

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.615 of 2016 and
Crl.M.P.No.4305 of 2016

Madhew

..Petitioner

Vs.

State through the
Inspector of Police,
All Women Police Station,
Ulundurpet,
Cirme No.03 of 2014

...Respondent

Prayer: Petition filed under Section 379 of Cr.P.C., to set aside the order dated 25.01.2016 made in Cr.M.P.No.722 of 2015 in S.C.No.438 of 2014 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram by allowing this Petition.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

O R D E R

The Revision Petitioner/ Accused has focused the present Criminal Revision Petition before this Court as against the Order dated 25.01.2016 in Crl.M.P.No.722 of 2015 in S.C.No.438 of 2014 passed by the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court, Villupuram).

2. The Learned Sessions Judge, Magalir Neethi Mandram (FTMC, Villupuram) while passing the Impugned Order on 25.01.2016 in Crl.M.P.No.722 of 2015 in S.C.No.438 of 2014 (filed by the Petitioner/Accused) had interalia observed the following:-

"... In the instant case, the Transfer Certificate when the accused had completed his 7th standard has been produced by the accused in which his date of birth is mentioned as 16.07.1997. His matriculation certificate or equivalent certificates, or his birth certificate from the school 1st attended or given by a corporation or a municipal authority not produced by the accused. Moreover, there is no evidence on

record to prove that who had given information to the school about the date of birth of the accused at the time of admission. Hence, in the absence of the above certificates as per Rule 12(3) (b) of JJ Rules, 2007, the medical opinion from a duly constituted medical board can be taken into consideration to declare the age of the accused. According to the radiological report issued on 27.05.2014 it is opined that the individual has completed 18 years but not completed 20 years at the time of examination. Hence in the absence of any other authenticated certificates to prove the age of the accused, the age certificate issued by the radiologist can be taken into consideration..."

and resultantly dismissed the Petition.

3. Being dissatisfied with the Order of dismissal dated 25.01.2016 passed in Crl.M.P.No.722 of 2015 in S.C.No.438 of 2014 by the Learned Sessions Judge, Magalir Neethi Mandram (FTMC, Villupuram), the Petitioner / Accused has preferred the instant Criminal Revision Case primarily contending that the Court below had failed to take into account that Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 specifically stipulates that in the absence of School Certificate or Birth Certificate, the opinion of duly constituted Medical Board can be sought for to establish the age of the accused.

4. Advancing his arguments, the Learned Counsel for the Petitioner projects an argument that the Court below had placed reliance on age certificate dated 27.05.2014 issued by the Radiologist when the Transfer Certificate issued by the school authorities was very much available on record.

5. The primordial stand taken on behalf of the Petitioner is that the Revision Petitioner / Accused date of Birth is 16.07.1997 as per Transfer Certificate dated 02.04.2013 issued by the Government Highersecondary School, Irunthai, Villupuram District, which fact was not properly appreciated by the Court below at the time of passing the Impugned Order.

6. In effect, the Learned Counsel for the Petitioner takes a clear cut stand that the Trial Court at the time of passing the Impugned Order in C.M.P.No. 722 of 2015 in S.C.No.438 of 2014 dated 25.01.2016 had observed the following:-

"...Moreover, there is no evidence on record to prove that who had given information to the school about the date of birth of the accused at the time of admission..."

and when that be the case, an opportunity ought to have been provided to the Petitioner to let in oral and documentary evidence to substantiate his case that the Date of Birth was

16.07.1997.

7. At this stage, this Court pertinently points out that Section 2 (K) of the Juvenile Justice (Care and Protection of Children) Act, 2000 reads as under:-

"Orphan" means a child who is without parents or willing and capable legal or natural guardian"

8. Also that Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 speaks of 'Presumption and Determination of Age'. Besides this, Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 enjoins as follows:-

"In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available, and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his / her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

9. It is to be noted that the age of a person recorded in Transfer Certificate or in school register are otherwise may be used for numerous purposes eg., for securing admission, for obtaining an appointment, registration of marriage, for contesting election etc., A Court of Law for the purpose of deciding the age of a party to a litigation is to bear in mind the necessary ingredients of Section 35 of the Indian Evidence act, 1872 relating to 'relevancy of entry in public record or electronic record made in performance of duty'.

10. One cannot brush aside a important fact that Section 35 of the Indian Evidence Act, 1872 applies to civil and criminal proceedings as per decision of Hon'ble Supreme Court in Ravinder Singh Gorkhi V.State of Uttarpradesh reported in AIR 2006 SC 157. There is no doubt that a high School Certificate is admissible under Section 35 of the Indian Evidence Act as per decision Mayank Rajput V. State reported in 1998 CrI.LJ 2797 (Allahabad). At this juncture, this Court worth recalls and recollects the decision of Hon'ble Supreme Court in Brij Mohan Singh V. Priya Brat Narain Sinha reported in AIR 1965 SC at page 282 whereby and whereunder among other things it is observed that in actual life it often happens that persons give false age of boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The entry of date of birth made in school admission register in terms of Section 35 of the Evidence Act should be considered from the perspective as per decision Sushil kumar V.Rakesh Kumar AIR 2004 SC at page 230.

11. As far as the present case is concerned, the Petitioner / Accused had relied on a Transfer Certificate dated 02.04.2013 issued by the Higher Secondary School, Irnthai, Villupuram District wherein the Date of Birth of the Petitioner has entered in the Admission Register was mentioned at Sl.No.7 as 16.07.1997 (both in English as well as in Tamil). However, the Respondent / Complainant had placed reliance on the Radiological Assessment of Age Certificate dated 27.05.2014 issued by the Radiologist of Government Villupuram Medical College Hospital, Villupuram wherein the Radiologist Doctor after examining the Petitioner had opined that he had completed "18 years but not completed 20 years".

12.It may not be out of place for this Court to make a significant mention that Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 does not expressly refer to "Transfer certificate issued by the Competent Authority of the school". Per contra, the Rule 12(3) (a) and (b) refers to the following:-

"12(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation of equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may if considered necessary, given benefit to the child or juvenile by considering his / her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

13. The obligation of a Court of Law in regard to the determination of the age of an accused claiming be a Juvenile is that of its paramount duty and the concerned court cannot wriggle out of that responsibility.

14. At this stage, the Learned Counsel for the Petitioner submits that the Petitioner is only in possession of the Transfer Certificate dated 02.04.2013 issued by the Head Master of the Government Highsecondary School, Iruthai, Villupuram District and he is not in possession of Matriculation or equivalent certificate. It is represented on behalf of the Petitioner that the Petitioner / Accused is a school drop out of VII standard.

15. A mere running of the eye over the contents of Rule 12 3(b) of Juvenile Justice (Care and Protection of Children) Rules, 2007 unerringly point out that in the absence of either (i), (ii) or (iii) of Clause(a) of Rule 12 (3), a medical opinion will be sought for from the duly constituted Medical Board, which would declare the age of the Juvenile or Child. Further, in case exact assessment of age cannot be done, the Court or the Board as the case may be, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his /her age within the margin of one year.

16. There is no dispute to the fact that the trial court had not recorded any oral or documentary evidence either on the side of the Petitioner / Accused or on the side of the Respondent to establish the Date of Birth of the accused.

17. Per contra, at the risk of repetition, this Court points out that the Court below had placed reliance on the Transfer Certificate dated 02.04.2013 issued by the Head Master of the Government Highersecondary school, Irunthai, Villupuram District and also the age certificate issued by the Radiologist dated 27.05.2014. To put it succinctly, no one from the respective sides had entered into witness box to substantiate their point of view in regard to the date of birth or the age of the Petitioner and also not marked any document. Even the medical opinion was not sought for from the duly constituted Medical Board by the Court below when there was a divergent stand taken by the respective parties in regard to the age of the Petitioner.

18. At this juncture, this Court simplicity without delving deep into the matter sets aside the Impugned Order dated 25.01.2016 in S.C.No.438 of 2014 passed by the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, since the same is not legally tenable one. Consequently, the Revision Case succeeds.

19. In the result, the Criminal Revision Case is allowed and connected Miscellaneous Petition is closed. Consequently, the Order dated 25.01.2016 in CrI.M.P.No.722 of 2015 passed by the Learned Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, in S.C.No.438 of 2014 is hereby set aside for the reasons assigned by this Court.

20. The Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, is directed to restore the Cr.M.P.No.722 of 2015 on file and to pass a fresh speaking order outlining the process of reasoning in a qualitative and quantitative terms by adhering to the Juvenile Justice (Care and Protection of Children) Act and Rules, 2007 made therein within a period of four weeks from the date of receipt of copy of this Order. It is made clear that the fresh order in the subject matter in issue is to be passed in a dispassionate manner, uninfluenced and untrammelled with any of the observations made by this Court in this Revision.

21. Further, the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, shall provide opportunity to the respective parties to adduce oral and documentary evidence to substantiate their case / version and also liberty is granted to the respective parties to raise all factual and legal pleas at the time of fresh hearing.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

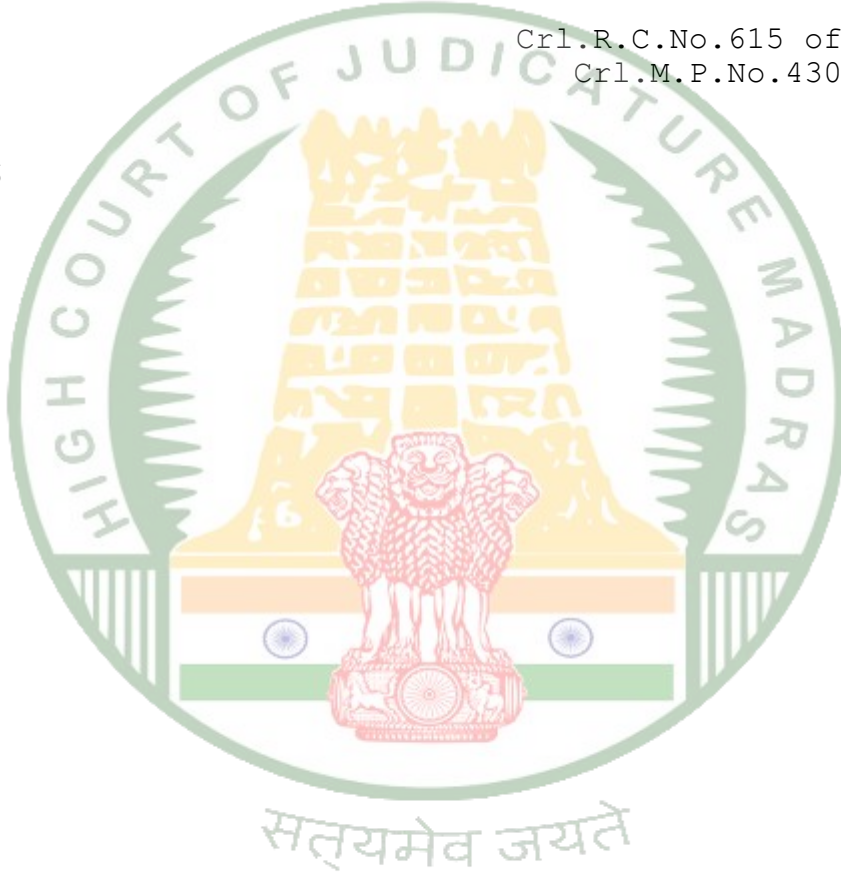
To

1. The Inspector of Police,
All Women Police Station, Ulundurpet,
2. The Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Villupuram.
3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.C. Munusamy, Advocate SR.23338.

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KSJ(CO)
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