

Hawaldar Singh and Others

Vs

State Uttar Pradesh

Special Leave Petition (Criminal) No. 1102 of 1982

(A. N. Sen, D. P. Madon JJ)

09.09.1983

ORDER

1. Notice in this special this special leave petition was confined to the question whether petitioners 2 and 3 Hawaldar Singh and Khan Singh were under the age of 16 years on the date of occurrence and therefore entitled to the benefit of the U. P. Children Act, 1961 although no such question was raised either before the court of Session or the High Court. This Court however by its order dated November 2, 1982 though it proper, in the interests of justice, to direct the Sessions Judge of Kheri to hold an inquiry into the question of age of each of the two petitioners on the date of the incident. In compliance with the said directions the learned Sessions Judge forwarded his report dated December 14, 1982 stating that no evidence was adduced by any of the parties as regards the age of the two petitioners Hawaldar Singh and Khan Singh but that the reports of the Chief Medical Officer dated December 7, 1982 showed that both of them had attained the age of 16 years on the date of the occurrence and therefore they were not entitled to the benefit of the U. P. children Act.

2. When the matter was placed before this court on February 14, 1983, a grievance was made by learned counsel for the petitioners that the report of the learned Sessions Judge was not based on any evidence. He also prayed for a fresh opportunity to be given to the petitioners to lead their evidence. This Court accordingly by its order of even date directed the learned Sessions Judge to record the evidence of the Chief Medical Officer and also to afford a fresh opportunity to the petitioners to adduce evidence as to their age. The learned Sessions Judge has now along with his report dated March 11, 1983 forwarded the deposition of Dr. S. K. Tiwari, Senior Radiologist, CW 1 and Dr. B. S. Mathur, Chief Medical Officer CW 2, both of whom are attached to the Sadar Hospital, Bareilly, together with the X-ray reports and X-ray plates. For reasons best known to them, the petitioners again did not avail of the opportunity to lead evidence in proof of their age but instead have filed two documents viz. School Leaving Certificate of Khan Singh and an entry from the Kutumb register.

3. It is amply clear that despite repeated opportunities, the petitioners have led no evidence and have failed to prove that either of them was under the age of 16 years on the date of the occurrence and therefore entitled to the benefit of the U. P. Children Act. Learned counsel for the petitioners however drew attention to the fact that in the bail application moved before the Court of Session during the trial the age of one of the petitioners was shown as 11 years. We find it difficult to rely on so slender a basis as to hold that the petitioners were governed by the U. P. Children Act. He further showed us two horoscopes in an endeavor to establish that the petitioners were children at the time of the commission of the offence. We had a look at the two horoscopes, and thought the papers on which they are engrossed given an ancient appearance, the documents could always be brought into existence at any time. We cannot rely upon the two horoscopes produced before us.

4. On the basis of the testimony of Dr. S. K. Tiwari, Senior radiologist, CW 1 and Dr. B. S. Mathur, Chief Medical officer, CW 2 which stands fully corroborated by the X-ray reports and X-ray plates submitted by the, we are satisfied that no other conclusion is possible than the one reached by the learned Sessions Judge, an the two petitioners Hawaldar Singh and Khan Singh are not entitled to the benefit of the U. P. children Act, 1961.

5. The special leave petition is accordingly dismissed. The bail bond of petitioners 3 Khan Singh shall stand cancelled and he should be taken into custody forthwith and sent to jain to serve out his sentence.

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