

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 156/2011 & CrI.M.A. No. 4096/2011(Stay)

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Reserved on: 5th March, 2012
Decided on: 12th March, 2012

DEEPAK KUMAR

..... Petitioner

Through: Mr. M.L. Sharma & Mr. P.S. Yadav,
Advocates

versus

STATE

..... Respondent

Through: Mr. Mukesh Gupta, APP for the State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition, the Petitioner challenges the order dated 16th March, 2011 passed by the learned Addl. Sessions Judge declaring him not to be a juvenile on the date of alleged incident and thus dismissing the application of the Petitioner seeking the benefit of juvenility according to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007(in short 'JJ Rules).

2. Learned counsel for the Petitioner contends that in view of the school certificate having been verified, the learned Trial Court ought to have relied the same in terms of Rule 12 of the J.J. Rules and should not have got the ossification test of the Petitioner conducted.

3. Learned APP for the State on the other hand contends that the Petitioner had given two certificates. As regards the certificate issued by the Municipal Corporation of Delhi (MCD), no entry was found. Thus, the birth certificate No. 920 dated 30th December, 1993 filed by the Petitioner was a

forged document. Further the Petitioner was admitted in Shri Bhopal Singh Public Junior High School, Bagpat, Uttar Pradesh directly in the fifth standard where his date of birth was mentioned as 4th December, 1993. This date of birth was mentioned without any corresponding municipal record and hence the learned Trial Court rightly rejected the same and got the ossification test conducted. As per the ossification test, the age of the Petitioner was opined to be between 19 to 20 years and hence on the date of incident, the Petitioner was over 18 years of age.

4. I have heard learned counsel for the parties. Briefly, the facts of the case are that FIR No. 121/2010 under Section 376 IPC was registered at PS Bhalswa Dairy. The offence allegedly took place in the intervening night of 8th-9th August, 2010 and the Petitioner is in judicial custody since 1st September, 2010. According to the Petitioner, he is a juvenile. As per the school leaving certificate and the birth certificate issued by the MCD, the Petitioner was born on 4th December, 1993, so on the date of alleged incident he was 16 years and 9 months old and thus entitled to the benefit of juvenility. The Petitioner filed an application on 12th January, 2011 seeking directions to verify the school leaving certificate as well as the date of birth certificate issued by the MCD. The investigating officer verified the school leaving certificate from the first attended school. The date of birth was found to be correct. However in the MCD no such record was found available and thus the Trial Court directed Petitioner's father to place on record the original birth certificate issued by the MCD. Since Petitioner's father could not bring the original MCD certificate, the Petitioner filed another application dated 19th February, 2011 under Section 7(A) of the

Juvenile Justice (Care and Protection) Act, 2000(in short J.J. Act) and Rule 12 of the J.J. Rules for conducting the ossification test to determine the juvenility. The medical board of Babu Jagjivan Ram Hospital examined the Petitioner on 25th February, 2011 and opined that the estimated age of the Petitioner was between 19 to 20 years.

5. By the impugned order, the learned Trial Court held that in view of the ossification test, the Petitioner was not a juvenile and hence dismissed the application. No doubt, the Petitioner has not produced the original MCD certificate. Moreover, from the verification it was found that the purported photocopy of the MCD certificate relied upon by the Petitioner was an incorrect document as no record was found in this regard. However, the moot question in the matter is whether the learned Trial Court conducted a proper enquiry to determine the age of the Petitioner or not. It may be noted that the learned Trial Court only called for a verification report from the school where the Petitioner studied. No enquiry in regard to this certificate was conducted. No statement of the concerned Principal or the investigating officer, who conducted the verification, was recorded to ascertain the truth. In a case like this where the MCD certificate was found to be incorrect, the learned Trial Court ought to have summoned and examined the Principal or the concerned officer of Shri Bhopal Singh Public Junior School to come to the conclusion whether the school leaving certificate submitted by the Petitioner can be relied upon or not. In terms of Rule 12 of the J.J. Rules, only after the school leaving certificate was found to be not genuine or could not be relied upon, the learned Addl. Sessions Judge could have adopted the procedure of getting the ossification test done.

6. Rule 12 of the JJ Rules provides:-

“12. Procedure to be followed in determination of Age.— (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, *prima facie* on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the

Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law”

7. In *Arnit Das v. State of Bihar*, (2000) 5 SCC 488, the Hon'ble Supreme Court held that while dealing with a question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views may be possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases.

8. In *Ravinder Singh Gorkhi v. State of U.P.*, (2006) 5 SCC 584 with regard to the entries made in School Leaving Certificate, their Lordship's observed as under:-

“17. The school-leaving certificate was said to have been issued in the year 1998. A bare perusal of the said certificate would show that the appellant was said to have been admitted on 1-8-1967 and his name was struck off from the roll of the institution on 6-5-1972. The said school-leaving certificate was not issued in the ordinary course of business of the school. There is nothing on record to show that the said date of birth was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Evidence Act. No statement has further been made by the said Headmaster that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school-leaving certificate, evidently had been prepared for the purpose of the case. All the necessary columns were filled up including the character of the appellant. It was not the case of the said Headmaster that before he had made entries in the register, age was verified. If any register in regular course of business was maintained in the school, there was no reason as to why the same had not been produced.”

9. In the present case though there is ample evidence on record to reject the MCD certificate produced by the Petitioner, however, no enquiry regarding the School Leaving Certificate has been conducted by the learned Trial Court. Neither the statement of the Headmaster nor any official of the school has been recorded by the learned Trial Court to discard the same. In fact, neither in the impugned order nor in the Trial Court file any reasoning has been rendered to discredit the School Leaving Certificate. In view of Rule 12, JJ Rules only after the School Leaving Certificate is found unreliable, the Trial Court could have considered the ossification test.

10. In view of the facts and circumstances of the case, order dated 16th August, 2011 is set aside. The learned Trial Court is directed to conduct an enquiry in terms of Rule 12 of the J.J. Rules. Only after conducting an enquiry on the School Leaving Certificate and finding the same to be unreliable, the learned Trial Court will resort to the report of ossification test and come to the conclusion as to whether the Petitioner is a juvenile or not. The parties will appear before the learned Trial Court on 26th March, 2012.

11. Petition and application are disposed of. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

MARCH 12, 2012
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