
(1987) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 160 of 1987

Balwinder Singh Bhunder

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 26-03-1987

Acts Referred:

Citation : (1987) 2 AICLR 500 : (1987) 2 RCR(Criminal) 108

Hon'ble Judges : Pritpal Singh, J

Advocate : D.S. Brar, G.S. Grewal, K.S. Dadwal, R.S. Gill, K.T.S. Tulsi, Advocates for appearing Parties

Judgement

Pritpal Singh.

1. The petition is for the release of the children detained in various jails in the State of Punjab.
2. The Punjab Government has filed a list (Annexure R.1) showing that 21 undertrial children below the age of 16 years were detained in various jails in the State of Punjab. It is revealed from the return filed by the State that out of these children one mentioned at S.No.1 namely, Vinod, has already been released on March 12, 1987. Two of them mentioned at Sr.Nos.5 and 13 namely Daljit Singh and Kishan Kumar, have since been released on bail. Other two mentioned at Sr.Nos.4 and 8, namely, Rajinder Kumar and Ashwani Kumar, have been shifted to Observation Home. In this way the remaining sixteen under trial children are still detained in various jails.
3. Under the directions of this Court two members of the Bar, namely, Mr. Narinder Singh and Mr. R.L.Batta, had visited the jails at Nabha and Sangrur to ascertain if any children had been detained therein. The report filed by them shows that they found 4 children below the age of 16 years in District Jail, Sangrur, and five in District Jail, Nabha. The names of the four children found in District Jail, Sangrur, are Jagraj Singh, Manjit Singh, Gurmit Singh and Jasbir Singh. The children found in District Jail, Nabha, were Gurpreet Singh. Sukhraj

Singh, Ram Kumar, Gurnam Singh and Sharanjit Singh. Admittedly Gurpreet Singh, detained in Nabha Jail, has already been released. Out of the nine children found by the panel of Advocates in the Jails at Sangrur and Nabha only two namely, Jagraj Singh and Manjit Singh have been mentioned in the ListAnnexure R.1. The explanation given is that excluding Gurpreet Singh who has already been released, the remaining six detainees are not included in the category of children because they were 16 years old at the time when they were admitted in the jails. The view taken by the Punjab State in this respect is evidently erroneous because the relevant date for determination, whether an accused is a child or not is the date on which the offence takes place and not the date of admission in the jail. The East Punjab Children Act, 1949 (hereinafter called 'the Act') is applicable to the State of Punjab. Section 3(c) defines "child" as a person under the age of 16 years. It is, however, not mentioned as to on what point of time the age of an accused is to be considered to determine whether he is a child for the purpose of the Act. Section 27 of the Act, however, gives the indication in this respect. It lays down that no person who was a child at the date of the commission of the offence shall be sentenced to death or committed to prison for any offence or in default of payment of fine, damages or costs. It is also relevant to take notice of Umesh Chandra v. State of Rajasthan, A.I.R. 1982 Supreme Court 1057, wherein it was observed that Children Acts are enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens reas as in the case of an adult. That being the intendment of such legislation, the relevant date for applicability of the Act has to be the date on which the offence takes place. In this view of the matter the under trials found to be children by the aforesaid panel of Advocates have to be dealt with in the same manner as the undertrial children named in the list Annexure R.1. Simply because they were 16 years old at the time of admission in the jails they cannot be deprived of the benefits of the Act. If they were barely 16 years old at the time of admission in the jail they were certainly below the age of 16 years when they committed the offence.

4. A child should not be incarcerated in jail is also evident from Section 29(1) of the Act which reads as under :

"Where a child is found to have committed an offence punishable with transportation or imprisonment the Court if satisfied on enquiry that it is expedient so to deal with the child may order him to be sent to a certified school."

It is manifest from this provision of the Act that a child found to have committed an offence cannot be lodged in jail but has to be sent to a certified school. In Sheela Barse and another v. Union of India and others, AIR 1986 Supreme Court 1773, the matter regarding the place of detention of erring children has been made lucidly clear. It is held that it is an elementary requirement of any civilised society and it has been so provided in various statutes concerning children, that children should not be confined to jail because incarceration in jail has a

dehumanising effect and it is harmful to the growth and development of children. It was observed that :

"It is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child exposing him to baneful influences, coarsening his conscience and alienating him from the society".

5. The contention on behalf of the respondentState is that the children have been kept apart from other prisoners in the jails in the children wards. Same contention was put forward before the Supreme Court in Sheela Barse's case (supra) and it was held that it is no answer on the part of the State to urge that the ward in the jail where the children are kept is separate from the ward in which the other prisoners are detained. It was explained that it is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. It is thus quite clear that the keeping of the children in jail not only violates the provisions of the Act but also the directions given by the Supreme Court in the case of Sheela Barse (supra).

6. It is next contended by the learned petitioner's counsel that not only the undertrial children should be ordered to be sent to a certified school but also they should be awarded compensation for their having been kept in the jail. The reply given on behalf of the respondentState is that the children have been detained in various jails in pursuance of the warrants of custody issued by the Courts and as such the State Government cannot be penalised for complying with the orders of the Court. The contention of the State is not without merit. As held in Rudul Sah v. State of Bihar and Another, A.I.R. 1983 Supreme Court 1086, a petitioner can be awarded compensation if from the admitted facts it becomes evident that a civil Court is bound to award the same if a suit is brought before it. In the case before the Supreme Court the petitioner was acquitted on June 3, 1968 but he was released from jail on October 16, 1982, i.e. more than 14 years after he was acquitted. In such circumstances it was held that there can be no doubt if the petitioner filed a suit to recover damages for his illegal detention of decree for damages would have to be passed in that suit. In that situation compensation was awarded to the petitioner. This judgment cited by the learned petitioner's counsel evidently has no application to the facts of the present case. The learned petitioner's counsel evidently has no application to the facts of the present case. The learned petitioner's counsel also cited Bhim Singh, M.L.A. v. State of J&K and others, 1986(1) Recent CR 348; 1986 Cri.LJ. 192. In that case Shri Bhim Singh a member of the Legislative Assembly of J&K was arrested on the intervening night of 9th and 10th September, 1985 and he was kept in police lock up from 10th to 14th and then he was produced before a

Magistrate for the first time on the 14th. From the facts placed before the Supreme Court it was held that not producing Shri Bhim Singh before the Magistrate within the requisite period not only amounted to gross violation of his rights under the Constitution but also his arrest was with mischievous and malicious intent. In these circumstances compensation was awarded to him. This judgment too is not applicable to this case because there is no material before this Court to come to a conclusion that the children have been kept in jails with mischievous and malicious intent. As a matter of fact no allegation of malafides has been made against the respondent State in the petition. I, therefore, do not find it a fit case in which the Punjab State should be directed to pay compensation to the children detained in the jails.

7. In the light of what is stated above the respondent State of Punjab is directed to send the aforementioned undertrial children to a certified school forthwith.

8. It is admitted in the return filed on behalf of the respondent State that besides the above mentioned under trial children four convicted children are also in detention in the jails. As mentioned above, it is specifically provided in Section 27 of the Act that no person who was a child at the date of the commission of the offence shall be committed to a prison. A proviso is added that a child who is 14 years of age or upwards may be committed to a prison where the court certifies that he is of so unruly or of so depraved a character that he is not fit person to be sent to a certified school and that none of the other methods in which the case may legally be dealt with is suitable. No such certificate has been issued by any Court in regard to any of the child prisoner. It is, therefore, directed that the child prisoners, admitted by the State Government to be lodged in jails, be also immediately sent to a certified school.