

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11611 OF 2016

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the order dated 24.06.2016 passed by the I Additional Sessions Judge, Ananthapur, in CrI.M.P. No.598 of 2013 in S.C. No.506 of 2013, declaring A.5 in the sessions case, who is the first respondent herein, as Juvenile.

The petitioner herein is the *defacto* complainant and L.W.1 in S.C. No.506 of 2013. The main ground urged by Sri T.Pradhymna Kumar Reddy, learned counsel appearing for the petitioner, is that the trial court did not consider Ex.X.7 and did not record any reason for disbelieving Ex.X.7, and the judgment relied by the learned Sessions Judge reported in (2015) SC page 676 has no application, since it pertains to determination of the age of the victim, and in the absence of any reason for disbelieving Ex.X.7, the order cannot be sustained.

Notice was ordered to the first respondent and the counsel for the first respondent, who is appearing before the trial court. It was served on the first respondent, and his counsel appearing before the trial court, as directed by this court. But none appeared.

The learned Sessions Judge mostly relying on the documents viz., Admission register-Ex.X.1, Relevant entry at Sl.No.1661 relating to the petitioner-Ex.X.2, Copy of transfer certificate-Ex.X.3, Copy of Secondary School Certificate of the

petitioner-Ex.X.4, placing reliance on the Judgment of the Apex Court referred above and concluded that the first respondent was a Juvenile by the date of commission of the offence i.e. on 27.07.2012.

Learned counsel for the petitioner contended that the first respondent was major by the date of offence and if Ex.X.7 is relied on by the counsel, it was produced by the Government Official, and Ex.X.7 is the record maintaining in its regular course of business in the Municipal Office, even the oral evidence of P.W.2 also supports the case of the petitioner herein. Though the trial court discussed the evidence of P.W.2 at paragraph 8 of page 5 of the order, did not record any reason to disbelieve Ex.X.7 except mentioning that Ex.A.7 is not cogently revealing the date of birth of the first respondent as 28.07.1993.

In fact, according to the evidence of P.W.2, the first respondent – Kuruba Bala Sainath, s/o. K.Shiva Prasad, was born on 22.09.1993, but 28.11.1993 is the date of registration and not the date of birth in Sl.No.3347. But the trial court on misconception of the evidence came to such conclusion that Ex.X.7 is not cogently revealing the date of birth of the first respondent.

It is known practice to everyone that name of the baby in the birth register is not being entered on the date of registration, but it can be intimated subsequently to incorporate the name of the baby by a specific requisition. But there is no material to show that the name of the baby was intimated subsequently and the reason assigned by the trial court to disbelieve Ex.X.7, as it

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was not revealing the exact date of birth, is without any basis, it is not convincing. The decision relied on by the trial court reported in 2015 SC 676 is relating to determination of age of the victim. It is not relevant to decide present facts in view of my discussion in the earlier paragraphs and in those circumstances, while exercising jurisdiction under Section 482 of Cr.P.C., this court cannot decide the exact date of birth, but at best this court can decide the legality of the order and if the order is not in accordance with law and passed without proper appreciation of evidence, the court can set aside by exercising jurisdiction under Section 482 of Cr.P.C. Hence, I find that it is a fit case to set aside the order under challenge.

In the result, the criminal petition is disposed of, setting aside the order dated 24.06.2016 passed by the I Additional Sessions Judge, Anantapur, in CrI.M.P. No.598 of 2013 in S.C. No.506 of 2013, while remanding the matter to the I Additional Sessions Judge, Anantapur, to consider Ex.X.7 and record specific finding as to why Ex.X.7 cannot be believed and decide the matter afresh.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 22.12.2016
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