
(1968) 09 GUJ CK 0024
In the Gujarat High Court

Kario @ Mansingh Malu and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-09-1968

Acts Referred:

Constitution of India, 1950 — Article 22(1), 22(1)
Criminal Procedure Code, 1898 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 392, 394
Saurashtra Children Act, 1954 — Section 22

Citation : (1969) 10 GLR 66

Hon'ble Judges : J.M. Sheth, J;A.D. Desai, J

Bench : Division Bench

Judgement

J.M. Sheth, J.—This is a reference made by the learned Sessions Judge, Rajkot, "Mr. V.R. Bhatia, u/s 438 of the Criminal Procedure Code, recommending that the order passed by the learned President, Children's Court, Rajkot on Exh. 2 in a Criminal Case No. 217 of 1968, rejecting the application filed by the accused to allow them to be defended by an Advocate, be set aside, as Section 22 of the Saurashtra Children Act, 1954 (Act No. XXI of 1954) which will be hereinafter referred to as the Act, violates the provisions of Article 22(1) of the Constitution of India.

2. The facts leading rise to this reference are briefly stated as under:

One Ashok Kumar Madan Gopal gave information to the Police Station Officer, "C" Division, Rajkot, on 27-11-1967 about commission of offences punishable under Sections 392 and 394 of the Indian Penal Code against the accused, Kario and Nanji. The offences were alleged to have been committed on 26-11-1967 at 23 hours. After the necessary investigation, a charge-sheet was sent to the Juvenile Court, (Children's Court) established at Rajkot against the three accused for the offence punishable u/s 324 read with Section 114 of the Indian Penal Code. On 29-11-1967, the three accused were arrested and they were released on bail by the police on furnishing bail bonds. After the charge-sheet

was sent to the Juvenile Court, the Court passed an order to release them on bail on furnishing the security bonds by their guardians. Bail bonds were accordingly furnished and they were admitted to bail. In the criminal case pending against the three accused before the Juvenile Court, an application Ex. 2 was given by the three accused to permit them to be defended by an advocate as they want to engage an Advocate. They stated in their application that on behalf of the prosecution the case is conducted by the police prosecutor. If the prosecution is permitted to conduct the case by a police prosecutor, the accused also should be permitted to defend themselves by an advocate. That application came to be rejected by the President, Children Court, Rajkot, Mr. B.M. Shah on 3-5-1968. Being dissatisfied with that order, the original three accused preferred a Criminal Revision Application No. 15 of 1968 in the Sessions Court at Rajkot. The learned Sessions Judge heard that revision petition and has made the present reference making the aforesaid recommendation.

3. V.R. Shah J., a single Judge of this Court referred this matter to a Division Bench. He had also ordered issue of a notice to the Advocate General. Notice was accordingly issued. No appearance is filed by the Advocate General. Mr. A.H. Thakar, Assistant Government Pleader appeared on behalf of the State. The Advocates Mr. M.T. Acharya and Mr. K.B. Acharya who had filed their appearance on behalf of the accused, are absent.

4. The important question that arises for consideration in this reference is whether the accused who had been arrested for the commission of an offence and who have been admitted to bail have got a fundamental right guaranteed under Article 22(1) of the Constitution of India to be defended by a counsel of their choice.

5. Section 22 of the Act runs as under:

Notwithstanding anything contained in any law for the time being in force, a legal practitioner shall not be entitled to appear in any case or proceeding before a Children's Court unless the Children's Court is of opinion that in public interest legal assistance is necessary in such case or proceeding and authorises, for reasons to be recorded in writing, legal assistance to be obtained.

6. The learned Assistant Government Pleader, Mr. Thakar has relied upon the provisions of this section and has urged that there is no absolute prohibition made in this Act for a legal practitioner to appear in any case or proceeding before the Children's Court. The Court has been given a discretion to allow a child offender to take assistance of a legal practitioner if it finds that in public interest legal assistance is necessary in such case or proceeding and it authorises, for reasons to be recorded in writing, legal assistance to be obtained. In short, he contended that there was no absolute prohibition. The Children's Court was empowered to permit such legal assistance If it finds that it is necessary in such case or proceeding in public interest.

7. Section 340 of the Criminal Procedure Code states:

Any person accused of offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

Shri Thakar contended that though there is such a provision in the Criminal Procedure Code, in the larger interest of the child offender, this provision has been made in Section 22 of the Act. That provision indicates that a legal practitioner shall not be entitled to appear in any such case notwithstanding anything contained in any law for the time being in force. In short, he contended that the provisions of the Code of Criminal Procedure referred to above, were controlled by the provisions of this Section 22 of the Act. There is no doubt in that behalf. But we have to refer to the relevant provisions of the Constitution of India.

8. In Part III of the Constitution of India, which deals with Fundamental Rights, there falls Article 22. The relevant clause is Clause (1) of Article 22. It runs as under:

(1) No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

A plain reading of that part of Article 22 of the Constitution of India, clearly indicates that a person who is arrested cannot be detained in custody without being informed, as soon as may be, of the grounds for such arrest. It means that he is to be informed of the grounds for his arrest. The second right given to him is that he cannot be denied a right to consult. It means, that he has been given a right to consult. That right cannot be denied. It is his fundamental right to consult. The third right given to him is that it is his right to be defended by a legal practitioner of his choice. It is his fundamental right to be defended by a legal practitioner of his choice. A plain reading of this article indicates that such a fundamental right given is an absolute right. It is not fettered by any reasonable restrictions or so.

9. Article 19 deals with protection of certain rights regarding freedom of speech, etc. Clause (2) of it states:

Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement of an offence.

There is no such provision in Article 22(1) of the Constitution of India. The argument advanced by the learned Assistant Government Pleader that there being no absolute prohibition laid down in Section 22 of the Act as the Court has

been given a discretion to permit a child-offender to get legal assistance, that section is not violative of the provisions of Article 22(1) of the Constitution of India, cannot be accepted as a well founded argument.

10. The present case Is fully covered, in our opinion, by the majority decision of the Supreme Court in the case of State of Madhya Pradesh Vs. Shobharam and Others, . His Lordship Hidayatullah J., (as he then was), has observed in Para 17 at page 1915 as under:

Article 22 is in Part III of the Constitution in a sub-chapter headed "Right to Freedom. "It is one of three articles immediately following Article 19. Under Article 19, certain fundamental rights are protected, subject to restrictions which may be imposed on those rights by law. Those restrictions are specified in relation to each of the guaranteed right in the article itself. We are not concerned with the rights or the restrictions because they do not touch the present matter. Article 20 which comes next consists of three clauses which are somewhat inadequately described by the marginal note "Protection in respect of conviction for offences." The first clause gives protection against retroactive penal laws, the second against double jeopardy and the third against testimonial compulsion. We are again not concerned with any of these rights. The next article is a general declaration relating to protection of life and personal liberty. It reads:

"21. Protection of life and personal liberty:

No person shall be deprived of his life or personal liberty except according to procedure established by law."

It will be noticed that there is no mention here of any particular law, nor of the articles that follow. Article 22 with which we are concerned, deals with several matters which are compendiously described in the marginal note as "Protection against arrest and detention in certain cases. "It consists of seven clauses of which Clauses (4) to (7) deal with preventive detention and the special requirements of such cases. They need not be considered here. Clause (3) excludes the operation of the first two clauses in respect of alien enemies and persons detained under any law providing for preventive detention. They do not touch our case. This leaves Clauses (1) and (2) which may be quoted here.

Clauses (1) and (2) of Article 22 of the Constitution of India are quoted thereafter and thereafter important observations are made in paras 18 to 20 and they are as under:

Articles 21 and 22 in a sense go together but, in my opinion, they cannot be treated as inter-related or inter-dependent. Article 21 prohibits arbitrary deprivation of life and personal liberty by laying down that these two possessions can only be taken away in accordance with procedure established by law. No authority in India (legislative, executive or judicial) can deprive a person of his life or personal liberty unless it can justify its action under a procedure established by law. Article 21 does not indicate what that law must be nor does

Article 22 say this Article 22, no doubt, advances in a way the purpose of Article 21, when it specifies some guaranteed rights available to persons arrested or detained and lays down, the manner in which persons detained preventively must be dealt with. But the force of the declaration in Article 21 is much greater than that because it makes law as the sole basis of State action to deprive a person of his life and personal liberty.

We are not concerned in this case with arbitrary deprivation of life and personal liberty. The respondents were considered to have committed an offence of criminal trespass and were arrested and tried by procedure established by law. The only defect in that procedure was that they were unable to get assistance of counsel because of a provision of law which they claim to be void by reason of Article 22(1). I proceed to examine the question.

Article 22(1) is in two parts and it gives persons arrested a two-fold protection. The first is that an arrested person shall not be detained in custody without being told the grounds of such an arrest and the other is that he shall be entitled to consult and to be defended by a legal practitioner of his choice. Article 22(2) gives a third protection and it is that every person arrested and detained in custody must be produced before the nearest Magistrate within 24 hours excluding the time of arrest to the Court of the Magistrate.

In Para 21 it has been observed as under:

Arrest is arrest, whatever the reason. In so far as the first part of Article 22(1) is concerned it enacts a very simple safeguard for persons arrested. It merely says that an arrested person must be told the grounds of his arrest. In other words, a person's personal liberty cannot be curtailed by arrest without informing him, as soon as is possible, why he is arrested. Where the arrest is by warrant, the warrant itself must tell him, where it is by an order, the order must tell him and where there is no warrant or order the person making the arrest must give him that information. However the arrest is made, this must be done and that is all that the first part of Article 22(1) lays down. I find nothing in Article 22(1) to limit this requirement to arrests of any particular kind. A warrant of a Court and an order of any authority must show on their face the reason for arrest. Where there is no such warrant or order, the person making the arrest must inform the person the reason for his arrest. In other words, Article 22(1) means what it says in its first part.

In Para 22 it has been observed:

I now come to the latter part of Article 22(1). Here again, the language is extremely clear. The words "nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice" refer to a person who is arrested. This is the sense of the matter and the grammatical construction of the words. It is contended by Mr. B. Sen that the article only affords a person to get released from arrest and the word "defended" means that the person who is arrested has a right to consult a legal practitioner of his choice and to take his aid to get out

of the arrest. He contends that if a person has already been released on bail either by the authority making the arrest or by an order of the Court, the purpose of the article is served and occasion for the exercise of the guaranteed right is over. He argues, therefore, that in the present case the section cannot be characterized as unconstitutional because the respondents were not under arrest during their trial and they were not in danger of losing their personal liberty in any way since the Nyaya Panchayat had no power to impose a sentence of imprisonment. I do not agree.

These observations afford a complete answer to the argument advanced by the learned Assistant Government Pleader that the validity of Section 22 of the Act cannot be challenged as the provisions of the Act indicate that no juvenile delinquent can be sentenced to death or transportation or imprisonment.

11. Section 67 of the Act to which our attention was drawn by the learned Assistant Government Pleader, runs as under:

(1) Notwithstanding anything to the contrary contained in any law, no juvenile delinquent shall be sentenced to death or transportation or imprisonment.

(2) When a child is found to have infringed the law in such serious manner that the Court is of opinion that no treatment which under the provisions of this Act it is authorised to provide is sufficient, or when the Court is satisfied that the child is of so unruly or of so depraved a character that he cannot be sent to a special school or kept in a place of safety and that none of the other methods in which the case may be legally dealt with is suitable, the Court shall order the delinquent to be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the Government.

It is true, that the provisions of this Section 67 do indicate that a juvenile delinquent cannot be sentenced to death or transportation or imprisonment.

12. Section 69 of the Act which is material for our purposes, runs as under:

Where a child is found to have infringed the law, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a special school or a fit person institution for such period of stay as will not, subject to the provisions of Section 5, extend beyond the time when the child will attain the age of twenty-one years or a shorter period, the reasons for such shorter period to be recorded in writing.

A persual of these provisions of Section 69 indicates that in case it is found that the child has infringed the law, the Court can order to send the child to a special school referred to therein for the specified period. It means that the child will be detained in that school. The child will be deprived of his personal liberty in that case.

13. Section 70 of the Act indicates that a child can also be allowed to go home after advice or admonition. A child can be released on probation of good conduct

and placed under the care of his parent or guardian without passing any final order.

14. Sub-section (iii) of Section 70 of the Act indicates:

If the infringement of law by the juvenile delinquent is punishable with fine and the juvenile delinquent himself is over the age of fourteen years and earns money, the Court can order him to pay a fine.

The offence in question is punishable with imprisonment as well as with fine. Section 70 of the Act indicates that the Court is empowered to punish the delinquent with fine in the circumstances specified therein.

15. Section 72 of the Act indicates that the Court in certain circumstances is empowered to order parent to pay fine instead of child. Section 75 indicates:

In passing an order in respect of a juvenile delinquent under this Part, it shall be lawful to the Court to exercise its powers under any one or more of the foregoing provisions at the same time, if it is necessary and expedient to do so in the interest of the offender.

A close scrutiny of all these relevant sections clearly indicates that though a juvenile delinquent cannot be awarded death penalty, sentence of transportation or imprisonment, he can be directed to be kept in a certified school. He can be fined in the specified circumstances. Merely because the juvenile Court has no power to award a sentence of imprisonment, it cannot be said that the provisions of Article 22(1) of the Constitution of India cannot be pressed into service.

16. In Para 23, at page 1917, the following observations have been made in the aforesaid Supreme Court decision by His Lordship Mr. Justice Hidayatullah (as he then was):

As I have stated already a person who is arrested gets three rights which are guaranteed. The first is that he must be told why he is arrested. This requirement cannot be dispensed with by taking bail from him. The need to tell him why he is arrested, remains still. The next is that the person arrested must not be detained in custody more than, 24 hours without being produced before a Magistrate. This requirement is dispensed with when the person arrested is admitted to bail. Otherwise it remains. The third is that he gets a right to consult and to be defended by a legal practitioner of his choice. This is, of course, so while the arrest continues but there are no words to show that the right is lost no sooner than he is released on bail. The word "defended" clearly includes the exercise of the right so long as the effect of the arrest continues. Before his release on bail the person defends himself against his arrest and the charge for which he is arrested and after his release on bail, against the charge he is to answer and, for answering which, the bail requires him to remain present. The narrow meaning of the word "defended" cannot be accepted.

These observations clearly indicate that the circumstance that the present three

accused are admitted to bail and the circumstance that the juvenile Court or the Children's Court has no power to award sentence of imprisonment are of no consequence and they are not relevant for the purpose of deciding the question involved in this reference.

17. After referring to the long struggle that took place in England before the right to be represented by counsel and to be told the grounds of arrest cause to be recognised, the following observations have been made at page 1918:

This history of English Law makes it clear that the right to be defended by counsel and to be informed the reason for arrest is not an empty declaration coming to an end with release on bail.

It is further observed:

It is atleast clear that when our Constitution lays down in absolute terms a right to be defended by one's own counsel, it cannot be taken away by ordinary law and it is not sufficient to say that the accused who was so deprived of this right, did not stand in danger of losing his personal liberty. If he was exposed to penalty, he had a right to be defended by counsel. If this were not so then instead of providing for punishment of imprisonment, penal laws might provide for unlimited fines and it would be easy to leave the man free but a pauper. And to this end without a right to be defended by counsel. If this position were accepted as true we might be in the Middle Ages.

The Criminal Procedure Code allows the right to be defended by counsel but that is not a guaranteed right. The framers of the Constitution have well thought of this right and by including the prescription in the Constitution have put it beyond the power of any authority to alter it without the Constitution being altered. A law which provides differently must necessarily be obnoxious to the guarantee of the Constitution. There is nothing in the worth of the Constitution which permits any authority to alter this condition even on grounds of public interest as is the case with the guaranteed rights in Article 19. Nor can we by a niggling argument lessen the force of the declaration so explicit in its terms or whittle down its meaning by a specious attempt at supposed harmony between rights which are not inter-dependent. There are three rights and each stands by itself. The first is the right to be told the reason of the arrest as soon as an arrest is made, the second is the right to be produced before a Magistrate within twenty-four hours and the third is the right to be defended by a lawyer of one's choice. In addition there is the declaration that no person shall be deprived of his personal liberty except by procedure established by law. The declaration is general and insists on legality of the action. The rights given by Article 22(1) and (2) are absolute in themselves and do not depend on other laws. There is no force in the submission that if there is only a punishment of fine and there is no danger to personal liberty the protection of Article 22(1) is not available. Personal liberty is invaded by arrest and continues to be restrained during the period a person is on bail and it matters not whether there is or is not a possibility of imprisonment. A person

arrested and put on his defence against a criminal charge, which may result in penalty, is entitled to the right to defend himself with the aid of counsel and any law that takes away this right offends against the Constitution. In my judgment, therefore, Section 63 of the Panchayat Act being inconsistent with Article 22(1) became void on the inauguration of the Constitution in so far as it took away the right of an arrested person to be defended by a legal practitioner of his choice.

In the instant case, these three accused were arrested by the Police Station Officer. They were released on bail by him. After the charge-sheet was sent to the juvenile Court, they are released on bail on furnishing of the bail-bonds by their guardians. They have been accused of an offence punishable u/s 324 read with Section 114 of the Indian Penal Code. The provisions of the Act indicate that they are liable to be visited with punishment of fine. They are liable to be sent to a certified school. The aforesaid persons were arrested. They had been put on their defence against a criminal charge which may result in penalty. They are, therefore, entitled to a right to defend themselves with the aid of a counsel and any law that takes away that right offends against the Constitution. In our judgment, therefore, Section 22 of the Act being inconsistent with Article 22(1) will become void to that extent as it takes away the right of an arrested person to be defended by a legal practitioner of his choice. This right is guaranteed by the Constitution. It is a fundamental right guaranteed. As said earlier, it is an absolute right. There are no fetters. It is an unfettered right. It is not fettered by any restriction. The question therefore, whether these provisions of Section 22 of the Act are meant to protect the interest of a child is immaterial and irrelevant. Grounds of public interest will not be necessary to be considered. It will be significant to note that Article 19 did make such special provisions for imposing reasonable restrictions. Article 15 of the Constitution deals with a topic-prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of it contains a special provision. It runs as under:

Nothing in this article shall prevent the State from making any special provision for women and children.

There is no such special provision made in Article 22(1) and (2) of the Constitution of India.

18. Article 13, Clause (2) of the Constitution states:

The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

In the instant case, the provisions of Section 22 of the Act indicate that it abridges the right conferred by this part of the Constitution. That section indicates that a juvenile delinquent is entitled to the assistance of a lawyer or an Advocate, only when the Court grants him permission and the Court has been empowered to grant permission if it is of opinion that in public interest, legal assistance is necessary, in such case or proceeding and if it authorises him to

obtain legal assistance, the Court has to record its reasons in writing. There is, therefore, no doubt that section abridges the right guaranteed under this part III of the Constitution of India to a person who is arrested to be defended by a legal practitioner of his choice. To that extent, that section is void.

19. In the aforesaid Supreme Court decision, His Lordship Mr. Justice Bachawat, speaking for himself and for His Lordship Mr. Justice J.M. Shelat, has observed at pages 1920 and 1921 as under:

Clauses (1) and (2) of Article 22 safeguard the rights of the person arrested. The arrest of any person on a criminal charge is a step in an intended criminal proceeding against him. Save where the Magistrate dispenses with his personal attendance and permits him to appear by a pleader, the first step in a criminal proceeding is to bring the accused before the Magistrate. The trial before the Magistrate proceeds "when the accused appears or is brought before him. "The attendance of the accused before the Magistrate is secured by summons or by arrest, under or without a warrant. Upon arrest, he may either be released on bail or be remanded into custody. If he is released on bail, the bail bond ensures his attendance at the trial. Summonses, warrants, arrests without warrant and bail bonds are all machinery for securing the attendance of the accused before the Court.

It has been further observed therein:

It has been suggested that the right of defence by counsel given by Article 22(1) does not extend to a trial of an offence before the Nyaya Panchayat because the Madhya Bharat Panchayat Act, 1949 does not authorise any arrest and, as a matter of fact, the respondents were arrested by the police in the exercise of its powers u/s 54 of the Code of Criminal Procedure. We are unable to accept this suggestion. Suppose a statute sets up a special criminal Court for the trial of certain offences, and it gives no power to the police to arrest any person. Nevertheless, the police has under its general powers under the Code of Criminal Procedure authority to arrest any person concerned in any cognisable offence. If in the exercise of these powers the police arrests some person on the accusation of a crime for which he is liable to be tried before the special criminal Court, the arrested person has the constitutional right to be defended by counsel at the trial before the special criminal Court in respect of the offence for which he was arrested. It has also been suggested that the trial of an offence before the Nyaya Panchayat is akin to an action for recovery of money and as an arrested person has no constitutional right to be defended by counsel in the action for recovery of money, so also he has no such right in a trial of an offence before the Nyaya Panchayat. We are unable to accept this line of reasoning A person arrested on the accusation of a crime has the constitutional right to be defended by counsel at a subsequent trial of the crime for which he is arrested. He cannot, therefore, claim this right in a subsequent action against him for recovery of money, but he can claim this right in a subsequent trial of the offence before the Nyaya Panchayat.

At page 1922 the following material observations have been made:

As soon as the respondents were arrested without warrants issued by a Court, they acquired the rights guaranteed by Clause (1) of Article 22. It is true that they were subsequently released on bail and at the time of the trial before the Nyaya Panchayat they were not being detained. But the right attaching to them on their arrest continued though they were not under detention at the time of the trial. The right was not lost because they were released.

We, therefore, hold that Section 63 of the Madhya Bharat Panchayat Act, 1949 is violative of Article 22(1) and is void to the extent it denies any person who is arrested the right to be defended by a legal practitioner of his choice in any trial of the crime for which he is arrested.

20. The learned Assistant Government Pleader relying upon certain observations made in Para 44 at page 1922, contended that no prejudice was caused to these three accused by rejecting their application to defend themselves through an Advocate. In our opinion, this argument is not a well-founded argument. In the aforesaid Supreme Court decision, the trial had ended, the order of conviction was passed, and the order of conviction and sentence was challenged in appeal. It was found that at the trial no request was made on behalf of the accused to permit them to obtain legal assistance. It was in those circumstances, held that no prejudice was caused and hence the order of conviction and sentence cannot be set aside. In the instant case, at the earlier stage these three accused persons have prayed to the Court to allow them to obtain legal assistance and they have been denied their right. Ex-facto the prejudice is caused to them. This argument, therefore, of the learned Assistant Government Pleader cannot be accepted as a well-founded argument.

21. Another argument advanced on behalf of the State was that the scheme of the Act indicates that certain provisions have been made in the Act to improve the child offender and that is the reason why a child, even if he has infringed any provision of law, is not to be awarded punishment. It was, therefore, in the public interest and in the interest of the child that he should not be given legal assistance. As said earlier, the object of the Act is immaterial. The Constitution gives an unfettered absolute right to a person who is arrested, to defend himself by obtaining legal assistance. That right is not circumscribed in any manner just as it has been done in the case of Article 19. No special provision is made in Article 22 in respect of women and children as it has been done in Article 15 of the Constitution of India. It cannot, therefore, be gainsaid that the framers of the Constitution gave this right to a person who is arrested absolutely and it cannot be fettered. The State, therefore, cannot legislate so as to take away or abridge that right.

22. We may also at this stage refer to the provisions of Section 32 of the Act. It runs as under:

Except as expressly provided under this Act or the rules made thereunder, the

procedure to be followed in the trial of cases and the conduct of proceedings under this Act shall be in accordance with the provisions of the Code of Criminal Procedure, 1898.

Section 93 of the Act runs as under:

(1) Any person aggrieved by a final order may appeal to the Courts hereinafter mentioned.

(2) If a final order is passed

(a) by a children's Court, or by a Magistrate empowered u/s 16 to exercise the powers of a children's Court, an appeal shall lie to the Court of Session.

(b) by a Court of Session, an appeal shall lie to the High Court.

(3) Except as provided in this section no appeal shall lie from any order passed under this Act by a children's Court or any other Court empowered to exercise the powers of a children's Court u/s 16.

These provisions of Section 93 are referred to, only for the purpose of showing that an appeal from the final order passed by the Children's Court lies to the Court of Sessions.

23. In the instant case it shall lie to the Court of Sessions at Rajkot. It is, therefore, evident that the Children's Court at Rajkot will be a Court inferior to the Court of Sessions at Rajkot. In this view of the matter, it is evident that the provisions of Section 22 of the Saurashtra Children Act, 1954 (Act No. XXI of 1954) are violative of the Constitution of India and are void to the extent that they deny to any person who is arrested, a right to be defended by a legal practitioner of his choice, in any trial of the crime for which he is arrested. We hold accordingly.

24. The result is that the reference is accepted and the order passed by the President, Children's Court, Rajkot, rejecting the application Exh. 2, dated 3rd May, 1968 is set aside and it is held that the accused juvenile delinquents are entitled as a matter of right to obtain legal assistance of their choice.