

Court No. - 47

Case :- CRIMINAL APPEAL No. - 2682 of 2016

Appellant :- Satyaveer

Respondent :- State of U.P.

Counsel for Appellant :- Deepak Kumar Pandey, Abhishek Mayank, Abhishek Srivastava, Mary Puncha (Sheeb Jose), Mohd. Kalim

Counsel for Respondent :- G.A.

Hon'ble Arvind Singh Sangwan, J.

Hon'ble Ram Manohar Narayan Mishra, J.

Heard on the application for taking on record the order dated 22nd of September, 2018, passed by Juvenile Justice Board, Hathras, declaring the appellant Satyaveer to be a juvenile by holding his age to be 15 years, 9 months and 22 days.

A perusal of this order would show that an application No.47 of 2018 dated 4th August, 2018, was filed by the appellant Satyaveer to declare him juvenile and in support of his contention, he placed a Transfer Certificate relating to Class-X issued by Nehru Smarak Bhagwandas Inter College, Maindu (Hathras). The appellant also examined a witness from the school, who prepared the certificate. Thereafter, it is observed in the order that the parties were heard and as no evidence from the prosecution was recorded and it is concluded that on the basis of said certificate, the appellant was aged 15 years, 9 months and 22 days at the time of said incident. This application was decided on 22nd September, 2018 and the order clearly reflects that no notice was issued to the informant. It is worth noticing that the impugned judgement was passed by Additional Session Judge, Court No.3 on 6th April, 2016 upholding the appellant guilty of offence under Section 396 IPC and awarded him life sentence with a fine of Rs.40,000/-, out of which 70 percent of fine was to be paid to the widow of the deceased.

On a Court query, learned counsel for the appellant as well as learned AGA admitted that no such application to declare the appellant juvenile was filed before the Court of Additional Session Judge during pendency of trial.

It is quite surprising that in similar circumstances, on earlier occasion also this Court has come across various orders passed by Juvenile Justice Board in the State of Uttar Pradesh wherein, the

jurisdiction is assumed after an order of conviction has been passed by the competent Court of law as in this case the Additional Session Judge has concluded the trial on 6th April, 2016 and the said Court has become 'Functus Officio' and the present appeal was also filed in the year 2016, which is pending. Therefore, during pendency of present appeal, the Juvenile Justice Board has opened a parallel trial without there being any order passed by the appellate Court.

In this regard, this Court has passed an order on 5th April, 2024 in Criminal Appeal No.3672 of 2016, operative part of the order is reproduced as under:-

"Though it is well settled principle of law that objection regarding juvenility of an accused can be taken at any stage, including during the pendency of appeal. However, the same powers are exercised by the appellate court by conducting an inquiry either itself or directing the trial court or the JJB, to conduct an inquiry and submit a report. Whereas in the instant case, without there being any order by the appellate court, the JJB has entertained an application independently that too, two years after filing of this present appeal and has recorded a finding without afforded any opportunity of hearing to the informant.

Even previously this Court has noticed a similar case where after filing of an appeal before this Court, the JJB has entertained an application, without there being any order by the appellate court.

The Supreme Court in Karan @ Fatiya Vs. The State of Madhya Pradesh reported in (2023) 5 SCC 504 while relying upon an earlier judgment in Raju Vs. State of Haryana (2019) 14 SCC 401, has held that where the appellant has not taken the plea of juvenility before trial court and such plea is raised before the High Court, which was rejected. The Supreme Court got an inquiry conducted by the Registrar (Judicial) of the Court who submitted a report, and accordingly the appeal was decided in light of the said report.

In Jitendra Singh @ Babboo Singh and others Vs. State of U.P. reported in (2013) 11 SCC 193 while relying upon the earlier judgment in Kalu @ Amit Vs. State of Haryana, the Supreme Court observed that plea of juvenility was raised for the first time, got an inquiry conducted and thereafter proceeded to direct the Board to pass appropriate order under Section 15 of the Juvenile Act. It is also held in this judgment that in all the pending cases including trial, appeal, revision or any other proceedings, the determination of juvenility shall be in terms of Clause (1) of Section 2 of the Act, even if juvenile cases to be so on or before the date of commencement of 2008.

In the instant case, the Special Court had already decided the application filed by the appellant holding that he is not a juvenile and the revision was also dismissed by the High Court, the Juvenile Justice Board was not competent to assume jurisdiction independently without there being any order passed by the appellate court.

In Babloo Pasi Vs. State of Jharkhand and another reported in (2008) 13 SCC 133 the Supreme Court has set-aside the order of the High Court, where an order was passed without affording opportunity to the complainant.

In the instant case also, the Juvenile Justice Board has not afforded any opportunity of hearing to the complainant/ victim, though the court of sessions while deciding such application has afforded the parties to lead their evidence and thereafter the case was decided.

Let an explanation be called from the concerned Magistrate as to how the application was entertained and decided when trial stands concluded and the appeal was pending before this Court. It will be open for the concerned officer to inspect the record with the criminal section before submitting the report.

Since such or similar orders are noticed repeatedly in appeals, we direct the Director JTRI, Lucknow to hold an online seminar/ conference of all the Principal Magistrates of JJB about the manner and the procedure to be followed when trial is already culminated and the applications are filed to declare a person juvenile. Report of director be also filed before the next date i.e. 15th May, 2024.

The director will also inform the number of such similar seminars conducted by JTRI, Lucknow giving details of all the resources persons who have actually conducted such seminars.

Registrar General, is directed to communicate the order to the concerned judicial officer as well as to the director forthwith."

Learned counsel for the appellant submitted that in the application dated 4th August, 2018, filed before the Juvenile Justice Board, the appellant has given a reference of **Criminal Writ-Public Interest Litigation No.855 of 2012 (Sister Sheeba Jose A Lawyer and Human Right Activist vs. State of U.P. and others)**, in which some directions were issued by this Court on 25th May, 2012.

A perusal of said order shows that an affidavit was filed on behalf of the State that there are 72 inmates in the State of U.P. in 2012, which were below 18 years and were detained in various district and central jails. In view of provisions of Section 7A (1) of Juvenile Justice (Care and Protection of Children) Act, 2000, providing that the claim of juvenility can be raised before any Court and it shall be recognized at any stage, even after final disposal of the case and such claim shall be determined in terms of the provisions contained in the Act and the Juvenile Justice (Care and Protection of Children) Rules, 2007. In PIL, the Division Bench directed all the District Judges, who are Chairpersons of their respective Legal Services Authorities to look into the status of such persons and by providing them legal aid lawyers, their case

be placed before the Principal Judge, Juvenile Justice Board. It was also observed that as per the procedure, the prosecution and complainant will be given opportunity to examine their own witness and to cross-examine the witnesses on behalf of the accused and Juvenile Justice Board shall serve a notice on the complainant/prosecution before dealing the claim of juvenility. However, it is not recorded in this order that all such inmates were facing trial or their trial stands concluded.

Learned counsel for the appellant submitted that in the light of said judgement, the Juvenile Justice Board has assumed the jurisdiction even after conclusion of the trial.

A reliance is also placed on an order of Supreme Court in **S.L.P. (Criminal) No.643 of 2020, decided on 29.11.2021**, in case of **Ashok vs. The State of Madhya Pradesh** wherein, when an objection was raised before the Supreme Court regarding the juvenility of the appellant, a direction was issued to the Session Court to examine the claim of the said appellant (*Ashok*) to decide his claim of juvenility in accordance with law and submit a report to the Supreme Court within time specified.

In this order also, the Supreme Court has referred to the provisions of Section 7A (1) of Juvenile Justice (Care and Protection of Children) Act, 2000 with observation that claim of the juvenility can be raised before any Court, at any stage, even after final disposal of the case. It is thus clear from the order that the Supreme Court while entertaining the S.L.P. has itself directed the Court of Sessions to ascertain the age of the appellant.

In the instant case also the Juvenile Justice Board, Hathras without there being any such order passed by the Appellate Court has assumed the jurisdiction after conclusion of trial and has passed an order without even issuing notice to the informant/victim.

List this case on 15th May, 2024 alongwith Criminal Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP).

A copy of this order be also served upon Director J.T.R.I., Lucknow in terms of the previous order dated 5th April, 2024.

Considering that it is duty of concerned Administrative Committee to keep a check on the working of Juvenile Justice Board by randomly calling and scrutinizing their judgements, in absence of same, in additionally, we direct the Registrar General of this Court to circulate both the orders dated 5th April, 2024, passed in

Criminal Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP) as well as present order passed in present case to all the Sessions Judges in State of U.P. on e-mail, with a direction that being the Chairman of the Legal Services Authority of their respective districts, they will sensitize all the members of the Juvenile Justice Board, specially the Principal Magistrate of the Board about the procedure to be followed in cases where a trial has already been concluded; the trial Court has become Functus Officio; an appeal is already preferred by the accused person and without filing an application before the appellate Court to declare him juvenile, which may be decided in accordance with law, if, such application is independently filed before the Juvenile Justice Board at a subsequent stage, the Juvenile Justice Board will assume the jurisdiction only on direction or order passed by Appellate Court and that too by following the procedure under the Act and by giving notice to complainant/informant. The needful be done within two days and the report of all the concerned District and Session Judges be received in this regard by e-mail before 15th May, 2024.

Learned State Counsel has raised an objection that the appellant is involved in as many as nine cases under Sections 392, 396 and 411 IPC.

Learned counsel for the appellant seeks some time to file a supplementary affidavit explaining the same by 15th May, 2024.

Order Date :- 9.5.2024

Kamarjahan

Court No. - 47

Case :- CRIMINAL APPEAL No. - 3672 of 2016

Appellant :- Ravindra Alias Loola

Respondent :- State of U.P.

Counsel for Appellant :- Sushil Kumar, Mukul Yadav, Rahul Srivastava, Sunita Chauhan

Counsel for Respondent :- G.A., Kriti Mishra, Mahima Maurya Kushwaha, Mukesh Kumar Kushwaha

Hon'ble Arvind Singh Sangwan, J.

Hon'ble Ram Manohar Narayan Mishra, J.

During the course of argument it transpires that Ravindra Alias Loola has moved an application before the trial court/Additional Session Judge/ Special Court under the SC/ST Act, Hathras, for declaring him juvenile which was dismissed on 09th June, 2015 by following the procedure and allowing parties to lead evidence.

Thereafter the appellant Ravindra Alias Loola filed Criminal Revision No.2141 of 2015, challenging the said order which was dismissed by this Court on 08.12.2015 holding that the order dated 09, June 2015 passed by the trial court does not suffer from any illegality or impropriety. The trial ultimately concluded and the appellant vide judgment of conviction as well as order of sentence both dated 25 June. 2016 sentencing life imprisonment with fine. This appeal was filed in the year 2016 itself.

Learned counsel for the appellant has now relied on an order dated 12.08.2018 passed by the Juvenile Justices Board (in short JJB), Hathras handed by one Yogesh Chauhan, Principal Magistrate, JJB, Hathras declaring appellant as juvenile.

The perusal of this order show that application No.26 was filed in the year 2018, that is after the culmination of the trial by the court and after filing of the present appeal. In this order, the JJB, Hathras has declared appellant juvenile on the basis of a Class Vth Marksheet by holding that his age was 16 years 8 months and 3 days.

The counsel for the informant submitted that no notice was given by the JJB, Hathras to the informant despite the fact that on the date when the order was passed, the appellant Ravindra Alias Loola stand convicted for life by the trial judge, under the offences under Section 302 IPC and Section 3(2)(5) of SC/ST Act, which

requires a notice to be given to the informant.

Though it is well settled principle of law that objection regarding juvenility of an accused can be taken at any stage, including during the pendency of appeal. However, the same powers are exercised by the appellate court by conducting an inquiry either itself or directing the trial court or the JJB, to conduct an inquiry and submit a report. Whereas in the instant case, without there being any order by the appellate court, the JJB has entertained an application independently that too, two years after filing of this present appeal and has recorded a finding without afforded any opportunity of hearing to the informant.

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Order Date :- 5.4.2024

Ashish/-