

(2011) 10 DEL CK 0113

In the Delhi High Court

Case No : Criminal M.C. No. 2470 of 2010 and Criminal M.A. No. 13095 of 2010

Hemant Saluja

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 14, 18, 2, 2(1), 20

Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 13(6), 13(7)

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2011) 9 AD 341

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sunil Sethi, Mr. Sunil Mittal and Mr. Sanjiv Saluja, for the Appellant;
Narender Mann, Spl. PP., for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The Petitioner is facing trial in case RC.2 (S)/96/DL-1 u/s 120B read with Sections 420/468/471 Indian Penal Code registered on the direction of the High Court of Guwahati, Agartala Bench.

2. The allegations against the Petitioner in brief are that though the Petitioner's name was not forwarded for admission in the category however,

the Secretary to the then Chief Minister in conspiracy with the other public servants issued a nomination letter dated 3rd October, 1989 in favour of the Petitioner for his admission in MBBS College, Trichur, Kerala knowing fully well that neither the Petitioner was eligible for the said nomination as nominee of the State of Tripura nor was Mr. Amal Kumar Roy himself authorized or competent to sign and issue the said nomination letter. Thus on the basis of the said fake nomination letter issued by Shri Amal Kumar Roy the Petitioner secured admission in MBBS College, Trichur, Kerala in the academic session 1989-90. During the Trial the Petitioner filed an application on 9th November, 2006 seeking

declaration that he was a juvenile and was thus entitled to be proceeded with under the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short "JJ Act").

3. The said application of the Petitioner was decided vide order dated 13th April, 2007 declaring the Petitioner as a juvenile and directing that the proceedings would continue before the Special Court itself. On 3rd March, 2009 the Petitioner filed another application inter alia seeking the relief of separation of trial u/s 18 of the JJ Act, refer the enquiry to Juvenile Justice Board for consideration and termination of proceedings in accordance with Section 14 of the JJ Act and Rules 13 (6) and (7) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (in short "JJ Rules"). Alternatively it was prayed that the learned Special Court terminate the proceedings against the Petitioner. The learned Special Judge vide its order dated 17th July, 2010 dismissed the application. This order dated 17th July, 2010 is the order impugned in the present petition.

4. Learned Counsel for the Petitioner contends that he is entitled to the benefits of Section 14 of the JJ Act, 2000 read with Rule 13(6) and (7) of the JJ Rules. According to the Learned Counsel for the Petitioner, the learned Judge erred in holding that Section 20 of the JJ Act would be applicable when a person was below the age of 18 years as on 1st April, 2001 and thus the said Section was not applicable to the Petitioner herein. The Petitioner has already been declared a juvenile as per Section 7(a) and thus he is entitled to all consequential benefits available thereunder. Further the Juvenile Justice Board vide its two separate orders dated 15th December, 2008 has already terminated the proceedings against two other juveniles who were also implicated in the abovementioned FIR, in view of Section 14 of the JJ Act read with Rule 13(6) and (7) of the JJ Rules. The decision of the Constitution Bench in Pratap Singh Vs. State of Jharkhand and Another, has been considered by the Hon"ble Supreme Court in Hari Ram Vs. State of Rajasthan and Another, wherein it has been held that pursuant to Pratap Singh v. State of Jharkhand (Surpa) there has been an amendment in Section 20 of the Act and Rules and thus the said decision would have no applicability.

5. Learned Counsel for the CBI on the other hand contends that the Petitioner was already declared a juvenile by the order of the learned Special Court dated 13th April, 2007 and it was held that on the date of commencement of the Act, that is, on 1st April, 2001 proceedings in respect of the Petitioner were pending in its Court as charge sheet was filed by the CBI on 13th December, 1997 and therefore, the proceedings shall be continued in the same Court as if the JJ Act had not been passed till the time the Court finds that the juvenile has committed the offence. On returning such a finding instead of passing any sentence in respect of the juvenile the matter would be referred to the Juvenile Justice Board which shall pass the order in respect of the juvenile in accordance with the provisions of the JJ Act. The said order dated 13th April, 2007 has not been challenged by the Petitioner till date and thus the same has become final. After the afflux of two years the Petitioner is seeking to challenge that order by

seeking the same relief in the garb of separate trial for himself under the JJ Act or for termination of the proceedings.

6. It is contended that Section 20 of the JJ Act is clear and in respect of any proceedings pending in any Court on the date on which the Act comes into force in that area, the proceedings will continue as if the Act has not been passed and the relevancy of juvenility under the JJ Act would come into picture at a stage when the order on sentence has to be pronounced on the juvenile. The cases of the other two juveniles were not identical to that of the Petitioner. There were no proceedings pending on 1st April, 2001, that is, at the time of commencement of the JJ Act, 2000 and charge sheets in the case were filed in the year 2003, i.e. after the commencement of the JJ Act and thus those cases were required to be referred to the JJ Board. There is no illegality in the impugned order and thus the petition deserves to be dismissed.

7. I have heard Learned Counsel for the parties. Some undisputed facts are that the Petitioner is a juvenile in regard to the trial he is facing. The charge sheet qua him was filed on 8th December, 1997. Though no cognizance was taken thereon immediately as it did not contain the relied upon documents, however, admittedly on the 29th July, 1998, the Petitioner was supplied the documents pursuant to appearance. Thus as on the date, that is, 1st April, 2001 when the JJ Act came into force the proceedings against the Petitioner were pending before the learned Trial Court.

8. In Hari Ram (supra) there Lordships expressly held that after the decision of the Constitution Bench in Pratap Singh (Supra) the legislature amended the provisions of the Act by the Amendment Act, 2006 and substituted Section 2(1) to define the "juvenile in conflict with law" "as a juvenile who is alleged to have committed an offence and he has not completed 18 years of the age as on the date of commission of such offence", thus the trial Court is bound to proceed in accordance with the JJ Act in relation to the Petitioner who was admittedly a juvenile at the time of commission of the offence.

9. Section 20 of the Juvenile Justice Act, 2000 after the amendment reads as under:

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.

(Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the

interest of such juvenile.

Explanation.-In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any, Court, the determination of juvenility of such a juvenile shall be in terms of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.)

10. A perusal of Section 20 thus clearly demonstrates that the Petitioner would have to continue with the trial as if the JJ Act was not passed and only in case the learned Trial Court holds that the Petitioner has committed the offences alleged, then at the stage of quantum of sentence, if required, his case would be required to be dealt with by the Juvenile Justice Board. Rule 13(6) and (7) of the JJ Rules will have no application to the facts of the present case as the benefit under the Act has to be provided to the accused where the accused is below the age of 18 years as on 1st April, 2001. However, in the present case, the Petitioner was around 28 years in the year 2001 though was a juvenile in the year 1989 when the alleged crime was committed. Furthermore, no objection was raised nor any application challenging the order dated 13th April, 2007 passed by the learned Judge wherein it was held that the proceedings against the Petitioner shall continue in the same Court as if the JJ Act had not been passed. Section 20 is clear and the only procedure to be followed is to refer the juvenile to JJ Board in case it is found that the juvenile had committed the offence. I find no merit in the petition.

11. Petition and application are dismissed.