
(2005) 11 PAT CK 0045

In the Patna High Court

Case No : Criminal. Misc. No. 522 of 2005

Tunni @ Tunni Sah @ Hari Shankar Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Citation : (2005) 11 PAT CK 0045

Judgement

I.P. Singh, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 (in short the Code). It is directed against the entire proceeding against the present petitioner arising out of Baikunthpur P.S. Case No. 44 of 2000 (G.R. No. 543/2000) and also for a direction to the learned Additional Chief Judicial Magistrate, Gopalganj to pass an order of acquittal and for the release of the petitioner in Trial No. 162 of 2003.

2. It has been contended that the aforesaid case was instituted against the present petitioner on 30.3.2000 and in absence of Juvenile Board it proceeded in the Court of the learned Additional Chief Judicial Magistrate, Gopalganj. As yet the enquiry trial against the petitioner has not been concluded even after the lapses of four years six months. The petitioner was sent to remand home on 7.4.2000 and since then he is rotting there. Due to the illegal and arbitrary action of the learned Court below the freedom and liberty of the petitioner have been violated. Earlier the petitioner had twice unsuccessfully moved for his bail before this Court by filing Cr. Revision Nos. 433 of 2001 and 179/2003.

3. The prosecution case, in short, is that the FIR u/s 376 of the Indian Penal Code was recorded on 30.3.2000 against the present petitioner on the basis of the fardbeyan of the mother of the victim girl who was only six years old. According to the fardbeyan at about 3 p.m. on 29.3.2000 the victim girl aged only six years was sexually assaulted by the present petitioner resulting in bleeding injuries on her private part. The FIR was recorded and charge-sheet submitted.

4. The petitioner has contended that there has been delay in lodging the FIR and

there was no medical examination of the victim girl. There is enmity between the parties. By the order dated 3.9.2003 passed in T. No. 162 of 2003 the learned Addl. Chief Judicial Magistrate has rejected the prayer of the petitioner for his acquittal. The enquiry/trial has not been completed even after the lapse of 4-1/2 years which is contrary to the law. The petitioner has been lodged in the remand home on 7.4.2000 and since then he is rotting there. On his behalf it has now been submitted that the period of his continuing in the remand home could be more than 5-1/2 years. It has, therefore, been prayed that this application may be allowed and the petitioner may be acquitted of the charge framed against him. In any case he may be released from the remand home.

5. I.A. No. 298 of 2005 has been filed in this case in which it has been prayed for staying the transfer of this petitioner from the remand home custody to jail and also for the expeditious disposal of the matter inasmuch as the petitioner is rotting in remand home confinement for more than four years whereas the maximum punishment in the matter concerned is only three years. .It was accordingly, prayed for the stay of the transfer of the petitioner to jail custody.

6. The parties have been heard at length in the matter, The FIR in this case was instituted on 30.3.20.00 with respect to an occurrence said to have taken place on 29.3.2000. It has been contended that on the alleged date of occurrence the petitioner was a Juvenile within the meaning of the Juvenile Justice Act, 1986 (hereinafter called as 1986 Act), This Act was made applicable to this State on 2.10.1987. In this connection it may be noticed that with the growth of population and industrialisation children are being neglected by their own parents and come in contact with evil elements in the society. Many of such children who are charged as criminals are themselves victim of the circumstances prevailing in the society. Different States framed legislation for dealing with the children alleged to have committed different offences. Initially Bihar Children Ordinance, 1973 (Ordinance No. 33 of 1973) was promulgated which was ultimately replaced by Bihar Children Act, 1982. Later the Parliament enacted the above mentioned Juvenile Justice Act, 1986 with an object that there should be a Central Act in respect of Children through out the country. Subsequently this Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the New Act). This New Act came into force on 1.4.2001. As I have noticed above the alleged occurrence had taken place on 29.3.2000 and, therefore, at that time 1986 Act was enforced. It is well known that unless there is specific provision in this regard all Acts are prospective and not retrospective. It is well settled that the New Act was not made retrospective. This will mean that in the present case 1986 Act will apply. This position has been made clear in Section 20 of the New Act which relates to the pending cases. According to this Section notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act came into force in that area shall be continued in that Court as if this Act of 2000 had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any

sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this New Act of 2000 as if it has been satisfied on inquiry under this Act that a juvenile has committed the offence. In this connection it may be noticed that earlier also in 1986 Act in its Section 26 there was a similar provision. The only difference being that in place of the word "Board" in Section 20 of the New Act the words "Juvenile Court" was used in Section 26 of the 1986 Act.

7. A question arose whether the New Act is retrospective or not. This has been answered in negative by the Hon'ble Supreme Court in the case of Lallan Singh Vs. State of U.P. and Another, in which it has been held that the wordings of Section 20 of the New Act are clear enough to show that if any proceeding is pending on the date of the enforcement of the New Act, that proceeding shall be concluded under the provisions of Old Act. From the above it would become clear that the New Act of 2000 is not retrospective. This will mean that on the date of the alleged occurrence 1986 Act was enforced and its provisions would apply to the present case.

8. It is not in dispute that the present petitioner is in the custody of remand home since 7.4.2000 and already more than five years have passed since his remand. On behalf of the petitioner it has been seriously contended that his continuance any further in the custody of remand home is against the provisions of law. In this connection my attention has been drawn to the Full Bench decision of this Court in the case of Krishna Bhagwan Vs. State of Bihar, This was a case also u/s 302 of the Indian Penal Code under which the petitioner was awarded imprisonment for life. He was also awarded 10 years rigorous imprisonment u/s 307 of the Indian Penal Code as also 2 years rigorous imprisonment u/s 324 of the Indian Penal Code. After detailed discussions of the facts and circumstances of the said case their Lordships of the Full Bench in concluding portion of paragraph 12 has observed as follows :-

It was rightly pointed out that many offences including the offence u/s 326 of the Penal Code are now triable by Magistrate first class as mentioned in First Schedule of the Code of Criminal Procedure although the maximum sentences prescribed for such offences are 10 years or imprisonment for life. But a Magistrate first class convicting an accused for such offences cannot pass sentence of imprisonment exceeding three years. The framers of the Act should have made more specific provision indicating as to normally what should be the period of detention. But, in absence thereof, especially taking into account, the liberal approach in respect of bail, trial, conviction and Sub-section (2) of Section 5 of the Children Act/ Juvenile Act, it has to be held that such period of detention should not exceed three years.

On the basis of this authoritative pronouncement by the Full Bench of this Court it has been submitted that in any view of the matter the detention of Juvenile should not exceed three years. It has also been pointed that detention in the present case it has already exceeded 5-1/2 years and since still the trial is

pending the petitioner should immediately be released from the custody of the remand home.

9. As against it the learned counsel for the State has contended that the allegations against the present petitioner are serious and he has been charged with an offence u/s 376 of the Indian Penal Code. In reply the learned Counsel for the petitioner has submitted that in the aforesaid Full Bench the petitioner was charged of very serious offences u/s 302 of the Indian Penal Code and still the Full Bench has observed that the period of detention could not be more, than three years. I find force in this contention of the learned counsel for the petitioner.

10. In view of the discussions made above it becomes clear to me that the petitioner has to be released from the custody of the remand home forthwith. Accordingly, the petitioner is ordered to be released on bail on furnishing bail bond of Rs. 5,000/- (five thousand) with two sureties of the like amount each to the satisfaction of the A.C.J.M. Gopalganj in Baikunthpur P.S. Case No. 44 of 2000 (G.R. No. 543 of 2000), The learned trial Court is directed to expeditiously dispose of the case and pass necessary judgment in the matter.

11. This application is ordered accordingly.