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DINA NATH @ DAULAT

V.

STATE OF HIMACHAL PRADESH

Criminal Appeal No. 16 of 2008

APRIL 23, 2009

B

**[DR. ARIJIT PASAYAT AND ASOK KUMAR  
GANGULY, JJ.]**

C

*Juvenile Justice (Care and Protection of Children) Act, 2000 – Juvenile – Determination of – Plea by appellant that he was minor at the time of commission of offence – Held: Certain documents have been filed to substantiate the plea, but the applicability of the amended provision is to be considered – On facts, matter remitted to trial court for adjudication of the plea.*

D

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No.16 of 2008

E

From the Judgement and Order dated 06.11.2007 of the Hon'ble High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 89 of 1993

S.K. Bansal, Savitri Bansal, Roopak Bansal, Debasis Misra, for the Appellant.

Naresh K. Sharma, for the Respondent.

F

The Judgement of the Court was delivered by

**DR. ARIJIT PASAYAT, J.**

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The only point urged in support of the appeal is that the appellant was minor within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short "2000 Act"). Reference is also made to the amendment of the expression "juvenile in conflict with law" in terms of Section 2(l) as amended by Act 33 of 2006 with effect from 22.8.2006. Reference is also

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made to the explanation appended to Section 20 by the said amendment. It is the stand of the appellant that on the date of occurrence he was minor as his date of birth is 6.3.1973. A

Learned counsel for the respondent states that this plea was not raised either before the trial court or before the High Court by the appellant. The question about the applicability of 2000 Act and the amendment thereto has to be tested on the basis of the evidence. Though certain documents have been filed to substantiate their stand that the appellant was a minor on the date of occurrence i.e. on 15.6.1990, the applicability of the amended provisions have to be considered. In the peculiar facts of this case, we set aside the impugned judgment of the High Court and remit the matter to the trial court to decide only the question as to whether the appellant was a juvenile on the date of commission of the offence i.e. on 15.6.1990. We make it clear that we have not expressed any opinion on the merits of the case. The trial court shall permit the accused appellant to produce such evidence as is considered necessary by him to substantiate the aforesaid plea. Similar shall be the case in case of prosecution. B C D

As the matter is pending since long, let the adjudication be done by the end of September, 2009. The accused-appellant shall continue to remain in custody till the adjudication is done by the trial court. E

We make it clear that the impugned judgment is being set aside only for the purpose of adjudicating the plea raised by the appellant that he was minor at the time of commission of the offence. F

The appeal stands disposed of accordingly.

N.J.

Appeal disposed of.