

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3087 OF 2014

Kiran Lakshman Dabade

.....Petitioner

V/s.

State of Maharashtra

....Respondent

Mr. Karan Bhosale i/b Ms. Neha Bhosale for Petitioner

Mrs. G. P. Mulekar APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 9, 2015.

PC :

Heard respective parties.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein has been charge-sheeted in crime no. 74 of 2011 for offence punishable under section 302, 307, 142, 147, 148, 149, 324, 323 r/w 34 of Indian Penal Code. The date of incident is 09/09/2011. The case was committed to the Court of Sessions and registered as Sessions Case No. 174 of 2011.
- 4) The date of incident in the present case is 09/09/2011 and the records produced by the petitioner to claim juvenility shows that his date of birth is 13/09/1993.
- 5) According to the petitioner, he is a juvenile in conflict with law and

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therefore, petitioner had filed an application under section 7 (A) of Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007. Along with the application, petitioner had filed documents to substantiate his claim of juvenility. The said application was rejected by learned Judicial Magistrate First Class on 03/12/2011. Petitioner was constrained to file writ petition no. 754 of 2012. This Court had directed the Trial Court to decide the claim of juvenility in view of section 7 (1) of Juvenile Justice (Care and Protection of Children) Act, 2000. During the interregnum, case was committed to the Court of Sessions and hence, the petitioner had filed an application before Sessions Court.

6) The learned Sessions Court had considered the application along with the documents including his certificate issued by Head Mistress of Zilla Parishad Primary School, Waghjaiwadi, Tal. Wai where petitioner had taken his primary education. Learned Sessions Court had recorded the evidence of the said witness namely Manisha Ozharde and she has stated on oath that name of the petitioner was registered at serial no. 494 in General Register maintained in the school and as per the said

register the date of birth of the petitioner is 13/09/1993. The said date was noted as per the order of Executing Magistrate vide order dated MGSR/95-99 dated 22/06/1999 and accordingly she had issued certificate on 14/08/2013. The said witness was cross-examined and she denied to have any personal knowledge about the registers maintained by the school during the period 1993 to 2003.

7) Petitioner had also examined Suhash Suryawanshi, Head Master of Bavdhan High School, where he had taken education up to 10th standard. Evidence of the said witness had corroborated the substantive evidence of Manisha Ozharde. Petitioner had also examined principal of Kisanvir College. The said witness has also reiterated that the college records would show that date of birth of the present petitioner is 13/09/1993. It was therefore, clear that documents upon which petitioner was relying to substantiate his claim of juvenility were proved by adducing substantive evidence. Learned Sessions Court was of the opinion that there was no record to show that date of birth was registered in Grampanchayat Waghjaiwadi. It is observed that:

“Petitioner had not placed on record the records of

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Grampanchayat Waghjaiwadi and has simply relied upon school leaving certificates and other certificates.”

8) Petitioner had filed several documents on record below Exhibits 28, 31 & 49 which were proved through 3 witnesses at Exhibits 45, 47 & 54. Learned Sessions Court has observed that date of birth of the petitioner is recorded on the basis of orders passed by Executive Magistrate. The same cannot be relied upon since school is not having any birth certificate given by Municipal Authority. Learned Sessions Judge has rejected the claim of juvenility and has refused to refer him to Juvenile Justice Board.

9) Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 contemplates as follows:

“(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 subrule(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.”

10) The procedure to be followed under Juvenile Justice (Care and Protection of Children) Act in conducting an enquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules.

11) Learned counsel for the petitioner has relied upon the Judgment of Hon'ble Division Bench of this Court in the case of **Imtiyaz Hussain V/s State of Maharashtra (2008 (10) DLR 1645)**. The Hon'ble Division Bench has observed that :

“On a conspectus and consideration of all these provisions it becomes clear that what is relevant is the date of offence and if that person falls within the definition of 'juvenile in conflict with law' then irrespective of whether proceedings are pending or the proceedings are in appeal or revision or even if proceedings had been closed and if an application is made by the juvenile who is undergoing a sentence, then on a proper reading of Section 7-A, together with Section 20, the provisions of the Act are applicable to such 'juvenile in conflict with law.' To that extant the judgment in Pratap Singh (Supra) considering the Amendment of 2006 will not apply to proceedings in respect of a 'juvenile in conflict with law' after the Juvenile Justice Amendment Act, 2006. The opening words of Section 20, therefore, clearly indicate that the definition of

'juvenile' is retrospective and the definition of juvenile under the Juvenile Justice Act of 2000 will be the applicable law. In other words, if the child or juvenile was less than 18 years on the date of the commission of the offence, the juvenile will be covered by the provisions of the Act of 2000 together with the 2006 amendment. ”

The Hon'ble Division bench has further held that :

“Considering the provisions of the Juvenile Justice Act, the law will have to be now considered not in the context of what was said either in the majority or concurring judgment in Pratap Singh (supra), but on the touchstone of Juvenile Justice Act, 2000 as amended by the amendment Act of 2006.

The Court now has to consider (i) the age of the juvenile/child on the date of commission of the offence; (ii) if such an application is made, it has to be considered in a case where a proceeding is pending and even in a case where no proceeding is pending, but where where the applicant is undergoing imprisonment having being convicted by a Court.”

It is further held by the Hon'ble Division Bench that :

“The questions framed are answered as under:

(a) The Application is maintainable if the juvenile or child was below 18 years on the date of commencement of the offence.

(b) As the appeal is pending considering Section [6\(b\)](#) the Court itself can exercise the powers of the Board, where such powers can still be exercised.”

It is further observed by Hon'ble Division Bench of this Court:

“On the facts of the present case we have to consider the documents placed before us which are the birth certificate, School Leaving Certificate and the Passport. The Passport is an official document issued by the Government of India. The birth certificate is a document which can be considered in terms of Rule 6(5) of the Rules.”

12) In view of the guidelines laid down by this Court in the case *cited supra*, it is abundantly clear that all that the Court has to rely upon is documentary evidence in the form of school leaving certificate and other documents. It is not necessary to file a Grampanchayat record or Municipal Corporation record and the Court can proceed to decide the claim of juvenility on the basis of school records. Learned counsel for the petitioner has also placed implicit reliance upon **Ashwani Kumar Saxena Vs State of Madhya Pradesh (2012 (9) SCC 750)**. In the said case, petitioner therein was short of 5 days for attaining majority. The Hon'ble Apex Court has also held that:

“ “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the

absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case of exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.”

13) This makes it amply clear that the matriculation or any equivalent certificate issued by any educational institution would be sufficient proof for considering the claim of juvenility in the eventuality that it is proved by adducing substantive evidence to prove the said documents. In the present case, there is no doubt that the petitioner herein was short of 4 days in attaining majority and therefore it can be safely held that petitioner had substantiated the claim of his juvenility.

14) The petitioner has successfully established his juvenility on the date of occurrence of the crime since the date of occurrence is 09/09/2011 and the date of birth is 13/09/1993. Hence, the petitioner was 17 years, 11 months and 26 days old. In case of **Ashwani Kumar Saxena Vs State of Madhya Pradesh (*cited supra*)**, the petitioner was 17 years, 11 months and 25 days old.

15) Hence, following order.

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 03/03/2014 passed by Additional Sessions Judge, Satara in Exhibit 26 in S. C. No. 174 of 2011 is hereby quashed and set aside.
- (iii) The case of petitioner be separated from other accused in C.R. No. 74 of 2011 and referred to the Juvenile Justice Board for appropriate action.
- (iv) The case records be sent to concerned Juvenile Justice Board.
- (v) Petitioner shall appear before Juvenile Justice Board and

file a fresh application seeking relief under Juvenile Justice (Care and Protection of Children) Act, 2000 and learned Juvenile Justice Board shall consider the claim of Juvenility of the petitioner in accordance with the provisions contemplated under section 7 r/w Rule 12 of Juvenile Justice(Care and Protection of Children) Act, 2000 and Rules thereunder.

(vi) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)