
(1997) 01 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 12223-M of 1996

Sunil @ Sucha Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 402

Hon'ble Judges : R.L.Anand, J

Advocate : Baldev Singh, Sanjiv Sheoran, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Sunil alias Sucha Singh, petitioner has filed the present petition under Section 482 Cr.P.C. for the quashment of the order dated 10.5.1996 passed by the Court of learned Sessions Judge, Hisar, who declined the request of the present petitioner for holding an enquiry about the age on the date of the commission of the offence of the petitioner. Petitioner is one of the coaccused alongwith others and is facing a trial in a case under Section 302 read with Section 34 IPC in case FIR No. 160 dated 31.3.1994 registered at Police Station City Hissar. The case of the present petitioner is that his actual date of birth is 16.12.1978 and on the date of the alleged commission of offence he was juvenile, being less than 16 years and therefore, he could not be tried along with his coaccused who are admittedly majors. The prayer of the present petitioner has been declined primarily by the learned Sessions Judge on the ground that the plea of juvenile has been taken at a very belated stage. Moreover, while recording the statement u/s 313 Cr.P.C. the petitioner has given his age as 1819 yeas and as such he was not a juvenile and, therefore, such application cannot be permitted.

2. In AIR 1984 Supreme Court, 237, Gopi Nath v. State, the Hon''ble Judges of the Supreme Court discussed the object of beneficial provisions like Juvenile Justice Act/West Bengal Children Act and their Lordships were pleased to hold that to overlook or nullify to the beneficial provisions of a very socially progressive statute by taking shield behind the technicalities of the contention

raised for the first time in the Supreme Court would mean to nullify the provisions of the Act itself. In the cited case, the plea of juvenile was taken for the first time before the Supreme Court which was opposed, but allowed with the observations that care should be taken by the trial Court whenever a case is brought before it and whenever it appears to the trial Court that the accused appears to be of the age of 21 or below before proceeding with the trial or undertaking an enquiry, an enquiry must be made about the age of the accused on the date of the occurrence.

3. In the present case duty lied with the committing court as well as to the Court of Sessions to make an enquiry at the first instance to find out whether Sunil alias Sucha Singh was entitled to the benefit of Juvenile Justice Act or not. The right of the petitioners cannot be scuttled down on the ground of delay and technicalities. It is yet to be determined whether the date of birth as given by the petitioner is correct or not. The learned AAG, Haryana assisted by Mr. Ajay Lamba vehemently opposed the request of the petitioner on the ground that the school certificate being relied upon by the petitioner cannot be taken as a gospel truth in the light of the statement made by the petitioner under Section 313 Cr.P.C. This Court is not giving any finding on a question of fact which will only be determined by the trial Court itself. Nevertheless the impugned order cannot be sustained in the eyes of law as the learned trial Court failed to discharge its duty causing a prejudice to the present petitioner. Thus the present petition is hereby allowed, the impugned order is hereby set aside. Directions are now given to the trial Court to conduct an enquiry which must be completed within one month from the date of the receipt of the copy of the order and after holding an enquiry one way or the other may proceed with the trial.

4. With the above observations and directions the present petition stands disposed of.