Munna and Others

Vs

State of Uttar Pradesh and Others

Writ Petition Nos. 9133 & 8974 of 1981 and 6 of 1982

(P. N. Bhagwati, R. S. Pathak JJ)

19.01.1982

ORDER

1. These three writ petitions came before us no notice to the state of Uttar Pradesh. They seek relief in respect of certain juvenile under-trial prisoners in the Kanpur Central Jail. The allegations in respect of these juvenile under-trail prisoners are that though there is a Children's Home in Kanpur, these juvenile under-trial prisoners who are, according to the allegations in the writ petition, more than 100 in number are lodged in the Kanpur Central Jail instead of being sent to the Children's Home and they are being sexually exploited by the adult prisoners. These allegations are based on a news report published in the issue of the Indian Express dated December 2, 1981 where a reference is made to a visit of Shri. Madhu Mehta of the Hindustani Andolan to the Kanpur Central Jail incognito. Shri. Madhu Mehta, according to this news report, found that "young boys of 10 to 14 years" were being "supplied to convicts for their delectation" and boy named Munna whom he met, was in agony because "after the way he was used, the was unable to sit". When these three writ petitions based on the news report came up for admission, it was not possible to state whether these allegations contained in the news report were correct or not. But if they were correct, they disclosed an extremely distressing state of affairs and they were correct, they disclosed an extremely distressing state of affairs and they were sufficient to shock the conscience of the court. The court, therefore, issued notice to the State of Uttar Pradesh in each of these three writ petitions. But, it appears that, in the meanwhile, a writ petition bearing number 14645 of 1981 was also filed in the High Court of Allahabad by an organisation called Human Rights Organisation seeking relief in respect of these juvenile under-trial prisoners and on this writ petition, the High Court of Allahabad rightly activated itself and decided to investigate into the matter and with that end in view, made an order dated December 18, 1981 requesting the senior most Sessions Judge of Kanpur to visit the Kanpur Central Jail and to make a report on the following points :

> 1. Whether there is any detenu below the age of 16 years who being detained in the District Jail, Kanpur ? If so, the names of such detenus and the offences in connection with which they are being detained be indicated.
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> 2. Whether any detenu below the age of 21 years is being kept under fetters or was being kept under fetters ?
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> 3. Whether any such person is being subjected to torture of the nature mentioned in the petition ?
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> 4. Whether such immates of the prison are being provided with proper medical facilities ?

The Sessions Judge accordingly visited the Kanpur Central Jail on December 21, 1981 and submitted his Report dated December 22, 1981 to the High Court of Allahabad. We do not propose to consider this Report in detail at this stage, but suffice it to state that according to this Report, there were admittedly seven juvenile under-trial prisoners below the age of 16 in the Kanpur Central Jail, but curiously enough, barring one Deshraj who was transferred to the Children's Home, Kanpur on December 19, 1981, all the rest happened to be released on different dates between December 7 and 16, 1981, before the order made by the Allahabad High Court on December 18, 1981. It is rather interesting to not that the news report in the issue of the Indian Express was published on December 2, 1981 and Writ Petition No. 8974 of 1981 which is the first of these three writ petitions was filed by miss Lily Thomas on December 3, 1981 and these juvenile under-trial prisoners were released within a few days of the publication of the news report and the filling of the writ petition. Even so far as Deshraj is concerned, though he was admitted in the Kanpur Central jail on March 7, 1981, he was not transferred to the Children's Home, Kanpur until December 19, 1981 after the order was made by the Allahabad High Court. The consequence of release of these under-trial juvenile prisoners, except Deshraj, was that the Sessions Judge could not interview any of them when he visited the Kanpur Central Jail on December 21, 1981. The Sessions Judge gave in Annexure A to his Report the names, ages and other particulars of 84 under-trial prisoners who, according to the jail record, were above 16 but below 21 years of age and added that the possibility could not be ruled out that on proper scientific medical examination, three or four out of these 84 under-trial prisoners might be found to be below 16 years of age. The Session Judge picked out nine from amongst these under-trial prisoners and got them examined by the Chief Medical Officer and enclosed the Report of the Chief Medical Officer as Annexure B to his Report. The Session Judge also reported that there appeared to be general ignorance in the Kanpur Central Jail about the provisions of the U.P. Children Act, 1951 and observed :

All the child accused mentioned in Annexure B should have been produced before the Juvenile Judge after their arrest. Where there was doubt whether the detenu was above the age of 16 or below it, he should have been; sent for medical report [sic examination] in connection with his age and on being found to be a child, should have been dealt in accordance with the Children Act.

The Sessions Judge instructed the Jail Superintendent and the jail doctor that in case there was any doubt about the age of an under-trial prisoner, they should instead of relying upon the police papers with regard to age, obtain the opinion of the Chief Medical Officer and "apprise the court concerned of it so that the presiding officer directs the accused to be produced before the Juvenile Judge to enable him to take the benefit of the provisions of the Children Act for a better social order". We do not know what order has been passed by the Allahabad high Court in the writ petition before it but when these three writ petition came up for hearing before us on January 5, 1982, the report of the sessions Judge was placed before us and a affidavit in reply was also filed by the Assistant Jailer of the Kanpur Central Jail denying the allegations made in the news report.

2. Now in the first place, since these three writ petition are based upon certain statements said to have been made by Shri. Madhu Mehta and set out in the news report of the Indian Express, we

think it would be desirable to join Shri. Madhu Mehta as a party respondent in each of the three writ petitions, so that he can place before the court all the facts gathered by him in regard to the juvenile inmates of the Kanpur Central Jail. The Assistant Jailer has in his affidavit in reply disputed that Shri. Madhu Mehta ever visited the jail, but since, according to the news report, Shri. Madhu Mehta entered the jail incognito, it is quite possible that the Assistant Jailer may not have any record of his visit. But, since the Assistant Jailer has denied the visit of Shri. Madhu Mehta, we think it necessary that Shri. Madhu Mehta should be impleaded as a party respondent to the writ petitions so that he can state on oath whether he visited the Kanpur Central Jail and if so, what were the facts which he observed. We cannot reject in limine the allegations made in the news report in regard to what Shri. Madhu Mehta found in the course of his visit to the Kanpur Central Jail, merely because the Assistant Jailer has disputed the visit of Shri. Madhu Mehta. The allegations are indeed so serious and, if correct, disclose to what utter depths of depravity man can sink, that the court cannot abdicate its constitutional duty of ensuring human dignity to the juvenile under-trial prisoners and summarily throw out the three writ petitions merely on the basis of a denial made by the Assistant Jailer. We must investigate into this matter not only in the interest of fair administration of justice but also for enforcing the basic human rights of these unfortunate juvenile under-trial prisoners who re alleged to have been the victims of sexual exploitation. Juvenile delinquency is, by and large, a product of social and economic maladjustment. Even if it is found that these juveniles have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail. Moreover, the object of punishment being reformation, we fail to see that social objective can be gained by sending juvenile to jails where they would come into contact with hardened criminals and lose whatever sensitivity they may have to finer and nobler sentiments. That is the reason why Children Acts are enacted by states all over the country and the U.P. legislature has also enacted the Uttar Pradesh Children Act, 1951. Since, according to the report of the Session Judge, there were seven juvenile under-trial prisoners below the age of 16 years, that being the limit of age below which a juvenile would be regarded as a 'child' within the meaning of the Uttar Pradesh Children Act, 1951, and out of these seven child under-trial prisoners, six were released prior to the visit of the Sessions Judge and they could not therefore be interviewed by the Sessions Judge, we would direct Shri. O. P. Garg, Secretary of the U.P. State Board of Legal Aid and Advice, to immediately contact these six children after finding out their addresses either from the court proceedings or from the jail records and take their statements with a view to ascertaining what was the treatment meted out to them in the Kanpur Central Jail and whether any of them was maltreated or sexually exploited. Shri. O. P. Garg will immediately without any delay, proceeded to take the statements of these six children and submit them to this Court along with his report on or before January 27, 1982. His expenses may be met by the U.P. State Board of Legal Aid and Advice.

3. We should also like the state of Uttar Pradesh and the Superintendent of the Kanpur Central Jail to inform us by a proper affidavit before the next bearing of the writ petitions as to what were the circumstances in which these six children whose names are given at serial numbers 2 to 7 in Annexure B were released, and also produced before us the orders of the Magistrates directing their release. We should also like the state of Uttar Pradesh and the Superintendent of the Kanpur Central Jail to inform us us to why Deshraj was detained in the Kanpur Central Jail from March 7, 1981 though he was admittedly, even on the basis of the jail records, a child below 16 years of age and how did it happen that suddenly on December 19, 1981, an order was obtained for transferring him to the Children's Home, Kanpur. The State of Uttar Pradesh and the Superintendent of the Kanpur Central Jail will also explain as to why such an order for transfer of Deshraj to the Children's Home, Kanpur cold not be obtained earlier.

4. The learned counsel appearing on behalf of the State of Uttar Pradesh handed over to us copies of Annexures A and B, but we do not have copies of the other annexures to the report of the sessions Judge. We would therefore request the Registrar of the High Court of Allahabad to forward to us immediately copies of all the annexures to the report of the Sessions Judge. The copies may be in quadruplicate.

5. Since, according to the report of the Session Judge, seven children were lodged in the Kanpur Central Jail and perhaps a few more out of the 84 under-trial prisoners mentioned in Annexure A to the report of the Sessions Judge could possibly be children within the meaning of Uttar Pradesh Children Act, 1951, we think it is necessary to point out the under the provisions of the that Act, no child can, except in the rare cases provided in the Act, be detained in jail. Chapter IV of the Act deals with youthful offenders. Section 23 which occurs in this chapter provides in sub-section [1] that when a person apparently under the age of 16 years is arrested for a non-bailable offence and cannot be brought forth before a court, the officer in charge of the police station to which such person is brought may in any case and shall unless the offence is one of culpable homicide or is an offence punishable with death or transportation release him on bail unless for reasons to be recorded in writing the officer believes that such release will bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice. section 24 then proceeds to enact that when a person apparently under the age of 16 years having been arrested is not released under Section 23 or otherwise, the officer in charge of the police station, shall cause him to be detained in the prescribed manner until he can be brought before a court. So also Section 25 provides that a court, on remanding or committing for trial a child who is not released on bail, shall order him to be detained in the prescribed manner until he can be brought before a court. So also Section 25 provides that a court, on remanding or committing for trial a child who is not released on bail, shall order him to be detained in the prescribed manner. The manner in which a child can be detained is prescribed by the Uttar Pradesh Children Rules, 1962 made in exercise of the powers conferred under sub-section [1] of Section 88 of the Uttar Pradesh Children Act, 1951. Rules 14 and 15 are the relevant rules which make provision in this behalf. Rule 14 provides that except as provided in the Act, where a child having been arrested is not released on bail under Section 23, the officer in charge of the police station shall cause him to be detained in a place of safety until he can be brought before a court and Rule 15 says that except as provided in the Act, where a child is not released on bail, the court shall on remanding or committing a child for trial order him to be detained in a place of safety pending the disposal of the proceeding. What is a "place of safety" is defined in Section 2, sub-section [9] of the Act to mean, "any observation home or any orphanage, hospital, or any other suitable place or institution the occupier or manager of which is willing temporarily to receive a child; or where such observation home, orphanage, hospital or other suitable place or institution is not available in the case of a male child only, a police station in which arrangements are available or can be made for the safe keeping of a child is arrested for an offence and is not released on bail, be cannot be sent to jail but he must be detained in a place of safety as defined in Section 2, sub-section [9] of the Act. The inhibition against sending a child to jail does not depend upon any proof that he is a child under the age of 16 years but as soon as it appears that a person arrested is apparently under the age of 16 years this inhibition is attracted. The reason for this inhibition lies in the court solitude which the law entertains for juveniles below the age of 16 years. The law is very much concerned to see that juveniles do not come into contract with hardened criminals and their chances of reformation are not blighted by contact with criminal offenders. The law throws a cloak of protection round juvenile and seeks to isolate them from criminal offenders, because the emphasis placed by the law is not on incarceration but on reformation. How anxious is the law to protect young children from contamination with

hardened criminals is also apparent from section 27 of the Act which provides, subject only to a few limited and exceptional cases referred to in the proviso, that notwithstanding anything contained to the contrary, no court can sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. It would thus be seen that even where a child is convicted of an offence, he is not to be sent to a prison but the may be committed to an approved school under Section 29 or either discharged or committed to suitable custody under section 30. Even where a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment which under the provisions of the Act it is authorised to inflict is sufficient, Section 32 provides that the offender shall not be sent to jail but shall be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the state Government. Section 33 sets out various methods of dealing with children charged with offences. But in no case except the exceptional ones mentioned in the Act, as child can be sent to jail. It is therefore very surprising that the seven children whose name are mentioned in Annexure BN to the report of the sessions Judge were sent by the concerned Magistrate to jail instead of being sent to Children's Home which we believe was a place of safety in Kanpur within the meaning of Section 2, sub-section [9] of the act. We would strongly impress upon the magistrates in the State of Uttar Pradesh - and what we say here must apply mutatis mutandis to the magistrates in the other parts of the country where the Children acts are in force, that they must be extremely careful to see that no person apparently under the age of 16 years is sent to jail but they must be detained in a Children's Home or other place of safety. It is absolutely essential in order to implement the provisions of the Uttar Pradesh Children Act, 1951 that Children's Home or other place of safety. It is absolutely essential in order to implement the provisions of the Uttar Pradesh Children act, 1951 that Children's Home or other suitable places of safety are set up by the Government for the purpose of providing a place of detention for children under the age of 16 years. No words we can use would be strong enough to convey our feelings in this respect. A nation which is not concerned with the welfare of its children cannot look forward to a bright future.

6. With these observations, we adjourn the hearing of these three writ petitions to January 29, 1982.

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