
(2005) 05 AHC CK 0243

In the Allahabad High Court

Case No : Criminal Misc. Application No. 6067 of 2005

Pankaj and Neeraj

APPELLANT

Vs

State of U.P. and Prem Pal Singh

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 6(2), 7

Citation : (2005) CriLJ 3683 : (2006) 1 RCR(Criminal) 509

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : V.K. Singh and A.K. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard earned counsel for the applicants and learned A.G.A. for the State.

2. This application has been filed challenging the order dated 6.5.2005 passed by the learned Sessions Judge, Baghpat declining to entertain an application moved on behalf of the applicants claiming to be a juvenile and is entitled for protection under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as the Act). A copy of the application has been annexed as Annexure-5 to the affidavit, stating therein that the two sessions trial were amalgamated and S.T. No. 425 of 2003 is the leading case. The applicants Pankaj and Neeraj claimed to be minor and in the circumstances, a separate trial was liable to be conducted. It was stated in the application that they were students at the time of occurrence. The date of birth of the applicant Pankaj son off Sri Charan Singh Saroha is 27.3.1986 according to High School Certificate and the applicant No. 2 set of Sri Raj Singh was born on 22.11.1987 as recorded in the School Leaving Certificate. The application was moved on 6.5.2005 that common trial should not proceed but the application was not entertained on the ground that since the Juvenile Justice Board has been constituted at Meerut, it is the

jurisdiction of the Board to decide and declare an accused as juvenile. This application has been moved challenging the said order. It has been argued that Section 7 of the Act prescribes procedure to be followed by a Magistrate not empowered under the Act Sub clause (1) of Section 7 provides that when any Magistrate not empowered to exercise the powers of a Board constituted under the Act is of the opinion that a person brought before him under any of the provisions of the Act, is a juvenile or the "child", he shall without any delay record such opinion and forward the juvenile to the competent authority having jurisdiction over the proceeding Sub clause (2) of Section 7 provides that the competent authority to which such proceedings are forwarded under Sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it. In the circumstances. It was the duty of the court to have ascertained and formed an opinion whether the person, such as the applicants in the instant case, was a juvenile in his opinion or not. He could not have thrown away the applicants and refused to entertain it only because a Juvenile Justice Board has now been constituted at Meerut. It is also relevant to point out that Section 6 sub clause (2) of the Act provides that the powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise. In the present case, this application was moved before the learned Sessions Judge, Baghpat and. therefore, he was bound to make preliminary inquiry and come to a conclusion, instead of relegating the applicants to approach the Board. It is also noteworthy that the Juvenile Justice Board constituted under the Act do not meet each and every day as a regular sitting of the court and in the circumstances, the learned Sessions Judge. Baghpat should have at least examined the matter and if he was of an opinion that the applicants were juvenile then an appropriate order should have been passed, which the court had failed to do so. In the case of *Bhola Bhagat and Ors. v. State of Bihar*, 1997 (35), A.C.C., 835. the Apex Court has held that whenever a plea is raised by an accused that he was "child" and the court entertains any doubt about the age, it has to hold an inquiry itself for determination of age or cause an inquiry to be held and seek report. It becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, it was necessary for the court to hold an inquiry itself. This legislation is a beneficial legislation and socially oriented so as to ensure every kind of reformative measures to be taken in respect of an accused who is a "child" within the meaning of the Act. In the instant case, nothing has been done by the learned Sessions Judge, Baghpat. It is not a case where he completely lacked jurisdiction to even conduct a preliminary inquiry regarding authenticity of the claim made by the applicants that they were juvenile within the meaning of the Act. The court was itself competent in view of the Section 6(2) of the Act to have conducted an inquiry but it appears that the application was not even entertained only because Juvenile Justice Board was constitute. This order can not be upheld and is, therefore, quashed. The applicants are permitted to move another application and the learned Sessions Judge, Baghpat shall make a preliminary inquiry as

provided under the Act and only if he comes to a definite conclusion that the applicants are not juvenile on the basis of the evidence produced before him, can proceed with the joint trial. In the event, there is an iota of doubt regarding the age of the applicants and the court feels that the applicants are minor children within the meaning of the Act, he shall proceed to make an inquiry in accordance with law and refer the matter to the Board or act in accordance with Section 6(2) of the Act.

3. In the circumstances, this application is allowed and the impugned order dated 6.5.2005 is set aside. The matter is sent back for a decision on merits.