

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.30867 OF 2011

DATED 14th JULY, 2015

Between:

Syed Mabu Shareef

... Petitioner

and

The State of Andhra Pradesh rep. by its
Principal Secretary for Home,
Secretariat, Hyderabad, and others.

... Respondents

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

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ORDER

By judgment dated 14.06.2005, the petitioner was convicted by the learned II Additional Sessions Judge, Kadapa at Proddatur, in Sessions Case No.181 of 2004 under Section 302 IPC and sentenced to life imprisonment along with payment of fine of Rs.500/-, in default of which, he was to suffer simple imprisonment for two months. The same was confirmed in appeal by a Division Bench of this Court in Criminal Appeal No.1096 of 2005, by judgment dated 19.10.2006. Pursuant thereto, the petitioner was jailed in the Central Prison at Kadapa. By way of this writ petition, he seeks a direction to the respondents to consider his case as per the prevailing law and release him forthwith from the Central Prison, Kadapa.

In the affidavit filed in support of the writ petition, the petitioner stated that the date of commission of the offence was 06.04.2004 and claimed that his date of birth was 30.06.1989. He therefore asserted that he was a minor as on the date of the offence and was entitled to be treated as a juvenile offender. According to him, there was a miscarriage of justice in trying him for the offence treating him as an adult. He relied upon the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity, 'the Act of 2000') and asserted that his school record demonstrated that he was a minor at the time of commission of the offence. The school record sought to be relied upon in this regard is a 'Record Sheet' in Form III, which was to be issued at

the time a student leaves the school. This 'Record Sheet' was purportedly issued by the Head Master of Sri Bharathi Public School, Duvvur, Kadapa District. Therein, it was recorded that Syed Mabu Shareef, the petitioner herein, was admitted on 26.07.1997 under Admission No.405 and his date of birth was 30.06.1989.

The Superintendent, Central Prison, Kadapa, filed a counter-affidavit stating that the petitioner had submitted a representation in August, 2007, to consider his case for admission into a Borstal School on the ground that he was a minor at the time of commission of the offence. He also supplied a copy of the 'Record Sheet' issued by the Head Master, Sri Bharathi Public School, Duvvur. However, upon enquiry into the validity thereof, it emerged that the said 'Record Sheet' was not genuine but was a duplicate copy. It was also found that Sri Bharathi Public School, Duvvur, has closed down in the year 1996 and the question of the petitioner being admitted into the said school on 26.07.1997 did not arise. The enquiry in this regard was conducted by the Additional District Probation Officer, Proddatur, Kadapa District, who went to Duvvur village and contacted one A.V.Narayana, former Correspondent of Sri Bharathi Public School, Duvvur. Upon perusing the copy of the 'Record Sheet' produced by the petitioner, the former Correspondent was stated to have confirmed that it was not a genuine one and that it was a duplicate. The Correspondent further stated that the school had closed down in the year 1996, whereas the record sheet reflected admission of the petitioner on 26.07.1997, which could not be correct. The former Correspondent also addressed a separate certificate stating to this effect. The letter of the Additional District Probation Officer, Proddatur, addressed to the Superintendent, Central Prison, Proddatur, Kadapa, and the certificate issued by A.V.Narayana, former Correspondent, Sri Bharathi Public School, Duvvur, Kadapa District, are also placed on record.

Though the aforesaid counter was filed on 28.12.2011, the petitioner did not choose to file a reply thereto rebutting the averments

made therein.

Sri D.Raghava Reddy, learned counsel for the petitioner, asserted that though the conviction and sentence by the trial Court stood confirmed in appeal by this Court, it would still be open to the petitioner to raise a claim as to his minority at the time of commission of the offence by way of this writ petition. He relied upon ***DHARAMBIR V/s. STATE (NCT OF DELHI)***^[1] in support of his contention. Therein, the Supreme Court, while dealing with Section 7-A of the Act of 2000, observed that a claim of juvenility could be raised before any Court and would have to be recognized at any stage, even after disposal of the case. In that case also, the claim of juvenility was based on a school leaving certificate. However, it is significant to note that the Registrar of the Supreme Court made an enquiry into the genuineness of the said certificate by recording the statements of the Principal and other office-bearers of the schools and reported that as on the date when the offence was committed the appellant therein was a minor.

However, that is not the factual position obtaining in the present case. The Additional District Probation Officer, Proddatur, conscientiously conducted an enquiry into the claim of the petitioner by personally going to Duvvur village and interacting with the former Correspondent of the school which allegedly issued the 'Record Sheet' to the petitioner, on the basis of which he claimed to be a minor at the time of commission of the offence. The categorical statement made by the said Correspondent to the effect that the school had shut down in 1996 and that the question of the petitioner being admitted in the year 1997 did not arise, remains uncontroverted. It is a matter of record that the petitioner having been subjected to the due process of law suffered conviction and is presently undergoing sentence. At his mere request, on the basis of an unfounded claim of juvenility, the concluded process cannot be set at naught. Such a claim must be duly supported by reasonable evidence as was the case in ***DHARAMBIR***¹. On his mere *ipse dixit*, the trial, conviction and sentence cannot be invalidated.

In the present case, even if the contention of Sri D.Raghava Reddy, learned counsel, as to the applicability of Section 35 of the Indian Evidence Act, 1872 to the 'Record Sheet' is accepted, the contrary certification of the former Correspondent of the school completely discredited the said document. As pointed out by the Supreme Court in ***BIRAD MAL SINGHVI V/s. ANAND PUROHIT***^[2], an entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Indian Evidence Act, 1972, but the entry regarding the age of a person in a school register is not of much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. In the present case also, the petitioner did not produce the documentary evidence on the basis of which the entry of his alleged date of birth was purportedly made in the 'Record Sheet' relied upon by him.

Given the suspicious circumstances surrounding the said 'Record Sheet' allegedly issued by Sri Bharathi Public School, Duvvur, Kadapa District, this Court is of the opinion that no reliance can be placed upon the same. When there is no acceptable evidence to support the claim of the petitioner that he was a minor at the time of commission of the offence, this Court sees no reason to interfere in the matter. A roving enquiry as to the status of the petitioner in terms of his age cannot be initiated at this stage at his mere request without anything further to support his claim.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

14th JULY, 2015

PGS

[\[1\]](#) (2010) 5 SCC 344

[\[2\]](#) AIR 1988 SC 1796