

\$~R-11 & R-11A (common order)

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

+ Crl. A. No.780/2001

SANJAY KUMAR MAHTO Appellant
Represented by: Mr. Jaideep Malik, Advocate.

versus

STATE OF DELHI Respondent
Represented by: Mr. Hirein Sharma, APP for the State.
SI Om Parkash, PS Badarpur.

WITH

+ Crl. Rev. P. No.164/2016

SANJAY KUMAR MAHTO Petitioner
Represented by: Mr. Jaideep Malik, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Represented by: Mr. Hirein Sharma, APP for the State.
SI Om Parkash, PS Badarpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **17.08.2016**

Crl. M.A. No.3170/2016 (for delay) in Crl. Rev. P. No.164/2016

1. This is an application seeking condonation of 169 days delay in filing the petition.
2. For the reasons stated in the application, the same is allowed and delay of 169 days in filing the petition is condoned as sufficient cause has been shown.
3. The application is disposed of.

Crl. A. No.780/2001 & Crl. Rev. P. No.164/2016

1. Vide Crl. Rev. P. No.164/2016, the petitioner has challenged the order dated 26.5.2015 passed by the learned Additional Sessions Judge (South-East) in case FIR No.405/1993 under Sections 363/366/376 IPC registered at Police Station Badarpur.
2. The petitioner was convicted for offence punishable under Section 363 IPC challenging which he preferred an appeal before this court being Crl. Appeal No.780/2001. In the appeal, the appellant/petitioner took the plea of juvenility. Thus, vide order dated 13.3.2015, this court directed the concerned judicial officer nominated by the learned District and Sessions Judge to conduct an enquiry regarding the juvenility of the appellant/petitioner on the date of incident and to furnish a report. Pursuant thereto, an order was passed by the learned Enquiry Officer on 26.5.2015 wherein the documents placed on record, that is, the birth certificate and the transfer certificate were disbelieved. After noting the contentions of the parties, the learned Enquiry Officer came to the following conclusion :-

“In view of aforesaid observations and findings, I conclude the enquiry with the finding that the applicant has not furnished the certificate of the first attended school to show his actual date of birth. The Transfer Certificate Ex. CW 2/A is not of any help so far as the date of birth of applicant is concerned. Moreover, I have already observed regarding the genuineness and authenticity of the Transfer Certificate Ex. CW 2/A. Same has been procured by the applicant in connivance with Shri Ramanand Jha (CW-2), the then Principal of Rukmani High School to show a wrong date of birth. So far as the genuineness of document, i.e., Birth Certificate Ex. CW 1/1 is concerned, the same has been issued without any authentic record. The verification done by Panchayat Secretary regarding the date of birth of applicant is also not based on any material and any

authentic document/record. The applicant has procured the documents, i.e., Birth Certificate and Transfer Certificate to claim juvenility in the case and in order to escape legal punishment.”

3. Though the impugned order cannot be faulted for holding that the Birth Certificate and transfer certificate were not authentic however the learned Enquiry Officer failed to notice the provision of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 providing that in the absence of certificate from the school or the certificate of birth from the Municipal Record, the court was required to get conducted an ossification test of the appellant/petitioner so as to ascertain his age. The provision under Section 7A of the Juvenile Justice (Care and Protection of Children) Act being beneficial in nature, the benefit thereof has to be extended before which an enquiry is required to be conducted into the age of the appellant/petitioner at the time of the alleged incident. The Enquiry Officer failed to ascertain the age of the petitioner on the basis of medical evidence. Consequently, this court directs the State to get the medical examination of the appellant/petitioner conducted by a board of doctors of AIIMS to ascertain his age. The report from the board of doctors of AIIMS be filed within three months.

4. In terms of the aforesaid directions, Crl. Rev. P. No.164/2016 is disposed of.

5. A copy of the order be given *dasti* to the learned APP for the State.

CrI. A. No.780/2001 & CrI. M.A. No.11696/2013

List the appeal in the category of 'After Notice Miscellaneous Matters' on 1st December, 2016.

AUGUST 17, 2016
'AA'

MUKTA GUPTA, J.