

IN THE HIGH COURT OF DELHI
AT NEW DELHI

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Date of decision : March 08, 2004

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WP (C) No. 8573/2003

Ex.Gnr.Ajit Singh,
S/o Mahesh Chand,
Village & PO Chulhawali,
Distt. Ferozabad (UP). Petitioner
! through : Mr.S.M. Dalal, Advocate.

Vs.

\$ The Union of India & Ors. Respondents.
^ through : Mr.Akshay Makhija, Advocate.

CORAM :-

* HON'BLE MR.JUSTICE VIJENDER JAIN
HON'BLE MR.JUSTICE H.R. MALHOTRA

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether the judgment should be reported in the Digest?

Vijender Jain, J. (Oral)

Rule D.B.

Petitioner was enrolled in the army on 15th December, 2000. He was posted in Rajasthan and thereafter for some offence of theft, a Court of Enquiry was ordered against the petitioner and after recording of summary of evidence, General Court Martial commenced and the petitioner was sentenced to suffer rigorous imprisonment for seven years and was dismissed from service.

Mr.S.M. Dalal, learned counsel for the petitioner has challenged the proceedings under General Court Martial under the Army Act and has prayed that the conviction and sentence be quashed and the petitioner be released from jail. Another prayer in the writ petition is that petitioner be reinstated in service with consequential benefits. The first submission of learned counsel for the petitioner is that the petitioner was a juvenile and he could not have been tried by the provisions of General Court Martial under the Army Act. Mr.Dalal has contended that after coming into force of the Juvenile Justice (Care & Protection of Children) Act, 2000, the applicability of the said Act is to the whole of India except the State of Jammu & Kashmir. He has placed reliance on Section 2 (k) which defines that 'Juvenile' or 'child' means a persons who has not completed eighteenth year of age. Section 2 (l) further defines "Juvenile in conflict with law" as a juvenile who is alleged to have committed an

offence. Section 2 (p) defines 'offence' as an offence punishable under any law for the time being in force.

Mr.Dalal has further contended that a careful reading of Section 6 which has a non obstante clause and nothing has been saved from the applicability of the aforesaid Act, it provides that any proceedings to punish the juvenile for imprisonment is contrary to the mandate of the Parliament. In support of his contention, learned counsel for the petitioner has relied upon judgment of the Supreme Court in Major E.G. Barsay Vs. State of Bombay AIR 1961 SC 1762 and has placed reliance on the following observation of the Supreme Court which is to the following effect :-

“There is a more formidable obstacle in the way of learned counsel's argument. Section 7 of the Criminal Law (Amendment) Act 1952, reads :

“Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law the offences specified in sub-section (1) of Section 6 shall be triable by Special Judges only.”

Doubtless the Army Act is comprehended by the words “any other law”. The offences with which we are now concerned are certainly offences specified in sub-sec. (1) of S.6 of the Criminal Law (Amendment) Act. The non obstante clause in S.7 clearly confers jurisdiction to try persons committing the said offences on a special judge. But it is contended that the Army Act is a special Act and therefore, S.7 found in the general Act cannot take away the

jurisdiction conferred on a court-martial in respect of the said offences. That proposition of law may have some bearing when there is a conflict of jurisdiction arising out of a general Act and a special Act without any specific exclusion of the jurisdiction in the general Act of that conferred under the special Act. But that principle may not have any relevance to a case where the general Act in express terms confers jurisdiction on a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law. In such a situation, the intention of the Legislature is clear and unambiguous, and no question of applying any rule of interpretation would arise, for the rules of interpretation are evolved only to ascertain the intention of the Legislature."

He has also placed reliance on a Division Bench judgment of Kerala High Court in the case of In re : Sessions Judge 1995 Cr.L.J. 330.

He has also relied upon a judgment of Supreme Court in the case of Gopinath Ghosh Vs. State of West Bengal 1984 (Supp) SCC 228.

On the other hand, Mr. Akshay Makhija, learned counsel for the respondent has contended that in all there were six charges against the petitioner, although it was admitted that petitioner was juvenile in relation to charges no. 1 and 3. However, it was contended that petitioner was not juvenile in relation to charges nos. 2, 4, 5 & 6. Therefore, the petitioner was punished keeping in view the totality of the circumstances and the offences committed by him. It has also been contended that Army Act is a special Act and is a complete Code in itself and is not subject to or

limited by any other general or special Act. It was contended that once an individual is enrolled in the Army, he is governed by the provisions of Army Act, 1950. In para 2 of the counter affidavit the respondent has taken the stand that such person is not subject to any other Act or legislation for any offence committed by an individual when in service. Another arguments was advanced by learned counsel for the respondent that the non obstante clause of Section 6 has to be read in conjunction with the Juvenile Justice (Care & Protection of Children) Act, 2000 and the same deals with primarily with cases falling under the Criminal Procedure Code. He has also contended that under Army Act certain fundamental rights can be abridged under Article 33 of the Constitution of India so as to maintain discipline in the armed forces.

We have given our careful consideration to the arguments advanced by learned counsel for both the parties. Juvenile Justice (Care & Protection of Children) Act was passed by the Parliament pursuant to the resolution adopted by the United Nations on 20th November, 1989 on the right of the Child wherein a set of standards to be adhered by all State parties in securing the best interests of the child has been prescribed. The Convention emphasises social re-integration of child victims, to the extent possible, without resorting to judicial proceedings. The Government of

India, having ratified the Convention, has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990) and all other relevant international instruments and to achieve this objective the Juvenile Justice (Care & Protection of Children) Bill was introduced in the Parliament which was passed by the Parliament as Act 56 of 2000.

From the plain reading of the definitions as set out in Section 2 (l) "Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. If the same is read in conjunction with Section 2 (p) of the said Act where 'Offence' has been defined as an offence punishable under any law for the time being in force. There is little room for doubt that the Act is applicable in spite of any other law in force including the Army Act. When the Parliament in its wisdom has included offences which are punishable under any law, there is no exclusion of the Army Act from the operation of the aforesaid Act. Even otherwise the interpretation sought to be given by the respondent that non obstante clause is only in relation to the Criminal Procedure Code is

neither here nor there. Power of Juvenile Justice Board is defined in

Section 6. Section 6 of the Act is to the following effect :

'6. Power of Juvenile Justice Board. - (1)

Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise."

From the bare reading of the aforesaid provision, it is manifestly clear that Juvenile Justice Board has power to deal exclusively relating to juvenile in conflict with law notwithstanding anything contained in any other law. In the case of Major E.G. Barsay's case (supra), Supreme Court while interpreting in somewhat similar circumstances the Criminal Law (Amendment) Act, 1952 held as under:

"It is contended that S.7 confers an exclusive jurisdiction on a special judge only in regard to offences specified in sub-sec (i) of S.6 and that the said sub-section does not comprise offences under S.32 of the Army Act. There is a fallacy underlying this argument. Certain acts, committed or omissions made by a person constitute offences under S.6 (1) of the Criminal Law (Amendment) Act, 1952. Under S.7 of the said Act, the said offences are exclusively triable by a special judge. In the present case

the accused were charged with having committed offences expressly falling under S.6 of the said Act and, therefore, the special Judge had clearly jurisdiction to try the accused in respect of the said offences. The mere fact that the said acts or omissions might also constitute an offence under S.52 of the Army Act would not be of any relevance, as jurisdiction was exclusively conferred on the special judge notwithstanding anything contained in any other law. If that be so, the special judge had exclusive jurisdiction to try offences covered by S.6 of the Criminal Law (Amendment) Act, 1952."

The whole Act is replete with the method and manner of custody, bail, inquiry and order which has to be passed by the Juvenile Board. The words 'notwithstanding anything contained in any other law' find expression in Sections 15, 16, 18, 19 and 20 the legislative intention is unambiguous as the Act lays down provision pursuant to Section 29 which deals with Child Welfare Committee, Section 37 deals with Shelter Homes and Chapter IV under the said Act deals with Rehabilitation and Social Reintegration.

In re : Sessions Judge's case (supra) a Division Bench of the Kerala High Court while dealing with Juvenile Justice Act, 1986 and a later Act of 1989, viz., Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 held that although the 1989 Act was special Act but the provisions of Juvenile Justice Act, 1986 would be applicable. The Court observed as under :-

"In view of what has been stated above, we answer the reference in the following terms :-

The juvenile, who has been charged with offences punishable under section 450, 376 and 506 (ii) of the Penal Code and also under Section 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to be tried by a Juvenile Court as provided under the Juvenile Justice Act, 1986. We are also of the opinion that the provisions contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 will not have any over-riding effect over the provisions contained in the Juvenile Justice Act, 1986."

We find no force in the arguments of the respondent that as the petitioner was recruited in the Army, even though he was a juvenile, the Army Act will have the applicability and will override the provision of Juvenile Justice (Care & Protection of Children) Act, 2000. Under the Juvenile Justice Act, 1986, juvenile has been defined under Section 2 (h) as follows :

"“juvenile” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;”

It cannot be said that the Parliament while enacting the present Act of 2000 was not aware that persons are recruited in the Army at the age of 16 years. But still the Parliament in its wisdom has changed the definition of juvenile as appearing in Section 2 (h) of 1986 Act. In the present Act, Section 2 (k) which defines 'juvenile' is to the following

effect :

"Juvenile" or "child" means a person who has not completed eighteenth year of age;"

The mere fact that the age has been enhanced to 18 years, irrespective of a boy or a girl and the Army Act is of the year 1950, it cannot be said that the legislature wanted to keep persons who are under the Army Act amenable to Army Act although they were juvenile under the present Act. In that case a special exception was to be made under the present Act. Therefore, we find no force in the arguments of the respondent that Juvenile Act will have no applicability to the person governed under Army Act. The reliance placed by the respondent on Article 33 of the Constitution of India is also misplaced. Article 33 only authorises the Parliament in relation to the members of the armed forces to determine to what extent any of the fundamental rights can be restricted or abridged so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 cannot be read to oust the applicability of Juvenile Justice (Care & Protection of Children) Act, 2000 which is also an Act of Parliament and in the absence of any exception provided in the said Act with regard to its jurisdiction or

applicability.

In Gopinath Ghosh's case (supra) said Gopinath was convicted under Section 302 read with Section 34 of the Indian Penal Code having committed the murder. Gopinath never questioned the jurisdiction of sessions court which tried him for the offence of murder. He did not even contend that he was juvenile delinquent within the meaning of the Act.

Still the Supreme Court held :-

".....However, in view of the underlying intendment and beneficial provisions of the Act read with clause (f) of Article 39 of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment, we consider it proper not to allow a technical contention that this contention is being raised in this Court for the first time to thwart the benefit of the provisions being extended to the appellant, if he was otherwise entitled to it."

Supreme Court further held :-

"Therefore, the conviction of the appellant for having committed an offence under Section 302, IPC and sentence imprisonment for life imposed by the learned Additional Sessions Judge and confirmed by the High Court are unsustainable and they must be set aside."

Therefore, we cannot ignore, overlook or nullify the beneficial provision of a socially progressive statute. We quash the proceedings of

the General Court Martial. The petitioner be set free forthwith. We have been told that the petitioner has already undergone 17 months of imprisonment, out of a total imprisonment of 7 years inflicted on the petitioner. However, from the perusal of the charges we find that out of six charges, charge nos. 1 & 3 pertain to the period when the petitioner was juvenile and the rest of the charges are for the period when the petitioner was not a juvenile. As we have already held that the General Court Martial was without jurisdiction, the petitioner has to be set free. Liberty is granted to the respondent if they want to pursue the matter further in relation to charge nos. 2, 4, 5 & 6, they will be at liberty to proceed in accordance with law against the petitioner de novo. If the respondent decides to hold the charges de novo, they will keep in mind that the petitioner has undergone 17 months incarceration without the authority of law.

With these observations petition stands disposed of.



Vijender Jain
(Judge)

March 08, 2004
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H.R. Malhotra
(Judge)