

CASE NO.:
Appeal (crl.) 448 of 2005

PETITIONER:
Bijender Singh

RESPONDENT:
State of Haryana and Anr.

DATE OF JUDGMENT: 28/03/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 4812 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

The only point involved in this case is whether the respondent No. 2, who was admittedly more than 16 years of age on 17.11.1999 when he purportedly committed offences punishable under Sections 302, 364, 201 read with Sections 34 and 120B of the Indian Penal Code, 1860 (in short the 'IPC') would be given the benefits of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the '2000 Act') and would not be governed by the Juvenile Justice Act 1986 (in short the '1986 Act').

Factual position is undisputed and is essentially as follows:

A first information report was lodged on 20.11.1999 alleging commission of the aforesaid offences on 17.11.1999. Charge sheet was filed and charges were framed. After filing of the charge sheet respondent No.2-Accused Sandeep made an application to the Court of Chief Judicial Magistrate, Bhiwani praying that he should be considered to be a juvenile under the 2000 Act. Since on the date of commission of offence, 1986 Act was in force and according to its provision the accused was not juvenile being above sixteen years of age, the application was dismissed. However, learned Sessions Judge Bhiwani reversed the order and extended benefit of 2000 Act to the accused. Complainant filed a revision application before the Punjab and Haryana High Court, which by the impugned order was rejected.

According to learned counsel for the appellant it is the date of commission of the offence which is relevant and admittedly since the date of birth of the respondent No.2\026 accused is 16.3.1982, he was seventeen years and eight months of age at the time of commission of offence, i.e. he was above sixteen years. The 2000 Act is operative from 01.04.2001 and has no relevance so far as the present appeal is concerned.

Learned counsel for the respondent on the other hand referred to Section 64 of the 2000 Act to contend that a person who is in the prison is given certain benefits and the same cannot be denied to a person who is yet to face the trial.

The Constitution Bench of this Court in Pratap Singh v. State of

Jharkhand and Anr. (JT 2005(2) SC 271) had occasion to deal with the matter relating to area of operation of the 1986 Act and 2000 Act. After noticing a few relevant aspects which were noted in Pratap Singh's case (supra), the dispute in the present case can be effectively adjudicated.

The salient features of the 2000 Act may be noticed at the outset. Section 1(3) of the said Act states that it would come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Central Government had issued an appropriate notification in terms whereof; 1.4.2001 has been specified as the 'appointed date' from which the provisions of the said Act will come into force. The Act, thus, is prospective in its operation. However, the 2000 Act has repealed the Act of 1986. It has obliterated the distinction between juvenile of different sex by reason whereof, a male juvenile would also be juvenile if he has not crossed the age of 18.

One of the basic distinctions between 1986 Act and 2000 Act relates to age of males and females. 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, the distinction between male and female juveniles on the basis of age has not been maintained. The age limit is 18 years for both male and female.

A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes 'juvenile' within the purview of 2000 Act must be answered having regard to the object and purport thereof.

In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short the 'Board') which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well-known must be given its full effect although it has its limitations. (See *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.* (JT 2002 (10) SC 55), *ITW Signode India Ltd. v. Collector of Central Excise* (JT 2004 (6) SC 456) and *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr.* (JT 2004 (1) SC 289).

In interpreting a provision creating a legal fiction, the Court has to ascertain for what purpose the fiction is created. (See *Ex Parte, Walton. In re. Levy* (1881) 17 Ch.D.746). After ascertaining the purpose the Court has to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. (See *East End Dwelling Co. Ltd. v. Finsbury Borough Council* (1951) 2 All E.R. 587, *Chief Inspector of Mines v. Karam Chand Thapar* (AIR 1961 SC 838). But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the provision by which it is created. (See *State of Maharashtra v. Laljit Rajshi Shah and Ors.* (2000 (2) SCC 699), *In re. Coal Economising Gas Company* (1875) 1 Ch.D. 182) and *Hill v. East and West Dock. Co.* (1884) 9 A.C. 448 (HL).

Thus, by reason of legal fiction, a person, although not a

juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.

Section 20 of the 2000 Act would, therefore, be applicable when a person is below the age of 18 years as on 1.4.2001. For the purpose of attracting Section 20 of the said Act, it must be established that: (i) on the date of coming into force the proceedings in which the petitioner was accused was pending, and (ii) on that day he was below the age of 18 years. For the purpose of the said Act, both the aforementioned conditions are required to be fulfilled. By reason of the provisions of the 2000 Act, the protection granted to a juvenile has only been extended but such extension is not absolute but only a limited one. It would apply strictly when the conditions precedent therefor as contained in Section 20 or Section 64 are fulfilled.

The embargo of giving a retrospective effect to a statute arises only when it takes away vested right of a person. By reasons of Section 20 of 2000 Act no vested right in a person has been taken away, but thereby only an additional protection had been provided to a juvenile.

Provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001. In the instant case undisputedly the respondent No.2 accused had completed 18 years of age before 1.4.2001.

The Constitution Bench in Pratap Singh's case (supra) has held as under:

"(i) In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed.

(ii) The 2000 Act will have a limited application in the cases pending under the 1986 Act.

(iii) The court would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act, 1872 as the model rules framed by the Central Government have no statutory force."

In that view of the matter, the trial court has to deal with the case of the respondent no. 2- accused keeping in view the law laid down by the Constitution Bench in Pratap Singh's case (supra).

The appeal is disposed of accordingly.

JUDIS