

[2020] 1 S.C.R. 69

PAWAN KUMAR GUPTA

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v.

STATE OF NCT OF DELHI

(Special Leave Petition (Criminal) No. 547 of 2020)

JANUARY 20, 2020

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[R. BANUMATHI, ASHOK BHUSHAN AND

A. S. BOPANNA, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000 – ss.7A, 21 – Nirbhaya Case – Petitioner-accused claimed that he was juvenile at the time of commission of the offence and the same is apparent from the School Leaving Certificate – Filed petition for holding an enquiry in terms of s.7A – Dismissed by the Addl. Sessions Judge inter alia referring to the order of the Supreme Court dtd. 09.07.18 wherein the plea of juvenility taken by the petitioner was rejected – High Court also, in Revision, dismissed the Petitioner's claim of juvenility – On appeal, held: In the present case, this is not the first time that the petitioner has raised the plea of juvenility – When the matter was pending before the lower courts, earlier the petitioner had raised the plea of juvenility which was rejected by the Metropolitan Magistrate by order dtd. 10.01.13 – This order was not challenged – Further, when the criminal appeal was pending before the High Court, the petitioner and a co-accused raised the plea of juvenility – Rejected – Plea of juvenility was then raised in the review petition also before the Supreme Court – Said plea taken by the petitioner and the co-accused was rejected by order dtd. 09.07.18 and that order has attained finality – s.7A stipulates that an application can be filed before any court at any stage including the stage after the final disposal of the petition, however, once a convict has chosen to take the plea of juvenility before the Magistrate, High Court and also before the Supreme Court and the said plea has been rejected up to the Supreme Court, the petitioner cannot be allowed to reagitate the plea of juvenility by filing fresh application u/s.7A – High Court rightly dismissed the revision petition – No ground to interfere with the impugned order.

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A *Ram Narain v. State of Uttar Pradesh (2015) 17 SCC 699 : [2015] 9 SCR 200 ; Upendra Pradhan v. State of Orissa (2015) 11 SCC 124 : [2015] 5 SCR 214 ; Ashwani Kumar Saxena v. State of Madhya Pradesh (2012) 9 SCC 750 : [2012] 10 SCR 540 – referred to.*

B **Case Law Reference**

[2015] 9 SCR 200	referred to	Para 6
[2015] 5 SCR 214	referred to	Para 6
[2012] 10 SCR 540	referred to	Para 6

C CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 547 of 2020.

From the Judgment and Order dated 19.12.2019 of the High Court of Delhi at New Delhi in Criminal Revision Petition No. 1301 of 2019.

D Dr. A.P. Singh, V.P. Singh, Ms. Geeta Chauhan, Ms. Pratima Rani, Ms. Richa Singh, Sadashiv, Advs. for the petitioner.

Tushar Mehta, SG, Sidharth Luthra, Sr. Adv., Chirag M. Shroff, Rajat Nair, Ms. Swati Ghildiyal, Kanu Agrawal, Ms. Supriya Juneja,

E Ms. Yashika Verma, Ms. Abhilasha Bharti, Manan Popli, Shantnu Sharma, Rajeev Ranjan, Varun Chugh, Bhuvan Kapoor, Digvijay Dam, A.K. Sharma, Ms. Gargi K., Adv., Advs. for the respondent.

The following Order of the Court was passed:

O R D E R

F 1. Accused Pawan Kumar Gupta has filed this SLP challenging the order dated 19.12.2019 passed by the High Court of Delhi in Criminal Revision Petition No.1301 of 2019 dismissing the claim of the petitioner of juvenility.

G 2. Contention of the petitioner Pawan Kumar Gupta is that he was a juvenile at the time of commission of the offence and that the same is apparent from the School Leaving Certificate issued in his favour by Gayatri Bal Sanskar Shala, Narayan Pur, Tanda, District Ambedkar Nagar, Uttar Pradesh. According to the petitioner, as per the said certificate, his date of birth is 08.10.1996 and therefore, on the date of alleged incident i.e. 16.12.2012, the petitioner was aged only 16 years 02

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months and 08 days and that he was a juvenile on the date of the alleged commission of the offence. Contention of the petitioner is that the certificate has been found to be genuine by the investigating officials and therefore, prayed for holding an enquiry in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "JJ Act"). According to the petitioner Pawan Kumar Gupta, as per Section 21 of the Act, no child in conflict with law shall be sentenced to death or imprisonment for life. The said petition was dismissed by the Additional Sessions Judge, FTC Court No. 7 by order dated 21.12.2018. In the said order dated 21.12.2018, the learned Sessions Judge referred to the order dated 10.01.2013 passed by the learned Metropolitan Magistrate. The learned Sessions Judge also referred to the order of the Supreme Court dated 09.07.2018 in and by which the Supreme Court had inter alia rejected the plea of juvenility taken by the petitioner Pawan Kumar Gupta while dismissing the review petition. The learned Sessions Judge held that the Supreme Court has held that the petitioner is not a juvenile on the date of commission of the offence and in view of the order passed by the Supreme Court dated 09.07.2018, the Sessions Judge would have no jurisdiction to determine the age of the petitioner Pawan Kumar Gupta in terms of Section 7A of the JJ Act.

3. By the impugned order, the High Court also referred to the order of the Supreme Court dated 09.07.2018 and pointed out that the Supreme Court had taken note that the investigating officials have verified the School Leaving Certificate from the concerned school authorities and the order passed by the Metropolitan Magistrate dated 10.01.2013 and after consideration of all the documents, the Supreme Court negatived the plea of juvenility taken by the petitioner Pawan Kumar Gupta by its order dated 09.07.2018. In the impugned order, the High Court in detail referred to the order passed by the learned Metropolitan Magistrate dated 10.01.2013 and the order of the Supreme Court dated 09.07.2018 and rejected the plea of juvenility raised by the petitioner. While dismissing the plea of juvenility, the High Court had noted that the petitioner had earlier raised the plea of juvenility in the review petition filed before the Supreme Court against the death penalty awarded to him and that the same was dismissed by the Supreme Court on 09.07.2018.

4. We have heard Mr. A.P. Singh, learned counsel appearing for the petitioner and Mr. Tushar Mehta, learned Solicitor General and Mr. Siddharth Luthra, learned Senior counsel appearing for the NCT of Delhi and perused the impugned order and other materials on record.

- A 5. Mr. A.P. Singh, learned counsel for the petitioner has submitted that the High Court has passed the order without hearing him. In that view, we have taken note of the grievance of the petitioner on merits. We have heard Mr. A.P. Singh at length and considered his submissions on merits and the grounds raised in the SLP.
- B 6. Contending that the plea of juvenility can be raised at any stage, learned counsel for the petitioner placed reliance upon *Ram Narain v. State of Uttar Pradesh (2015) 17 SCC 699* and *Upendra Pradhan v. State of Orissa (2015) 11 SCC 124*. The learned counsel also placed reliance upon *Ashwani Kumar Saxena v. State of Madhya Pradesh (2012) 9 SCC 750* wherein para (32) of the said judgment lays down the procedure to be followed to determine the age of the accused claiming to be juvenile. It has been held that once the procedure as stipulated under the Act has been followed, that order shall be the conclusive proof of the age as regards the child in conflict with law.
- C 7. As held in *Ram Narain v. State of Uttar Pradesh (2015) 17 SCC 699*, claim of juvenility may be raised at any stage even after final disposal of the case. It may also be raised for the first time even after final disposal of the matter. However, once the accused has chosen to take the plea of juvenility before the trial court, before the High Court and also before the Supreme Court and the said plea has been rejected, it is not open to the accused to reagitate the plea of juvenility by filing the fresh application under Section 7A of the JJ Act.
- D 8. In the present case, this is not the first time that the petitioner has raised the plea of juvenility. When the matter was pending before the trial court, plea of juvenility was raised by the petitioner at the first instance. The learned trial court vide order dated 07.01.2013 directed the Investigating Officer to file a report regarding the documents he has relied upon to determine the age of the accused. Upon consideration of the report of the Investigating Officer, vide order dated 10.01.2013, the learned Metropolitan Magistrate has held that the age verification report of the petitioner Pawan Kumar Gupta was received and that the accused did not dispute the age verification report filed by the Investigating Officer and further, he did not dispute the age to be above 18 years at the time of commission of the offence. When the matter was pending before the lower courts, earlier the petitioner has raised the plea of juvenility and by order dated 10.01.2013, the learned Metropolitan Magistrate has rejected the plea of juvenility. In the said order, the learned Metropolitan Magistrate
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pointed out that the prosecution has placed certified copies of the admission register of the petitioner when he first attended the school and the same has been filed on record. It is stated that age verification report of the petitioner Pawan Kumar Gupta had been received and also certified copies had been filed before the learned Metropolitan Magistrate. It is stated that the said report referred to the statement of the parents of both the petitioner Pawan Kumar Gupta and co-accused Vinay Sharma where they (parents) have confirmed the age of their sons. Pointing out that the parents of the petitioner or the counsel then appearing for Pawan Kumar Gupta have not raised any objection as to the age verification report filed by the IO and have not disputed the age of the petitioner to be above 18 years on the date and time of commission of the offence, the learned Metropolitan Magistrate has negatived the plea of juvenility. This order dated 10.01.2013 has not been challenged by the petitioner.

9. When the criminal appeal was pending before the High Court in Crl.App. No.1398 of 2013, the petitioner and co-accused Vinay have raised the plea of juvenility that they were juvenile on the date of the alleged commission of the offence. Upon consideration of the submissions, by the reasons stated in paras (150) to (153), by its judgment dated 13.03.2014, the High Court rejected the plea of juvenility raised by the petitioner. The High Court has also pointed out that the order passed by the learned Metropolitan Magistrate dated 10.01.2013 has not been challenged. In para (150), the High Court pointed out that by the order dated 10.01.2013, the learned Metropolitan Magistrate has held that the parents of the petitioner Pawan Kumar Gupta had confirmed his age as set out in the report which was included in the statement of the parents of the petitioner. In para (150), the High Court observed as under:-

“150.It may be noted that the learned M.M. in her order has clearly recorded the fact that the parents of Vinay Sharma and Pawan Kumar had confirmed the age of their respective wards as set out in the Report which included the written statement of the parents of both the accused persons. Learned M.M. further noted that the counsel for accused Vinay Sharma and Pawan Kumar along with the said accused had not raised any objection to the Age Verification Report filed by the I.O. and the accused did not dispute their age to be above 18 years at the time of the commission of the offence.”

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- A 10. The plea of juvenility was then raised by the petitioner in the review petition before the Supreme Court. After referring to the submissions of the learned counsel for the NCT of Delhi and the order of the learned Metropolitan Magistrate dated 10.01.2013, the Supreme Court by its order dated 09.07.2018 has rejected the plea of juvenility taken by the petitioner and the co-accused Vinay Sharma and that order has attained finality. The relevant portion of the order dated 09.07.2018 passed by the Supreme Court reads as under:-

B “**18.**On the claim that Pawan was a juvenile, Shri Luthra referred to the order dated 10-1-2013 where age verification report of Pawan has been received and also certified copies had been filed on record. The report had referred to the written statement of the parents of both these accused where they have confirmed the age of their wards. There was no infirmity in the trial court taking decision that both were major and the trial court proceeded accordingly. There is no substance in the submission raised by the learned counsel for the petitioners.

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C **45.** Now, coming to the submission of the learned counsel for Petitioner 2 that he was juvenile at the time of occurrence. The said issue was also considered by the trial court and rejected. The trial court on the basis of the material placed before it had rightly concluded that Petitioner 2 was not a juvenile. The learned counsel for the respondent has rightly referred to the proceedings of the trial court dated 10-9-2013. In this respect this submission also does not furnish any ground for review of the judgment.”

D F 11. Section 7A of the JJ Act stipulates that an application can be filed before any court at any stage including the stage after the final disposal of the petition. However, once a convict has chosen to take the plea of juvenility before the learned Magistrate, High Court and also before the Supreme Court and the said plea has been rejected up to the Supreme Court, the petitioner cannot be allowed to reagitate the plea of juvenility by filing fresh application under Section 7A of the JJ Act. Considering the earlier orders passed by the Metropolitan Magistrate dated 10.01.2013 and the judgment of the High Court dated 13.03.2014 and the order passed by the Supreme Court dated 09.07.2018, in our view, the learned Single Judge of the Delhi High Court rightly dismissed

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the revision petition. We do not find any ground warranting interference A
with the impugned order.

12. Mr. A.P. Singh has submitted that the High Court has made certain observations against him which is prejudicial to his rights. He further submitted that he was not present at the time of passing of the order by the High Court and as such the observations are not justified. We have considered the above submission raised by learned counsel for the petitioner but do not express any opinion as it is not germane to the present issue. We however reserve liberty to Mr. Singh to take appropriate proceedings separately against the observations made by the High Court against him. B

13. In the result, the SLP is dismissed. C

Divya Pandey

Petition dismissed.