

Sheo Shankar Singh

Vs

State of Bihar

Criminal Appeal No. 220 of 1980

(CJI Y. V. Chandrachud, D. A. Desai JJ)

18.03.1980

ORDER

1. Heard counsel. Special leave granted.
2. We had called for a report from the Civil Surgeon on the age of the appellant - Sheo Shankar Singh - since it was argued before us that, when the offence was committed, the appellant was a 'child' within the meaning of the Bihar Children Third Ordinance, 1979. The Civil Surgeon of Bhojpur, Arrah, has sent his report saying that on February 14, 1980, the appellant was between 18 to 20 years of age. Since the offence was committed about five years before the date of examination by the Civil Surgeon, the appellant must have been less than 16 years of age then.
3. The Bihar Ordinance defines a 'child' to mean "a boy or a girls who has not attained the age or sixteen years or eighteen years, respectively, as the case may be". Since the appellant was less than 16 years of age of the time when the offence was committed, the provisions of the Ordinance are clearly attached.
4. The prosecution against the appellant was pending on the date when the Ordinance came into force. Clause 26 of the Ordinance provides, insofar as is material that :

Notwithstanding anything contained in this Act all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been based; if the court finds that the child has committed any offence, it shall record such finding and instead of passing any sentence, it shall forward the child to the children's court which shall pass orders in respect of that child in accordance with the provisions of this Act as if the court was satisfied on inquiry under this Act that the child has committed the offence. /
5. Clause 21 of the Ordinance provides, to the extent material, that " (1) Where a children's court is satisfied on enquiry that a child has committed an offence..... the children's court may" pass may of the orders provided for under the clause. It now becomes necessary to direct that the children's court will deal with the case and pass an appropriate order under Clause 21.
- 6 In view of the provisions of the Bihar Ordinance we confirm the order of conviction but set aside the order of sentence and remit the matter to the children's court for passing an appropriate order under Clause 21 of the Ordinance.

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