

ITEM NO.5

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No. 848/2014
(Arising out of impugned final judgment and order dated 02/05/2013
in SBCRA No. 446/1986 passed by the High Court of Judicature for
Rajasthan at Jaipur)

MAHESH JOGI

Petitioner(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

(With application for bail and exemption from filing Official
Translation and office report)

Date : 16/12/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Mohan Pandey, A.O.R.

For Respondent(s) Mr. Shiv Mangal Sharma, A.A.G.
Mr. Ankit Shah, Adv.
Mr. Shrey Kapoor, Adv.
Ms. Ruchi Kohli, A.O.R.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal stands disposed of in terms of the
signed reportable order.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE.]

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

**CRIMINAL APPEAL NO. OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION(CRL.) NO. 848 OF 2014**

MAHESH JOGI APPELLANT

VERSUS

THE STATE OF RAJASTHAN RESPONDENT

O R D E R

In this Special Leave Petition, while ordering notice on 20th January, 2014, such notice was confined to the question as to whether the petitioner was a juvenile at the time of the commission of the offence. By our subsequent order dated 2nd July, 2014, after hearing learned counsel for the petitioner as well as the respondent-State, we directed the Additional Sessions Judge, Dausa Camp, Jaipur to hold an inquiry to find out as to whether the petitioner was a juvenile on the date of the commission of the offence i.e. 20th January, 1985. The learned Sessions Judge was directed to give an

opportunity to the petitioner to produce all requisite materials in support of the claim that he was a juvenile on the date of the occurrence and also to call for necessary documents from school authorities for ascertaining the said question.

2. Pursuant to our order, the learned Sessions Judge after holding an inquiry has submitted his Report dated 16th October, 2014. After detailed reference to the various materials placed before him, the learned Additional Sessions Judge, Dausa Camp, Jaipur, Rajasthan has submitted as under:-

"It is, therefore, having determined the age of petitioner/accused Mahesh Jogi son of Parasram, Caste-Jogi, resident of Bagwada, Police Station-Aamer, District-Jaipur(Raj.) order is passed that in Session Case No. 18/86(58/85) titled State v. Mahesh, the age of petitioner/accused on the date of commission of offence i.e. 20.01.1985 was about 17 years 04 months, meaning thereby that he had attained the age of 16 years and therefore he is not a juvenile delinquent."
[underlying is ours]

3. Leave granted.

4. Having perused the Report of the learned Additional Sessions Judge, we find that the appellant was about 17 years and 4 months as on the date of the occurrence namely 20th January, 1985. The conclusion of the learned Additional Sessions Judge that since accused-appellant

was above 16 years of age he was not a juvenile is not correct. This Court has held in a number of decisions as to what would be the effect of the Juvenile Justice(Care and Protection of Children) Act, 2000 [hereinafter referred to as 'the Act of 2000']. The age of a juvenile has been amended by which the age which was prescribed as 16 years to be a juvenile was revised as 18 years under the Act of 2000.

5. A question arose as to when conviction came to be imposed on an accused, prior to the coming into force of the Act of 2000, and a claim as to his status as a juvenile at the subsequent stages as to whether the protection or the benefits can be made available to him as a juvenile by virtue of the coming into force of the Act of 2000. In the decision reported in Hariram v. State of Rajasthan (2009) 13 SCC 193, it was ultimately held:-

".....a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act."

6. The said judgment was subsequently followed in the decisions reported in Ajay Kumar v. State of Madhya

Pradesh (2010) 15 SCC 83, Abuzar Hussain @ Gulzar Hossain v. State of West Bengal (2012) 10 SCC 489, Jitendra Singh alias Babboo Singh and another v. State of Uttar Pradesh(2013) 11 SCC 193 and Yakub Abdul Razak Memon v. State of Maharashtra 2013(13) SCC 1. One of us, Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla, in the judgment reported in JT (2014) 9 SC 243 titled Hakkim v. State represented through Deputy Superintendent of Police had occasion to follow the above said principle while dealing with a convict in Criminal Appeal No. 1410 of 2009(one of the three appeals). Therefore, after the coming into force of the Act of 2000, a juvenile who had not completed 18 years of age on the date of the commission of the offence was entitled to the benefits of the said Act.

7. Keeping the above legal principle consistently held by this Court in the above referred to decisions, when we consider the Report of the Additional Sessions Judge, Dausa Camp, Jaipur, Rajasthan, inasmuch as the appellant was only 17 years 4 months on 20th January, 1985, he was entitled for the benefit of the Act of 2000. Since notice was issued in this appeal by way of special leave confining to the question as to whether the appellant

was entitled for the benefit as a juvenile and by a decision reported in Jitendra Singh's case (supra), it was made clear that such benefit would only enure to the extent of the sentence imposed on the appellant, there is no scope for interfering with the conviction imposed on the appellant.

8. Therefore, even while affirming the conviction we hold that the appellant was a juvenile and has to be dealt with on that basis for imposition of sentence. We wish to follow the direction issued by this Court in the decision reported in Ajay Kumar's case (supra).

9. Paras 6 of the said decision is reproduced hereunder:-

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

"98. Disposed off cases of juveniles in conflict with law - 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 said Act."

10. In the light of the said decision, the appellant is referred to the Juvenile Justice Board and while setting aside the sentence awarded to him without interfering with the conviction, the Juvenile Justice Board is directed to pass appropriate orders under Section 15 of the Act as regards the sentence to be undergone by the appellant. The said exercise shall be carried out by the Juvenile Justice Board expeditiously preferably within one month from the date of receipt of a copy of this order.

11. The appeal stands disposed of on the above terms.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[ABHAY MANOHAR SAPRE]

NEW DELHI
DECEMBER 16, 2014.