

[2019] 6 S.C.R. 41

ASHOK KUMAR MEHRA & ANR.

V.

THE STATE OF PUNJAB ETC.

(Criminal Appeal Nos. 1466-1467 of 2008)

April 15, 2019

[ABHAY MANOHAR SAPRE AND

DINESH MAHESHWARI, JJ.]

Juvenile justice (Care and Protection of Children) Act, 2000: gi s.20 ga eroinana ss. 2(k), 2(I), 7A –kumja 2000 gi Act sigi kanaba- kanana (entitlement) fangfam thokpa- Appellant no.2 bu Sessions Judge na maral leite haiba wayelgi taiyonabada High Court na IPC gi u/s 302/34 gi makhada Criminal trial amada mee amabu maral leire haina Court na laothokpa (Conviction piba) amasung maral leiraba mee amabu karamba makhalgi cheirak pigani (sentence) piba-appellant asina ehan hanba oina mahak chahi 18 sudriba angang(juvenile) amani haina court asigi maphamda haijaba – Appeal(haija warol) aduda Court asina wapham asi asumna taba: Sections 2(k),2(I), 7A amadi 2006 ta semdokhraba kumja 2000 gi Act ki section 20 ga eroinana paminaba matamda chahi 18 sudriba angang(juvenile) amana karigumba aranba thabak (offence) ama touramba matamda kumja 2000 gi Act asina piba khudongchaba asi louba yai, wapham asi Court sigi maphamda ahanba oina thangatpa oijarabasu Appellant no. 2 si chahi 18 sudriba angang (juvenile) ama oibana hairiba appeal sidasu chatnaba yagani - Asumna, Appellant no. 2 asi aranba (offence) toukhiba numit aduda juvenile ama oiba maramna amasung mahak na hwjikphoubada wayel chathariba(under-trial) amadi maral leiraba phadok(convict) ama oina shanglaba matam ama keisumsangda mapunshi lellaba meewoi ama oibana mahaki mathakta takhiba yathang(impunged order) adu kakpa(set aside).

Court asida haijarakliba meewoi ahanba(appellant no. 1) gi haija warol (appeal)na kaklaga anisuba meewoi(appellant no. 2) gi haija warol (appeal) buna wayel chathanaba ayaba piba oina, Court asina

Warep loure madudi(*Held*):1.1 Haija warol(*appeal*) thajalakhiba meewoi ahanba(*appellant no. 1*) haibadi mapa asi leikhidabana maram oiduna mahaki oinadi wayel asi makha tana chathaba thingle (abate). [para 7] [44-B]

1.2 Haija Warol (*appeal*) thajalakliba anisuba meewoi (*appellant no. 2*) asi tarik 14.06.1980 da pokee amasung mahakna aranba thabak(*offence*) toururiba adugi numitna 04.01.1998 tani. Masina maram oiduna, anisuba meewoi(*appellant no. 2*) asi chahi 18 sudriba angang (*juvenile*) ni haiba warol asi kakningai yaodaba wafamni (matam aduda mahak chahi 18 sudriba angang amani haibadi mahak supnatagi chahi 17 ka tha 5 fabata ngairi) aranba toukhiba (*offence*) numit adugi tarik paraba matungda haibani. Adubu hairiba wapham asi *Sessions Judge* amasung *High Court*ki mamangda puthoktuna matam aduda pukhatlak khidaba amasung haijaralakliba meewoi anisuba(*appellant no. 2*) asina Court asigi maphamda wapham asi ahanba oina thamba oijarabasu Court asina Raju gi caseta takhiba rai gi matung enadi houjiksi adum wapham asi puthorakpa yabagi ayaba lei. Sections 2(k),2(I), 7A amadi 2006 ta semdokhraba kumja 2000 gi Act ki section 20 ga eroinana paminaba matamda chahi 18 sudriba angang (*juvenile*) amana karigumba aranba thabak(*offence*) ama touramba matamda kumja 2000 gi Act asina piba khudongchaba asi loubu yai. Kumja 2000 gi Act asigi section 7A ki matung enna chahi 18 sudriba angang (*juvenile*) oire haibasi (*claim of juvenility*) case amagi tangkak(*stage*) amahektada Court amahektagi mamangda, masigi wayel shang (*court*) asisu yaona aranba touwee haina maral shiralaklaba meewoi (*accused*) amana hanana waroishin puraktuna loisinkhraba (*final disposal*) case singsu youna wapham asi puthokpa yabagi ayaba piri .[Paras 8-11][45-E-H;44-D-G]

1.3 *Appellant no. 2* gi pokpa numit asi kayam chumi natraga lali haibasi mahakna *Sessions Courta* mahaki pokpagi khudam utliba che(*birth certificate*) pisinba matamda *prosecution* na matamduda karimata yetpa leikhidy; Court asinasu *appellant no. 2* asi aranba thabak(*offence*) adu toubu matam aduda chahi 18 sudriba meewoi(*juvenile*) ama oibana *bail* pikhi amasung *Respondent* oiriba State nasu wapham asida yetkhidy amasung haija warol (*Appeal*) asi Court asina khannaba matamda State ki damakta leplibu wakil nasu mahaki pokpagi khudam utliba che (*date of birth certificate*) asi aranbani haina yetkhidy. Maram asina mahaki pokpagi numit ki matangsida makha tana thijan humjanbagi (*further inquiry*) mathou tady.[Para 12,13][46-A-C]

1.4 Appellant no. 2 asi aranba thabak(*offence*) toukhiba numit aduda chahi 18 sudriba meei (*juvenile*) ama oiba maramna amasung mahak na hwjikphoubada wayel chathariba(*under-trial*) amadi maral leiraba meei(*convict*) ama oina shanglaba matam ama keishumshangda mapunshi lelaba oibana mahaki mathakta takhiba yathang(*impunged order*) adu kakle(*set aside*). [Para 14] [46-D]

Matang asida *Raju v. The State of Harayana* 2019(4) SCALE 398- ki mateng Court asina louri.

Mateng Louriba Case Law

2019(4) SCALE 398 ki mateng asi Para 8,14 ta louri

CRIMINAL APPELLATE JURIDICTION : 2008. Ki Criminal Appeal Nos. 1466-1467 .

Tarik 21.07.2008 ta Chandigarh da pikhiba Court of Punjab and Haryana gi Wayel (*Judgement*) amadi Yathang (*Order*) da Criminal Appeal No. na No. 681-DBA of 2000 and Criminal Revision No. 1242 of 2000.

Yash Pal Dhingra, *Appellants* ki damakta leplibak (*Advocate*)

Ankit Swarup, Ms. Vidisha Swarup, Jawad Tariq, Rohit Kumar Singh, Ms. Jaspreet Gogia, Ms. Mandakini Singh, Ms. Ashima Mandla, *Respondent* ki damakta leplibak (*Advocate*) sing.

Court asigi Wayel (*Judgement*) sina **Justice ABHAY MANOHAR SAPRE** na asumna piri,

1. Masigi haija warol (*Appeals*) sing asi Chandigarh da High Court of Punjab & Haryana na Tarik 21.07.2008 da pikhiba *Criminal Appeal No.681-DBA of 2000* amsung *Criminal Revision No. 1242 of 2000* gi aroiba wayel(*judgement*) amadi yathang (*order*) dugi mayokta thangatlakpani, maduda High Court na Respondent No. 1(State) na thangatlakpa *appeal* amasung respondent No. 2(*Complainant*)na thangatlakpa *criminal revision* bu yahalaba matung Sessions Judge, Rupnagar na Sessions Case No 10 of 1998 ga mari leinana tarik 06.06.2000 ta pikhiba wayel adubu aranba wayelni haiduna *appellants* animakpu Indian Penal Code 1860(makha tarakpada IPC hainadang sijinariba) ki Section 302 amasung Section 34 ki makhada *phadok(Convict)* piraduna

mapunshi chupa keisumshangda leiba amsung fine oina lishing manga-manga thibagi dandi piramkhi. Karigumba fine sing adu thidaba taragana tha 6 keisumshang manungda akanba thabak shubagi dandisu phangani.

2. *Appeals* shing asibu loishankhinaba makhada warol khara thamba darkar oiri.
3. *Appellant No. 1* – Ashok Kumar Mehra si *Appellant No. 2* –Kushwant @ Sukhwant Kumar Mehra gi mapani. *Appellants* animak haibadi mapa macha animak Inderjit Dhiman kouba meewoi ama hatpada chenei haidana Courtna wayel chathariba meewoini. Sessions Judge na tarik 06.06.2000 ta pikhiba Sessions Case No. 10/1998 gi wayel (*judgement*)/yathang(*order*) da appellant animakpu maral leity haina thamle.
4. State amasung *Complainant* animak wayel asina sokladuna High Court ki maphamda Criminal appeal amadi Criminal Revision gi case thangatlakhi. High Courtna Criminal appeal amadi Criminal revision animak yahalaba matung Sessions Judge na pikhiba wayeldugi taiyonabada *Appellants* animak asi maral lei haiduna mapunshi chupa keisumshangda leiba haina dandi pibadagi mapa macha ani asina court asigi maphamda *haija warol(appeal)* si thangatlakpani.
5. Mr. T.S. Doabia, appellants ki damak lepiba senior wakil amasung Mr. Ankit Swarup amadi Ms. Jaspreet Gogia, respondents singi leplibani wakil shingi warol tare.
6. Mr. T.S. Doabia, appellants ki damak lepiba senior wakil na hourakpada asumna thangatlakli madudi, appeal thajalakhiba meewoi ahanba(*appellant no. 1*) haibadi mapa asiga mari leinana hai madudi, mahak (mapa) asi appeal asi loisandringeida leikhidabani. Learned counsel na amukka eikhoigi mityeng chingsillak li madudi, appeal thajalakhiba meewoi anisuba(*appellant no.2*)-Khushwant@Sukhwant Kumar Mehra haibadi, machanupa asi aramba thabak (*offence*) toukhiba numit aduda chahi 18 sudriba angang (*juvenile*) oiri haiduna thamli.
7. Eikhoigi mottki matung enna, appeal thajalakhiba meewoi ahanba(*appellant no. 1*) Ashok Kumar Mehra haibadi mapana thangatlakhiba appeal asigi oinadi, mahak leikhidabana maram oiduna makha chathaba yadana (*abated*) oina leire. Hiram asigi matangda, eikhoigi mityengda appellant no. 1 na thangatlakhiba appeal asi makha chatnahandabana (*abated* toubana) maram oiraga appeal asi kakle (dismissed toure).

8. Houjikna appeal thajalakhiba meewoi anisuba(*appellant no.2*)- Sukhwant Kumar Mehra haibadi, machanupa asigi appealgi oinadi, eikhoigi mityengda, appeal adu yabagi hak lei haina louee haibadi Court asina **Raju vs. The State of Haryana**, 2019(4) SCALE 398 adudasu chap manaba wahang asi neinakhi. Court (three judges bench) asina Paras 9, 10 amasung 25 ta takhiba rai sing adudi makhada thamli:

“9. *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211 gi case tasu warep loukhibagumna, houjikti masi mayamna yanaraba wafamni madudi Sections 2(k),2(I), 7A amadi 2006 ta semdokhraba kumja 2000 gi Act ki section 20 ga eroinana paminaba matamda chahi 18 sudriba angang (*juvenile*) amana karigumba aranba thabak (*offence*) ama touramba matamda kumja 2000 gi Act asina piba khudongchaba asi loubu yai haina. (*mari leinana yengba yaba atopa case sing Mohan Mali v. State of Madhya Pradesh*, (2010) 6 SCC 669; *Daya Nand v. State of Haryana*, (2011) 2 SCC 224; *Dharambir v. State (NCT) Of Delhi (Supra)*; *Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh*, (2013) 11 SCC 193). Houjikti chap mannana yanare madudi, Kumja 2000 gi Act asigi section 7A ki matung enna chahi 18 sudriba angang (*juvenile*) oire haiba (*claim of juvenility*) asi case amagi tangkak(*stage*) amahektada Court amahektagi mamangda, masigi wayel shang (*court*) asisu yaoraduna aranba touwee haina maral shiralaklaba meewoi (*accused*) amana hanana waroishin puraktuna loisinkhraba (*final disposal*) case singsu youna wapham asi puthokpa yabagi ayaba piri. (case yengba yaba sing *Dharambir v. State (NCT) of Delhi*, (*supra*), *Abuzar Hossain v. State of West Bengal*, (2012) 10 SCC 489; *Jitendra Singh @ Babboo Singh v. State of UP*, (*supra*); *Abdul Razzaq v. State of Uttar Pradesh*, (2015) 15 SCC 637).

10. Hairiba mathaki ain gi mityeng(*legal position*) sina khudam oiraga *appellant* asi kumja 2000 gi Act sigi kanaba loubu yagani karigumba mahaki chahi sina aranba thabak (*offence*) adu touruba numita chahi 18 gi makha oiragadi. Masigisu mathakta, Section 7A gi matung ennadi mahakna *Trail Court* ta

Juvenilty/chahi 18 sudabagi gi case ni haidana haijahoudabagi wapham asi thoina darkar leity. Court asigi *Registrar(Judicial)* gi thijin humjinbagi chebao (*inquiry report*) ki matung enna case asidasu *Appellant* asina aranba touwe haiba numit asida mahak asi chahi 18 gi makhada lei haibasi khang. Eikhoigi mangda tariba amata ngairaba wahang adudi matang asida masini, madudi High Courtna pikhriba rai adugi taiyonabada report asibu hena lumna louraga kumja 2000 gi Act asigi kanabasi appellant sida phanghangadra haibaduni.

25. Criminal Appeal asi matang asida ayaba pire amasung IPC gi section 376(2)(g) gi makhada High Courtki Yathangi matung enna *Appellant* asi maral leire haina laothokpa amasung phadok pikhibadubuna kakle. *Appellant* asi keishumshangda chahi 6 lellaba meewoini haibasi yenglaba matung amasung kumja 2000 gi Act ki Section 15(1)(g) ki matung enna chahi 18 sudriba angang(*juvenile*) amabu Special home amada thambagi khwaidagi shangba matam asi chahi 3 khaktani haibasisu yenglaga amadi mahak asi Court na Tarik 09.05.2014 da thokpa yathang matung enna *bail* phanglaba meewoi ama oibana amuk hana phajanbagi mathou tady. Mahaki *Bail bonds* gi matung enna thamlamba athingba shingsu lina louthokle amadi mahaki mathakta thangatlamba case asigi mari leinaba wapham khudingmak matang asida lina louthokle.

9. Ekhoina *Appellant* no. 2 gi case asiga mari leinaba wapham(*facts*) khudingmak **Raju**(supra) gi caseta takhiba ain gi oiba mityengdagi kupna neinaba matamda eikhoina khangba ngami madudi appellant No.2 gi pokpa numitna tarik 14.06.1980 ni aduga aranba thabak (*Offence*) toukhraba numit tuna tarik 04.01.1998 tani.
10. Maram asina *Appellant* No. 2 si aranba thabak(*Offence*) touruba numit aduda (04.01.1998) *Juvenile*(chahi 18 sudriba angang haibadi chahi 17 ka tha 5) ni haibasi yanaraba waphamni. Atopa waheida hairabada, *Appellant* No.2 asi aranba touba numit aduda haibadi tarik 04.01.1998 da chahi 18 mapung phadriba angang amani haibasini.

11. Wapham asi Sessions Judge natraga High Court ki mamangda pukhatlakhidaba amasung ehan hanba oina Appellant No. 2 na Court sigi mapham da puthorakhiba oijarabasu, Para 10 da pankhriba **Raju**(supra) gi case ta Court asina takhiba rai mayam asigi mateng louraga Appellant No.2 na tabinaba haijaribasi appeal asidasu phangpham thoke.
12. Appellant No. 2 gi pokpa numit ki achum-arangi matang asidadi , ahanbada, Appellant No. 2 na Sessions Courta masagi pokpagi khudam utliba che (*date of birth certificate*) pishinkhi haibasi yetnadraba waphamni ; anisubada, mahaki mathakta case thangatliba meewoi shingna Certificate adu Sessions Judge ki mamangda aranbani haiduna yetkhibasu leity; ahum subada, masigi Court asina tarik 11.07.2011 thokhiba bail pibagi yathang aduda pankhiba Appellant No. 2 si chahi 18 mapum phadriba angang amani haibasi respondent oiriba State na yetkhidy; amasung eroi loidabada, appeal asi hwjiksi takhiba matamda, respondent State ki damakta leplibaki vakil shingnasu Appellant No. 2 gi pokpagi khudam utliba che (*date of birth certificate*) ki matangsida yetpa leity.
13. Mathakta pankhriba maram mari asi yenglaga, ekhoina ashumna loure madudi mahaki chahigi wapham asigi matangda makha tana thijan humjanbagi (*further inquiry*) mathou thoina tadre.
14. Mamangda neinakhraba warol mayam asi yenglaga, ekhoigi oiba kupna khandharaba motti masini, madudi Appellant No.2 si chahi 18 sudriba angang ama thoudoktu thokpa numit aduda oiba amasung wayel chathariba(*under-trial*) amadi phadok/maral leiraba meewoi(*convict*) ama oina shanglaba matam kaya keishumshangda mapunshi lelaba meewoi ama oirabasu, mahakna thangatlakliba haija warol (*appeal*) asi **Raju**(supra) gi case ta toukhibagumna case asigi *merit* (achum aran) lomda chansandringei amadi makha taba rai amata pidabida, appeal asibu khana neinabagi ayaba piri.
15. Ashumna Appellant No. 2 gi appeal asi ayaba pire. Appellant No. 2 gi mathakta pikhiba hanagi yathang(*order*)buna matang asida kakle.