

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 623 of 2004 (C)

AGAINST THE JUDGMENT IN Crl.Appeal No. 337/2001 of SESSIONS
COURT,KOZHIKODE DATED 12-01-2004

AGAINST THE JUDGMENT IN CC 563/2000 of JUDICIAL MAGISTRATE OF FIRST
CLASS-I,THAMARASSERY DATED 28-05-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JITHESH, 21 YEARS, S/O. VASUDEVAN,
PANAKKAL HOUSE, KANALAD AMSOM, KOZHIKODE DIST.

BY ADV. SRI.TOMY JOHN VETTATH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. STATE OF KERALA,REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. S.I. OF POLICE, THAMARASSERY.

R, BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

'C.R.'

P.D. RAJAN, J.

Crl.R.P.No.623 of 2004

Dated this the 4th day of November, 2015

ORDER

The short question for determination is whether the petitioner, who was not admitted as a juvenile within the meaning of the Juvenile Justice Act, 1986 (for short the 1986 Act), when the offence was committed but had not completed 18 years of age on that date, will be governed by the Act of 2000 and be declared as a juvenile? This revision petition is preferred against the judgment in Criminal Appeal No.337/2001 of the Sessions Judge, Kozhikode. Brief facts are that the revision petitioner and three others were charge sheeted in C.C.No.563/2000 before the Judicial First class Magistrate-I, Thamarassery for having committed an

offence punishable u/s.451 and 380 r/w.34 IPC. The charge against them was that on 8.7.2000, the accused 1 to 4 trespassed into the Holy Family High School building No.11/21 of Thamarassery Panchayat and broke the locks of the office room and staff room, stolen articles worth ₹7,000/- thereby committed the offence. On the side of the prosecution, four witnesses were examined and marked Exts.P1 to P13 as documentary evidence. MO1 to MO8 were admitted as material objects. The learned Magistrate acquitted A1, A2 and A4 u/s.457, 380 and 461 r/w.34 IPC and convicted A3 u/s.451, 380 and sentenced to simple imprisonment for one year each. Against that, he preferred Crl.Appeal No.337/2001 before Sessions Court, Kozhikode, which was dismissed by that Court. Being aggrieved by that, he preferred this revision petition.

2. Heard both sides. The learned counsel appearing

for the revision petitioner contended that the revision petitioner was not completed 18 years of age at the time of commission of the offence and he was a juvenile within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act of 2000). An enquiry is to be conducted in terms of Section 7A of the Act of 2000 for deciding the age of the petitioner.

3. In this back ground, the learned Public Prosecutor was directed to enquire that aspect and furnish a report after verifying the school admission register. Accordingly, he produced the copy of the school admission register.

4. The word 'juvenile' is defined u/s.2 (k) of the Juvenile Justice Act as follows: "(k) "Juvenile" or "child" means a person who has not completed eighteen year of age."

Juvenile Board is constituted u/s.4 of the Juvenile Justice Act and the basic approach is curative instead of punitive. Five Judge Bench in Pratap Singh v. State of Jharkhand and anr. [AIR 2005 SC 2731] held that provisions of 2000 Act would be applicable in a pending proceeding in any Court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001. Apex Court in Bhim @ Uttam Ghosh v. State of West Bengal [2010 (12) SCALE 212] held that the date relevant for determining the age of the accused, who claims to be a juvenile, would be the date on which the offence had been committed and not the date on which he is produced before the competent authority or in the court.

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

"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 inquiry, 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 recognized 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."

6. A perusal of the Section 7A quoted above would show that 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 inquiry, 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. The date of birth of the revision petitioner is 28.1.1983 and the Extract of Admission Register is marked as Ext.C1. From the above, I am of the opinion that the revision petitioner was a minor on the date of incident and he is entitled to get the benefit of benevolent provisions of the Act of 2000. Rule 12(3) provides that school certificate should be taken into consideration, for determining the age of the minor. The enquiry conducted by the Sub Inspector of Police, Thamarassery and the certificate show that on 8.7.2000, the date of commission of offence the revision petitioner was a juvenile.

7. Doubtless, no documents were produced in the trial Court claiming juvenility. If any claim was made there, that Court should conduct an enquiry for

determining the age of the accused. A perusal of Section 7A shows that he can raise that claim before any court at any state even after final disposal of the case. Apex Court in Jodhbir Singh v. State of Punjab [AIR 2013 SC 1] held as follows:

"12. In Ashwani Kumar Saxena case, (2012 AIR SCW 5377) (supra), this Court has explained how "Age determination inquiry" has to be conducted under Section 7A of the JJ Act read with Rule 12 of the JJ Rules. Relevant portion of the same is extracted hereunder:

"32. "Age determination inquiry" contemplated under Section 7A 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 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.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination."

13. We are of the view that in a case where genuineness of the school leaving certificate has not been questioned, the Sessions Court and the High Court were not justified in placing reliance on certain statements made by Parkash Kaur, mother of the accused in the cross-examination. The Sessions Court also committed an error in placing reliance on the certificate issued by the village Chowkidar who was examined as RW2. When the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.

Apex Court in Anil Agarwala & anr. v. State of West

Bengal [2011(2) SCALE 429] held that Section 7A of the

Juvenile Justice Act gives right to any accused to raise

the question of juvenility at any point of time, and if such an issue is raised, the Court is under the obligation to make an inquiry and deal with the question.

8. The matter may be further elaborated on the basis of the decision of the Apex Court in Dharambir v. State (NCT of Delhi) and Anr. [AIR 2010 SC 1801] held as follows:

12. At this juncture, it will be profitable to take note of Section 7A, inserted in the Act of 2000 with effect from 22nd August, 2006. It reads as follows :

"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 inquiry, 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."

Proviso to sub-section (1) of Section 7A contemplates that a claim of juvenility can be raised before any court and has to be recognised at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of Section 2(k) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(1), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted.

It is thus apparent from a reading of Section 2(k), 2(1) 7A of the Act 2000 that a person below the age of eighteen

years on the date of commission of the offence would be treated as juvenile even if the claim is raised after he has attained the age of 18 years on or before the commencement of the Act of 2000.

9. In this case, the prosecution examined 14 witnesses, admitted Exts.P1 to P13 and material objects MO1 to MO6 during trial. A1, A2 and A4 were acquitted and the revision petitioner, who is A3, alone was convicted. He can raise juvenility before any Court and it shall be recognized at any stage, even after final disposal of the case and such claim shall be decided as per provision of Section 7A of the Juvenile Justice Act. According to Section 7A(2) of the Juvenile Justice Act, 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. It is clear that the offence was committed in the year 2000. The date of birth of the accused is 28.1.1983. It is crystal clear from the judgment that the date relevant for determining the age of the accused, who claims to be a juvenile would be the date on which the offence had been committed and not the date on which he is produced before the competent authority or in the Court. In this case, on 8.7.2000, the accused was juvenile and had not completed the age of 18 years. Therefore, the Juvenile Justice Board constituted in the Kozhikode District may pass appropriate orders against a juvenile when it is satisfied that the juvenile has committed an offence.

In the result, the conviction and sentence passed by the Judicial First Class Magistrate-I, Thamarassery u/s.451 and 380 IPC is set aside and the revision petitioner

is set at liberty. The matter is remitted to the Juvenile Justice Board (for short Board), Kozhikode and the Board will pass appropriate orders as per the Act of 2000. The learned Judicial First Class Magistrate-I, Thamarassery shall forward the records to the Board urgently.

The Crl.R.P. is allowed as above.

Sd/-
P.D. RAJAN, JUDGE.

acd

True copy

PA to Judge.