

(1995) 08 PAT CK 0005

In the Patna High Court

Case No : Criminal Miscellaneous No. 3516 of 1995

Manu Rai @ Shyamal Rai

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Bihar Children Act, 1982 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 482
Juvenile Justice Act, 1986 — Section 21, 22, 26, 32, 60(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (1996) 1 PLJR 66

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Advocate : Binod Shankar Tiwary and Ram Rang Tiwary, for the Appellant;
Pramod Kumar Sinha, Madhukar Narayan Sinha and Indra Deo Shah, for the Respondent

Final Decision : Allowed

Judgement

Naresh Kumar Sinha, J.—This application u/s 482 of the Code of Criminal Procedure is for quashing an order dated 14.2.94 passed by the learned 2nd Addl. Sessions Judge rejecting an application of the Petitioner-accused for forwarding him to the children Court for his trial under the provisions of the Juvenile Justice Act.

2. The Petitioner is an accused in Sessions Trial No. 344 of 1985 pending before the learned Addl. Sessions Judge for an occurrence dated 11.4.82 in course of which one Sri Mana Chakravarty was killed. On the basis of the written report filed by the informant Gautam Das (O.P. No. 2) the Kotwali police station had initially registered a case under certain sections of the Indian Penal Code as also the Explosives Substance Act. On submission of the charge sheet the learned Chief Judicial Magistrate took cognizance u/s 302 I.P.C and committed the case to the Court of Session where it was presently pending. A petition was filed on behalf of the Petitioner on 23.8.93 wherein he claimed that he was below 16

years of age on the date of the occurrence and that he should be tried by the Children Court under the provisions of the Juvenile Justice Act, 1986 (in short the "Juvenile Act"). The Petitioner in support of his application relied upon certain observations made by the learned 4th Addl. Sessions Judge in his order dated 3.7.82 granting bail to the Petitioner. The observation was to the effect that the accused Petitioner may be little below or above 16 years of age.

3. It appears that the learned Addl. Sessions Judge by his order dated 6.9.93 constituted a Medical Board consisting of the Civil Surgeon and two other Doctors which examined the Petitioner and submitted its report dated 12.10.93. The Medical Board by its report, copy of which is Annexure-2, found the Petitioner to be 27 years of age on the date of submission of the report. On the direction of the Court one of the members of the Board was examined as Court witness to prove the report of the Medical Board marked Ext. 1. In view of the statement made by Dr. Sudhir Kumar, an Orthopedic Surgeon, one of the members of the Medical Board that the person examined might be between 31 to 32 years of age on the date of examination, the learned Addl. Sessions Judge rejected the medical report. Some documents were produced including the school admission registers mentioning the date of birth of the Petitioner and for the reasons recorded in the impugned order the learned Addl. Sessions Judge preferred to rely on the date of birth of the Petitioner i.e. 3.1.63 as mentioned in the school admission register marked Ext. 1 produced by the prosecution. On the basis of the said date of birth the Petitioner would be above 16 years of age on the date of occurrence. The learned Addl. Sessions Judge rejected the prayer of the Petitioner also on the ground that a similar plea taken by him had been rejected by the learned 4th Addl. Sessions Judge on 8.8.88 and the Petitioner did not file any revision against the said order and had again agitated the plea of minority at the stage of argument of the case at a belated stage.

4. After hearing learned Counsel for the Petitioner and O.P. No. 2 at length the main controversy between the parties appears to centre round the fact whether or not the Petitioner had attained the age of 16 years on 11.4.82 the date of occurrence of the criminal case in respect of which the Sessions Trial was pending. The reference on behalf of the Petitioner to the provisions of the Bihar Children Ordinance 1980 appears to be an obvious mistake for the Bihar Children Ordinance 1982. There is no dispute between the parties that the Bihar Children Act 1982 came into force with effect from 29.4.82 when it received the assent of the President. Sub-section (2) of Section 60 of the said Act had repealed the Bihar Children Ordinance 1982 (Bihar Ordinance No. 28 of 1981). Sub-section (3) of the said section, however provided that notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken. The admitted position is that both the Ordinances as well as the Act of 1982 had defined a child by Section 2(d) to mean a boy or a girl who has not attained the age of 16 years or

18 years respectively as the case may be. It is also common ground that the Juvenile Act 1986 enacted by the Central Legislature came into force in the year 1986. The Juvenile Act contained more or less similar provisions as contained in the Bihar Children Act.

5. A Full Bench of this Court in *Krishna Bhagwan v. State of Bihar* (1989 P.L.J.R. 507) had occasion to consider the provisions of the Juvenile Act vis-a-vis corresponding provisions of the Bihar Children Act 1982. It also considered the true ambit and scope of Section 26 of the Juvenile Act which reads as follows:

26. 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 Juvenile Court 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 the juvenile has committed the offence.

It was pointed out that the proviso to Section 65 of the Juvenile Act provided that despite repeal of the different corresponding Acts framed by the different States, any right, privilege, obligation or liability acquired can be enforced in spite of such repeal. It is the admitted case of the parties that the Sessions Trial against the Petitioner was pending on the date the Juvenile Act came into force. The Full Bench was pleased to observe that when first part of Section 26 says that notwithstanding anything contained in that Act, all proceedings in respect of a juvenile pending in any Court shall be continued in that Court as if that Act had not been passed, as a necessary corollary it has to be held that even Section 63 of the Juvenile Act shall be deemed to be not in force so far the pending proceedings are concerned upto the stage of determination of the guilt of such juvenile. It further observed that all such provisions shall become applicable in different proceedings only after the Court concerned record findings in respect of the charges levelled against juvenile in question. The Full Bench then proceeded to hold that trials including appeals which were pending on the date the Juvenile Act came in force upto determination of the guilt of the juvenile concerned has to proceed in accordance with the Code of Criminal Procedure.

6. Thus in view of the law laid down by the Full Bench the learned Addl. Sessions Judge should have proceeded with the trial under the Code of Criminal Procedure which the Court in the present case appears to have done. If the accused was found not guilty there would be no question for consideration whether or not he was a juvenile on the date of commission of the offence. In case the accused-Petitioner was found guilty and convicted of the offence it would be necessary to make an enquiry with regard to his claim that he was less than 16 years of age on the date of occurrence. The Full Bench in *Krishna Bhagwan's* case (*supra*) while dealing with the case of Appellant who raised the plea that he was a child

for the first time in an appeal preferred against his conviction before the High Court has this to say:

if the plea that the accused was a child or juvenile on the date of the commission of the offence is taken for the first time in this Court, then this Court should proceed with the hearing of the appeal, as required by Section 26 of the Juvenile Act and should record a finding in respect of the charge which has been levelled against such an accused. If such an accused is acquitted, there is no question of holding any enquiry in respect of the accused being a child on the relevant date but, if the finding of the guilt recorded by the Court below is affirmed and this Court on the basis of materials on record is prima facie satisfied that the accused may be a child/juvenile within the meaning of the relevant Act on the date of the commission of the offence, it should call for a finding from the Children's Court/Juvenile's Court in accordance with Section 32 of the Act. If the finding so received is accepted by this Court, then this Court in terms of Section 26 of the Juvenile Act should pass an order directing the Juvenile Court to pass orders in accordance with, Sections 21 and 22 of the Act.

The above observations are relevant and equally applicable in a case where the trial of the accused was pending before the learned Addl. Sessions Judge on the date the Juvenile Act came into force. Thus in terms of Section 26 of the Juvenile Act as interpreted by the Full Bench the trial Court after holding the Petitioner-accused guilty will have the occasion to consider the prayer that the Petitioner was a juvenile. In case the Court on the basis of the materials on record was prima facie satisfied that the accused may be a child/juvenile within the meaning of the relevant Act on the date of commission of the offence, it shall call for a finding from the children/juvenile Court in accordance with Section 32 of the Act. If the finding so received was accepted by the learned Addl. Sessions Judge then in terms of Section 26 of the Juvenile Act he would pass an order directing the juvenile Court to pass orders in accordance with Sections 21 and 22 of the Act. While doing so the learned Addl. Sessions Judge should keep in mind the caution mentioned in the Full Bench decision which is reproduced below:

...This determination should not be based merely on written opinion of the doctors produced before this Court. Prosecution has right to cross-examine such medical or forensic experts who have given their opinion about the age of the accused in order to demonstrate that the accused was not a juvenile on the date of the commission of the offence.

The Full Bench decision emphasises the fact that once the Legislature had enacted a law to extend the special treatment in respect of the trial and conviction to juveniles, the Courts should be jealous while administering such law so that the delinquent juveniles derive full benefit of the provisions of such Act, but at the same time, it is the duty of the Courts that the benefit of the provisions meant for juveniles are not derived by unscrupulous persons, who have been convicted and sentenced to imprisonment for having committed heinous and serious offences by getting themselves declared as children or

juveniles on the basis of procured certificates.

7. Since the impugned order was not in accordance with law laid down by a Full Bench of this Court in Krishna Bhagwan's case (*supra*), the same is quashed. The learned Addl. Sessions Judge should proceed with the trial and consider the desirability of making an enquiry with regard to the age of the Petitioner only in the event of his being found guilty. In doing so he shall act strictly in accordance with law laid down by this Court and shall not feel inhibited by any observation made in course of the order. With these observations this application is allowed. This Court had no occasion to express any opinion on merits. It needs to be re-emphasised that the impugned order has been quashed only on legal and technical ground without entering into its merits.