

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Revision Application No. 163 of 2014

The State of Maharashtra,
Through the Investigation Officer,
Police Station Akole,
Taluka : Akole,
District : Ahmednagar.

.. Revision Applicant.

versus

Ashok Munna Rai,
Age : 24 years,
Occupation : under Trial Prisoner,
R/o. c/o. Sub-Jail, Akole,
Taluka : Akole,
District : Ahmednagar.

.. Respondent.

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*Mr. S.G. Nandedkar, Additional Public Prosecutor,
for the revision applicant - State.*

Mr. S.K. Shinde, Advocate, for the respondent.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 6TH APRIL 2015

ORAL JUDGMENT :

1. Heard learned APP Mr. S.G. Nandedkar for the revision applicant - State, and Adv. Mr. S.K. Shinde for the respondent - original accused.

2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. The State, being aggrieved by the order passed by the Additional Sessions Judge, Sangamner, dated 10th February 2014, below Exhibit 5 in Sessions Case No. 54/2013, thereby referring the respondent / accused to the Juvenile Justice Board, Ahmednagar, has filed the present Revision Application.

4. It is the case of the prosecution, that on 8th September 2013, one Swarup s/o. Badrinath Gavande lodged a report at Akole Police Station, alleging therein that at about 2.30 to 3.00 a.m., present respondent had killed his father by means of an axe. The respondent herein was working with the father of the complainant. On the basis of the said report, Crime No. 78/2013 was registered at Akole Police Station against the present respondent for offence punishable under Sections 302 and 326 of the Indian Penal Code. After completion of investigation, charge sheet was filed.

5. The learned Judicial Magistrate (F.C.), Akole, had committed the matter to the Court of Sessions as the case was exclusively triable by the Court of Sessions at Sangamner and was registered as Sessions Case No. 54/2013.

6. On 6-1-2014, accused had raised the claim of juvenility. An application was filed by the accused contending therein that his date of birth is 1st March 1998. The date of incident is 8th September 2013.

According to the accused, he was a juvenile in conflict with law and deserved to be protected under the Juvenile Justice (Care and Protection of Children) Act, 2000 [**For the purpose of brevity, hereinafter referred to as “2000 Act”**]. Along with the application, the accused had filed a school leaving certificate. It was specifically prayed that the matter be referred to the Juvenile Court.

7. The learned Public Prosecutor conducting Sessions Case No. 54/2013 filed a reply stating therein that the prosecution has sent the school leaving certificate and the other relevant documents filed by the accused, for enquiry by the Police. The Police had visited the State of Bihar and had enquired with Rajkiya Madhyamik Vidyalaya, Nakta Diyara, Diya / Patna, from where the said certificate was issued. The Police had recorded statement of the Head Master of the said school. The Principal had stated before the Police, that no student by name, Ashok Munna Rai had ever studied in the said school. According to him, Shri Lal Bihari Prasad, who has purportedly issued the said school leaving certificate, was not working as Head Master at the relevant time. Hence, the said certificate was forged and fabricated. The learned Public Prosecutor had apprised the court, of the fact that the application seeking school leaving certificate was filed on 4-10-2013 i.e. after registration of the offence. The said certificate was issued only on the basis of an affidavit filed on behalf of the mother of the accused. The affidavit was sworn on 19th September 2013 i.e. after registration of the offence. The accused had not raised the claim of juvenility at the time when he was produced before the Magistrate or at the time when the charge sheet was filed and the case was committed to the Court of Sessions.

8. Perused the papers annexed to the Revision Application. The statement of the Head Master of the said school clearly indicates that he was working in the said school as a Head Master since 1st December 2012. The school leaving certificate was not issued either by the school or by him. The school records do not show that Ashok Munna Rai had ever studied in that school. It was specifically stated that the said certificate is forged and fabricated. The said statement was recorded on 15th January 2014. The Police had also recorded statement of Shri Lal Bihari Prasad, wherein it is stated that Shri Lal Bihari Prasad was not the Head Master at the relevant time. It was specifically disclosed to the Police, that the certificate is a forged document.

9. The learned Additional Sessions Judge had then referred the accused for ossification test. The Medical Officer, General Hospital, Ahmednagar, had given an opinion that “*as per radiologist, age is more than 18 years*”. The learned Sessions Court was of the opinion that the said opinion is vague and omnibus in nature. The accused was referred to Medical Board, Ahmednagar, for examination and to give opinion about age of the accused. The Medical Officer, District Hospital, Ahmednagar, has given the opinion that the age of the accused is 18 to 20 years. The learned Sessions Court has relied upon the guidelines of the Hon'ble Supreme Court and held that the court has to consider the age of the accused by considering the margin of error of one year on the lower side age limit shown by the Medical Officer. Since the medical opinion showed that the age of the accused was between 18 to 20 years, the Sessions Court had formed an opinion that at the time of incident, the accused was 17 years old, and has arrived at a conclusion that on the date of alleged incident, the accused was a juvenile in conflict with law.

Hence, the matter was referred to the Juvenile Justice Board, Ahmednagar.
Hence, this Revision Application.

10. Section 7 of the 2000 Act contemplates thus :

“ Procedure to be followed by a Magistrate not empowered under the Act :- (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.”

11. Section 7A of the 2000 Act lays down the procedure to be followed when claim of juvenility is raised before any court. Section 7A of the 2000 Act needs to be read in consonance with Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 [**For the purpose of brevity, hereinafter referred to as “2007 Rules”**]. Rule 12, Sub-Clause 3, reads thus :

“ 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, 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. ”

12. It is apparent on the face of record, that in the present case, the mandate of Rule 12 of 2007 Rules was not followed. In fact, the claim of juvenility was raised on the basis of forged and fabricated documents. It is mandatory to accept the matriculation or equivalent certificate, if available, and in its absence, date of birth certificate or other documents and only in the absence of relevant documents, the accused ought to have been referred to the Medical Board. In the present case, the learned court ought to have considered that the provisions of law have been flouted by the accused. In fact, what was expected of the Sessions Court, was an inquiry under Section 340 of the Code of Criminal Procedure, 1973. It is apparent on the face of record, that forged and fabricated documents were filed on behalf of the accused in relation to proceedings in the Court of Law i.e. in the present case, the Sessions Court. The learned Additional Sessions Judge has observed that the school leaving certificate produced by the accused is found to be incorrect document as it was not issued by the school concerned. The accused had misused the benevolent provisions of law. After arriving at a conclusion, that the document came into existence on 4th October 2013 i.e. subsequent to the alleged incident and arrest of the accused, the learned Sessions Court ought to have taken action against the accused. Rule 12 of the 2007 Rules contemplates medical opinion as a last resort and not as an alternative course of action to be adopted especially when the accused has filed forged and fabricated document to raise the claim of juvenility. In the case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh**, reported in **(2012) 9 Supreme Court Cases 750**, the Hon'ble Apex Court has held that *“In cases where those documents or certificates are found to be fabricated or manipulated, the Court needs to go for medical report for age determination.”* Hence, it

can be held that the Court has adopted a correct approach.

13. In the case of ***Kulai Ibrahim @ Ibrahim Vs. State Represented by the Inspector of Police, B-1, Bazaar Police Station, Coimbatore***, reported in ***(2014) 12 Supreme Court Cases 332***, the Hon'ble Apex Court has held that the matter should be considered prima facie on the touchstone of preponderance of probability. Claim of juvenility lacking in credibility of frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the Court at the threshold whenever raised. In the case of ***Kulai Ibrahim (cited supra)***, the Apex Court was apprised of the fact that a case was registered against the appellant's father at Ukkadam Police Station, under Section 467, 471 and 420 of IPC. The case was being investigated and therefore no opinion was expressed. The Apex Court was pleased to direct the Police to complete investigation in respect of the case registered against the appellant's father (and the appellant, if any) within one month and file charge sheet within 15 days.

14. Section 45 of the Indian Evidence Act deals with the evidence of expert's opinion. The prosecution had challenged the report of the Medical Officer. In view of this, it was incumbent upon the learned Additional Sessions Judge to record evidence to that effect since the opinion of Radiologist regarding age cannot be considered as conclusive evidence. An expert's opinion cannot be considered to be an infallible and accurate test. An expert is a witness of fact. His evidence is of an advisory character. The credibility has to be tested by the court. The duty of an expert witness is to furnish with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent opinion by the application of these criteria to the facts

proved by the evidence. The learned Additional Sessions Judge has committed a grave error by simply extending the benefit of juvenility to the accused without following due procedure of law. The learned Additional Sessions Judge has been oblivious of the fact, that when a party challenges the veracity of medical certificates, the party producing the said certificate has to prove the correctness of the statement made therein by examining the Doctor who issued said certificates. In the present case, the prosecution was deprived of the opportunity to examine the Doctor to establish the correctness of his opinion.

15. The Court cannot be oblivious of the fact, that the accused has committed a heinous offence punishable under Section 302 of the Indian Penal Code. He is a resident of State of Bihar. That, he has filed forged and fabricated documents before the Sessions Court, on the basis of which he has claimed juvenility. The accused does not deserve any leniency by the Court. It is true that the provisions under the 2000 Act are benevolent in nature in favour of the juveniles in conflict with law, however, the accused shall not take undue advantage of the said provisions. The learned Judge has not observed in the judgment and order that he has followed the provisions under Rule 12 of the 2007 Rules. Moreover, the Radiologist had given the opinion that the accused is more than 18 years of age. The learned Additional Public Prosecutor submits that the prosecution was not given any opportunity to challenge the medical opinion. Hence, the matter deserves to be remanded for re-consideration. In view of this, the Revision Application deserves to be allowed.

16. In the result, the Revision Application is allowed.

(A) The order dated 10th February 2014, passed by the Additional Sessions Judge, Sangamner, below Exhibit 5 in Sessions Case No. 54/2013, is hereby quashed and set aside.

(B) The learned Sessions Court shall initiate action under Section 340 of the Code of Criminal Procedure, 1973, against the respondent (original accused) after making an enquiry into the genuineness of the certificates / documents, such as, school leaving certificate. The learned Magistrate may give an opportunity to the prosecution to substantiate their challenge to the Report of the Radiologist.

(C) The learned Additional Sessions Judge is directed to issue notice to the accused forthwith and decide the application Exhibit 5, as far as possible, within six weeks from the date of receipt of this order.

17. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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