

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 672/2008

SHRI RAVI KUMAR Petitioner
Through Mr. Sunil Kumar, Advocate

versus

THE STATE (NCT OF DELHI) Respondent
Through Mr. Harish Khanna, Advocate for the
complainant.
Mr. Sanjay Lao, APP

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER
01.04.2009

1. This is a revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure 1973 ('CrPC') challenging an order dated 14th November 2008 passed by the learned Additional Sessions Judge ('ASJ') rejecting the application filed by the Petitioner under Section 12 read with Section 6 (2) of the Juvenile Justice (Care & Protection of Children) Act, 2000 ('JJ Act'). By the impugned order the learned ASJ held that the issue concerning the determination of the age of the Petitioner on the date of offence stood decided by the predecessor Court on 15th December 2005 and therefore, the said order could not be reviewed. The present petition also challenges an order dated 17th December 2005 passed by

the learned ASJ rejecting the bail application by the Petitioner.

2. FIR No. 351 of 2004 under Section 302 IPC was registered against the Petitioner at Police Station Khajuri Khas. This was in relation to an incident of 5th September 2004. On 22nd November 2004 a charge sheet was filed in the court of the learned Metropolitan Magistrate ('MM'). The learned MM took cognizance of the offence. The case was thereafter committed to the court of the learned ASJ by the order dated 21st December 2004. The bail application of the Petitioner was kept pending till the order on charge. Charge was framed on 29th March 2005 against the Petitioner for the offence under Section 302 IPC.

3. The case was further listed for prosecution evidence on 16th May 2005. On 28th October 2005 part arguments on the bail application were heard. It was contended on behalf of learned counsel for the accused before the learned ASJ that the accused was a minor at the time of the incident. The photocopy of the I-Card of the accused showing the date of birth to be 16th June 1987 was filed. The Petitioner also produced certificate from the schools in which he had studied. The learned ASJ directed the Investigating Officer ('IO') to verify the records of Government Boys Secondary School and to confirm from the said school whether admission had been given to the Petitioner on the basis of certificate issued by the municipality or on the basis of some affidavit filed by his parents. It was further directed that in case the accused had been admitted to the last school after passing out earlier from some other school, verification should also be done from the earlier school. A further direction was issued to Jail Superintendent to send the Petitioner to the Deen Dayal Upadhyaya Hospital ('DDUH') for bone age X-ray.

The Medical Superintendent, DDUH was directed to constitute a Medical Board, get the bone age of the accused determined and submit a report before the next date i.e. 6th December 2005.

4. The medical report dated 8th December 2005 was taken on record by the learned ASJ on 15th December 2005. The said report indicated that the Medical Board had reached the conclusion that “the approximate age of the above mentioned accused is more than twenty years but less than twenty two years at the time of examination i.e. 24th November 2005.” The learned ASJ, on the basis of the said report, observed that the accused as a major at the time of the offence. Arguments on the bail application were heard. By the order dated 17th December 2005 the bail application was dismissed. A further application for regular bail was rejected on 21st November 2006.

5. On 19th April 2008 it was recorded by the learned ASJ that the Petitioner had filed an application under section 6 (2) read with Section 12 JJ Act. A separate bail application was also being filed. Thereafter the case had been kept getting adjourned on the said application. On 14th November 2008 the said application was dismissed by the learned ASJ on the ground that the issue had already been decided by the predecessor court on 15th December 2005 after calling for all the records and getting the accused tested for bone age. It was accordingly, held that the Court had no power to review the said order passed by the earlier court on 15th December 2005.

6. Learned counsel for the Petitioner submits that under Section 14 of the JJ Act it

was the Juvenile Justice Board ('JJB') which had to conduct an enquiry as to the age of the juvenile. It was further submitted that under Section 49 of the JJ Act the JJB has to take evidence as it might deem necessary (but not an affidavit) and record a finding whether the person is a juvenile or not and state the person's age "as nearly as may be." It is further submitted that the learned ASJ was in error in rejecting the application only because the report of the Medical Board had been taken on record by the predecessor ASJ on 15th December 2005. It was submitted that the said order did not decide this issue. It was further submitted that school certificates which had been directed to be verified by the learned ASJ were verified by the police to be genuine. The police opined that the said reports cannot be relied upon only because the entry in the school records was not based on any birth certificate or affidavit by any Court. It is submitted that this is contrary to the law as explained by this Court in *Shehzad v. State (NCT of Delhi) 2006 (3) JCC 1580*, *Manoj Kumar v. The State, NCT Delhi 2006 (3) JCC 2046* and *Gurmit Singh v. State 87 (2000) DLT 496*. It is submitted that an appropriate enquiry ought to have ordered to be conducted by the JJB into the school records to bring out their authenticity.

7. Learned counsel for the complainant as well as learned APP appearing for the State have also been heard. It was submitted by them that the enquiry, if at all, had to be conducted only by the JJB in terms of JJ Act.

8. This Court finds that the learned ASJ was in error in dismissing the application of the Petitioner by the impugned order dated 14th November 2008 only on the ground that the issues raised already stood decided by the predecessor ASJ on 15th

December 2005. The order passed on 15th December 2005 merely recorded the opinion of the Medical Board. The said short order does not decide whether in fact the Petitioner's plea as to the age of the date of the commission of offence was considered. The learned ASJ ought to have directed the production of the Petitioner before the JJB for conducting an enquiry as to his age in terms of the JJ Act.

9. This Court has perused the verification report submitted by the police on the two certificates dated 28th November 2005 issued by the Head Master, MCD Primary Boys School, Rajeev Nagar-II, S.N. Delhi – 110 094 and the Vice Principal, Government Boys Senior Secondary School, Khajoori Khas, Delhi – 110 094. In the former certificate it is stated that the Petitioner was enrolled in the said school on 16th August 1993 by his mother by way of an affidavit and that as per the record of the said school his date of birth was 16th June 1987. The Khajoori Khas School has given the certificate that as per the school record the date of birth of Petitioner was 16th June 1987. The police was asked to verify whether the certificates issued were genuine. It is surprising that the police has opined that the certificates could not be taken to be true because there was no birth certificate issued by the MCD and also there was no affidavit made by any Court.

10. In *Shehzad v. State (NCT of Delhi)* the learned Single Judge of this Court rejected a similar order passed by the learned ASJ which preferred the report of the Medical Board to the school certificate for determining the age of the accused. It was noticed in the said judgment that the Principal of the school had appeared in the witness box and testified that the date of birth of the accused as per the school

record was entered on the basis of the school leaving certificate. In those circumstances it was held that once it was proved that the date of birth was what was stated in the school record, the said evidence could not be rejected only because there was no birth certificate or an affidavit on the basis of which such entry had been made. It was held that the date of birth recorded in the school record much prior to the alleged incident in that case should be taken to be correct.

11. In the present case also, copies of the school certificates produced by the police show that the entries in those records of the date of birth were much prior to the date of the incident. However what requires to be done as far as the present case is concerned, is to have the determination of the age of the Petitioner undertaken in the form an enquiry by the JJB under Sections 14 read with 49 of the JJ Act. The impugned order dated 14th November 2008 passed by the learned ASJ is set aside.

12. The JJB will proceed in accordance with law to determine if the school records reflect the correct date of birth of the Petitioner. If they do, there is no question of Petitioner's age being determined with reference to the opinion of the Medical Board. However if they are not conclusive, then the JJB will proceed to consider the opinion already rendered by the Medical Board in accordance with law and by taking such further evidence as may be if it thinks necessary.

13. The Petitioner will be produced before the JJB-I Kingsway Camp on 20th April 2009. The application is filed by the Petitioner for bail can be considered by the JJB-I on that date in accordance with law. The JJB-I will consider the Petitioner's bail application notwithstanding the dismissal of the bail application by the learned

ASJ by the order dated 17th December 2005 or any subsequent order. The JJB-I will pass an order in terms of Section 14 read with 49 of the JJA within a period not later than four months from 20th April 2009. The case will thereafter proceed in accordance with law.

14. The trial court record be initially sent back to the court of the learned ASJ concerned who will thereafter transmit it to JJB-I, Kingsway Camp for the following procedure as indicated hereinabove.

15. Needless to say that it will be open to either of the parties to seek appropriate remedies in accordance with law against the order of the JJB-I.

16. With the above directions, the petition is disposed of. Order be given dasti.

S.MURALIDHAR, J

APRIL 01, 2009
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