

(2013) 05 PAT CK 0020

In the Patna High Court

Case No : Criminal Revision No. 675 of 2012

Majbul Hoda and Izharul Haque

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Arms Act, 1959 — Section 25(1A), 26

Criminal Procedure Code, 1973 (CrPC) — Section 313

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 16, 2, 53, 64

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2013) CriLJ 3167

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Farooque Ahmad Khan, Md. Sufiyan and Thakur Brajesh Singh, for the Appellant; Dashrath Mehta, Assistant Public Prosecutor, for the Respondent

Judgement

Rajendra Kumar Mishra, J.—The petitioners have filed this Criminal Revision, u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000, against the order dated 16.4.2012 passed in Criminal Miscellaneous No. 26 of 2011 by the Sessions Judge, Gopalganj, whereby the learned Sessions Judge, Gopalganj, disposed of the aforesaid Criminal Miscellaneous Case, filed on behalf of the petitioners u/s 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, to make an enquiry and declare them to be juvenile on the date of the commission of the offence, arriving at the conclusion that the application is not maintainable. The brief fact, as appears from the record of the case, is that that the petitioners, who were accused alongwith others in Uchakagaon P.S. Case No. 97 of 1984 registered under Sections 302/34 of the Indian Penal Code and Sections 25(1-A) and 26 of the Arms Act, faced trial in Sessions Trial No. 83 of 1985 in the court of Sessions Judge, Gopalganj, and were convicted and sentenced to undergo rigorous imprisonment for life vide Judgment dated 7.3.1987. The petitioners had filed Criminal Appeal (DB) No. 104 of 1987 before this Court, which was dismissed on 30.7.1999 and their SLP was also dismissed

by the Hon''ble Apex Court. Thereafter, the petitioners filed an application u/s 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, in the court of Sessions Judge, Gopalganj, which was numbered as Criminal Miscellaneous No. 26 of 2011, to make an inquiry and declare them to be juvenile on the date of the commission of the offence, i.e., 29.7.1984, on the basis of their age as recorded in their statements on 4.10.1986, u/s 313 of the Code of Criminal Procedure, as 20 years and 19 years respectively and also on the basis of their dates of birth mentioned in their School Leaving Certificate as 5.1.1967 and 17.6.1968. The learned Sessions Judge, Gopalganj, on hearing the matter, disposed of the aforesaid Criminal Miscellaneous Case filed u/s 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, to make an enquiry and declare them to be juvenile on the date of the commission of the offence, arriving at the conclusion that the application is not maintainable.

2. Learned counsel for the petitioners made submission that in view of the provisions of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, a petition for determining the juvenility can be filed in any court at any stage even after final disposal of the case. As such, the learned Sessions Judge, Gopalganj, while disposing of the aforesaid Criminal Miscellaneous Case, has committed error holding that the petition of the petitioners regarding claim of juvenility is not maintainable.

3. On the other hand, learned A.P.P. for the State argued that Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, relates to the Procedure to be followed when claim of juvenility is raised before any Court at any stage. It has further been submitted that admittedly, the conviction and the sentence of the petitioners have already been affirmed even by the Hon''ble Apex Court, so the learned Sessions Judge, Gopalganj, has rightly disposed of the aforesaid Criminal Miscellaneous Case, regarding claim of juvenility, holding that the same is not maintainable.

4. In order to appreciate the submission of the learned counsel for the petitioners, it is necessary to refer the provisions of Sections 7-A and 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which are read as under:

7-A. 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 a 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 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 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 juvenile on the date of commission of the offence under sub-section (1), it shall forward juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

64. Juvenile in conflict with law undergoing sentence at commencement of this Act.- In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under subsection (2) of Section 16 of this Act.

Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation.- In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of section 2 and other provisions contained in this Act and rules made thereunder, irrespective of the fact that he ceased to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institute, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.

98. Disposed off cases of juveniles in conflict with law.- The State Government or as the case may be the Board may either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order in the interest of a juvenile in conflict with law u/s 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in section 15 of the said Act.

5. From bare reading of the aforesaid provisions of Sections 7-A and 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, it is evident that

Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, has been inserted by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, which deals with the procedure to be followed when juvenility is claimed before any court even after final disposal of the case but this provision does not provide as to where the petition for determining the juvenility would be filed by such person, who is serving out the sentence after final disposal of the case in appeal even by the Hon"ble Apex Court. The provision of Section 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000, provides that the State Government, or as the case may be the Board, may, pass appropriate order and review the case of a juvenile in conflict with law undergoing a sentence by giving the adequate and special reason. Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, supplements the provision of Section 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The aforesaid Rule provides that the State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the Act and pass appropriate order in the interest of juvenile in conflict with law u/s 64 of the Act.

6. It appears from the impugned order that the learned Sessions Judge, Gopalganj, has disposed of the Criminal Miscellaneous Case of the petitioners regarding the claim of their juvenility with the finding that it is true that the plea of juvenility can be made at any stage, but in the instant case, the matter had reached the appeal stage and if at all any such plea is to be made, such plea may perhaps be taken before the Hon"ble Court which has last dealt with the matter, and arrived at the conclusion that the application filed on behalf of the petitioners is not maintainable.

7. Admittedly, the petitioners are serving out the sentence after final disposal of the case by the Hon"ble Apex Court. Therefore, the application filed on behalf of the petitioners for determining their juvenility may be filed u/s 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Hence, I find that the petition filed on behalf of the petitioners for determining their juvenility before the learned Sessions Judge, Gopalganj, is not maintainable. I find no illegality in the impugned order for interference with the same in revisional jurisdiction. Accordingly, this Criminal Revision stands dismissed.