
R.N.R.

Before Permod Kohli, J.

SUNIL KUMAR,—*Petitioner*

versus

STATE OF HARYANA,—*Respondent*

CWP No. 7507 of 2010

3rd May, 2010

Constitution of India, 1950—Art. 226—Juvenile Justice (Care and Protection of Children) Act, 2000—S. 7-A—Juvenile Justice (Care and Protection of Children) Rules, 2007—Rt. 12—Petitioner convicted and sentenced u/ss 376 & 366 IPC—Petitioner claiming to be juvenile at time of commission of offence seeking direction to Government to determine his juvenility by holding an inquiry—State or any of its agency has no authority or jurisdiction to determine age of juvenile—Only Criminal Courts including High

Court dealing with matter at any stage or Board constituted u/s 4 of 2000 Act or Committee constituted under RL. 19 of 2007 Rules competent to determine age of an accused claiming to be juvenile—Petition dismissed while granting liberty to petitioner to approach competent forum.

Held, that Section 7-A clearly provides for holding an inquiry, so is the position under Rule 12(3) which enjoins upon the Court or the Board a duty to conduct an inquiry by seeking evidence by obtaining the matriculation or equivalent certificates, date of birth certificate from the school and such other evidence. Section 7-A also clearly empowers the court dealing with the matter to hold an inquiry by taking evidence. Similarly, Rule 12 sub rule 1 also empowers the Court or the Board or Committee referred to in Rule 19 to determine the age of the juvenile in conflict with law by taking evidence. There is no provision whereunder the State can determine the age of the accused claiming to be juvenile at the time of commission of offence. Thus, the mandamus sought by the petitioner is misconceived. The State or any of its agency has no authority or jurisdiction to determine the age of juvenile. It is only the criminal court dealing with the matter at any stage or the Board constituted under Section 4 or a Committee constituted under Rule 19 of the Rules framed under the Act which is competent to determine the age of the accused claiming to be juvenile.

(Para 8)

Rishi Malhotra, Advocate *for the petitioner.*

PERMOD KOHLI, J. (ORAL)

(1) The petitioner was an accused in FIR No. 233, dated 17th May, 1990 registered under sections 376, 366 and 201 I.P.C. at P.S.Sadar, Hisar. He was accused of committing rape on the prosecutrix on 16th May, 1990. Petitioner was sent to face trial for the aforesaid offence and was convicted to undergo R. I. for 7 years under section 376 I.P.C. and 4 years under section 366 I.P.C.,—*vide* judgement dated 26th February, 1992 by the learned Addl. Sessions Judge-III, Hisar. A criminal Appeal No. 102-SB of 1992 filed before the High Court remained unsuccessful having been dismissed,—*vide* judgement dated 1st July, 2005. During the pendency of the criminal appeal before this Court, the petitioner made an application

being Crl. Misc. No. 38333 of 2004 pleading that he was juvenile at the time of commission of offence. It is stated that the High Court disposed of the appeal without considering the question of juvenility of the petitioner. On dismissal of his appeal by the High Court, petitioner preferred Special Leave Petition being S.L.P. (Criminal) No. 4448 of 2005 before the Hon'ble Apex Court. The Criminal Appeal also came to be dismissed,— *vide* order dated 5th September, 2005. Being not satisfied, the petitioner preferred a review petition before the Hon'ble Supreme Court which came to upon provisions of Sections 7-A and 20 of the Act which are reproduced hereunder :

- “7. 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 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 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.
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 that 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.”

(2) Sub-section (1) of Section 7-A provide for an inquiry to determine the juvenility of the accused on the date of commission of the offence as and when any such question is raised before the Court or the Court is of the opinion that the accused person was juvenile on the date of commission of offence. Proviso to sub section 1 further empowers the court to recognize the factum of juvenility at any stage, even after final disposal of the case and to determine such claim in accordance with the provisions of the Act and the rules even if the juvenile ceased to be so on or before the commencement of the Act. This Act came into force on the date of its publication in the Central Government Gazette i.e. 1st April, 2001, —*vide* S.O. 177 (E) Section 20 of the Act further applies the provisions of this Act even on pending cases. Thus from the conjoint reading of proviso to Section 7-A, and Section 20, it can be conveniently gathered that the provisions of this Act will be attracted even if, the commission of offence had taken place prior to the operation of this Act.

(3) It is also not in dispute that the juvenility of the accused can be determined even after the final disposal of the case. Thus, the competent court has the jurisdiction to determine the juvenility of the petitioner irrespective of upholding the conviction by the Hon’ble Apex Court. From the perusal of the prayer made in this petition, it appears that the petitioner is seeking a direction to the Government to determine his juvenility by holding an inquiry and then to pass an appropriate order in regard to his conviction for the criminal offence for which he has been sentenced and convicted finally.

(4) The contention on behalf of petitioner is that the High Court in exercise of its writ jurisdiction can definitely issue a Mandamus to the Government to determine the question of juvenility of the petitioner.

(5) With a view to appreciate the contention of the petitioner, relevant provisions of the Act have been examined. Section 7-A permits raising of the issue of juvenility before any court. It is, thus, contended that

the Court includes the High Court, exercising writ jurisdiction under Article 226. Further reference is made to Rule 12 of the rules framed under the Act. Rule 12 deals with the procedure to be followed in determination of the age. The same is reproduced hereunder :—

12. **Bail of juvenile.**—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.
- (2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.
- (3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”

(6) Clause 1 of section 7-A obligates the court to make an inquiry and determine the age of the accused person whenever a claim of juvenility is raised before it. The court contemplated under section 7-A has not been defined under the said Act. Section 2, however, lays down that where words and expressions defined used in the Act but not defined therein and defined in the Code of Criminal Procedure, shall have the meaning as assigned in the Code. Thus, for purposes of definition of the court one has to fall back on the Code of Criminal Procedure to find out the definition of the expression court envisaged under Section 7-A. Section 6 of the Code of Criminal

Procedure under Chapter 2 deals with the constitution of criminal courts and offences. Section 6 reads as under :—

“6. **Clauses of Criminal Courts.**— Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely :—

- (i) Courts of Session ;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate ;
- (iii) Judicial Magistrates of the second class ; and
- (iv) Executive Magistrate.”

(7) Thus, the court for purposes of Section 7-A could be any class/category of court exercising criminal jurisdiction which *inter alia* includes the High Court as well. Thus, the question of juvenility can be decided by the Court of Sessions, Judicial Magistrates of the 1st Class, Judicial Magistrate IInd Class and Executive Magistrates including the High Court exercising the criminal jurisdiction. It appears that the High Court can also decide the question of juvenility but while exercising criminal jurisdiction. Chapter 2 of the Code of Criminal Procedure deals with the constitution of the criminal courts only. In my humble opinion the petitioner should have approached any class or category of criminal court as defined under section 6 for purposes of Section 7-A and not the writ court . Learned counsel for the petitioner has further relied upon the judgements of the Hon’ble Apex Court reported as **Hari Ram versus State of Rajasthan and another (1)**. In this case the Hon’ble Supreme Court has held that the Juvenile Justice (Care and Protection of Children) Act, 2000 has retrospective operation. It has further been observed that the age of an accused person can be determined by the Court or Board by seeking the evidence. The relevant observations are contained in para 34, which are as under :—

“34. Sub Section (1) of Section 49 vests the competent Authority with power to make due inquiry as the age of a person brought before it and for the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a finding as to whether the person is a juvenile or a child or not, stating his age as nearly as may be. Sub-section (2) is of equal importance as it provides that no order of a Competent Authority would be

deemed to have become invalid merely on account of any subsequent proof that the person, in respect of whom an order is made, is not a juvenile or a child, and the age recorded by the Competent Authority to be the age of the person brought before it, would, for the purpose of the Act, be deemed to be the true age of a child or a juvenile in conflict with law. Sub Rule (3) of Rule 12 indicates that the age determination inquiry by the Court or Board, by seeking evidence, is to be derived from :—

- (i) the matriculation or equivalent certificates, if available, and in the absence of the same;
- (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;”

(8) It is, thus, argued that the age of the petitioner is supported by matriculation certificate and the State should be directed to determine the age of the petitioner. Section 7-A clearly provides for holding an inquiry, so is the position under Rule 12 (3) which enjoins upon the Court or the Board a duty to conduct an inquiry by seeking evidence by obtaining the matriculation or equivalent certificates, date of birth certificate from the school and such other evidence. Section 7-A also clearly empowers the court dealing with the matter to hold an inquiry by taking evidence. Similarly, Rule 12 sub rule 1 also empowers the Court or the Board or Committee referred to in Rule 19 to determine the age of the juvenile in conflict with law by taking evidence. There is no provision whereunder the State can determine the age of the accused claiming to be juvenile at the time of commission of offence. Thus, the *Mandamus* sought by the petitioner is misconceived. The State or any of its agency has no authority or jurisdiction to determine the age of juvenile. It is only the criminal court dealing with the matter at any stage or the Board constituted under Section 4 or a Committee constituted under Rule 19 of the Rules framed under the Act which is competent to determine the age of the accused claiming to be juvenile.

(9) In view of the above position, this petition is dismissed with liberty to the petitioner to approach any of the foras prescribed under section 7-A read with Rule 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and rules framed thereunder.