

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Crl.MC.No. 3943 of 2015

LPC 112/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.
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PETITIONER/ACCUSED:

**SHIJU P.B, AGED 24 YEARS,
S/O.BABU.P.J., PUTHANPARAMBIL HOUSE,
MOIPRA.P.O., ERUVASSY, SREEKANDAPURAM,
KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.A.ARUNKUMAR**

RESPONDENT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY GOVERNMENT PLEADER SRI.TOM JOSE PADINJAREKARA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES:

- ANNEXURE AI:** TRUE COPY OF THE FIR IN CRIME NO.1570/2008 OF ERNAKULAM CENTRAL POLICE STATION.
- ANNEXURE AII:** TRUE COPY OF THE PROCEEDINGS SHEET IN L.P.C.112/2014.
- ANNEXURE AII:** TRUE COPY OF THE EXTRACT OF ADMISSION REGISTER OF NIRMALA HIGHER SECONDARY SCHOOL, CHEMBERY ISSUED BY THE HEAD MASTER.

RESPONDENTS' ANNEXURES: -NIL

/TRUE COPY/

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 3943 of 2015

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Dated this the 31st day of July, 2015

O R D E R

The prayers in the Crl.M.C. are as follows:

“i) recall the non bailable warrant issued against the petitioner in L.P.C.No. 112/2014 on the file of the Judicial First Class Magistrate-II, Ernakulam.

ii) direct the learned Magistrate (sic) forward the case covered by L.P.C.No.112/2014 to the Juvenile Justice Board.”

2. The petitioner is the sole accused in the impugned Anx.A1 Crime No.1570/2008 of Ernakulam Central Police Station, registered for offences under Sec.379 of the I.P.C. The matter is now said to be pending in the long pending case register as LPC No.112/2014 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam. It is urged by the petitioner that his date of birth is 25.5.1991 as revealed by Anx.A-III and that the date of the alleged incident is on 15.7.2008 as can be seen from the impugned Anx.A-1 FIR and the therefore, the petitioner is a juvenile as on the date of the commission of the alleged offence. Accordingly, it is contended that the case against the petitioner cannot be entertained

by the jurisdictional Magistrate's court concerned, but has to be forwarded to the Juvenile Justice Board under Sec. 7(1) of the Juvenile Justice (Care & Protection of Children) Act, 2000 and consequently, it is argued that the present impugned criminal proceedings against the petitioner on the file of the Judicial First Class Magistrate's Court-II, Ernakulam, are not maintainable.

3. In view of the aforesaid submissions and contentions made on behalf of the petitioner, this Court had called for a report from the learned Magistrate concerned. Accordingly, the Judicial First Class Magistrate's Court-II, Ernakulam, has submitted a report dated 29.7.2015 to the Registry of this Court. In the said report is stated that L.P.No.112/2014 was originally taken on file against the accused, viz., Shiju.P.B. aged 20 years as in the year 2008, S/o.Babu, Puthenparambil House, Eruvasserry Amsam, Muyippa, Kannur District as C.C.No.366/2009 with the allegation of commission of offence punishable under Sec.379 of the I.P.C. That the crime was originally registered in Kudiyanmala Police Station in Kannur district and that the accused was enlarged on bail by the Judicial First Class Magistrate's Court, Thalipparamba at the crime stage. It is further pointed out in the report that as per the final report submitted by

the Police in the aforementioned crime, the age of the petitioner accused is shown as 20 years at the time of the alleged incident. Further it is pointed out that the accused has never appeared before the learned Magistrate and has agitated the matter at his younger age. It is submission of the petitioner that no summons was ever received by him in these proceedings.

4. Heard Sri.M.Sasindran, learned counsel appearing for the petitioner and Sri.Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution appearing on behalf of the respondent State of Kerala.

5. Sri.Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution submits that such issues are to be considered in the light of the specific provisions in Secs.7 and 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the Juvenile Justice Act", for short) as well as Rule 12 of the Juvenile Justice (Care and Protection of Children), Rules, 2007 framed thereunder. This submission is accepted by the learned counsel appearing for the petitioner. Both sides submit that the matter in issue is covered by the decision of this Court in Ravi v. State of Kerala reported in 2013 (1) KHC 397(DB). In view of this aspect of the matter, it is profitable to refer to the aforestated provisions of the statutes and

the rules made thereunder. Sec.7 of the Juvenile Justice Act reads as follows:

“Sec.7: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 jurisdiction over the proceeding.

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

Sec.7A of the Juvenile Justice Act reads as follows:

“Sec.7A. Procedure to be followed when claim of juvenility is raised before any court.– (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person and shall record a finding whether the person is a juvenile or a child or not stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1) it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect”.

Rule 12 of the Juvenile Justice (Care and Protection of Children)

Rules 2007, reads as follows:

“Rule 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.”

6. This Court in the case Ravi v. State of Kerala reported in 2013 (1) KHC 397 (DB) has held in paragraphs 12 and 32 thereof as follows:

“12. It is quite clear from a reading of Section 7A of Juvenile Justice Act that the claim of juvenility can be raised by an accused before any court at any stage. The said provision does not insist that such claim shall be raised at any particular stage of the proceedings or trial before court or that it must be raised at the initial stage itself. The proviso to Section 7A(1) specifically lays down that the claim of juvenility can be raised “at any stage”, even after final disposal of the case, and it shall be recognised by the court. Therefore, in the light of the proviso to Section 7A(1) of Juvenile Justice Act, the mere fact that the claim was made only at the fag end of the trial is no reason at all for the court to reject a plea of juvenility.

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32. The claim of juvenility involves a jurisdictional question. Therefore, it shall not be viewed lightly or rejected casually, by casting burden of proof on the accused to prove his age. In cases in which an accused raises a claim of juvenility, the court shall make an enquiry under the provisions of the Act and the Rules thereunder and determine the claim as well as the age of the juvenile. For this purpose, the court need not wait for the juvenile to produce the certificates referred to in Rule 12 to prove his age. The court itself has to “obtain” such certificates and it is its duty to obtain them. The court may even seek medical opinion of a duly constituted Medical Board on the age of the accused who raises a claim of

juvenility.”

7. In view of these aspects, both sides submit that the matter may be referred to the Judicial First Class Magistrate's Court-II, Ernakulam, to proceed in accordance with the provisions of law and in accordance with the principles laid down by this Court in the aforestated decision in Ravi's case supra. Sri.M.Sasindran, learned counsel for the petitioner submits that the petitioner will appear before the learned Magistrate and will also be represented through counsel and will point out these aspects regarding his date of birth based on Anx.A-III certificate and accompanied by necessary application in that regard, in order to prove that the petitioner was juvenile as on the date of commission of the alleged offence. This submission is recorded. It is also prayed by the petitioner that the non-bailable warrant said to be now pending against the petitioner may also be ordered to be recalled in the interest of justice. It is further ordered in the interest of justice that in the event of the petitioner appearing before the learned Magistrate as undertaken now, within a period of six weeks from today and by producing the aforestated application with relevant materials and accompanied a certified copy of this order, then the impugned non-bailable

warrant said to be pending against the petitioner will stand recalled and until then, further coercive steps in pursuance of the execution of such warrant will also be kept in abeyance. The Addl. D.G. of Prosecution is requested to convey the authorities concerned about the directions issued hereinabove. On such an application being made by the petitioner accused, the same shall be dealt with in accordance with the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000 and the rules framed thereunder, as delineated above.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge