

Ajay Kumar

v.

State of M.P

(Supreme Court Of India)

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA HON'BLE MR. JUSTICE ANIL R. DAVE

Ajay Kumar v. State of M.P

Criminal Appeal No. 1908 Of 2010 (@ Special Leave Petition (Crl) No. 6618 Of 2007) | 01-10-2010

1. Leave granted.

2. The issue that is raised for consideration in this appeal is whether the appellant herein was a juvenile on the date of the commission of the offence, that is, on 17.2.1994. An issue regarding the age of the appellant and that he was a juvenile was raised before the trial Court. However, despite the fact that the said issue was raised, no categorical finding was given by the trial court in that regard.

3. The said issue was however not raised by the appellant before this Court at the time of filing of the appeal but has now been raised by filing a separate application under Section 7-A of the Juvenile Justice (Case and Protection of Children) Act, 2000 (hereinafter referred to as the "Juvenile Justice Act") claiming juvenility of the appellant on the date of the offence. It is stated in the application that his date of birth is 3.7.1978 and therefore he was aged 15 years 7 months 14 days on the date of occurrence.

4. In terms of the Juvenile Justice Act, an inquiry is to be conducted by the Court before whom such a plea is raised and the Court has to render a finding as to whether or not, the appellant was a juvenile and in case he is found to be juvenile then in that event, the court has to forward the papers to the Board for passing an appropriate orders and that the sentence passed by the Court shall be deemed to have no effect.

5. Under Section 15 of the Juvenile Justice Act, it is provided that if the Board is satisfied on inquiry that a juvenile has committed an offence, then, the Board may pass different types of orders as mentioned in Sub Section 1 of Section 15 of the Juvenile Justice Act. One of the orders that is contemplated under the said provisions is to make an order directing the juvenile to be sent to a special home for a period of three years. That appears to be the maximum period for which the juvenile could be kept in a special home. Enough evidence

has been placed on record by the appellant in the application filed which could not be rebutted by the State that he was a minor on the date of commission of the offence.

6. Rule 98 of The Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as Juvenile Justice Rules, 2007) provides the procedure as to how a case of a juvenile is in conflict with law should be disposed of. The same reads as follows:

98- "Disposed off cases of juveniles in conflict with law.- The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the Act".

7. In the light of the aforesaid provisions, the maximum period for which a juvenile could be kept to be in special home for three years. In the instant case, we are informed that the appellant who is proved to be a juvenile has undergone detention for a period of about approximately 14 years. In that view of the matter, since the appellant herein was a minor on the date of commission of an offence and has already undergone more than the maximum period of detention as provided for under Section 15 of the Juvenile Justice Act. By following the provisions of Rule 98 of the Juvenile Justice Rules, 2007 read with Section 15 of the Juvenile Justice Act, we allow the appeal with a direction that the appellant be released forthwith.

8. In terms of the aforesaid order, the appeal stands allowed to the aforesaid extent.

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