

CASE NO.:
Appeal (crl.) 210 of 2005

PETITIONER:
Pratap Singh

RESPONDENT:
State of Jharkhand & Anr.

DATE OF JUDGMENT: 02/02/2005

BENCH:
N. SANTOSH HEGDE, S.N. VARIAVA, B.P. SINGH & H.K. SEMA

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (Crl.) NO. 3749 OF 2001)

H.K. SEMA, J.

Leave granted.

This appeal is directed against the judgment and order dated 10.9.2001 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 98 of 2001.

Briefly stated the facts giving rise to the filing of the present appeal are as follows:-

First Information Report was lodged before the police in Bokaro city registered as P.S. case No.1/99 dated 1.1.1999 for the offence under Sections 364A, 302/201 IPC read with Section 120B IPC to the effect that on 31.12.1998 the appellant was alleged as one of the conspirators to have caused the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the C.J.M. Chas on 22.11.1999. On production, the learned CJM assessed the age of the appellant to be around 18 years old. On 28.2.2000, a petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence i.e. 31.12.1998, whereupon the learned CJM transmitted the case to the Juvenile Court. The appellant was produced in the Juvenile Court on 3.3.2000. On his production the Juvenile Court assessed the age of the appellant by appearance to be between 15 and 16 years and directed the Civil Surgeon to constitute a Medical Board for the purpose of assessing the age of the appellant by scientific examination and submit a report. No such Medical Board was constituted. Thus, the learned ACJM asked the parties to adduce evidence and on examining the school leaving certificate and mark sheet of Central Board of Secondary Education came to the finding that the appellant was below 16 years of age as on 31.12.1998 taking the date of birth of the appellant as 18.12.1983 recorded in the aforesaid certificate. The appellant was then released on bail.

Aggrieved thereby the informant filed an appeal before the 1st Additional Sessions Judge, who after referring to the judgment of this Court rendered in Arnit Das vs. State of Bihar, (2000) 5 SCC 488 disposed of the appeal on 19.2.2001 holding that the Juvenile Court had erred in not taking note of the fact that the date of production before the Juvenile Court was the date relevant for deciding whether the appellant was juvenile or not for the purpose of trial and directed a fresh inquiry to assess the age of the appellant. Aggrieved thereby the appellant moved the High Court by filing Criminal Revision Petition. The High Court while disposing of the Revision has followed the decision rendered by this Court in Arnit Das (supra) and held that reckoning date is the date of production of the accused before the Court and not the date of the occurrence of the offence.

The High Court held that for determining the age of juvenile, the provisions of 1986 Act would apply and not 2000 Act. The High Court, however, took the view that the date of birth, as recorded in the school and the school certificate, should be the best evidence for fixing the age of the

appellant. High Court was also of the view that any other evidence in proof of age would be of much inferior quality. As the enquiry is pending, we need not delve into this question.

Having noticed the conflicting views in *Arnit Das vs. State of Bihar* (2000) 5 SCC 488 and *Umesh Chandra Vs. State of Rajasthan* (1982) 2 SCC 202, this matter has been referred to the Constitution Bench by an order dated 7.2.2003. It reads:-

"The High Court in its impugned judgment has relied on a two-Judge bench decision of this Court in *Arnit Das vs. State of Bihar*, 2000(5) SCC 488. The submission of the learned counsel for the petitioner is that in *Arnit Das* (supra), the decision of this Court in *Umesh Chandra vs. State of Rajasthan*, 1982(2) SCC 202, was not considered. The point arising is one of the frequent recurrence and view of the law taken in this case is likely to have a bearing on the new Act, that is, Juvenile Justice (Care and Protection) Act, 2000 also, the matter deserves to be heard by the Constitution Bench of this Court. Be placed before the Hon.Chief Justice of India, soliciting directions."

This is how the matter has been placed before us.

The dual questions which require authoritative decision are:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

Question (a)

Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

Mr. Mishra submits that the decision in *Umesh Chandra* (supra) rendered by a three-Judge Bench of this Court has laid down the correct law and a two-Judge Bench decision in *Arnit Das* (supra) cannot be said to have laid down a correct law. Mr. Mishra also submits that the decision in *Arnit Das* (supra) has not noticed the decision of a three-Judge Bench in *Umesh Chandra* (supra). Mr. Mishra also referred to the aims and objects of the Juvenile Justice Act, 1986 (hereinafter referred to as the 1986 Act) and submits that the whole object is to reform and rehabilitate the juvenile for the offence he is alleged to have committed and if the date of offence is not taken as reckoning the age of the juvenile, the purpose of the Act itself would be defeated. In this connection, he has referred to Sections 18, 20, 26 and 32 of the Act. Per contra Mr. Sharan refers to the aims and objects of the Act and various Sections of the Act and particularly emphasized the word is employed in Section 32 of the Act and submits that cumulative reading of the provisions as well as of the scheme of the Act would show that the reckoning date for determining the date of juvenile would come into play only when a juvenile appears or is brought before the authority/court and not the date of an offence.

We may at this stage notice the preamble as well as object of the 1986 Act:

"An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.- A review of the working of the existing Children Acts would indicate that much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

2. In this context, the proposed legislation aims at achieving the following objectives:-

(i) to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts;

(ii) to provide for a specialized approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

(iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;

(iv) to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;

(v) to develop appropriate linkages and co-ordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles;

(vi) to constitute special offences in relation to juveniles and provide for punishments therefor;

(vii) to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.

3. As its various provisions come into force in different parts of the country they would replace the corresponding laws on the subject such as the Children Act, 1960 and other State enactments on the subject."

Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intentment of the legislation.

We may also, at this stage, notice the definition of delinquent juvenile.

Sub-section (e) of Section 2 of the 1986 Act defines the delinquent juvenile as:

(e) "delinquent juvenile" means a juvenile who has been found to have committed an offence;"

Sub-section (l) of Section 2 of 2000 Act defines "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. The notable distinction between the definitions of 1986 Act and 2000 Act is that in 1986 Act "juvenile in conflict with law" is absent. The definition of delinquent juvenile in 1986 Act as noticed above is referable to an offence said to have been committed by him. It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority and or court he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have committed. In our view, therefore, what was implicit in 1986 Act has been made explicit in 2000 Act.

Section 32 of the 1986 Act deals with the presumption and determination of age, which reads:

"32. Presumption and determination of age.-(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person."

Mr. Sharan stressed heavily on the word is used in two places of the Section and contended that the word is suggests that for determination of age of juvenile the date of production would be reckoning date as the inquiry with regard to his age begins from the date he is brought before the Court and not otherwise. We are unable to countenance this submission. We have already noticed that the definition of delinquent juvenile means a juvenile who has been found to have committed an offence. The word is employed in Section 32 is referable to a juvenile who is said to have committed an offence on the date of the occurrence. We may also notice the provisions of Section 18 of the 1986 Act. Section 18 provides for bail and custody of juveniles. It reads:-

18. BAIL AND CUSTODY OF JUVENILES.(1) When any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home or a place of safety in the prescribed manner (but not in a police station or jail) until he can be brought before a Juvenile Court.

(3) When such person is not released on bail under sub-section

(1) by the Juvenile Court it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

It will be noticed that the word is has been used in more than one place in this Section also. Often than not, an offender is arrested immediately after an offence is alleged to have been committed or some time even arrested on the spot.

This would also show that the arrest and release on bail and custody of juveniles, the reckoning date of a juvenile is the date of an offence and not the date of production.

Furthermore, Section 32 of the Act heavily relied upon by the counsel for the respondent does not envisage the production of a juvenile in the Court.

We may also usefully refer to Sections 3 and 26 of the Act 1986. Sections 3 and 26 of the Act reads:-

"3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.- Where an inquiry has been initiated against a juvenile and during the course of such inquiry the juvenile ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile".

"26. Special provision in respect of pending cases.-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Juvenile Court which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the juvenile has committed the offence."

The legislative intendment underlying Sections 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof. Interpretation of Sections 3 and 26 of the Act are no more res-integra. Sections 3 and 26 of the 1986 Act as quoted above are in pari materia with Sections 3 and 26 of the Rajasthan Children Act, 1970 (Raj. Act 16 of 1970). A three-Judge bench of this Court in Umesh Chandra (supra) after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. This Court then said in paragraph 28 at 210 SCC:-

"28. As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the

child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial."

(emphasis supplied)

As already noticed the decision rendered by a three-Judge bench of this Court in Umesh Chandra (supra) was not noticed by a two-Judge bench of this Court in Arnit Das (supra). We are clearly of the view that the law laid down in Umesh Chandra (supra) is the correct law and that the decision rendered by a two-Judge bench of this Court in Arnit Das (supra) cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in Umesh Chandra (supra) is the correct law.

Question No.(b):

Whether the Act of 2000 will be applicable in the case a proceeding is initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

On this point, we have heard Mr. P.S.Mishra, learned senior counsel for the appellant, Ms. Maharukh Adenwala, counsel for the intervener and Mr. Amarendra Sharan, learned ASG for the State of Jharkhand. In fact counsel for the intervener has adopted the arguments of Mr. Mishra. Mr. Mishra would submit that any proceeding against any person pending under the 1986 Act would be covered by the 2000 Act and would extend the benefit of being a juvenile as defined under the 2000 Act, if at the time of the commission of the offence he was below the age of 18 years. To buttress his point counsel heavily relied upon the provisions contained in Section 20 of the Act and Rules 61 and 62 framed by the Central Government. Per contra Mr. Sharan counsel for the respondent would contend that the 1986 Act has been repealed by Section 69(1) of the 2000 Act and, therefore, the provisions of 2000 Act would not be extended to a case/inquiry initiated and pending under the provisions of 1986 Act, the Act of 2000 being not retrospective.

To answer the aforesaid question, it would be necessary to make a quick survey of the definitions and Sections of 2000 Act, relevant for the purpose of disposing of the case at hand.

As stated hereinabove the whole object of the Acts is to provide for the care, protection, treatment, development and rehabilitation of juveniles. The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles.

The 1986 Act was holding the field till it was eclipsed by the emergence of 2000 Act w.e.f. 1.4.2001, the date on which the said Act came into force by the Notification dated 28.2.2001 in the Official Gazette issued by the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 1 of the Act. Section 69(1) of the Act repealed the 1986 Act. It reads:-

69. Repeal and savings.-(1) The Juvenile Justice Act, 1986 (53 of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act."

(emphasis supplied)

Sub-Section (2) postulates that anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. Thus, although the 1986 Act was repealed by the 2000 Act, anything done or any action taken under the 1986 Act is saved by sub-section (2), as if the action has been taken under the

provisions of the 2000 Act.

Section 20 on which reliance has been placed heavily by the counsel for the appellant deals with the special provision in respect of pending cases. It reads:-

"20. Special provision in respect of pending cases.-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."

The striking distinction between the 1986 Act and 2000 Act is with regard to the definition of juvenile. Section 2(h) of the 1986 Act defines juvenile as under:-

"2(h) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;"

Section 2(k) of 2000 Act defines juvenile as under:-

"2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;"

Thus, the striking distinction between the 1986 Act and 2000 Act is that under the 1986 Act a juvenile means a male juvenile who has not attained the age of 16 years and a female juvenile who has not attained the age of 18 years. In the 2000 Act no distinction has been drawn between the male and female juvenile. The limit of 16 years in 1986 Act has been raised to 18 years in 2000 Act. In the 2000 Act wherever the word "juvenile" appears the same will now have to be taken to mean a person who has not completed 18 years of age.

Section 3 provides as follows:

"3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.- Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."

Thus, even where an inquiry has been initiated and the juvenile ceases to be a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile.

Similarly, under Section 64 where a juvenile is undergoing a sentence of imprisonment at the commencement of the 2000 Act he would, in lieu of undergoing such sentence, be sent to a special home or be kept in a fit institution. These provisions show that even in cases where a mere inquiry has commenced or even where a juvenile has been sentenced the provisions of the 2000 Act would apply. Therefore, Section 20 is to be appreciated in the context of the aforesaid provisions.

Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force

and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.

In this connection it is pertinent to note that Section 16 of the 2000 Act is identical to Section 22 of the 1986 Act. Similarly Section 15 of the 2000 Act is in pari materia with Section 21 of the 1986 Act. Thus, such an interpretation does not offend Article 20(1) of the Constitution of India and the juvenile is not subjected to any penalty greater than that which might have been inflicted on him under the 1986 Act.

Mr. Mishra placed reliance on Rules 61 and 62 framed by the Central Government. According to him, particularly Rule 62 of the Rules covers the pending cases and the appellant is entitled to the benefit of Rule 62. Rule 62 reads:-

"62. Pending Cases.-(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1), and it is hereby clarified that such benefits shall be made available not only to those accused who was juvenile or a child at the time of commission of an offence, but also to those who ceased to be a juvenile or a child during the pendency of any enquiry or trial.

(4) While computing the period of detention of stay of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention or stay shall be counted as part of the period of stay or detention contained in the final order of the competent authority."

This Rule also indicates that the intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e. the date on which the 2000 Act came into force, the person was a "juvenile" within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age.

Mr. Mishra referred to the decision of the two-Judge Bench of this Court in Criminal Appeal No. 370 of 2003 decided on 31.3.2004 in the case of Upendra Kumar Vs. State of Bihar, wherein this Court referred to the earlier decisions of this Court rendered in Bhola Bhagat vs. State of Bihar (1997) 8 SCC 720, Gopinath Ghosh vs. State of W.B. 1984 (Supp). SCC 228, Bhoop Ram Vs. State of U.P.(1989) 3 SCC 1 and Pradeep Kuamr vs. State of U.P. 1995 Supp (4) SCC 419 where this Court came to the conclusion that the accused who were juvenile could not be denied the benefit of the provisions of the Act then in force. We, therefore, hold that the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

The net result is:-

(a) The reckoning date for the determination of the age of

the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

The appeal stands disposed of in the above terms.

JUDIS