

(2006) 04 AHC CK 0204
In the Allahabad High Court
Case No : Criminal Revision No. 3631 of 2004

Sachin Sharma (In Jail)

APPELLANT

Vs

State of U.P. and Om Prakash

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 52, 53
Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2006) 04 AHC CK 0204

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Ashutosh Tripathi, for the Appellant; N.L. Pandey and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This revision has been preferred by the revisionist Sachin Sharma being aggrieved by the order 9.8.2004 passed by the learned Special Judge S.C./S.T.(P&A) Act/Additional Sessions Judge in Criminal Misc. bail Application No. 664 of 2004 whereby the bail application of the revisionist has been rejected.

2. The prosecution story in brief is that in the present case F.I.R. has been lodged by Om Prakash on 7.4.2004 at 8.30 p.m. in respect of the incident which had occurred on 7.4.2004 at about 6.45 p.m. at P.S. Dadri in case crime No. 169 of 2004 under Sections 302/376 I.P.C. The revisionist is not named in the F.I.R. whereas co-accused Sonu is named in the F.I.R. It is said that the co-accused Sonu has disclosed the name of the revisionist during investigation. The deceased was the sister in law of the revisionist. The revisionist took the plea that he is juvenile. The enquiry was made by the learned C.J.M. Ghaziabad and on the basis of the medical examination report, the revisionist was declared juvenile because according to the medical examination report his age was about

17 years. He was declared juvenile by the learned C.J.M. on 3.6.2004. The order dated 3.6.2004 has been challenged by the first informant Om Prakash in the court of learned Sessions Judge, Gautam Budh Nagar by way of filing a criminal appeal.

3. Heard Sri Ashutosh Tripathi, learned Counsel for the revisionist, learned A.G.A. for the State of U.P. and Sri N.L. Pandey learned Counsel for O.P. No. 2.

4. It is contended by the learned Counsel for the revisionist that the revisionist has been declared juvenile, therefore, he is entitled for bail under the provisions of 12 of the Juvenile Justice (Care and Protection of Children) Act 2000.

5. It has been opposed by the learned A.G.A. and the learned Counsel for the complainant by submitting that the impugned order dated 3.6.2004 by which the learned C.J.M. Gautam Budh Nagar has declared the revisionist to be juvenile, has been challenged by O.P. No. 2 by way of filing a criminal appeal before the learned Sessions Judge, Gautam Budh Nagar but the result of the appeal has not been brought to the notice of this Court by the revisionist, therefore, the revisionist may not be released on bail only on the ground that he has been declared juvenile by the learned C.J.M. Ghaziabad on 3.6.2004.

6. After considering the submissions made by the learned Counsel for the revisionist and the learned A.G.A. and the learned Counsel for the complainant and from the perusal of the record, it appears, that the order dated 3.6.2004 passed by the learned C.J.M. Gautam Budh Nagar declaring the revisionist to be a juvenile has been challenged by O.P. No. 2 in the court of learned Sessions Judge, Gautam Budh Nagar but the fate of the appeal has not been brought to the notice of this Court neither by the revisionist nor by O.P. No. 2, It also appears that the revisionist made a prayer for bail by way of filing a criminal revision u/s 53 of the Juvenile justice (Care and Protection of Children) Act 2000 read with Section 397/401 Cr.P.C. such type of plea can be raised only after the dismissal of the appeal filed by the revisionist and his bail application would not have been rejected by the juvenile Justice Board as provided by this Act, but in the present case, the application for bail has not been moved by the revisionist before the Juvenile justice Board, and there was no occasion for filing the appeal but the revisionist moved an application before the learned Sessions court and the same was rejected on 9.8.2004. The impugned order dated 9.8.2004 is not revisable u/s 53 of the Juvenile Justice (Care and Protection of Children) Act 2000 read with Section 397/401 Cr.P.C.) because the revision lies only against the order of appeal passed under the provisions of Section 52 of the aforesaid Act, therefore, this revision is not maintainable.

7. Accordingly this revisionist is dismissed as not maintainable.