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Single Bench

cf. 100/-

BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (Cr.) No. 53 / 2013

Petitioner : SUSEN KUMAR RAY,
S/o Shri CHINTA HARAN RAY,
Aged about 38 years,
R/o Bengali Camp,
P.S. Kirandul, District Dantewada,
South Bastar (C.G.)

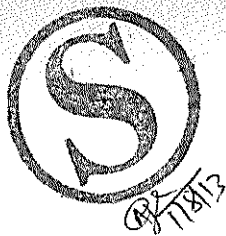
R. No. 53/P
Presented by Shri. Avinash Chandra
2/7/13

Versus

Respondent: STATE OF CHHATTISGARH
Through District Magistrate Dantewada
District Dantewada (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION

OF INDIA



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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (Cr.) NO.53 OF 2013

PETITIONER

Susen Kumar Ray

Versus

RESPONDENTS

State of Chhattisgarh

(Writ Petition under Article 226 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Rahul Tyagi, Advocate for the petitioner.

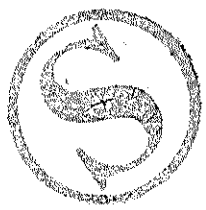
Shri Adil Minhaz, Panel Lawyer for the State.

ORDER

(Delivered on 31st day of July, 2013)

Heard learned counsel for the parties.

1. Learned counsel appearing for the petitioner submits that the petitioner does not seek quashing of the sentence of imprisonment passed by the learned Division Bench of this Court in Criminal appeal No.2461 of 1997, however, in view of the provisions of Section 7A of the Juvenile Justice (Care and Protection) Act, 2000 (for short "the Act, 2000") set aside the sentence imposed by the learned Division Bench upon the petitioner.
2. The facts, in brief, as projected by the petitioner are that four accused persons namely Sapan, Somen Rai, Suben and Sushen, i.e. the present petitioner, were tried in Sessions Trial No. 961/1992 before the Court of Additional Sessions Judge, Jagdalpur, for the offences punishable 302 and 307/34 of the Indian Penal Code. The other co-accused persons were convicted by the Additional Sessions Judge, Jagdalpur by order dated 14.10.1996 and were sentenced to undergo imprisonment for life under section 302 of the IPC and rigorous imprisonment for seven years under section 307/34 of the IPC.



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However, the petitioner was acquitted of the charges. Against the judgment and order of conviction dated 14.10.1996, the co-accused persons filed an appeal being Criminal Appeal No. 1981/1996 before the High Court of Madhya Pradesh at Jabalpur and the State Government also filed an appeal against the order of acquittal passed in favour of the petitioner, being Criminal Appeal No. 2461/1997. Both these appeals were heard together and finally decided on 11.02.2013. The learned Division Bench, having regard to the fact that at the time of the commission of the offence, the accused persons were in their young age, the conviction under section 302/34 of the IPC was set aside and the co-accused persons alongwith the petitioner were sentenced to undergo rigorous imprisonment for seven years for the offence punishable under section 304(Part-II) and five years rigorous imprisonment for the offence punishable under section 307 of the IPC. A compensation to the tune of Rs. 20,000/- was also awarded to the injured persons in equal proportion. Thus, the appeal filed by the State against the order of acquittal of the petitioner, i.e. Criminal Appeal No. 2461/1997, was allowed partly.

3. After passing of the order by the learned Division Bench of this Court, it appears that the petitioner made an application before the Chairman (Chief Magistrate) Juvenile Justice Board, Dantewada, on 22.05.2013. The Juvenile Justice Board, by order dated 22.06.2013 (Annexure P/3) held that the petitioner was 16 years 5 months and 24 days old at the time of incident i.e. on 01.09.1991 and as such, he was juvenile. The petitioner has preferred the instant petition seeking the following reliefs:



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10.1 Quash/set aside the sentence of imprisonment passed in Criminal Appeal No. 2461 of 1997 in Crime No. 109/1991 registered at P.S. Kirandul District Dantewada.

10.2 Grant all benefits available to the petitioner as 'juvenile in conflict with law' available to him under The Juvenile Justice (Care and Protection of Children) Act, 2000.

4. On a query asto whether the petitioner has raised the question of juvenility either before the trial Court or before the appellate Court, learned counsel fairly submits that this question was never raised before any forum. However, at the time of argument before this Court, the petitioner made a submission that in view of the provisions of Section 7A of the Act, 2000 the order of sentence passed by the learned Division Bench, may be set aside.
5. The question of law raised herein is asto whether the judgment and order of conviction passed in a Criminal Appeal by a learned Division Bench of this Court can be set aside by a Single Bench in exercise of its power under Article 226 of the Constitution of India.
6. It is an admitted position that the issue of juvenility of the petitioner at the time of commission of the offence, was neither raised before the trial court nor before the appellate Court i.e. the learned Division Bench. After the appellate Court convicted the petitioner, as afforested, an application was made before the Juvenile Justice Board, Dantewada on 22.05.2013. The present writ petition has been filed under Article 226 of the Constitution of India, before the Single Judge, wherein the relief to set aside the

judgment and order of the learned Division Bench, has been sought.

7. Shri Tyagi submits that Section 7A of the Act, 2000 clearly provides that the question of juvenility may be raised before any court and it shall be recognized at any stage, even after disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
8. For ready reference, section 7A of the Act, 2000, is reproduced below:

"7A. Procedure to be followed when claim of juvenility is raised before any court. - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by the Court shall be deemed to have no effect. "

9. The term "may be raised before any court" does not empower a Court, which is subordinate on judicial side, to set aside the order of conviction and sentence passed by the superior Court. In such a situation, the juvenile accused may either approach the same Court by way of any application or otherwise or before the superior Court for setting aside the order of conviction and sentence. In the instant case, the order was passed by the learned Division Bench. If a Single Bench, even in exercise of its power under Article 226 of the Constitution, set aside the order of the learned Division Bench under the provisions of section 7A of the Act, 2000 that may create judicial chaos and will be opposed to the judicial propriety and discipline. No writ/direction can be issued by a Single Bench to make an order passed by the Division Bench even in exercise of power under section 7A of the Act, 2000 as redundant.
10. The issue with regard to issuance of a writ against the Courts, a Constitution Bench of the Supreme Court, in *Rupa Ashok Hurra v. Ashok Hurra & Another*¹, observed as under:

"Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior courts/tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgment/orders of the High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Article 132, 133

¹ (2002) 4 SCC 388

and 134 as well as under Article 1346 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to the High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution."

11. Reliance of Shri Tyagi on the decision of the Supreme Court in *Amit Singh v. State of Maharashtra and another*² wherein it was observed that the claim of juvenility can be raised before any Court at any stage, even after disposal of the case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised, is of no assistance. In the Supreme Court, a Bench comprises of two or three Judges have equal jurisdiction and also there is no provision to file an appeal against the order passed by a Single Bench. In the facts of the case, when the order of acquittal was reversed and the petitioner was convicted and sentenced by the Division Bench, no writ can be issued by a Single Bench setting aside the order passed by the Division Bench. It is also not a case where the petitioner has no remedy. The petitioner can very well approach the same Court or

²(2011) 13 SCC 744

higher Court for the appropriate relief, which is still available to the petitioner.

12. In *Amit Singh* (supra), a Bench of the Supreme Court has passed the order where the order of conviction was affirmed by another Bench of the Supreme Court. Thus, the petitioner may not get the advantage of the ratio laid down by the Supreme Court in the said case, in the facts of the instant case, which has been explained hereinabove.

13. In view of the above analysis, this petition is dismissed as not maintainable.

Gowri/
Amit

Sd/-
Satish K. Agnihotri
Judge