

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1008 OF 2015

IN

CRIMINAL APPEAL NO.696 OF 2007

Shekhar Chandrakant Nadkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms Rohini Dandekar, Advocate appointed for the Applicant.

Mrs. A.S. Pai, A.P.P. for the Respondent -State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ**

DATED: 29th March, 2016

P.C.:-

Heard both sides.

2. Case of the Applicant is that he was below 18 years of age on the date when the incident took place on 10.8.2006. Hence, he should be given a benefit of being a juvenile in conflict with law at the time of the incident.

3. The Applicant was convicted in Sessions Case No.941 of 2006 by the Sessions Court at Mumbai. Being aggrieved the Applicant preferred criminal appeal No.696 of 2007 in this Court. The said appeal came to be dismissed on 7.3.2013. Thereafter

this application has been preferred by the Applicant.

4. In view of section 7 (A) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'said Act'), the claim of Juvenility may be raised before any Court at any stage and even after final disposal of the case. In view of the prayer of the Applicant, the matter was sent to the concerned Sessions Court to enquire into the claim of the Applicant. Accordingly, the learned Additional Sessions Judge has sent the report to this Court, which states that the Applicant was above 18 years of age on the date of the offence.

5. The case of the Applicant is that he does not have any birth certificate, school leaving certificate or any certificate to show his date of birth, hence, he should be sent for ossification test to find out his age. Thus, the only contention of the Applicant is that he should be sent for the ossification test. The case of the Applicant is that when he was of 1-2 years of age his mother expired and his father married another woman. He was neglected by his father, hence, his matrimonial uncle and maternal grand parents took him to their house and brought him up till he came to Mumbai to earn his living.

6. As the only prayer of the Applicant is that he should be sent for ossification test, it is necessary to examine whether

ossification test can be straightaway directed by circumventing the procedure. The Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'Rules') prescribe the procedure to be followed in relation to determination of age. Rule 12 (3) (a) prescribes that age determination enquiry shall be conducted by seeking evidence by obtaining the matriculation or equivalent certificates, if available, and in the absence thereof the date of birth certificate from the school (other than a play school) first attended and in the absence thereof the birth certificate given by a corporation or a municipal authority or a Panchayat. Rule 12(3) (b) prescribes that only in absence of the documents in Clause 12 (a) (i) to (iii) the medical opinion will be sought as prescribed therein. It is therefore, clear that medical examination of the claimant should be directed as a last resort, and not on the basis of a wish of the claimant. It is also clear that medical examination is merely an opinion and is not binding on the Court. The Court relies upon medical opinion whenever there is a disagreement on the documented evidence for age or in those cases where they are completely missing. The learned Sessions Judge being aware of Rule 12(3) (a), 12(3) (b) and Rule 12(a) (i) to (iii) decided to find out availability of any documentary evidence in respect of date of birth of the Applicant rather than straightaway referring him for medical examination.

7. The Applicant was insisting for ossification test by saying that no document was available in respect of his date of birth. It is also his case that he had never attended any school. In the course of the enquiry Mr. Vithoba Dalvi, the maternal uncle of the Applicant was traced out and summoned. He produced the Bonafide Certificate (Exh.7) of the Applicant issued by Raigad Zilla Parishad Shala, wherein his date of birth is shown as 12.10.1986. Witness No.4 Vithoba, the maternal uncle of the Applicant assured that he will make efforts to produce the School Leaving Certificate. Therefore, opportunity was given to him. On the next date Vithoba Dalvi produced the duplicate School Leaving Certificate of the Applicant which is at Exh.10, having the same date of birth of the Applicant i.e. 12.10.1986. Hence, the Bonafide Certificate (Exh.7) and the School Leaving Certificate (Exh.10) indicate 12.10.1986 as the date of birth of the Applicant.

8. In order to confirm the genuineness of the entries in Bonafide certificate and school Leaving Certificates, the original school registers were called and the Headmistress was summoned to personally remain present in the Court. Accordingly original registers maintained by the school were produced by the Headmistress Smt. Ajita Ghodinde. She was examined as Witness No.5. On the basis of her evidence and the original registers,

relevant extracts were also taken on record vide Exhs.12 to 16 respectively. In this way entries in the Bonafide Certificate (Exh.7) and School Leaving Certificate (Exh.10) are proved genuine as per Section 34 r/w section 74 of the Indian Evidence Act. There is nothing to show that the entires in Exhs.7 and 10 are doubtful and false. Hence presumption of genuineness arises to hold that the date of birth of the Applicant is 12.10.1986.

9. We deprecate the conduct of the Applicant as his case is that he had never attended school. However, the documents referred to above show that the Applicant had attended Raigad Zilla Parishad Shala, Vighavali, Taluka-Mangaon, District-Raigad. He has studied in the said school upto 7th standard. The Applicant knows very well that there is a school record to prove his date of birth and his age. Yet, he purposely suppressed this fact and made a totally false claim before this Court.

10. The enquiry report clearly shows that the date of birth of the Applicant is 12.10.1986. The incident had occurred on 10.8.2006. Thus, on the date of the incident the Applicant was 19 years, 9 months and 29 days old. Hence, he was not a juvenile in conflict with law on the date of the incident. Hence, this application is rejected.

11. Office to communicate this order to the Applicant, who is in Kolhapur Central Prison, Kalamba, Kolhapur.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)