

- (ii) The State of Haryana is not competent to levy sales tax on the transfer of property in goods involved in the execution of a 'works contract' in a case where the order for printing of lottery tickets has been placed by another State, and there is movement of the end product in the course of inter-state trade and commerce.
- (iii) Clause 29-A which was added in Article 366 by the 46th Amendment of the Constitution only embodies an enabling provision. It does not, however, ipso facto authorise the State Legislature to levy taxes on the sale or purchase of goods where such sale or purchase takes place in the course of inter-state trade and commerce. The power in this behalf vests exclusively in the Parliament and unless the provisions of the Central Sales Tax Act, 1956 are amended, the fiction introduced under the State Act by the Haryana Legislature would not permit the levy of sales tax.
- (iv) Review Application No. 147 of 1993 filed by the petitioner is allowed. The order of assessment dated January 14, 1992, a copy of which has been appended as Annexure P-1 with CWP No. 337 of 1992, is set aside.
- (v) Review application No. 205 of 1993 filed by the State of Haryana is dismissed.
- (vi) Civil Writ Petitions Nos. 14757-14758 of 1993 and 4502 of 1995 are allowed. The orders of assessment impugned in CWPs Nos. 14757 of 1993 and 4502 of 1995 are set aside.
- (vii) The cases are remitted to the assessing authority for a fresh decision in accordance with law and the conclusion recorded above.
- (21) In the circumstances of these cases, we make no order as to costs.

J.S.T.

Before Hon'ble S. S. Grewal, J.

DIAL SINGH.—Petitioner.

versus

STATE OF PUNJAB.—Respondent.

Crl. R. No. 747 of 1993

6th December, 1993

Juvenile Justice Act, 1986—One of the accused claiming separate trial under Juvenile Act—Power of Sessions Judge to decide the question.

Held, that the perusal of sub-sections (2) and (3) of Section 7 of the Act shows that powers conferred on the Board or the Juvenile Court by or under the Act may also be exercised by the Sessions Court or the High Court when the proceeding comes before them in appeal or revision or otherwise. The word 'or otherwise' appearing at the end of Section 7(3) clearly indicates that it would be open to the Court of Sessions to exercise the powers conferred on the Board or Juvenile Court by or under this Act while conducting trial in a murder case as is the situation in the present case. The learned Additional Sessions Judge was legally competent to decide the question of the age of the petitioner and further to decide as to whether the petitioner had attained the age of 16 years and would come within the definition of juvenile under Section 2(h) of the Act.

(Para 5)

D. S. Chahal, Advocate, for the Petitioner.

I.P.S. Sidhu, AAG Punjab, for the Respondent.

JUDGMENT

S. S. Grewal, J. (Oral).

(1) This revision petition is directed against the order of Additional Sessions Judge, Amritsar, dated 17th of September, 1993 whereby the learned Additional Sessions Judge, dismissed the application moved on behalf of the present petitioner that he is a child and his age is 15 years and that he be tried as per the provisions of Juvenile Justice Act 1986 separately by a Special Court. It was further prayed that his case may be separated from his co-accused and sent for trial before the Special Court in view of Section 24 of the Juvenile Justice Act, 1986 (hereinafter referred to as the Act) and the Rules framed thereunder.

(2) The main grievance of the petitioner is that the learned Additional Sessions Judge had no jurisdiction to decide the question of age of the petitioner in order to decide the main question whether he was a juvenile or not at the time of the commission of the offence. Relevant provisions of Sections 2(d) and 7 of the Act are reproduced hereunder for the sake of convenience :—

“2(d) ‘competent authority’ means, in relation to neglected juveniles, a Board and, in relation to delinquent juveniles, a Juvenile Court and where no such Board or Juvenile

Court has been constituted, includes any Court empowered under sub-section (2) of Section 7 to exercise the powers conferred on a Board or Juvenile Court."

"7. Powers of Board and Juvenile Court :—(1) Where a Board or a Juvenile Court has been constituted for any area, such Board or Court, 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 neglected juvenile or delinquent juveniles, as the case may be :

(3) Provided that a Board or a Juvenile Court may, if it is of opinion that it is necessary so to do having regard to the circumstances of the case, transfer any proceedings to any Juvenile Court or Board, as the case may be.

(4) Provided further that where there is any difference of opinion between a Board and a Juvenile Court regarding the transfer of any proceedings under the first proviso, it shall be referred to the Chief Metropolitan Magistrate or, as the case may be, the Chief Judicial Magistrate for decision, and in a case where the District Magistrate is functioning as a Board of a Juvenile Court, such difference of opinion shall be referred to the Court of Sessions, and the decision of the Chief Metropolitan Magistrate or Chief Judicial Magistrate or, as the case may be, the Court of Sessions on such reference shall be final.

(2) Where no Board or Juvenile Court has been constituted for any area, the powers conferred on the Board or the Juvenile Court by or under this Act shall be exercised in that area, only by the following namely :—

(a) the District Magistrate ; or

(b) the Sub Divisional Magistrate ; or

(c) any Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be.

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

(5) Perusal of sub-sections (2) and (3) of Section 7 of the Act shows that powers conferred on the Board or the Juvenile Court by

or under the Act may also be exercised by the Sessions Court or the High Court when the proceeding comes before them in appeal or revision or otherwise. The word 'or otherwise' appearing at the end of Section 7(3) clearly indicates that it would be open to the Court of Sessions to exercise the powers conferred on the Board on Juvenile Court by or under this Act while conducting trial in a murder case as is the situation in the present case. In my opinion the learned Additional Sessions Judge was legally competent to decide the question of the age of the petitioner and further to decide as to whether the petitioner had attained the age of 16 years and would come within the definition of juvenile under Section 2(h) of the Act.

(6) Faced with this situation, the learned counsel for the petitioner further submitted that the learned trial Court has erred in relying upon entry in the Chowkidara registered while ignoring the school leaving certificate and the certificate issued by the Registrar Births and Deaths, Municipal Corporation, Amritsar. The latter entry was ignored on the ground that there was no evidence to connect the said entry with the petitioner inasmuch as the mother's name of the petitioner in the certificate was Kamaljit Kaur whereas the petitioner's mother name is Savinder Kaur wife of Harjinder Singh. It is true that Savinder Kaur had mentioned that she is also known as Kamaljit Kaur the fact remains that in the voters list she had given her name as Savinder Kaur and not Kamaljit Kaur. In the absence of any evidence on the record that the entry in the Chowkidara register was made by person other than the Chowkidar himself, the learned trial Court was justified in relying upon the entry in the Chowkidara register and ignoring the entry in the school leaving certificate.

(7) It was further submitted by the learned counsel for the petitioner that the learned Additional Sessions Judge, in the instant case, has not sought medical opinion regarding the age, physical and mental condition of the petitioner as contemplated under Rule 5(4) of the Juvenile Justice (Punjab) Rules, 1987 (hereinafter referred to the Rules). For the sake of convenience Rule 5(4) of the Rules is reproduced as under :—

“5(4) In every case concerning a juvenile, the competent authority shall obtain a birth certificate or medical opinion regarding his age and his physical and mental conditions and when passing orders such case shall after taking into consideration the medical opinion and such

other evidence as may be available record a finding in respect of his age.”

(8) Careful perusal of Rule 5(4) indicates that it is obligatory for the Court either to obtain the birth certificate or medical opinion regarding the age physical and Mental condition of juvenile offender while passing orders to consider such medical opinion and such other evidence as may be available before recording a finding in respect of his age. Since the birth certificate was already on the record, it was not essential for the learned Additional Sessions Judge to obtain the medical opinion concerning the age, physical and mental condition of the petitioner. It is well known that medical opinion concerning the age may be obtained by conducting ossification test which itself is not a surer test and the ossification age given by the medical expert after conducting such test may vary on either sides by two years in view of the opinion expressed by Dr. Modi in his Medico-legal Jurisprudence.

(9) For the foregoing reasons, I do not find any merit in this petition and the same is hereby dismissed. However, in case the petitioner wants to be released on bail on the ground of his young age, he may, if so advised, move a separate application for this purpose.

S.C.K.

Before Hon'ble H. S. Brar, J.

RAM KUMAR,—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

Cr. M. No. 520-M of 1994

31st January, 1995

Code of Criminal Procedure, Quashing 1973—S. 482—Food Adulteration Act, 1954—S. 7, 16/A—Summary Procedure—Under what circumstances could a Magistrate depart from summary procedure and resort to procedure of a warrant case—It is mandatory for Magistrate to hear parties and record reasons as to why warrants case procedure is to be adopted—Failure to do so—Complaint liable to be quashed.