

Sube Singh and Others

Vs

State of Haryana and Others

Writ Petition (Criminal) No. 648 of 1987

(M. N. Venkatachaliah, Ranganath Misra JJ)

21.09.1988

JUDGMENT

RANGANATH MISRA, J. –

1. These are a batch of writ petitions under Article 32 of the Constitution raising the common claim of entitlement to the benefit of Section 5 of the Punjab Borstal Act, 1926.
2. In each of these writ petitions, the petitioner has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to life imprisonment. The State of Haryana has challenged the claim of the petitioner in each of these writ petitions.
3. Learned counsel for the petitioners has relied upon the decision of this Court in *Have Singh v. State of Haryana* ((1987) 4 SCC 207 : 1987 SCC (Cri) 738) in support of the claim advanced in the writ petitions. A two Judge Bench of this Court in that case referred to Section 5 of the Act and held : (SCC pp. 212-13, para 6)

On a conspectus of the aforesaid decision as well as on a consideration of the facts and circumstances the only conclusion follows that the petitioner who has already under gone actual imprisonment for seven years is entitled to be released from detention and from imprisonment. Paragraph 516-B of the Punjab Jail Manual is not applicable in this case as the petitioner who was an adolescent convict below twenty-one years of age was sent to the Borstal Institute at Hissar for detention in accordance with the provisions of Section 5 of the Punjab Borstal Act, 1926. He being convicted by the Sessions Judge the maximum period of detention as prescribed by the Act is seven years. We have already said hereinbefore that such an inmate of the Borstal Institute cannot be transferred to jail on the ground that he has attained the age of twenty-one years as the said Act does not provide for the same. The only provision of transfer to jail is in the case of incorrigible inmates convicted of major Borstal Institution offence.

4. Reliance was also placed by learned counsel for the petitioners on another two Judge Bench decision of this Court in the case of *State of Andhra Pradesh v. Vallabhapuram Ravi* ((1984) 4 SCC 410 : 1984 SCC (Cri) 635). That was a case under the Andhra Pradesh Borstal Schools Act, 1925 (5 of 1926) and the question for consideration was the same as here with reference to the provision of Section 8 of that Act. The two Judge Bench held that the provisions of the Borstal Schools Act applied to the offence punishable under Section 302 of the Indian Penal Code.
5. Both these case were referred to in *Subhash Chand v. State of Haryana* ((1988) 1 SCC 717 : 1988 SCC (Cri) 259) by a three Judge Bench. It referred to *Hava Singh* case at length. The three

Judge Bench in its judgment referred to the definition of 'offence' under Section 2(4) of the Punjab Borstal Act which defined 'offence' to mean -

an offence punishable with transportation or rigorous imprisonment under the Indian Penal Code other than -

(a) an offence punishable with death;

The court found that Section 302 of the Indian Penal Code provides :

(SCC p. 721, para 4)

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine

and proceeded to say again :

One of the punishments for the offence of murder is death and, therefore, the offence of murder would be covered within Section 2(4)(i)(a) of the Punjab Act and to such a conviction the Punjab Borstal Act would have no application. Support for such a view is available from several decisions of different High Courts.

The court ultimately held : (SCC p. 722, para 5)

In Hava Singh case ((1987) 4 SCC 207 : 1987 SCC (Cri) 738) the definition was not placed for consideration before the court and, therefore, the conclusion which has been reached is not correct. The Punjab Borstal Act does not have application to an offence punishable under section 302 of IPC.

This being a decision of a larger Bench we are bound by it.

6. In the Webster's Third New International Dictionary the following meaning has been given to the word 'punishable' :

Deserving of, or liable to, punishment : capable of being punished by law or right.

7. Aiyar's The Law Lexicon (Reprint Edition 1987) gives the meaning of 'punishable' thus :

The word 'punishable' as used in statutes which declare that certain offences are punishable in a certain way, means liable to be punished in the way designated.

8. In Bouvier's Law Dictionary, the meaning of the word 'punishable' has been given as 'liable to punishment'. In Words and Phrases - Permanent Edition, the following meaning has been given :

The word 'punishable' in a statute stating that a crime is punishable by a designated penalty or term of year in the State prison limits the penalty or term of years to the amount or term of years stated in the statute.

9. The word 'punishable' is ordinarily defined as deserving of or capable or liable to punishment, punishable within statute providing that defendant may have ten (sic) peremptory challenges if offences charged is 'punishable' with death or by life imprisonment; means deserving of or liable to

punishment; capable of being punished by law or right, may be punished, or liable to be punished, and not must be punished.

10. Corpus Juris Secundum gives the meaning as :

Deserving of, or liable to, punishment; capable of being punished by law or right; said of persons or offences. The meaning of the term is not 'must be punished', but 'may be punished', or 'liable to be punished'.

In the absence of a definition of 'punishable' we have referred to these for gathering the exact meaning of the word. In the sense given to the word, as above, there can be no doubt that the offence of under is punishable with death even though the punishment awarded is not death but imprisonment for life.

11. An earlier decision of this Court in Kunwar Bahadur v. State of Uttar Pradesh (1980 Supp SCC 339 : 1981 SCC (Cri) 275), where a two Judge Bench dealt with the provisions of the United Provinces Borstal Act 7 of 1938 was also relied upon. The judgment is a short one. Detailed reference to the provisions of the United Provinces Act has not been made but Section 7 of the Act was referred to and it was observed : (SCC p. 340, para 2)

Under this section where a prisoner is sentenced for transportation i.e. life imprisonment and is below the age of 21 years he should be sent to Borstal School where he cannot be detained for more than five years. The law thus contemplates that for such an offender the sentence of five years will be equivalent even to a higher sentence of life imprisonment.

Obviously in the united Provinces Act, there is no definition of 'offence' as available in the Punjab Act. Therefore, the decision in Kunwar Bahadur case (1980 Supp SCC 339 : 1981 SCC (Cri) 275) is not really material of our purpose.

12. 'Punishable' carries a meaning 'liable to be punished' as indicated by the three Judge Bench. Since the offence under Section 302 is punishable with death, the provisions of the Punjab Borstal Act would not cover an offence under Section 302 of IPC and the benefit would not therefore, be available to an accused convicted of the offence under Section 302 IPC.

13. During the hearing of the matters learned counsel for the petitioners had maintained that the provisions of the Punjab Act should be suitably amended to bring about uniformity in the law on the subject. This is a matter for the State and the legislature and it is for them to consider whether the provision should be suitably amended keeping the modern concept of punishment and treatment of adolescents in view.

14. Each of the writ petitions is dismissed. There would be no order for costs.

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