



Concept of juvenility and juvenile justice

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Abstract

The concept of Juvenility which was based on the age of the child being below 16, was raised retrospectively to below 18 by the Amendment Act, 2006. This research paper covers the aim, objectives and benefits of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Act of 2006 and discusses recent case of the Supreme Court in Abdul Razzaq Vs. State of UP.

Keywords: juvenility and juvenile justice, care and protection of children

Introduction

1. Juvenile Justice ^[1] relates to a child below 18 years being given the benefit of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Act of 2006. The concept of Juvenility which was based on the age of the child being below 16, was raised retrospectively to below 18 by the Amendment Act, 2006. The scope of the benefit conferred under the Act of 2006 came up for a thorough discussion before the Supreme Court in a recent case ^[2] and the principle of law was laid down in very clear terms thus:-

“The benefit is available to a person undergoing sentence, if he was below 18 years on the date of occurrence. Such relief can be claimed even, if a matter has been finally decided” ^[3].

2. Considering the scope of 7A of JJ Act and Rule 12 of Juvenile Justice (Care and Protection of Child) Rules 2007, the Supreme Court in Hari Ram Vs. State of Rajasthan ^[4] observed ‘that the claim of Juvenility may be raised before any court which shall be recognized at any stage, even after the final disposal of the case and such claim shall be determined in terms of provisions contained in the Act and the rules made thereunder, which includes the definition of the Juvenile in Sec 2(K) and 2(1) of the Act, even, if the Juvenile has ceased to be so on or before the commencement of the Juvenile Justice Act’.

In other words, the crucial date for considering the Juvenility is the date on which the act was committed by the delinquent and not in any relation to any fact such as commencement of the Act, the date on which the charge-sheet has been filed or the date on which the final decision of the court has been rendered.

3. Sec 20 of the JJ Act extends the application of the Act to any pending case in any court, the determination of Juvenility of such a Juvenile in terms of Sec 2(1) of the Act, even if Juvenile ceases to be so, ‘on or before the date of the commencement of the Act by specifically providing that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times, when the alleged offence was committed. In other words, if the person was below 18 years as on the date of the

commission of the alleged act, the benefit conferred by JJ Act would be available.

4. Juvenile Justice (Care and Protection of Children) Rules 2007 makes it quite clear that in the case of the Juvenile in ‘conflict with law’, the State Government or Juvenile Board could either ‘suo mottu’ or an application made for the purpose, review the case of Juvenile, determine the Juvenility and pass appropriate order under Sec 64 of the Act for the immediate release of Juvenile, whose period of detention has exceeded the maximum period under Sec 15 of the Act i.e., 3 years. The scheme of JJ Act “is to give children, who have for some reason or the other gone astray, to realize their mistakes, rehabilitate themselves and rebuild their lives and become lawful citizens of society, instead of degenerating into hardened criminals ^[5]. The Supreme Court reiterated that ‘Juvenility of a person in conflict with law has to be reckoned from the date of incident and not from the date on which cognizance was taken by the magistrate ^[6].

5. A claim of ‘Juvenility’ can be raised at any stage such as: ^[1].

- i) Even after the final disposal of the case;
- ii) It may be raised before the appellate court for the first time;
- iii) Can be raised before the appellate court even though not raised at the stage of trial court; and
- iv) Even after the conviction order has been given in the case.

The delay in raising the claim of Juvenility cannot be ground for rejection of the claim.

With regard to the claim of ‘Juvenility’ after conviction, the claimant must produce some material which may prima-facie satisfy the court that an inquiry into the claim is necessary. The initial burden has to be discharged by the person who claims the ‘Juvenility’ ^[8].

6. With regard to the material to be produced to satisfy the court on the claim of ‘Juvenility’, the Supreme Court observed thus ^[9].

- i) With regard to the material to be produced, it cannot be catalogued;

- ii) What weight should be given cannot be laid down but the documents may be sufficient to raise the presumption of 'Juvenility' and shall be sufficient for 'prima-facie' evidence to satisfy the court about the age of delinquent necessitating an enquiry;
- iii) Statement recorded under Sec 313 of the Criminal Procedure Code is too tentative and by itself not sufficient to justify or reject the claim of 'Juvenility';
- iv) The credibility or acceptability of the document like school leaving certificate or the voter's list obtained after conviction would depend on the facts and circumstance of the case and no hard and fast rule can be prescribed. However, the documents produced must be found prima-facie credible; ^[11].
- v) However, in Jitendra's case, ^[11] the school leaving certificate, marks sheet and medical report were treated as sufficient to direct an enquiry and for verification of the age. The court felt that the documents prima-facie inspire confidence of the court for directing an inquiry and for the determination of age; ^[12].
- vi) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of 'Juvenility' raised for the first time in appeal or revision or during the pendency of the matter or after disposal of the case shall not be sufficient for justifying an enquiry to determine the age of such person, unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an inquiry into the determination of the age of delinquent. The court, where the plea of 'Juvenility' is raised for the first time should always be guided by the objectives of JJ Act and be alive to the position that the beneficent and salutary provisions contained in JJ Act are not defeated by the hyper-technical approach and persons who are entitled to benefit get such benefits; ^[13].
- vii) The court should not unnecessarily influenced by any general impression that in schools, the parents / guardians understate the age of their wards by one or two years for future benefit or that the age determination by the medical examination is not very precise. The matter should be considered prima-facie on the touchstone of preponderance of probability; ^[14].
- viii) Claim of 'Juvenility' lacking in credibility or frivolous claim of 'Juvenility' or patently absurd or inherently improbable claim of 'Juvenility' must be rejected by the court at the threshold whenever raised; ^[15].

7. The raising of the age of Juvenile to below 18 from below 16 applies retrospectively so as to give the benefit to Juveniles who are below 18 years at the time of the commission of the Act ^[16].

8. Where the plea of 'Juvenility' has not been raised at the initial stage of trial and has been taken only at the appellate stage, the Supreme Court has consistently maintained the conviction but has set aside the sentence ^[17].

9. The Supreme Court, ^[18] while dealing with cases of Juveniles, has laid down the following procedure:-

- i) In all such cases, where the accused was above 16 but below 18 years of age, on the date of occurrence, the proceedings pending in the court concerned, will

continue and be taken to their logical and except that the court upon finding the Juvenile guilty will not pass an order of sentence against him;

- ii) Instead, he shall be referred to the JJ Board for appropriate orders under JJ Act;
- iii) The trial court as well as the High Court are legally required to record a finding as to the guilt or otherwise of the delinquent; and
- iv) All that the courts can do to record an order of conviction, cannot pass any sentence but refer the case to JJ Board.

10. Sec 7-A(2) prescribes the procedure to be followed under JJ Act ^[19]. However, there is no provision suggesting for the court before whom the claim of 'Juvenility' is made, to set aside the conviction on the ground that on the date of commission of the offence, he was a Juvenile and hence not triable by an ordinary court of law. The court dealing with the case can only make a reference to JJ Board for appropriate orders, setting aside the sentence passed.

11. In conclusion, the following suggestions are made:-

- i) The courts, while dealing with the case of Juvenile must have the necessary power not only to set-aside the sentence but also conviction order as well and leave the matter to JJ Board to deal with, in accordance with law;
- ii) Detaining a person in jail pending the detention of the age of 'Juvenility' the courts must have the power to suspend the sentence. If it is found to be a case of 'Juvenile' all proceedings shall be quashed and direction given to JJ Board for appropriate order to deal with the case;
- iii) The future of the Juvenile shall be protected from not keeping him in jail pending the determination of 'Juvenility' and
- iv) A clear cut rule may be laid down exhaustively providing for the material to be produced for satisfying the court on the plea of 'Juvenility' so that the proceedings are expedited.

Witnesses may be produced, as a last resort to give evidence about the age or the exact date of birth like the prohibit who attended the 10th day naming ceremony of the child or 1st Birthday which was attended by relatives and parties and so on.

The rule should provide sufficient guidelines for the determination of the age, so that a person entitled to JJ Act is not deprived of the benefit, just as a man who is not able to produce his BA Certificate being treated as an Inter qualified when he has actually passed BA examination and obtained the degree. Secondary evidence must be allowed to be produced, whenever necessary, in the interests of justice;

- v) JJ Board must consist of experts in the area of child welfare and Juvenile delinquency and related aspects of child psychology to deal with the case of Juveniles.

It must be remembered that children are the future assets of the nation and the development of the nation lies in the future generation for its progress.

References

1. Juvenile Justice Refers to Juvenile Justice (Care and

- Protection of Children) Act, 2000 as amended by Act of 2006.
2. Abdul Razzaq Vs. State of UP. 2015 Cr LJ P.411 (SC).
 3. Ibid Para 10.
 4. AIR 2011 SC (Cri) 2053
 5. Note 2 Para 56.
 6. Pratap Singh's case AIR 2005 SC P.2731.
 7. Abizer Hassain alias Gulam Hossain Vs. State of WP AIR 3012 SC P.1020.
 8. Note 2 Para 39.2
 9. Ibid.
 10. Akbar Shaik's case AIR 2009 SC (Supp) P.1638. See also Pawan's case, AIR SCW, 2009. 2171.
 11. AIR 2011 SC (Supp) 588.
 12. Note 2 Para 393.
 13. Note 2 Para 39.5.
 14. Ibid.
 15. Note 2 Para 39.5.
 16. This statement of law was reiterated by the Supreme Court in Union of India Vs. EXGNR Ajeet Singh AIR SCW. 2013, 2116.
 17. Babla Vs. State of Uttarakhand 3 SCC (cri) P.1067; Abuzar Hossain Vs. State of West Bengal AIR 2013 SC P.1020 and Hari Ram Vs. State of Rajasthan AIR 2011 SC (cri) P.2053 and in other cases, 2012.
 18. Jitendra Singh alia Babboo Singh Vs. State of UP AIR SC (cri), 2015, 355.
 19. Note 18.