separate judgment, the Supreme Court has held as follows: "95. Section 20 of the Act of 2000 would, therefore, be applicable when a person is below the age of 18 years as on 01.04.2001. For the purpose of attracting Section 20 of the Act, it must be established that: (i) on the date of coming into force the proceedings in which the petitioner was accused were pending; and (ii) on that day he was below the age of 18 years. For the purpose of the said Act, both the aforementioned conditions are required to be fulfilled. By reason of the provisions of the said Act of 2000, the protection granted to a juvenile has only been extended but such extension is not absolute but only a limited one. It would apply strictly when the conditions precedent therefor as contained in Section 20 or Section 64 are fulfilled. The said provisions repeatedly refer to the words "juvenile" or delinquent juveniles" specifically. This appears to be the object of the Act and for ascertaining the true intent of Parliament, the rule of purposive construction must be adopted. The purpose of the Act would stand defeated if a child continues to be in the company of an adult. Thus, the Act 2000 intends to give the protection only to a juvenile within the meaning of the said Act and not an adult. In other words although it would apply to a person who is still a juvenile having not attained the age of 18 years but shall not apply to a person who has already attained the age of 18 years on the date of coming into force thereof or who had not attained the age of 18 years on the date of commission of the offence but has since ceased

to be a juvenile".

11. Thereafter, the Parliament introduced Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (which came into force with effect from 23.08.2006), in terms whereof retrospective and restorative meaning was given to the definition of 'juvenile' stating: -

"4. In section 2 of the principal Act: - (iv) for clause (1), the following clause shall be substituted, namely: -

(i) "Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence."

12. The amendment Act 2006 had come into force with effect 23.08.2006 wherein Section 2(k) and (l) were amended.

13. Section 7(A) of the Act provides raising a claim of Juvenility at any stage, even after final disposal of the case. Under this provision, the claim of Juvenility may be raised before "any court" at "any stage".

14. In 2010 5 SCC 344 (Darambeer Vs State of (NCT of Delhi) and another) the Hon'ble Supreme Court dealt in detail of Section 7(A), 20 and 64 of the Act. The Court observed "what is to be noticed under Section 20 is that it means provision for continuance of trial which had been commenced prior to the coming into operation of the Act 2000". While at the time of trial before the Court, if it was found that the Juvenile had committed an offence, the Court would be required to record such finding and instead of passing any sentence, forward the juvenile to the Juvenile Justice Board which could then pass orders in accordance with the provisions of the Act 2000.

15. It is to be noted that Section 64 of the Act 2000 deals with a situation where a juvenile in conflict with law is already undergoing the sentence at the time of commencement of the Act. The commutative effect of Section 2(k)(l), 7(A) and 20 is that the benefit under the Act 2000 is retrospective and the Juvenility is to be reckoned as per Section 2(k)(l) of the Act even prior to the commencement of the

Act 2000. In other words, if a person was considered as adult i.e., completed 17 years of age and not completed 18 years of age under the old Act, and if he is undergoing an imprisonment the Juvenility has to be considered only in accordance with the Act 2000 i.e., he has to be considered only as Juvenile as he has not completed the age of 18 and Section 64 of the Act has to be pressed into service. However, the explanation to Section 64 would provide that in all cases where a Juvenile in conflict with law is undergoing sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility shall be deemed to be decided in terms of Section 2(l) and accordingly, he shall be sent to the special home or a reputed institution for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in Section 15 of the Act.

16. Under Section 15 of the Act, the maximum period prescribed for detaining in a special home or in a fit institution is only 3 years. Therefore, if any person claims juvenility at any stage even after final disposal of the case, the juvenility will be determined on an enquiry and if it is found that he was a juvenile as per Section 2(k) and (l) of the Act 2000 at the time committing the offence and if he is undergoing a sentence, Section 64 has to be applied and if it is found that he has already undergone the maximum period of 3 years he must be set at liberty.

17. It is true that in all the reported cases decided by the Hon'ble Supreme Court, the plea of juvenility was raised in pending appeal cases. There is no decision of the Hon'ble Supreme Court regarding the plea of juvenility raised after the disposal of the case. Therefore, the only question before us is, in a disposed off case, which is the forum in which such claim can be raised.

18. As stated earlier, Sec.7(A) of the Act provides that the juvenility can be raised before any court at any stage i.e., even after disposal of the case. Sec. 64 deals with a situation where a juvenile in conflict with law is already undergoing the sentence at the time of commencement of the Act.

19. The Central Government framed The Juvenile Justice (Care and Protection of Children) Rules, 2007, dated 26.10.2007. Rule 98 deals with disposed off cases of juveniles in conflict with law, which reads as follows: "98. Disposed off cases of

juveniles in conflict with law: - The State Government or as the case may be the Board may either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under Section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in section 15 of the said Act".

20. There is no corresponding Rule under The Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001 dated 17.01.2012. Under Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the State Government or Board either suo motu or on an application made for the purpose, review the case and pass appropriate order under Sec. 64 of the Act.

21. However, the forum, in which a claim of juvenility, is to be made is also dealt with in the Amended Sec. 7 (A) of the Act. In other words, Sec.7(A) empowers any person or a juvenile to raise a claim of juvenility before 'any Court' and at 'any stage', even after final disposal of the case which, in our considered view, includes invoking the writ jurisdiction under Article 226 of the [Constitution of India](#) by way of filing Habeas Corpus Petition. This view is fortified by the word mentioned in Sec.7(A) "any court" which necessarily be a "Court other than the Board". Moreover any contravention of Sec.15 of the Act, namely, detention beyond three years is to be treated as illegal detention.

22. Therefore, in our considered view, this Court has ample powers under Article 226 of the [Constitution of India](#) to exercise implementation of the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 and the rules thereon.

23. Having found a person, who claims juvenility at the time of occurrence, is, in fact, a juvenile, no purpose would be served in sending him back to, either before the Government or before the Board for them to review and pass orders either under sub Sec.(2) of Sec.7(A) or under Sec.64 of the Act or under Rule 98 of The Juvenile Justice (Care and Protection of Children) Rules, 2007. It is to be remembered that writ jurisdiction is exercised also in cases where the remedy

otherwise is not efficacious. Efficacy would also include not requiring a different body to pass orders upon decisions already arrived at by this Court. Once this Court has arrived at a decision, it may by itself pass suitable orders rather than require a different body to pass such order.

24. In this case, in view of the categorical report submitted by the learned Sessions Judge, after due enquiry that the detenu/convict was a juvenile at the time of commission of the offence, the detenu/convict is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000. In the counter affidavit the 2nd respondent has stated that the detenu has already undergone imprisonment of 3 years, 9 months and 24 days as on March, 2012. The maximum sentence that could be passed against a juvenile is only three years. Therefore, any further detention of the convict/detenu Kundumani @ Pitchaikani is not legal and he is liable to be set at liberty.

25. Accordingly, this Habeas Corpus Petition is allowed and the detenu Kundumani @ Pitchai Kani (Convict in S.C.No.56/1985 and 57/1985 on the file of Sessions Judge, Madurai North at Dindigul) is directed to be released forthwith, unless his presence is required in connection with any other case or cause.

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