

ITEM NO.101

COURT NO.6

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

Criminal Appeal No(s).2084/2009

MUMTAZ @ MUMTYAZ

Appellant(s)

VERSUS

STATE OF U.P. (NOW UTTARKHAND)

Respondent(s)

(with appln. (s) for bail and office report)

WITH

Cr1.A. No. 460/2010

(With Office Report)

Date : 19/11/2014 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. K.t.S. Tulsi, Sr. Adv.
Mr. Prafulla Kumar Behera, Adv.
Mr. Rakesh Kumar Tewari, Adv.
Mr. Kuber Bodhti, Adv.
Mr. S.S. Nehra, Adv.

For Respondent(s) Mr. Tanmaya Agarwal, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

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

When this appeal was listed on 7.8.2014, this Court had passed the following order :

"Application seeking permission taking additional documents on record is allowed. It is submitted by Mr. K.T.S. Tulsi, learned senior counsel that the appellant Dilshad @ Pappu was a juvenile on the date of occurrence i.e. 27.12.1990 inasmuch as his date of birth is 22.07.1974, as is reflected from the School Leave Certificate, contained in Annexure A-1 at page 9. Learned senior counsel would submit that an inquiry should be held by the District & Sessions udge,

Roorkee, and th report be made available to this Court and thereafter the hearing may take place.

Regard being had to the language employed in Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is directed that the concerned District & Sessions Judge, Roorkee shall cause an inquiry with regard to the juvenility of the appellant, Dilshad @ Pappu, after following the procedure as engrafted under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and submit his report within a period of 30 days from the date of receipt of the order passed today. Learned District & Sessions Judge shall submit the documents forming the basis of his report.

Matter be listed on 24.09.2014."

In pursuance of the aforesaid order, the learned District and Sessions Judge has submitted a report. The relevant part of the said report reads as follows :

"Hence from the above discussion the date of birth of Dilshad @ Pappu is discernible from Exhibits Ka 1 to Ka 5. The entries made therein have not been controverted by the Counsel appearing for the State and there is nothing on record to refute or rebut the factum of date of birth as entered in above Exhibits. Hence, the inquiry under Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 has been fully satisfied. The Court accordingly determines that Dilshad @ Pappu date of birth is 22.7.1974 (Twenty two July Ninteen Seventy Four) and on date of occurrence i.e. 27-12-1990 he was 16 years 5 months and 5 days old and hence a juvenile as per Juvenile Justice (Care and Protection of Children) Act, 2000."

Mr. Aggarwal, learned counsel appearing for the State though made an attempt to dislodge the report, yet we have remained unconvinced. We are of the considered opinion that the report deserves to be accepted, regard being had to the analysis made by the learned Sessions Judge and the documents that were produced at the time of enquiry.

At this juncture, we had been apprised that the appellant in

Criminal Appeal No.460 of 2010 is presently aged about 40 years. It is submitted by Mr. Tulsi, learned senior counsel appearing for the appellant that Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides for order that may be passed regarding the juvenile. It reads as follows :

"15. Order that may be passed regarding juvenile:- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home,-

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institute on under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section(3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case

may be, the sureties, if any, and the probation officer."

He has also drawn our attention to Section 7A of the Act which reads as follows :

"7A.(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 evidences 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 juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

Relying on the said provisions, it is submitted by Mr. Tulsi that this Court, after declaring the appellant as a juvenile he is required to be sent to the Juvenile Board for appropriate orders. It is also urged by him that as per Section 7A(2), the moment an order declaring him a juvenile is passed and the matter is sent to the Juvenile Board for appropriate orders, the sentence, if any, passed by a Court shall be deemed to have no effect.

Mr. Tulsi, learned senior counsel further submitted that these provisions are likely to cause anomalous situation. It is urged by him that this Court, going by the letter and spirit of Section 7A, is obliged under the law to declare the trial against the said accused as vitiated and send the matter for *denovo* trial before the Juvenile Board. It is also urged by Mr. Tulsi that the decision rendered in *Jitendra Singh vs. State of U.P.* [(2013) 11 SCC 193] deserves to be reconsidered.

Reserving our views on the said judgment, we would like to hear the learned Attorney General for India on the implications of

Section 7A. As suggested by Mr. Tulsi, learned senior counsel, that if a man of 40 years or 45 years is sent for a punishment under Section 15, it will be an exercise in futility and, in fact, it will be travesty of justice. Similar feeling is echoed by Mr. Aggarwal that if he is sent to a Special Home or Observation Home by the Juvenile Board, he would be absolutely misfit there because the Observation Homes are meant for young juveniles *in praesenti*.

Mr. Aggarwal would vehemently contend that if they are admonished and left or sent for parental or guardian care, it would also usher in a peculiar situation. There may be situations where there cannot be parents or guardian for such care. It is also contended by him that there may be cases where the parents may not be alive. In essence, the submission of Mr. Aggarwal is that there should be rethinking of the provision of raising/agitating the issue of juvenility "at any stage of the proceedings."

Learned counsel has drawn our attention to the order in *Central Bureau of Investigation vs. Swapan Roy* reported in 2014 (12) SCALE.

In view of the aforesaid, we would request the learned Attorney General for India to assist us. A copy of this order shall be handed over to Mr. Aggarwal in course of the day who shall serve it on the appropriate authority who can apprise the same to the learned Attorney General for India.

List the matter on 20.11.2014.

(Gulshan Kumar Arora)
Court Master

(Tapan Chakraborty)
Court Master