

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 08th September, 2015

+ **CRL.M.C. No.457/2015**

SIYA RAM Petitioner
Represented by: Mr.S K Sethi & Ms.Dolly Sharma,
Advocates.

Versus

THE STATE GOVT OF NCT OF DELHI Respondent
Represented by: Mr. Hirein Sharma, Additional
Public Prosecutor for the State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.) petitioner seeks directions thereby declaring the petitioner 'juvenile' in case bearing FIR No.74/2012 registered at Police Station Mayapuri, Delhi, for the offences punishable under Sections 302/392/34 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC').

2. It is noted that for the similar relief, the petitioner moved an application before the learned Metropolitan Magistrate-01 (West), Delhi and the same was dismissed vide order dated 12.09.2013. Thereafter, the petitioner moved another application, which was dismissed vide order dated 26.09.2014 by the learned Additional Sessions Judge-2 (West), Delhi, on the ground that since the learned MM has taken up this issue

and decided the same after adopting the procedure prescribed under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter to be referred as 'JJ Act'), the question cannot be reiterated before this Court by way of a fresh application.

3. Mr. S.K.Sethi, learned counsel appearing on behalf of the petitioner submitted that the offence was committed on 01.06.2012 and the petitioner was arrested on 10.06.2012. As per the report of medical examination for assessment of the age dated 06.07.2012, it was opined that after performing general, dental and radiological examination, age of the petitioner was about 18 to 20 years. Thus, age of the petitioner should have been considered one year less, i.e., 17 years and benefit of the same should have been given to the petitioner.

4. To strengthen his arguments on this issue, learned counsel has relied upon a case of **Noor Jhaan @ Haseena & Ors. Vs. State NCT of Delhi¹**, whereby the Division Bench of this court held as under:-

“4. In terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, giving the one year margin on the lower side of the age as opined on the medical examination, the appellant would be below the age of 18 years as on 8th October, 2008 which is the date of the incident. The appellant would thus be covered under the definition of juvenility within the meaning of the expression under Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as on the date of the offence entitling him to the benefit of the statutory provisions.

¹ 2013 (2) JCC 896

5. We are informed that the applicant stands incarcerated since 16th October, 2008, and has already been in jail for a period of 3 years and 10 months. Given our finding on the age of the appellant No. 3 on the date of the offence and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the appellant No. 3 cannot remain incarcerated any further.”

5. Also relied upon case of **Darga Ram @ Gunga Vs. State of Rajasthan**², whereby the Division Bench of the Supreme Court held as under:-

“15. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radio diagnosis and Forensic Medicine has determined his age to be “about” 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination no matter advances made in that field. That being so in terms of Rule 12 (3) (b) the appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination. The general rule about age determination is that the age as

² JT 2015 (1) SC 57

*determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radio diagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to **additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3) (b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.***”

6. Learned counsel further submitted that as per the School certificate of the petitioner of the year 2007-08, his date of birth is 27.04.1996, thus, on the date of occurrence, i.e., 01.06.2012, he was just 16 years old. However, the learned Magistrate while conducting enquiry has discarded this certificate on the ground that affidavit furnished by father of the petitioner, wherein date of birth of the petitioner was furnished as 27.04.1996, was forged one. In the cross-examination of Sh. Chander Pal Gautam, it was stated that Bhim Rao Ambedkar School was not first attended by the petitioner as he took admission in that School in Vth standard. There is no other proof of his date of birth,

accordingly, the learned Magistrate opined that he was not a juvenile on the date of commission of offence.

7. Learned counsel further submitted that it has not come in the inquiry that the School certificate was forged. If the stamp paper was fake, that was not the fault of the father of the petitioner as he purchased the same from the Stamp Vendor and accordingly, filed in the School. However, date of birth of the petitioner has been recorded as 27.04.1996. On that date, father of the petitioner was not aware that his son will commit any offence and on the basis of his birth date, he will get the benefit of juvenile. Thus, the learned Trial Court on presumptions and assumptions rejected the application of the petitioner.

8. In addition, the Principal of the School, who appeared as CW2, has specifically stated that the School record was not tampered with since 2011. The offence was committed on 01.06.2012. He admitted that there was no over writing either in the year or date of birth. It is only in the month.

9. Learned counsel for the petitioner submitted that if it is presumed that there was overwriting by someone that is in the month of birth, then also, it will not affect the age of the petitioner.

10. In addition to above, the learned counsel for the petitioner submitted that as per the report of the Medical Board, age of co-accused, namely, Jagdish was more than 22 years and less than 25 years. However, as per the certificate issued by the Sarpanch, his date of birth was 11.08.1995. Accordingly, the learned Trial Court accepted the

version of the Sarpanch and declared the co-accused as ‘juvenile’ vide order dated 27.09.2013 whereas, in fact, the petitioner, a juvenile has not been declared so and his application was rejected.

11. On the authenticity and reliability of the school certificate, learned counsel for the petitioner has relied upon the case of **Ashwani Kumar Saxena Vs. State of M.P.**³, whereby the Supreme Court held as under:-

“8. The C.J.M. Court felt that school records including mark sheets etc. cannot be relied upon since teacher, who entered those details, was not examined and stated as follows:

The date of birth mentioned in all the certificates is 24.10.1990. But it is significant that such date of birth was recorded on the basis of the date of birth disclosed by the father while getting him admitted in the school and neither the school admission form, admission register in original were called for and even statement of no teacher, who got admitted in the school, was got recorded in the court to determine on the basis of which document actually the date of birth was got recorded as per the principle of law laid down by the Honourable Supreme Court that the date of birth should be relied only when it was recorded in the school on the basis of our authenticated documents and the parents used to get the date of birth of the children recorded for some with variation for some benefit and therefore same cannot be held as authenticated.”

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³ AIR 2013 SC 553

27. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974),

shall have the meanings respectively assigned to them in that Code.

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40. We fail to see, after having summoned the admission register of the Higher Secondary School where the Appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the Appellant was born on 24.10.1990, what prompted the Court not to accept that admission register produced by the principal of the school. The date of birth of the Appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11.02.2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. We are of the view the above document produced by the principal of the school conclusively shows that the date of birth was 24.10.1990 hence section 12(3)(a)(i)(ii) has been fully satisfied.

41. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the Appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial courts and the Appellate courts, when the question regarding the claim of juvenility is raised.

42. Legislature and the Rule making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

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45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”

12. On the other hand, Mr. Hirein Sharma, learned Additional Public Prosecutor appearing on behalf of the State submitted that the Investigating Officer has conducted the enquiry and found that the stamp paper which records the date of birth of the petitioner as 27.04.1996 was found forged. Moreover, overwriting was found in the record of the School and that may be before the year 2011 as admitted by the Principal of the School, who appeared as a witness before the learned Trial Court. Thus, the said affidavit cannot be relied upon. Since the petitioner had not produced any other record or certificate issued by the Municipal Corporation, therefore, in absence thereof, the date of birth recorded in the

School and that is on the basis of the affidavit noted above cannot be relied upon. The learned Trial Court has conducted enquiry and found that the petitioner is not a juvenile; therefore, this Court should not interfere with the order passed by the learned Trial Court.

13. I have heard the learned counsel for the parties.

14. The offence was committed on 01.06.2012 and the petitioner was arrested on 10.06.2012. As per the report of the medical examination dated 06.07.2012 for assessment of his age, it was opined that after performing the general, dental and radiological examinations, the age of the petitioner was about 18-20 years.

15. In case of **Noor Jhaan @ Haseena** (*supra*) it is held that in terms of Rule 12 of the JJ Act, one year margin on the lower side of the age as opined on the medical examination should be given to the accused. If that age margin is given to the petitioner, his age on the date of incident i.e. 01.06.2012 comes to 17 years.

16. In case of **Darga Ram @ Gunga** (*supra*) it is held that in terms of Rule 12 (3) (b) of the JJ Act, the accused is entitled to benefit of fixation of his age on the lower side within the margin of one year in case, the Court considers it necessary to do so in the facts and circumstances of the case.

17. Apart from that, if the age of the accused was determined by the upper extremity limit, the same would have been subject to variation of plus/ minus of two years; meaning thereby his age will be considered two years less than the age determined by the medical examination.

18. Moreover, as per the school certificate of the petitioner of the year 2007-08, his date of birth is 27.04.1996, thus on the date of the offence i.e. 01.06.2012, he was just 16 years old. However, learned Magistrate while conducting the enquiry has discarded this certificate on the ground that the affidavit furnished by the father of the petitioner, wherein the date of birth of petitioner is mentioned as 27.04.1996 was forged one. If the stamp paper was fake, that was not the fault of the petitioner as it was purchased from stamp vendor and accordingly filed in the school. It is pertinent to note that on that date, the father of the petitioner was not aware that his son will commit any offence in future and on the basis of his date of birth, he will get the benefit of juvenility. Thus, learned Trial Court on presumption and assumption rejected the application of the petitioner.

19. It is not out of the place to mention here that as per the report of the medical board, the age of co-accused Jagdish was more than 22 years and less than 25 years. However, as per the certificate issued by *surpanch* his date of birth was 11.08.1995. Accordingly, learned Trial Court accepted the version of the *surpanch* and has declared the co-accused as juvenile vide order dated 27.09.2003, whereas the application of the petitioner was rejected.

20. Section 7A of the JJ Act obliges the Court only to make an inquiry not investigation or trial. The said Section has used the expression that court shall make an inquiry and take such evidence as may be necessary. Rule 12 has to be read alongwith Section 7A of the Act, which has used certain expressions are also to be borne in mind. Rule 12 (2) uses the expressions "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking

evidence by obtaining". Thus, expressions re-emphasise the fact that what is contemplated in Section 7A and Rule 12 of the Act is only an inquiry. The principal of the school conclusively shown that the date of birth of the petitioner was 27.04.1996, hence ingredients of Section 12 (3) (a) (i) (ii) of JJ Act have been fully satisfied.

21. Learned Trial Court has made a phishing inquiry to determine the basis vide which the date of birth was entered into the school record/register, which is untenable under law. It is evident from the Rule that if the assessment of the age could not be done, the benefit would go to the child or juvenile considering his/her age on the lower side within the margin of one year.

22. In the instant case, the age of the juvenile has not been established by the medical examination, however opined between 18-20 years. Thus, he is entitled to lower margin of one year in his age. To bring him down to one year, his age comes to 17 years, therefore, he is a juvenile as per the certificate also.

23. There are two evidences in favour of the petitioner; one is medical examination and second is school certificate. By considering either of the two, the petitioner was juvenile on the date of the commission of the offence. The petitioner was arrested on 10.06.2012 and since then he is in judicial custody, thus, he has completed more than three years in jail.

24. In view of the findings of this Court on the age of the petitioner, on the date of the offence and the provisions of the JJ Act, the petitioner cannot remain incarcerated any further.

25. Consequently, I hereby direct that the petitioner shall be set at liberty forthwith by the jail authorities, if not wanted in any other case.

26. In view of above, the petition is allowed with no order as to cost.

27. Copy of this order be sent to the jail authorities for compliance.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 08, 2015

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