

Anil Agarwala & Another

v.

State of West Bengal

(Supreme Court Of India)

HON'BLE MR. JUSTICE ALTAMAS KABIR HON'BLE MR. JUSTICE
CYRIAC JOSEPH

Criminal Appeal No. 355 2011 (Arising Out Of S.L.P.(Criminal) No. 3180 Of
2009) | 07-02-2011

Leave granted.

This appeal is directed against the judgment and order dated 10th February, 2009, passed by the Calcutta High Court in CRR No. 2535 of 2005, dismissing the application filed on behalf of the appellants claiming that they were minors at the time of the alleged offence and that they could not, therefore, be tried along with the adult co-accused.

The only ground for rejection of the appellants' application by the trial Court was that the application had been made at a belated stage and the same, therefore, could not be entertained.

We are unable to agree with the said view expressed by the High Court in view of the statutory provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2009 (for short "The Act"). Section 7A of the Act, as it now reads, gives right to any accused to raise the question of juvenility at any point of time, and if such an issue is raised, the Court is under an obligation to make an inquiry and deal with the question. The said Section has to be read along with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, as amended in 2007. Accordingly, the said observation of the High Court cannot be sustained and is set aside. However, despite holding that the application had been made belatedly, the High Court has also granted liberty to the appellants to raise their plea of juvenility and to establish the same before the Additional Sessions Judge at the stage of the examination under Section 313 Cr.P.C.

Section 7A of the above Act reads as follows:

"Procedure to be followed when claim of juvenility is raised before any court. -

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

Rule 12 of the 2007 Rules provides the procedure to be followed in determination of age and is also set out herein below:

"Procedure to be followed in determination of Age (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the

juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

And, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i),(ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the

conclusive proof specified in sub-rule (3) the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Having regard to the above provisions, we set aside the order passed by the High Court which is incompatible with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and direct the trial Court to first of all look into the question of juvenility, as claimed by the appellants herein and after disposal of the claim made by the appellants that they were minors on the date of alleged incident, it shall proceed with the trial. In the event, the trial Court comes to a finding that the appellants were minors at the time of commission of the offence, it shall immediately send them to the concerned Juvenile Justice Board for considering their cases in accordance with the provisions of the 2000 Act. It is expected that these applications which have been filed on behalf of the appellants will be disposed of within three months from the date of receipt of a copy of this order.

The Registry is directed to communicate this order to the Additional Sessions Judge, 2nd Court, Jalpaiguri, West Bengal, immediately.

The appeal is disposed of accordingly.

