

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 145 OF 2015
IN
CRIMINAL APPEAL NO. 548 OF 1994

Sanjay @ Sunil R. Gejge. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. P.K. Dhakephalkar, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 2, 2015

P.C.:

1 Not on board. Upon mentioning taken on board.

2 Heard the learned Counsel for the appellant/applicant and
learned APP for State.

3 This appeal is of the year 1994. It was called out for hearing on
11/6/2012. None appeared for the appellant. Hence this Court

(Coram : R.C.Chavan, J) issued bailable warrant returnable on 25/6/2012.

4 On 25/6/2012 appellant appeared before this Court alongwith his advocate. Matter was listed for final hearing. On 10/8/2012 this Court (Coram : R.C. Chavan, J) observed “since the appellant's advocate is not interested in arguing the matter Registry may assign the brief to an advocate on the panel of legal aid.”

5 On 4/9/2014 the matter was called out for final hearing. While perusing the records, this Court (Coram : Sadhana S. Jadhav, J) noticed that the date of incident is 24/4/1990 and the date of birth of the appellant is 1/6/1973. This Court observed that the appellant would be covered by Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000. This Court brought it to the notice of the advocate representing the applicant that in view of the aforesaid observations, it would be expedient in the interest of justice to enquire into the matter accordingly. This Court issued notice to

the accused/appellant and directed him to remain present before this Court alongwith his school leaving certificate and other documents which would indicate his age. The appellant was directed to remain present before this Court on 16/9/2014.

6 On 16/9/2014 none appeared for the appellant. The accused/appellant also did not remain present before this Court. The learned APP sought time to call for report from Nandgaon Police Station. The matter was then adjourned at the request of the learned Counsel for the appellant.

7 On 12/1/2015 also learned Counsel for the appellant sought time. Time as prayed for is granted and the matter was adjourned to 2/2/2015 i.e. today.

8 Today, Learned Counsel for the applicant submits that on 28/1/2015 he has filed Criminal Application No. 145 of 2015. The matter came up before Section Officer on 31/1/2015. The said

application is registered and numbered today. Upon enquiry made by this Court, learned Counsel for the applicant submits that the appellant had not brought his school leaving certificate and therefore, he could not file an application prior to 28/1/2015. It is apparent on the face of the record that the appellant as well as learned Counsel appearing for the appellant have taken the matter very callously. That in fact, it was incumbent upon the learned Counsel for the appellant to file an application soonafter it was brought to his notice by this Court that the accused/appellant had not completed 18 years of age on the date of incident. It is noticed from the perusal of application that prayer clause is for declaring the appellant as Juvenile on the date of commission of offence. The learned Counsel has simply relied upon the judgment of the Hon'ble Division Bench of this Court (Coram : F.I. Rebello & R.S. Mohite, JJ) in **Sou Motu High Court on its own motion v/s. Chief Secretary of Maharashtra & ors.** In fact, this Court cannot grant prayer clause (a) seeking declaration as juvenile.

9 It is clear from the records that the hearing of the appeal is not being taken seriously. After 20 years of filing of the appeal, it is a pathetic situation that an advocate representing the appellant should be insensitive towards expeditious disposal of an appeal against conviction. Hence, this Court is constrained to decide the application finally and remand the matter to the Sessions Court for considering the applicant under Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

10 Learned Counsel for the applicant has filed present application contending therein that the date of birth of the present applicant is 1/6/1973. The date of incident is 24th April, 1990. That the applicant was apparently a juvenile in conflict with law on the date of incident. The school leaving certificate issued by New English School, Nandgaon, District-Nashik is filed on record. The said certificate is a duplicate copy of the original and is issued on 20/9/2014. The fact that a contention of juvenility is raised at the stage of final hearing of the appeal, it would be necessary to consider the same.

12 In view of this, the matter needs to be remanded to the Court of Sessions at Malegaon to consider the plea of juvenility raised by the appellant/applicant at the stage of final hearing of the appeal. The appellant herein shall file an application raising plea of juvenility alongwith the school leaving certificate and any other relevant documents before the learned Sessions Court at Malegaon within 4 weeks from today. The learned Sessions Judge shall consider the application in accordance with rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The learned Sessions Court shall follow the procedure laid down in rule 12 in consonance with rule 19. The Sessions Court shall record substantive evidence of the necessary witnesses including Head Master/authorised staff of New English School, Nandgaon and decide the said application within a period of 8 weeks and send the report to this Court soon thereafter.

13 In view of this, original records in Criminal Appeal No. 548 of 1994 be relegated to the Court of Sessions at Malegaon within one

week from today. The Registry to communicate this order to the Court of Sessions at Malegaon and take appropriate steps expeditiously.

14 The learned Counsel for the appellant undertakes to give appropriate instructions to the appellant in writing.

15 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)