

(1984) 09 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3641-M of 1984

Dhan Singh and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Haryana Children Act, 1974 — Section 2, 27
Penal Code, 1860 (IPC) — Section 201, 302, 376

Citation : (1985) 1 ILR (P&H) 292 : (1985) 87 PLR 145

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : S.S. Rathore, for the Appellant; Jatinder Sharma, for A.G. and M.L. Saini, for the Respondent

Final Decision : Allowed

Judgement

M.M. Punchhi, J.—In this petition u/s 482 of the Code of Criminal Procedure, it is required of this Court to let the Petitioners participate in an inquiry to determine the age of Sher Din Respondent No. 2 for the purposes of Haryana Children Act, 1974.

2. Briefly stated, the facts are that on 5th March, 1981, the missing of a minor girl aged 5/6 years, named Nirmala Devi, was reported at Police Station Gharaunda. Later on 9th April, 1981 a first information report under sections 302/376/201 Indian Penal Code, was registered against Sher Din Respondent No. 2. Suggestion was made therein that he had committed forcible intercourse with the minor girl; caused her death and caused disappearance of the evidence of the crime. The accused was brought before the Chief Judicial Magistrate, Karnal for being committed to the Court of Session to stand his trial. It transpired that the Court of the Chief Judicial Magistrate itself was "the Children Court" for purposes of the Haryana Children Act, 1974. A doubt having arisen in his mind, the learned Chief Judicial Magistrate undertook an inquiry to determine the age

of the Respondent. In the process he required" the prosecution and the accused to lead evidence. Surprisingly, the prosecution itself examined Majid, the father of the accused, as P.W. 1 and also tendered in evidence, Exhibit P. 1, the birth certificate suggestedly relating to the accused. The accused, only on the other hand, relied upon his school leaving certificate. The learned Chief Judicial Magistrate, however, did not take care to invite participation of the complainants, the present Petitioners, in the said proceedings. On the evidence recorded, he came to the conclusion that Sher Din accused-Respondent was a child. He rejected birth certificate, Exhibit P. 1, on the sole ground that therein the name of the accused did not figure. The birth certificate disclosed that a son by the name of Nanha was born to Majid son of Badlu of village Gudha on 8th October, 1963. Majid had, however, in his statement suggested that his son was about 15 years of age and he was his eldest son who was born at village Gudha. The school leaving certificate, Exhibit D.A., however, disclosed that the date of birth of the accused was 15th January, 1966. So approximately there was 2 1/4 years difference between Exhibits D.A. and P. 1. Relying on Exhibit D.A., the learned Chief Judicial Magistrate held that Sher Din accused-Respondent was a child as the occurrence had taken place, as suggested by the investigation, on 3rd March, 1981.

3. Dhan Singh, one of the Petitioners, filed an application on 11th January, 1982 requesting the Chief Judicial Magistrate to review his afore-referred to order dated 3rd September, 1981. The prayer was declined on 11th February, 1982 by the Chief Judicial Magistrate. Thereupon, Dhan Singh Petitioner supported by the State filed a revision petition before the Court of Session to seek upsetting of the order of the Chief Judicial Magistrate dated 11th February, 1982. The learned Sessions Judge took the view that since the original order dated 3rd September, 1981 had not been challenged by any party at any stage, revision against order dated 11th February, 1982 could not bring to the Petitioners the desired relief. On the dismissal of the petition, the Petitioners Dhan Singh and the first informant Prem Singh have approached this Court u/s 482 of the Code of Criminal Procedure primarily contending that the Petitioners as complainants should have been associated in the proceedings for inquiry for determination of the age of the accused-Respondent.

4. The provisions of the Haryana Children Act envisaged setting up of a Children Court, and in the absence of one being set up, the powers of that Court are to be exercised by a Judicial Magistrate 1st Class specially nominated by the Sessions Judge. I had occasion to observe in *Surjit Singh v. State of Haryana and Ors.* 1983 (1) C.L.R. 403 that the Chief Judicial Magistrate, Karnal seemingly was such a nominated Court. As said before the accused-Respondent in a regular way was brought before the Chief Judicial Magistrate to be committed to the Court of Session. And this gave occasion for the learned Chief Judicial Magistrate to go into the question as to whether the accused-Respondent was a child within the meaning of the aforesaid Act or not.

5. A Children Court in relation to delinquent children comes within the compass of "competent authority" as defined u/s 2(h) of the Act. Section 27 thereof requires that save as provided in the said Act, no person shall be present at any sitting of a competent authority, except (a) an officer of the competent authority, or (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers; and (c) such other persons as the competent authority may permit to be present. Now this provision envelopes a whole lot of people who can be parties to the proceedings. The point to be considered herein is whether the complainants were persons directly concerned in the inquiry or were otherwise such other persons which the competent authority could have permitted to be present for the purpose.

As said before, the Children Court did not afford any opportunity to the complainant-Petitioners to participate in the inquiry. They as persons aggrieved, on account of the commission of the crime, to my mind, appeared, if not persons directly "concerned in the inquiry, at least such other persons who would be interested in the inquiry. The provisions of the Haryana Children Act tend to take out children less than 16 years of age as delinquents, practically outside the penal net of the law. The inquiry as such is crucial not only from the partisan point of view but also from the social point of view. It requires to be broad-based as the circumstances of the case permit. To have left * the complainants totally in the dark of this aspect of the case, especially when they were required to depose against the accused-Respondent at the trial, would to my mind lead to failure of justice. Thus, an opportunity was required by the Children Court to be given to the complainants for participating in the inquiry to determine the age of the accused-Respondent. Even the procedure adopted by the learned Magistrate seems to me rather odd. The prosecution was allowed to put in the father of the accused as witness to prove his age. As was expected, the father did dispose in favour of his son that he was a child. Intrinsically, however, his evidence does not seem to have been marshalled with birth certificate, Exhibit P. 1, when the learned Magistrate chose to prefer instead the school leaving certificate. Much could be said on either side for their comparative value. Had the complainants been a party to the inquiry, they could well have highlighted the preponderance of evidence to be in favour of holding that the accused-Respondent was not a child within the meaning of the Act. Thus, I am of the considered view that the inquiry conducted in that regard was vitiated. Further from the file summoned, I find that not a single prosecution witness has so far been examined. Thus, for all practical purposes, the trial is at the initial stages and no prejudice would be caused to the accused-Respondent in having the inquiry afresh about his age in the presence of the complainants.

6. For the foregoing reasons, this petition is allowed. The orders declaring the accused-Respondent as child are quashed remitting the matter back to the learned Chief Judicial Magistrate to redetermine the question in the presence of the complainants, the accused and the prosecution, in accordance with law. Parties

through their counsel are directed to put in appearance before the learned. Chief Judicial Magistrate, Karnal on 11th October, 1984.