2002 P Cr. L J 659

[Karachi]

Before Muhammad Roshan Essani and S.A. Rabbani, JJ

ZIA AHMED AWAN---Petitioner

Versus

GOVERNMENT OF SINDH and others---Respondents

Constitutional Petition No.D-743 of 1993, decided on 27th September, 2001.

Sindh Children Act (XII of 1955)----

----S. 10---Constitution of Pakistan (1973), Art.199 --- Constitutional petition---Public interest litigation---Juvenile offender---Trial of Juvenile offender to be conducted according to law---Petitioner being a human right activist filed the Constitutional petition in public interest wherein he pointed out that the juvenile offenders were not being tried in accordance with law---Validity---In addition to Juvenile Justice System Ordinance, 2000, there were Sindh Children Act, 1955, Sindh Borstal Schools Act, 1955. and Reformatory Schools Act, 1897, in force in. the Province of Sindh---High Court advised the Government of Sindh to promulgate a consolidated law on the subject, incorporating substantial provisions of the Federal Juvenile Justice System Ordinance, 2000---Responsibility lay with the Provincial Government to ensure that the provisions of the law t were complied with by the agencies and concerned officials---Subject involved in the petition was not only legal but also had social and moral concern---High Court directed the Provincial Government to get the matter examined by a Committee comprising experts on the subject and officers of the concerned Departments, for the purpose of consolidation of the law on the subject as well as to ascertain the areas in the system where compliance with the law was not being made and to establish the institutions required under the law to provide facilities within a period of six months---Constitutional petition was allowed accordingly.

M. Ilyas Khan for Petitioner.

Nemo for Respondents.

Date of hearing: 19th September, 2001.

JUDGMENT

S.A. RABBANI, J.---The petitioner is an Advocate, and human rights activist. He filed this petition, in the public interest, pointing out violations of law being committed in respect of juvenile offenders. He pointed out that there is no separate Court for juvenile offenders as required under Sindh Children Act, 1955.

He submitted that section 10 of the Sindh Children Act prohibits joint trial of a child with an adult but such joint trials are being conducted. He further submitted that under section 68 of this Act no youthful offender can be sentenced to death or imprisonment and under section 69, the expressions "convicted" and "sentenced" are not to be used in relation to children but these provisions are being violated. He further pointed out that there is no separate arrangements for juvenile offenders for taking them to Court and back to the remand home and they are, sometimes taken in the same vehicle alongwith adult hardened criminals. He further pointed out lack of provision of medical facilities for the children involved in offences and non-existence of certified schools as required under Sindh Children Act. He also pointed out that often juvenile offenders are produced before Court in handcuffs. In substance, he has pointed out how the law about juvenile offenders is being ignored and not complied with. He made the following prayer in the petition:--

"(a)?????? To declare that various sentences awarded to the juvenile in contravention of the provisions of the Sindh Children Act, 1955 are illegal ab initio void and coram non judice.

(b)??????? To establish Juvenile Courts in the areas notified under the Sindh Children Act, 1955 as required under section 9. of the said Act.

(c)??????? To declare that non-Court competent to try a juvenile under section 8 of the Sindh Children Act shall try any juvenile alongwith an adult in contravention of section 10 of the Sindh Children Act, 1955.

(d)??????? To direct the authorities not to bring the juvenile to the Court with hardened and desperate criminals and in handcuffs or fetters.

(e)??????? To declare that there should be proper 'certified schools' for juvenile offenders with all the arrangements and facilities as provided under Sindh Children Act, 1955.

(f)???????? To declare that there should be a separate Juvenile Courts for each District of Karachi and other parts of Sindh.

(g)??????? To declare that there should be a separate vehicle for these boys to take them to the Court for trial and back.

(h)??????? To declare that there should be medical facilities for these juvenile offenders and other training facilities as provided under the Acts.

(i)???????? To declare that the trial of these young offenders be conducted without any delay and they should not be allowed to rot in Remand Home for months without trial;

(j)???????? To order any other/further/better/additional relief or relieves/ facilities in 'remand home' this Honourable Court deems fit and proper in the circumstances of the facts of case and for betterment of the juvenile offenders."

The comments filed by Home Department, Government of Sindh, do not categorically reflect absence of the violations of law in respect of juvenile offenders.

Now, an Ordinance has also been promulgated on the subject a; the Federal level. The Juvenile Justice System Ordinance, 2000, extends to whole of the country and it is in addition to any other law for the time being in force. This Ordinance provides the manner how juvenile offenders are to be dealt with in the process of law.

In the Province of Sindh, the Sindh Children Act, 1955, Sindh Borstal Schools Act, 1955, and the Reformatory Schools Act, 1887 are in force on the subject, in addition to the new Federal Ordinance.

It would be advisable for the Government of Sindh to promulgate a consolidated law on the subject, incorporating substantial provisions of the Federal Juvenile Justice System Ordinance, 2000. It is responsibility of the Provincial Government to ensure that the provisions of the law are complied with by the agencies and concerned officials.

The subject involved in this petition is not only legal, but it has also social and moral concern. The Provincial Government is, therefore, directed to get the matter examined by a Committee comprising experts on the subject and officers of the concerned departments, for the purpose of consolidation of the law on the subject as well as to ascertain the areas in the system where compliance with the law is not being made. The Provincial Government is further directed to establish the institutions required under this law and to provide facilities required by law, within a period of six months. The petition is allowed accordingly.

Q.M.H./M.A.K./Z-25/K???
Petition allowed.

;