
(1989) 02 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5784-M of 1988

Ved Parkash

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:

Citation : (1989) 2 RCR(Criminal) 301

Hon'ble Judges : S.S.Grewal, J

Advocate : P.S. Bajwa, B.S. Bindra, Baldev Singh, Kulbir Singh, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of the Code of Criminal Procedure relates to quashment of order of Additional Sessions Judge, Hissar, dated 19th April, 1986, whereby, the said court held that Ranbir Singh and Balwan Singh respondent Nos. 4 and 6 were below 16 years of age, and were children as defined under Section 2(d) of the Haryana Children Act, 1974 (hereinafter referred to as 'the Act').

2. In brief the facts of this case are that seven accused, including Ranbir Singh and Balwan Singh aforesaid were committed to the Court of Sessions to stand trial for committing offences under Sections 148, 307, 326 and 324 read with Section 149 of the Indian Penal Code. The learned Additional Sessions Judge vide impugned order directed the aforesaid two accused to be released and directed that challan against them be presented in the competent Court, and they would be summoned for facing trial in accordance with the provisions of the Act.

3. Main grievance of the complainantpetitioner is that he was not at all associated with the inquiry made by the Additional Sessions Judge, before coming to the conclusion that Ranbir Singh and Balwan Singh accused were below 16 years of age. Reliance was rightly placed on the Single Bench authority of this Court Dhan Singh and another v. State of Haryana and another, 1984(2)

Recent Criminal Reports 427 wherein such an inquiry concluded without associating the complainant, was held to be vitiated, and, the case was remitted back for fresh inquiry.

4. It is quite apparent that no proper inquiry in the instant case was made by the Additional Sessions Judge before holding that aforesaid two accused were children. Without holding such an inquiry and in the absence of any finding, it is neither permissible nor, legitimate to contend that the aforesaid two accused could come within the definition of child at the time of the commission of offence, as held in a Division Bench authority of this Court, reported as Hari Singh v. The State of Punjab, 1976 C.L.R. 296.

5. For the foregoing reasons, the impugned order passed by the Additional Sessions Judge cannot be held to be legal and valid. The impugned order is accordingly, set aside and the case is remitted back to the Additional Sessions Judge with the direction that he would decide the question whether the aforesaid two accused were children at the time of the commission of the offence, after conducting proper inquiry and after affording an adequate opportunity to the parties, including the complainant, to lead evidence concerning the age of the said accused. Thereafter, he would proceed according to law.

JUDGMENT accordingly.