
(2013) 04 AHC CK 0257
In the Allahabad High Court
Case No : Criminal Revision No. 1126 of 2013

Neelu Chaurasia @ Arvind Kumar Chaurasia	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 53, 7A
Penal Code, 1860 (IPC) — Section 354
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) 3 ACR 3125 : (2013) 5 ADJ 69 : (2013) 6 ALJ 54 : (2013) 82 ALLCC 142

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Pramod Kumar Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Heard learned counsel for the revisionist and learned A.G.A. for the State.

This criminal revision u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as the "Act") is directed against order dated 19.3.2013 passed by Additional Sessions Judge, Court No. 7, Kaushambi, whereby the application 30 Ga for declaring the revisionist to be a juvenile was rejected.

The revisionist is an accused in S.T. No. 403 of 2009, State v. Neelu Chaurasia, arising out of crime No. 43 of 2006 u/s 354 IPC and 3(1)(x) S.C./S.T. Act, P.S. Kokhraj, District Kaushambi. An application u/s 7A of the Act was moved on behalf of the revisionist claiming that his date of birth, as per the high school marks-sheet, was 5.1.1989. The incident took place on 23.2.2006 and, therefore, the revisionist Neelu Chaurasia @ Arvind Kumar Chaurasia was a juvenile on the date of incident. The application was supported by an affidavit

and marks-sheet dated 15.6.2005 issued by Pandit Jagdish Narayan Mishra Uchatar Madhyamik Vidyalaya, Pandey Mau, Bharwari, Kaushambi. The revisionist was also subjected to medical examination and as per the medical report dated 5.12.2012, the age of the revisionist was found to be between 22 to 25 years.

2. Learned trial Court examined the doctor and came to the conclusion that the marks-sheet did not disclose that the revisionist appeared as a regular candidate or as a private candidate and, therefore, the marks-sheet was ignored and on the basis of statement of the doctor, revisionist was declared not to be a juvenile on the date of incident and consequently the application was rejected.

3. Learned counsel for the revisionist submits that no proper inquiry was conducted by learned Additional Sessions Judge in accordance with Section 7A of the Act. Except the doctor, no other witness was examined by the trial Court. If learned Additional Sessions Judge was not satisfied with the high school marks sheet, he should have summoned the Principal as well as the records from the school to judge their correctness and validity.

Learned A.G.A. supported the impugned order.

4. I agree with the submissions advanced by learned counsel for the revisionist that no proper inquiry was held by learned Additional Sessions Judge.

Section 7A of the Act provides as under :

7A. 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 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 (1); it 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.

5. It is clear from the subsection (1) of Section 7A of the Act that whenever a claim of juvenility is raised, before any Court, that Court is bound to hold an inquiry and take all such evidence, as may be necessary (but not on affidavit) so as to determine the age of such person and shall record a finding whether the

person is juvenile or a child or not, stating his age as clearly as may be. A high school marks-sheet was filed on behalf of the revisionist.

6. As per Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the question of juvenility has to be decided on the basis of matriculation certificate or equivalent certificate or in the absence whereof the date of birth recorded in the school first attended and in the absence whereof the date of birth recorded in the Municipal records, Panchayat, Corporation etc. and in the absence of above three certificates, age has to be determined on the basis of a certificate of the Medical Board duly constituted for the purpose of ascertaining the age of the accused.

7. When the high school marks-sheet was filed and if the trial Court had any doubt, it could have summoned the relevant school records or the records of the High School Board. The Principal of the school could also have been summoned to establish the correct date of birth of the revisionist. An inquiry into juvenility of an accused is not a game of chess between the accused, the complainant and the State. Heavy responsibility rests on the shoulders of the Court to find out the truth irrespective of the fact whether a party is being represented properly or incompetently. The powers of the Court to inquire into the juvenility of an accused are unlimited. On one side; a person should not be permitted to take a false plea of juvenility to escape punishment and on the other hand, a juvenile: should not suffer on account of lack of proper representation or lack of means. When an inquiry is being held by the Court, it can summon any person as a witness at the expense of the State to find out the truth. Such an inquiry is not a mere formality.

I am of the firm opinion that in this case, learned trial Court has failed to discharge its duties in a fair and proper manner. Therefore, the impugned order cannot be sustained and the matter has to be remanded for a fresh decision on the point of juvenility of the revisionist.

Accordingly, revision is allowed.

Impugned order dated 19.3.2013 is set-aside.

Learned Additional Sessions Judge is directed to hold a proper inquiry after summoning all the relevant witnesses who may depose regarding date of birth or age of the revisionist after giving an opportunity of hearing and leading evidence to the revisionist, the complainant as well as the public prosecutor in the light of guidelines indicated above.