

High Court of Sikkim

Record of proceedings

Cri.A. No.20 of 2023

Ashish Manger

Appellant

VERSUS

State of Sikkim

Respondent

Date : **07-11-2023**

CORAM : **THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

For Appellant Mr. Kazi Sangay Thupden, Legal Aid Counsel (Pro Bono).

For Respondent Mr. Yadev Sharma, Additional Public Prosecutor.
Mr. Sujan Sunwar, Assistant Public Prosecutor.

ORDER

1. I.A. No.01 of 2023 is an application filed under Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter, "J.J. Act") and I.A. No.02 of 2023 is an application filed under Section 391 of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C."), on behalf of the Appellant, during the pendency of the Appeal.

2. Heard Learned Counsel for the parties.

3. Learned Counsel for the Appellant submits that the Appellant was convicted of the offences under Sections 9(l), 9(m) and 9(n) of the Protection of Children from Sexual Offences Act, 2012, punishable under Section 10 of the same Act and he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹ 5,000/- (Rupees five thousand) only, with default clause of imprisonment and an Appeal has been filed in this context before this Court. That, the date of birth of the Appellant is 31-03-1998 and the alleged offence occurred in the year 2015 as noted in the Section 164 Cr.P.C. statement of the victim, dated 05-02-2021. That, as a consequence, it is evident that the Appellant was a juvenile at the time of commission of the alleged offence as the Appellant was below the age of eighteen years. That, the provisions of Section 6 of the J.J. Act would also squarely apply to the present facts and circumstances. That, the J.J. Act grants power to this Court to

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conduct an enquiry on the plea of juvenility raised by the Appellant and in the event that this Court arrives at a finding that the Appellant was a juvenile on the date of commission of the offence, the Court may forward the Appellant to the Juvenile Justice Board for issuing appropriate orders.

4. Learned Counsel for the Appellant submits that with regard to I.A. No.02 of 2023 (*supra*) the Birth Certificate of the Appellant has been made over to Learned Counsel by the family of the Appellant. The document indicates that the Appellant was born on 31-03-1998, thereby buttressing the fact that the Appellant was a minor during the time of commission of the alleged offence. That, the Learned Trial Court failed to consider the aspect of the minor age of the Appellant during the course of trial. That, the documents annexed with the Petition, i.e., the Birth Certificate of the Appellant and the Transfer Certificate issued to him from his School require to be considered as proof of juvenility of the Appellant. Hence, both the Petitions be allowed in the interest of justice. To buttress his submissions, Learned Counsel placed reliance on ***Rishipal Singh Solanki vs. State of Uttar Pradesh and Others***¹ and ***Karan alias Fatiya vs. State of Madhya Pradesh***².

5. Learned Additional Public Prosecutor submits that he has no serious objection to the Petitions *supra* in view of the fact that the Learned Trial Court during the course of trial failed to consider the age of the Appellant at all. However, it is admitted by Learned Counsel for both parties that in fact the issue of juvenility of the Appellant was not raised before the Learned Trial Court.

6. Due consideration has been accorded to the submissions put forth. It is clear that Section 9 of the J.J. Act, more especially, the Proviso to the Section lays down that claim of juvenility may be raised before 'any' Court and it shall be recognised at any stage, even after the disposal of the case and such a claim shall be determined in accordance with the

¹ (2022) 8 SCC 602

² (2023) 5 SCC 504

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provisions of the Act and the Rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

7. At this juncture, it is relevant to look at Section 9(2) of the J.J. Act, which provides as follows;

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act—(1).....

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

.....”

8. In light of the facts and circumstances elucidated hereinabove, the legal provisions referred to and in terms of the directions of the Supreme Court in *Karan alias Fatiya vs. State of Madhya Pradesh*³, it is hereby ordered as follows;

(i) The copies of the Birth Certificate and Transfer Certificate be forwarded to the Learned Trial Court concerned by 08-11-2023 in physical form as well as in digitised form.

(ii) The Appellant shall be produced before the Learned Trial Court concerned on 16-11-2023.

(iii) The Learned Trial Court shall take steps to consider whether the Appellant was a juvenile on the date when the offence is said to have been committed.

(iv) Towards this end, the Learned Trial Court, if so required, may call for and consider all relevant documents as well as have the facility of medical check-up of the Appellant as provided by law.

(v) The Report pertaining to such enquiry shall be submitted before the Registry of this Court within four weeks from today.

³ 2022 SCC OnLine SC 1887

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9. I.A. No.01 of 2023 and I.A. No.02 of 2023 are accordingly allowed.

10. Registry is directed to forward a copy of this Order to the Court of the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim, for information and compliance of the directions detailed above.

11. List on 08-12-2023.

Judge
07-11-2023

ds/sdl