

(2008) 02 BOM CK 0108
In the Bombay High Court
Case No : Criminal Appeal No. 270 of 2007

Mohamad Zakir Mohamad Muktar Shaikh	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 7A, 7A(2)
Penal Code, 1860 (IPC) — Section 34, 363, 364A, 365

Citation : (2008) CriLJ 2519

Hon'ble Judges : R.M.S. Khandeparkar, J; A.A. Sayed, J

Bench : Division Bench

Advocate : Silvin Kale, for the Appellant; P.S. Hingorani, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard. This appeal arises from the Judgment and Order dated 29th March, 2006 passed by the 5th Ad hoc Additional Sessions Judge, Mumbai in Sessions Case No. 489/2004, whereby the appellant has been convicted for life holding him guilty of the offences punishable u/s 363, 364(A) and 365 r/w Section 34 of Indian Penal Code.

2. The main contention which is sought to be raised on behalf of the appellant is that the appellant was juvenile in conflict on the date of commission of the offence and therefore, he is entitled for the acquittal of the offences under Juvenile Justice (Care and Protection of Children) Act, 2000. It is further case on behalf of the appellant that appellant was arrested on 22nd April, 2004 and since then he has been in jail.

3. Undisputedly, the offence was committed on 13th April, 2004. Pursuant to the issue of being juvenile raised by the appellant, the necessary inquiry was ordered by the Sessions Judge and pursuant to the enquiry so held, the Sessions Judge has submitted his report, wherein he has observed that the appellant was of the age of 19 years as on 15th October, 2005 the date on which his statement u/s 313, Cr. P.C. was recorded and consequently he was below 18 years of age on

13th April, 2004.

4. On hearing the learned Advocates for the parties and perusal of the report along with medical report, it is apparent that the appellant, on the date when his statement u/s 313, was recorded, was found to be the age of 19 years i.e. on 15th October, 2005. The Doctor who had examined the accused pursuant to the direction of the Court has also found him of the age of 23 years. The Doctor who had opined the age of the appellant to be 23 years has examined him in October, 2007. Considering the said reports, we find that the findings arrived at by the Sessions Judge about the age of the appellant to be clearly borne out from the record and consequently the accused was juvenile in conflict within the meaning of said expression under the said Act on the date of commission of the offence i.e. 13th April, 2004. Consequently, the provisions of the said Act are squarely attracted. Undisputedly, the appellant was not produced before the Juvenile Board nor the trial in the matter was in accordance with the provisions of the said Act.

5. In the circumstances, Section 7A of the said Act is clearly attracted. Section 7A of the said Act reads thus:

Procedure to be followed when claim of juvenility is raised before any Court:

(i) 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 as nearly as may be;

Provided that a claim of juvenility may be raised before any Court and it shall be recognised 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 the 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 a juvenile on the date of commission of the offence under Sub-section (i), shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

Obviously, therefore, the impugned judgment so far as it relates to the appellant cannot be sustained and is liable to be held to be bad in law in view of Sub-section 2 of Section 7A of the said Act. Consequently the appellant would be entitled for release from the custody.

6. It is also not in dispute that the appellant has been in custody since 22nd April, 2004. Even considering the provisions of Section 15 of the said Act, the longest period for which a juvenile can be sent to a Special Home is for three years. The appellant is detained in custody contrary to the provisions of law for a

period more than he could have been detained.

7. The law on this aspect is very clear in view of the decision of the Apex Court in Pratap Singh Vs. State of Jharkhand and Another, and of the Division Bench of this Court to which one of us (R.M.S. Khandeparkar, J.) was party, in the matter of Rahul Govind Sharma v. State of Maharashtra and Anr. reported in 2005 ALL MR (Cril.) 1973.

8. Considering the provisions of law as applicable to the facts of the case, the impugned Judgment and Order to the extent it relates to the appellant is hereby quashed and set aside. The appellant is directed to be released forthwith, unless required in any other matter. The appeal stands disposed of accordingly.

9. For the reasons recorded separately in the oral judgment, the following order is passed.

The Judgment and Order to the extent it relates to the appellant is hereby quashed and set aside. The appellant is directed to be released forthwith, unless required in any other matter.

The appeal stands disposed of accordingly.

In view of the judgment passed in Criminal Appeal No. 270 of 2007, this application does not survive and accordingly stands disposed of.