

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 80 OF 2015

Nasmul Hussain @ Shaikh,
s/o Kasim Ali, Indian,
permanent resident of Laldigi,
Sopanagar, Kumarganj, Dakshin
Dinajpur, West Bengal,
currently resident at Porba Waddo,
Calangute, Bardez, Goa .. Petitioner

Versus

The State of Goa,
through Police Inspector,
Calangute Police Station,
Calangute, Bardez, Goa. .. Respondent

Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. P. Phaldessai, Additional Public Prosecutor for the respondent.

CORAM :- C. V. BHADANG, J.

DATE : 18th December, 2015

ORAL JUDGMENT :

Rule. Rule, made returnable forthwith. The learned Additional Public Prosecutor waives service. Heard finally, by consent of the parties.

2. By this petition, the petitioner is challenging an order dated 05/11/2015, passed by the President, Children's Court at Panaji, whereby, the application Exh.D-46, filed by the petitioner,

staking a claim of juvenility, has been dismissed.

3. The brief facts are that the petitioner is facing prosecution for the offence punishable under Section 363 of I.P.C. read with Section 8 of the Goa Children's Act. On 26/09/2014, the petitioner was referred for medical examination for the purposes of his age determination. The report exhibit C-35 sent by PW8 Dr. Ajit Dinkar, who is the Professor and Head of Oral Medicine and Radiology Department, Government College and Hospital at Goa, has certified that, based on physical, dental and radiological examination, the approximate age is between 20 to 22 years. It appears that the petitioner had filed an application Exh.D-46 claiming that he was a juvenile on the date of the incident i.e. on 24/08/2014 and as such, cannot be tried before the Children's Court. Indisputably, the petitioner was medically examined on 26/09/2014. At present, 10 prosecution witnesses are already examined, including the victim/ girl and her family members.

4. It is submitted by Shri Menezes, the learned Counsel for the petitioner that considering the fact that the margin of error is two years on either side, the age of the petitioner would be

below 18 years as on the date of the incident. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Ashwani Kumar Saxena Vs. State of M.P.***, reported in 2013 AIR (SC)553 and in particular, para 14 thereof.

5. It is submitted by the learned Additional Public Prosecutor that the petitioner was examined by two Doctors namely, PW7 Pannag Kumar, who is Radiologist and PW8 Dr. Ajit Dinkar, in the presence of a lady Medical Officer. It is submitted that in one of the reports i.e. Exh.C-41, dated 26/09/2014, the approximate age shown is 21 years, 3 months (+-) 6 months. It is submitted that thus, the finding recorded by the Children's Court is legal and proper.

6. I have considered the rival circumstances and the submissions made.

7. There is no dispute with the proposition that the claim of juvenility can be raised at any stage and once raised, the Court is bound to enquire into the same and record a finding as to whether the accused was a juvenile on the date of the incident in

question.

8. It was not disputed during the course of arguments at bar that in terms of Section 7A of the Juvenile Justice Act, read with Rule 12 of the Rules framed thereunder, which lay down the procedure of such enquiry and examination of the accused for the purposes of determination of his age has to be by a duly constituted Medical Board. The learned Additional Public Prosecutor fairly submitted that in the present case, there is no report sent by the Medical Board as such, as the Doctors have examined the petitioner individually and had given some certificates about the age. Thus, it was not disputed that the petitioner will have to be examined by a duly constituted Board under the Act and Rules and report will have to be obtained. In that view of the matter, the parties submit that the issue about juvenility can be examined by the Children's Court afresh, after the petitioner is got examined by a duly constituted Medical Board. In such circumstances, the following order is passed :

ORDER

- (i) The impugned order dated 05/11/2015 is hereby set aside.

(ii) The issue about juvenility of the petitioner as raised in the application Exh.D-46 is sent back to the President of the Children's Court for deciding the same afresh, in accordance with law.

(iii) The learned President of the Children's Court shall refer the petitioner to a duly constituted Medical Board for examination and certification of his age and shall then proceed to decide the issue of juvenility of the petitioner, in accordance with law.

(iv) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA