

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.07.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR. JUSTICE C.T.SELVAM

HCP.No.747 of 2015

R.Maheswari

.. Petitioner

Versus

1.The State of Tamil Nadu
rep. by the Inspector of Police,
D.6 Mankadu Police Station,
Mankadu, Kancheepuram District.

2. The Superintendent of Prisons,
Central Prison for Women,
Puzhal, Chennai-66.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus and quash the sentences awarded by the Fast Track Court-3, Chengleput to undergo life sentences in 2 counts and to pay a fine of Rs.20,000/- (totally) in default to undergo Rigorous imprisonment for 2 years as per judgment made in S.C.No.392 of 2003 dated 20.06.2005 and also confirmed by the High Court in C.A.No.1040 of 2006 dated 14.3.2008 and direct the respondents to release the petitioner's brother Thanika @ Thanikachalam-A2 from the Central Jail, Puzhal.

For Petitioner : Mr.S.Sridevi

For Respondents: Mr.A.N.Thambidurai, APP

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

The Habeas Corpus Petition is filed challenging the judgment dated 20.06.2005 made in S.C.No.392 of 2003 by the learned Additional Sessions Judge, Fast Track Court No.3, Chengleput at Poonamallee, which was confirmed on appeal by this Court in C.A.No.1040 of 2006 by judgment dated 14.03.2008.

2. The brief facts of the case are as follows:

The petitioner's brother, namely, Thanika @ Thanikachalam, was convicted by the learned Additional Sessions Judge, Fast Track

Court No.III, Chengelpet at Poonamallee in S.C.No.392 of 2003 on 20.06.2005 for the offences under Section 302 of IPC read with Section 34 of IPC and sentenced to undergo life imprisonment in two counts and to pay a fine of Rs.10,000/- for each offence in default to undergo rigorous imprisonment of two years. Aggrieved over the same, the appeal filed by the petitioner's brother was dismissed by this Court in C.A.No.1040 of 2006 by judgment dated 14.3.2008 by confirming the conviction and sentence imposed by the court below. Now, the petitioner's brother Thanika @ Thanikachalam is undergoing the sentence at Central Prison, Puzhal, Chennai.

3. Learned Counsel for the petitioner would submit that on the day of commission of the alleged offence, the petitioner's brother Thanika @ Thanikachalam was only 17 years 7 months and 29 days old. Therefore, he was a juvenile on the said date, however, the learned Sessions Judge, without following the rules laid down under Juvenile Justice Care and Protection Act, 2000, convicted him and imposed double life sentence which was confirmed by this Court also on appeal. The learned Counsel for the petitioner would further submit that the case of the petitioner's brother has to be dealt with under the provisions of the Juvenile Justice Care and Protection Act, 2000 and sentence him accordingly.

4. Having considered the submissions of the learned Counsel for the petitioner, to meet the ends of justice, this Court directed the respondent police to verify the said factum. Accordingly, the Inspector of Police, T.14 Mangadu Police Station, after verification filed an affidavit to the effect that the date of birth of the detenu is 15.08.1983 and that the Divisional Officer, Chennai Corporation, Chennai has given a letter dated 24.03.2014 stating that the Birth certificate issued by the Chennai Corporation is genuine.

5. On the aforesaid circumstance, in order to determine the age of the detenu, this Court directed the Additional Sessions Judge, Fast Track Court No.3, Chengalpattu at Poonamallee to conduct an enquiry with regard to the age of the detenu and after conducting enquiry by examining the witnesses and the necessary documents marked, submitted a report with regard to the age of the convicted accused.

6. Accordingly, the learned Additional Sessions Judge, Fast Track Court No.III, Chengalpet at Poonamallee conducted a detailed enquiry, examined witnesses and marked certain documents as Ex.C.1 to Ex.C.4 including School Record Sheet of the convicted person. A perusal of those documents would go to show that the date of birth of the detenu, namely, Thanika @ Thanikachalam is 15.8.1983 whereas the alleged offence was committed on 13.04.2001.

7. Having considered the evidence available on record both oral and documentary, the learned Sessions Judge has sent a report dated 2.6.2015 stating that the life convict, namely, Thanika @ Thanikachalam was only Juvenile on the date of commission of the alleged offences.

8. In view of all the above, we are of the view that the life convict, namely, Thanika @ Thanikachalam is only a Juvenile on the date of commission of the alleged offence and therefore, he has to be dealt with under the provisions of the Juvenile Justice Care and Protection Act, 2000. Hence, the conviction and sentenced imposed on him by the learned Additional Sessions Judge, Fast Track Court No.3, Chengleput at Poonamallee which was confirmed by this Court is set aside with a direction to the Additional Sessions Judge, Fast Track Court No.III, Chengulpet at Poonamallee to deal with the case of Thanika @ Thanikachalam concerned in S.C.No.392 of 2003 in accordance with the provisions of the Juvenile Justice Care and Protection Act, 2000.

9. With the above observation, the Habeas Corpus Petition is disposed of.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Additional Sessions Judge
Fast Track Court No.III
Chengalpet at Poonamallee

2. The Inspector of Police,
State of Tamil Nadu,
D.6 Mankadu Police Station,
Mankadu, Kancheepuram District.

3. The Superintendent of Prisons,
Central Prison for Women,
Puzhal, Chennai-66.

4. The Superintendent
Central Jail
Puzhal, Chennai

5.The Public Prosecutor
High Court, Chennai.

1 cc to M/s.S. Sridevi, Advocate, Sr. 33792

HCP.No.747/2015

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