Rohtas

Vs

State of Haryana and Another

Criminal Appeal No. 170 of 1979

(Syed M. Fazal Ali, P.S. Kailasam JJ)

31.07.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against a judgment of the Punjab and Haryana High Court, dated November 10, 1978, by which the High Court accepted the revision filed before it and set aside the order of the Sessions Judge and directed him to conclude the trial according to law.

2. The points in controversy arise in the following circumstances :

> 2a. The appellant Rohtas was being prosecuted under Section 302 of the Indian Penal Code, for having caused the death of one Subhash on December 23, 1974. The trial proceeded before the Session Judge and after the evidence was concluded the case was adjourned to May 5, 1978, for recording the statement of the appellant. At this stage it appears to have been pointed out to the Sessions Judge that he had no jurisdiction to try the appellant as the appellant happened to fall within the provisions of the Haryana Children Act, 1974, for short, to be referred to as the Haryana Act. Thereafter the Sessions Judge remitted the matter to the Committing Magistrate directing him to hold an enquiry as to whether or not the appellant Rohtas was a child within the meaning of the provisions of the Haryana Act and after arriving at a finding that the appellant was a child, the Magistrate proceeded to try the case in accordance with the provisions of the Haryana Act. The brother of the deceased filed a revision before the High Court for quashing the proceedings against the appellant on the ground that the Sessions Judge and the Committing Magistrate were wrong in holding that the case of the appellant fell within the purview of Section 4 of the Haryana Act. The contention raised by the revision-petitioner was based on the fact that although the Criminal Procedure Code of 1973, hereinafter to be referred to as the Code of 1973, contained provisions some of which were directly in conflict with the Haryana Act and other Central Acts, therefore, the Code of 1973 would prevail and the State Acts would stand overruled by virtue of the provisions of Article 254 of the Constitution of India. This arguments appears to have been accepted by the High Court on the ground that as the Haryana Act though passed with the previous consent of the President of India, so far as the State of Haryana is concerned, the Act was superseded by the Code of 1973 which was an Act passed by Parliament subsequent to the Haryana Act.

3. Before scrutinising the contentions of the parties it may be necessary to examine and analyse

some of the important and relevant provisions of the statute concerned. To begin with, even the previous Criminal Procedure Code of 1898 contained a special procedure for the trial of persons who had committed offences and who were below the age of 15. Such accused could be tried by a Magistrate on whom powers are conferred by Section 8, sub-section (1) of the Reformatory Schools Act of 1897 which also provided for the custody, trial or punishment of such youthful offenders. This section was expressly repealed by Section 65 of the Haryana Act which reads as below : Certain Central Acts not to apply :

> (1) The Reformatory Schools Act, 1897 (Central Act 8 of 1897), and Section 29-B and 399 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), shall cease to apply to any area in which this Act has been brought into force.
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> (2) The Women's and Children's Institutions (Licensing) Act, 1956 (Central Act 105 of 1956), shall not apply to any Children's home, special School or observation home established and maintained under this Act.

4. This being the position, so long as the Haryana Act was to be in force in the State of Haryana, it is manifest that Section 29-B was put completely out of action and any trial of an accused who was a child within the meaning of the Haryana Act had to be conducted in the manner prescribed by the Haryana Act. For the purposes of this case it is not necessary for us to detail the procedure which was to be adopted by the Court under the Haryana Act. The fact remains, therefore, that until the passing of the Code of 1973 the Haryana Act held the filed. The Haryana Act came into force on March 1, 1974. In fact the said Act received the assent of the President as far back as on February 6, 1974 and was published in the Haryana Gazette on February 12, 1974 but under the provisions of Section 1 sub-section (3) of the Act it was to come into force on a dare to be notified by the State Government and this was done on March 1, 1974. Thus the Haryana Act started operating w.e.f. March 1, 1974 and any offences committed thereafter by a child, as defined in the Act, were to be tried according to the procedure laid down by the Haryana Act. So far there is no dispute between the parties. The only difficulty that arises is that just about the time that the Haryana Act was passed the Code of 1973 was also passed by Parliament which completely revolutionised the entire Criminal Procedure Code of 1898. It is not disputed in the present case that the occurrence in the present case took place after coming into force of the Code of 1973 and if, therefore, the Code of 1973 applies to the present trial then it is obvious that the trial has to be held not in accordance with the provisions of the Haryana Act but according to the provisions of the Code of 1973. So far as the Code of 1973 (Act II of 1974) is concerned, it came into force w.e.f. April 1, 1974. Section 4 of the Code of 1973 clearly lays down that all offences under the Indian Penal Code shall be investigated, inquired into, tired and otherwise dealt with according to the provisions of the said Code. Thus at the first sight the contention of the respondent that the accused was rightly ordered to be tried under the Code of 1973 appears to be sound. In the view that we have taken in this case and on a close and careful interpretation of Section 5 of the Code of 1973, we do not find it necessary to go into this point at all.

5. In our opinion the provisions of Section 5 of the Code in the present case completely clinch the entire issue. Far from overruling or colliding with the provisions of the Haryana Act, the Code of 1973 appears to have kept alive and fully endorsed the application of the Haryana Act or for that matter the provisions of any other Act passed by the State legislature and which falls within the ambit of Section 5 of the Code of 1973 which may be extracted thus :

> Nothing contained in this Code shall, in the absence of a specific provision to the

> contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

6. It will thus be seen that Section 5 carves out a clear exception to the provisions of the trial of an offence under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force. It is not disputed that the Haryana Act was in force when the Code of 1973 was passed and, therefore, the Haryana Act far from being inconsistent with Section 5 of the Code of 1973 appears to be fully protected by the provisions of Section 5 of the Code of 1973 as indicated above.

7. In these circumstances, we are clearly of the opinion that the High Court was in error in holding that the Code of 1973 overruled the Haryana Act and that the appellant should have been tried under the Code of 1973. We are satisfied that the view taken by the Sessions Judge on this point was correct and the case of the appellant should have been referred to the Magistrate concerned for trial in accordance with the provisions of the Haryana Act.

8. We, therefore, allow this appeal, set aside the judgment of the High Court and restore that of the Sessions Judge as a result of which the appellant will now be tried by the Magistrate empowered under the Haryana Act and in accordance with the provisions of that Act. The case is an old one. The Magistrate concerned should try to dispose of the case as expeditiously as possible.

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