

MOHD. FEROZ KHAN @ FEROZ

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v.

STATE OF ANDHRA PRADESH

(Writ Petition (Criminal) No. 67 of 2014)

DECEMBER 16, 2015

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**[J. CHELAMESWAR AND
ABHAY MANOHAR SAPRE, JJ.]**

Juvenile Justice (Care and Protection of Children) Act, 2000 – ss.2(l), 20 – Conviction of petitioner for offence of murder – Plea of juvenility raised before Supreme court for the first time for setting aside the sentence – Held: Since petitioner was below 18 years on the date of commission of offence, the provisions of Act of 2000 would apply in his case – Matter remitted to Juvenile Justice Board for disposal of petitioner's case – Penal Code, 1860 – ss.120B, 302 and 396.

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Allowing the appeal and remitting the matter to the Juvenile Justice Board, the Court

HELD: It was held in **Hari Ram* case that Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000. In the instant case, the offence was committed on 02.08.1999 and the petitioner was found between the age group of 16-17 years i.e. below 18 years on the date of commission of the offence. That apart, the question of juvenility of petitioner was not gone into till date in accordance with law by any Court. The petitioner is entitled to claim the same relief as was granted in the case of *Hari Ram* by this Court. The impugned order in so far as it relates to

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A the petitioner is set aside. The matter is remitted to the concerned Juvenile Justice Board exercising jurisdiction for disposal of the petitioner's case in accordance with law. [Paras 16 to 19] [152-D; 153-H; 154-A-B, G-H; 155-A-C]

B **Hari Ram v. State of Rajasthan & Anr. 2009 (7) SCR 623 : (2009) 13 SCC 211 – relied on.*

Case Law Reference

2009 (7) SCR 623 relied on Para 10

C CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 67 of 2014.

Under Article 32 of the Constitution of India.

D R. K. Dash, Sr. Adv., Mohd. Irshad Hanif, Aarif Ali Khan, Advs. for the Appellant.

S. Udaya Kumar Sagar, Krishna Kumar Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

E **ABHAY MANOHAR SAPRE, J.** 1. This writ petition under Article 32 of the Constitution of India is filed by the petitioner (Accused No.2, in short 'A-2') to raise the plea of juvenility alleging *inter alia* that he was juvenile on the date of the commission of offence, i.e., 02.08.1999 and hence entitled to seek issuance of a writ in the nature of Certiorari and Mandamus for setting aside the order of sentence dated 28.06.2004 passed by the Additional Metropolitan Sessions Judge, Hyderabad in Sessions Case No. 93 of 2002 as confirmed by the High Court by judgment/order dated 27.02.2007 in Criminal Appeal No. 1825 of 2004 and by this Court on 08.07.2010 in Criminal Appeal No.435/2008 against him.

H 2. The brief facts of the case to appreciate the short issue involved in the petition need mention *infra*:

(a) Rama Krishana Rao (hereinafter referred to as "deceased") was resident of Bodhan, Nizamabad District. He was running a cycle shop called 'Krishna Shop' and also a theatre. One Azam Ghouri (A-9) (died during the trial) who organized a Tanjeem along with eight persons hatched a conspiracy to snatch away the cash bag of the deceased. In pursuance thereof, on 02.08.1999, Azam Ghouri (A-9) chalked out a plan at Sarbathi Canel Mozque, Bodhan. According to his plan, Maqbool @ Zubair @ Shah Nawaz (A-1) will snatch the bag of the deceased, Mohd. Feroz Khan @ Feroz (A-2), petitioner herein, will drive the vehicle so as to facilitate them to escape from the scene after commission of the offence and other seven persons will watch the movements by taking shelter near the shop and house of the deceased. For implementation of their plan, one Abdul Aahth (A-6) arranged a vehicle from his friend (PW-12) and A-9 gave his pistol to A-1.

(b) On 02.08.1999, a lorry loaded with spare parts of Hero cycle came to the shop of the deceased and the goods were unloaded into the shop at 10.30 p.m. By that time, the deceased was having second show collections, which was estimated to Rs.40,000/-. After closing the shop, when the deceased was proceeding to his house, which was only 500-600 feet away, Y. Krishna Mohan (PW-1) was accompanying him to drop him at his house and one Nazar Khan (PW-3) and Habeeb Khan were following him and all of them were going on foot. Suddenly A-1 intercepted and demanded the bag from the deceased and when the deceased tried to resist, A-1 opened fire from the pistol at the deceased thrice, snatched the bag and ran away. Due to that, the deceased fell down. PW-1, wife of the deceased (PW-2) and the daughter of the deceased took the deceased to Santhan Nursing Home where the doctors declared him dead. Thereafter PW-1 went to the Police Station at about 11.50 p.m. and gave a complaint (Ex. P-1) to the sub-Inspector of Police and on the basis of it, a case was registered in Crime No.220 of 1999 under Sections

- A 120-B, 302 and 396 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') and Section 25 of the Arms Act, 1959 against the accused persons. The investigation in the case was completed and the charge-sheet was filed by the Investigating Officer. After recording of evidence, by order
- B dated 28.06.2004, the Additional Metropolitan Sessions Judge, Hyderabad found the accused persons guilty of the offences charged and convicted the petitioner herein under Section 235(2) of the Criminal Procedure Code 1973 (hereinafter referred to as 'the Cr.P.C.') for the offence
- C punishable under Section 302 read with Section 109 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.1000/-, in default to suffer 6 months simple imprisonment.

3. Challenging the said order, the petitioner herein (A-2) along with other accused filed appeals before the High Court. The High Court by order dated 27.02.2007 in CrI. A. No. 1825 of 2004 upheld the judgment and order passed by the Additional Metropolitan Session Judge, Hyderabad.
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4. Against the said order, the petitioner herein (A-2) along with other accused filed appeal bearing CrI.A. No.435 of 2008 before this Court. This Court also dismissed the appeal by order dated 08.07.2010.
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5. The petitioner is serving the sentence in District Jail, Nizamabad, District Nizamabad, A.P.
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6. The petitioner has now filed this petition on the ground that he was 17 years, 3 months and 11 days old on the date of incident, i.e., 02.08.1999, and hence, in view of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, he was juvenile on the date of incident.
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7. It is with these background facts, the question for consideration in this writ Petition is whether the petitioner is entitled to claim any relief?

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8. The notice of this writ Petition was served on the respondent-State and they are duly served and represented by the counsel. A

9. Heard Mr. R.K. Dash, learned senior counsel for the petitioner and Mr. S. Udaya Kumar Sagar, learned counsel for the respondent. B

10. Learned senior counsel for the petitioner made only one submission. Learned counsel contended that the petitioner's case is fully covered by the decision rendered in **Hari Ram vs State of Rajasthan & Anr.** [(2009) (13) SCC 211] and hence the petitioner is also entitled for the same relief which was granted to accused in the case of **Hari Ram** (supra). C

11. Learned counsel pointed out that since on the date of commission of the offence (02.08.1999), the petitioner was a minor i.e. 17 years, 3 months and 13 days of age (below 18 years) and hence he was entitled to get the benefit of law laid down and the relief granted to accused in the case of **Hari Ram** (supra). It was his submission that since the issue of juvenility of the petitioner was not decided in accordance with law laid down by this Court by the competent authority at any stage in any court proceedings and hence he has a right to raise such plea at any time and in any proceedings in any court for determination of this question notwithstanding the fact that he has suffered conviction from the regular courts. D E

12. In reply, learned counsel opposed the prayer contending that no case is made out for grant of any relief and hence this petition should be dismissed. F

13. Having heard learned counsel for the parties and on perusal of the record of the case, we find force in the submission urged by the learned senior counsel for the petitioner. G

14. Indeed, even the learned counsel appearing for the respondent could not dispute the legal position arising in the H

A case in petitioner's favour on the basis of law laid down in the case **Hari Ram** (supra) in the context of the facts alleged in the writ petition which remained uncontroverted on material issues.

B 15. In our considered opinion, the facts of the case in hand and the one involved in the case of **Hari Ram** (supra) are more or less similar. So far as the facts of **Hari Ram's** case (supra) are concerned, we find that the offence was committed on 30.11.1998 and the accused therein was found between the age group of 16 to 17 years i.e. below 18 years.

C On these facts, this Court examined the issue in the light of the proviso and explanation appended to Section 20 of the Juvenile Justice Act, 2000 by Amendment Act 33 of 2006 and laid down the following principles of law for deciding the issue of juvenility in every case.

D 16. It is apposite to reproduce Paras 38 and 39, 72 and 73 of **Hari Ram's Case** (supra) which are given as under:

"38. The same is, accordingly, reproduced hereinbelow:

E **"20. Special provision in respect of pending cases.—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on**

F **which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the**

G **juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:**

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Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

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Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

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The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.

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39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person

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A even after conviction by the regular court and also
empowers the court, while maintaining the
conviction, to set aside the sentence imposed and
forward the case to the Juvenile Justice Board
concerned for passing sentence in accordance with
B the provisions of the Juvenile Justice Act, 2000.

72. We, therefore, allow the appeal and set aside
the order passed by the High Court and in keeping
with the provisions of Sections 2(k), 2(l), 7-A and 20
of the Juvenile Justice Act, 2000 and Rules 12 and
C 98 of the Juvenile Justice Rules, 2007, hold that
since the appellant was below 18 years of age at
the time of commission of the offence the
provisions of the said Act would apply in his case
in full force.

D 73. The matter is accordingly remitted to the
Juvenile Justice Board, Ajmer, for disposal in
accordance with law, within three months from the
date of receipt of a copy of this order, having regard
to the fact that the offence is alleged to have been
E committed more than ten years ago. If, however, the
appellant has been in detention for a period which
is more than the maximum period for which a
juvenile may be confined to a special home, the
Board shall release the appellant from custody
F forthwith."

17. As mentioned above, we find no distinguishing
features in the facts of the case in hand and the one involved
in the case of **Hari Ram** (supra) so as to deny the relief to the
G petitioner herein because in this case also we find that the
offence was committed on 02.08.1999 and the petitioner was
found between the age group of 16-17 years i.e. below 18
years on the date of commission of the offence. That apart,
the question of juvenility of petitioner was not gone into till date
H in accordance with law by any Court.

18. In the light of these facts emerging from the record of the case which could not be controverted by the learned counsel for the respondent, we are of the considered view that the petitioner is entitled to claim the same relief as was granted in the case of **Hari Ram** (supra) by this Court.

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19. In view of the foregoing discussion, the petition succeeds and is allowed. The impugned order in so far as it relates to the petitioner is set aside. The matter is remitted to the concerned Juvenile Justice Board exercising jurisdiction for disposal of the petitioner's case in accordance with law within three months from the date of receipt of copy of this order.

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20. However, if the petitioner has been in detention for a period, which is more than the maximum period for which a juvenile may be confined to a special home, the Board shall release the petitioner from custody forthwith.

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Devika Gujral

Appeal allowed.