Supreme Court of India
Sudesh Kumar vs State Of Uttarakhand on 29 January, 2008
Author: C Thakker
Bench: C.K. Thakker, P.P. Naolekar

CASE NO.:
Appeal (crl.) 204 of 2008

PETITIONER:
SUDESH KUMAR

RESPONDENT:
STATE OF UTTARAKHAND

DATE OF JUDGMENT: 29/01/2008

BENCH:
C.K. THAKKER & P.P. NAOLEKAR

JUDGMENT:

J U D G M E N T ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 5639 OF 2007
Judgment Delivered by:

C.K. THAKKER J, P.P. NAOLEKAR J, C.K. THAKKER, J.

1. I have had the benefit of going through the judgment prepared by my learned Brother. I am in agreement with him that the appeal deserves to be dismissed. I, however, decide the appeal on the second ground that on the facts and in the circumstances of the case, the appellant has failed to make out a ground that he was less than 21 years of age at the time of commission of offence.

2. As observed by my learned Brother, the accused had not claimed benefit of Section 6 of the Probation of Offenders Act, 1958 either before the trial Court or before the High Court. My learned Brother has also referred to Yaduraj Singh & Ors. v. State of U.P., (1976) 4 SCC 310 wherein this Court did not allow a new plea as to age of the accused to be raised for the first time in this Court.

3. In Sushil Kumar Mehrotra v. State of Uttar Pradesh, (1984) 3 SCC 123, a similar plea was raised for the first time by the appellant- accused in this Court against his conviction for an offence punishable under Section 302 read with Section 34 and Section 394 of the Indian Penal Code (IPC). It was held that the contention of the accused that he was 15= years of age at the time of occurrence was a complete after thought and refused to grant the benefit on that basis.

4. It is, no doubt, true that the provision is beneficial and benevolent in nature and no technical objection should be raised that such plea was not taken before the Courts below. [Gopinath Ghosh v. State of West Bengal, (1984) Supp. SCC 228]. But in my opinion, there must be credible and trustworthy evidence in support of such plea. In the present case, a certificate in the form of Scholar Record & Transfer Certificate is annexed wherein the date of birth of the appellant was shown as June 28, 1962. The certificate was not on record either before the trial Court or before the

High Court. From the True Copy , it is clear that it is purported to have been issued by the Principal only on February 10, 2007. Thus, it cannot be said that there is credible evidence or trustworthy material that the appellant was less than 21 years of age at the time of commission of offence. In my considered opinion, such question cannot be permitted to be raised for the first time in this Court and I am in agreement with my learned Brother on that point.

5. Since the appeal can be decided on this ground, I refrain from expressing any opinion on the question dealt with and decided by my learned Brother on interpretation of Section 6 of the Act.

6. The appeal is accordingly dismissed.

P.P. NAOLEKAR, J.

Leave granted.

The appellant was convicted by the judgment and order dated 26.7.1985 passed by the Additional District & Sessions Judge, Dehradun, along with another accused person, under Section 392 read with Section 34 of the Indian Penal Code (IPC) and sentenced to undergo five years rigorous imprisonment and further to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months. The appellant was further convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year. In appeal preferred by the appellant, the High Court has confirmed the order of conviction and sentence by its order dated 9.7.2007.

The case of the prosecution in brief is that one Jagdish Prasad was wholesale beedi merchant and carried on his business in the name and style of M/s. Madrasee Basant Beedi in Vikasnagar, District Dehradun. Jagdish Prasad used to go to collect his dues from the retailers on every 15th day. On 7.3.1981, he went to Purola, Badkot for realization of his dues. Along with other persons, he was travelling in the car which was being driven by the driver Gyanendra Singh. While returning to Vikasnagar from Purola, they had stopped at the curve of Katta Pather and alighted from the car. Four miscreants came on scooter and parked the said scooter in front of the motor car. Two miscreants were armed with revolvers and the remaining two had khukhries with them. All of them surrounded Jagdish Prasad and ordered him to hand over money bag to them. They also threatened him to shoot and kill him if he made any protest. Jagdish Prasad quietly handed over the money bag containing about Rs. 25,000/-. He also gave his wrist watch and a golden ring. Another occupant of the car was compelled to give cash of Rs.230/- and the driver gave cash of Rs.600/- to them. One person sitting in the car was forced to give his three wrist watches. The miscreants snatched away the keys of the car from its driver. One of the miscreants ran away on the scooter along with the money bag, while the remaining three boarded the car and fled away. On appreciation of the evidence brought on record, the Additional District & Sessions Judge found the accused persons guilty and imposed the punishment which was confirmed by the High Court as mentioned hereinabove. The accused appellant- Sudesh Kumar has preferred this appeal against the order of conviction and sentence.

Shri K.T.S. Tulsi, learned senior counsel appearing for the appellant has submitted only one point that the accused at the time of the commission of the crime was below 21 years of age which is apparent from the statement recorded under Section 313 Cr.P.C. of the accused wherein age of the accused was given by the accused as 20 years and from the transfer certificate, filed along with special leave petition, issued by the Principal, Sanatan Dharma Junior High School, Dehradun, which shows that the appellant was born on 28.6.1962. It is, therefore, submitted that it is clearly established that the accused appellant on the date of the offence, i.e. 7.3.1981, was below 21 years of age and as such was entitled to consideration and benefit under Section 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as the Act for convenience). On the other hand, it is urged by Shri Jatinder Kumar Bhatia, learned counsel for the State that the accused having not raised the question of his age either before the trial court or before the High Court, and in the absence of any reliable material, could not ask for consideration of his case and benefit under Section 6 of the Act. It is further submitted that it is the date on which the sentence is passed which shall be the relevant date for applicability of Section 6 of the Act.

The question involved in this case is of interpretation of Section 6 of the Act. It would, therefore, be appropriate to reproduce Section 6 which reads as under: . Restriction on imprisonment of offenders under twenty-one years of age. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied, that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the Probation Officer and consider the report, if any; and any other information available to it relating to the character and physical and mental condition of the offender. While interpreting Section 6 of the Act, a 3-Judge Bench of this Court in the case of Daulat Ram v. The State of Haryaya, (1972) 2 SCC 626, has said that the object of Section 6 of the Act, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail. The Court laid down that Section 6 places restrictions on the court s power to sentence a person under 21 years of age for the commission of crimes mentioned therein unless the court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The court is also required to record reasons for passing sentence of imprisonment on such offender.

In another case in the matter of Satyabhan Kishore and Another v. The State of Bihar, (1972) 3 SCC 350, this Court (a 3-Judge Bench) reiterated the principle laid down by the Court in Daulat Ram case (supra) and Shelat, J. speaking for the Court held that Section 6 lays down an injunction as distinguished from discretion under Sections 3 and 4 not to impose a sentence of imprisonment on an offender, unless reasons are recorded. From the aforesaid judgments, it is apparent that while

imposing a sentence on an accused who is below 21 years of age and who is found guilty of having committed an offence punishable with imprisonment which is not the imprisonment for life, the court shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender it is not desirable to deal with him under Section 3 or Section 4 of the Act. It further mandates that if the court wants to impose a sentence of imprisonment on the offender who is below 21 years of age it shall record its reasons for doing so. Thus, the court imposing a sentence of imprisonment on an accused who is below 21 years of age would record reasons as to why it does not find it desirable to deal with him under Section 3 or Section 4 of the Act.

It can be noticed that the question of the offender being of 21 years or below on the date of the commission of offence or on the date of imposition of sentence of imprisonment was not dealt with in the above-mentioned cases.

The learned counsel for the appellant has relied upon a 2-Judge Bench judgment of this Court in the case of Masarullah v. State of Tamil Nadu, (1982) 3 SCC 458, wherein this Court held as under:

. In case of an offender under the age of 21 years on the date of commission of the offence, the court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the court to award sentence unless the court considers otherwise, `having regard to the circumstances of the case including nature of the offence and the character of the offender , and reasons for awarding sentence have to be recorded. Considerations relevant to the adjudication of this aspect are, circumstances of the case, nature of the offence and character of the offender. It is, therefore, necessary to keep in view the aforementioned three aspects while deciding whether the appellant should be granted the benefit of the provisions of the Act. It appears that in Masarullah case (supra), the Court did not notice a 4-Judge Bench judgment delivered by Ayyangar, J. in Ramji Missar and Another v. State of Bihar, AIR 1963 SC 1088 ( = (1963) Supp. 2 SCR 745), wherein this Court has noticed argument before the High Court that the Sessions Judge erred in not applying the provisions of Section 6 of the Act to the accused. The High Court repelled the contention holding that although the accused might have been under 21 years of age on the date of the offence, he was not a person under 21 years of age on the date when the Sessions Judge found him guilty and sentenced him to a term of imprisonment, and held that the crucial date on which the age had to be determined being not the date of offence but the date on which as a result of a finding of guilty sentence had to be passed against the accused. In the factual matrix of that case, this Court held as under:

. Taking first the case of Ramji, the elder brother, we entirely agree with the High Court in their construction of S.6. The question of the age of the person is relevant not for the purpose of determining his guilt but only for the purpose of the punishment which he should suffer for the offence of which he has been found, on the evidence, guilty. The object of the Act is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crime. If this were borne in mind it would be clear that the age referred to by the opening words of S.6(1) should be that when the court

is dealing with the offender, that being the point of time when the court has to choose between the two alternatives which the Act in supersession of the normal penal law vests in it, viz., sentence the offender to imprisonment or to apply to him the provisions of S.6(1) of the Act. . The Court further said:

9. We shall now proceed to consider one question which was mooted before us in regard to the crucial date for reckoning the age where an appellate court modifies the judgment of the trial Judge, when S.6 becomes applicable to a person only on the decision of an appellate or a revisional court. Is the age of the offender to be reckoned as at the date of the judgment of the trial Judge or is it the date when the accused is, for the first time, in a position to claim the benefit of S.6. We consider that on the terms of the section, on grounds of logic as well as on the theory that the order passed by an appellate court is the correct order which the trial court should have passed, the crucial date must be that upon which the trial court had to deal with the offender. From the judgment of the Court, it is apparent that the date of the judgment of the trial court would be the crucial date for consideration of the age of the accused while applying Section 6 of the Act.

Faced with the 4-Judge judgment of this Court in Ramji Missar (supra), the learned senior counsel for the appellant contended that while considering the pari materia provisions under the Juvenile Justice Act, 1986, a Constitution Bench of this Court in Pratap Singh v. State of Jharkhand and Another, (2005) 3 SCC 551, has held that reckoning date for determining the age of a juvenile is the date of the commission of the offence and not the date when he is produced before the competent authority or in the court and, therefore, the provisions of Section 6 of the Act should be construed in the same light, and the age of the accused for applying Section 6 of the Act has to be the date on which the offence was committed. While interpreting the provisions of the Juvenile Justice Act, 1986 (for short the 1986 Act ) and the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short the 2000 Act ), this Court has observed that these Acts provide for the care, protection, treatment, development and rehabilitation of juveniles. The Acts being benevolent legislations, such interpretation must be given which would advance the cause of the legislations, i.e. to give benefit to juveniles. Section 2(l) of the 2000 Act defines `juvenile in conflict with law as meaning a juvenile who is alleged to have committed an offence. The definition of `delinquent juvenile in the 1986 Act is referable to an offence said to have been committed by him. It is the date of offence that he was conflict with law. When a juvenile is produced before the competent authority and/or court, he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found guilty to have committed. Therefore, what was implicit in the 1986 Act has been made explicit in the 2000 Act. Sinha, J. in his concurring judgment said that having regard to the constitutional and statutory scheme it was not necessary for Parliament to specifically state that the age of juvenile must be determined as on the date of commission of the offence and the same is inbuilt in the statutory scheme.

From the aforesaid, it is apparent that while determining the age of a juvenile the Court has interpreted the provision for giving benefit to a juvenile who has committed an offence and was in conflict with law. The offence having been committed, he came in conflict with law on the date of commission of the offence which is relevant for determining the age for giving protection under the 1986 Act and the 2000 Act.

It can be noticed from Ramji Missar case (supra) and Pratap Singh case (supra) that the object and purpose of the Probation of Offenders Act, 1958 for applying the relevant provisions to the accused are different and cannot be said in pari materia with the Juvenile Justice Act, 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000. The Court would not construe a Section of a statute with reference to that of another statute unless the latter is in pari materia with the former. Therefore, a decision made on a provision of a different statute will be of no relevance unless underlying objects of the two statutes are in pari materia. The decision interpreting various provisions of one statute will not have the binding force while interpreting the provisions of another statute. Section 6 of the Act has been construed by a 4-Judge Bench of this Court in Ramji Missar case (supra) and that will have the binding force while interpreting the same Section in same statute and the decision of the Constitution Bench interpreting provisions of the 1986 Act and the 2000 Act would not be held to be a decision on interpretation of Section 6 of the Act. Section 6 of the Act would apply to the accused who is under 21 years of age on the date of imposition of punishment by the trial court and not on the date of commission of the offence. If on the date of the order of conviction and sentence by the trial court the accused is below 21 years of age the provisions of Section 6 of the Act applies in full force.

That being the case, even if the date of birth of the accused is held to be 28.6.1962 as alleged by him in the petition, on the date of delivery of judgment of conviction and sentence on 26.7.1985 by the Additional District & Sessions Judge he was more than 21 years of age and thus was not entitled to the benefit under Section 6 of the Act.

That apart, the question of applicability of the Act has been raised for the first time while filing the special leave petition. The accused has not claimed benefit under Section 6 of the Act during the trial before the Additional District & Sessions Judge or before the High Court. Only material which was placed before the Sessions Judge or the High Court is the statement recorded of the accused appellant under Section 313 Cr.P.C. wherein the age of the accused was given as 20 years. In the similar circumstances, in Yuduraj Singh and Others v. State of U.P., (1976) 4 SCC 310, this Court held as under:

. The learned counsel appearing for the appellants argues that on August 30, 1969 when the incident took place, appellants 3 and 4 were less than 21 years of age and, therefore, they ought to have been given the benefit of the Probation of Offenders Act. This contention was neither taken in the sessions court nor in the High Court. True, that this Court has taken the view that in appropriate cases such a contention may be entertained by this Court for the first time. But the difficulty in accepting the submission of the learned counsel is that there is no credible evidence on the record showing that appellants 3 and 4 were less than 21 years of age when the offence was committed. Counsel says that those two accused had given their ages in their statements under Section 342, Code of Criminal Procedure, and if the trial Judge doubted the correctness thereof, he could have had the two accused medically examined in order to ascertain their age This seems to us a difficult burden for any trial Judge to undertake. The age given by the two accused in their statements had no special significant in the absence of a proper plea under the Probation of Offenders Act. For the aforesaid reasons, the appeal being devoid of any merit, is dismissed.