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

DECIDED ON : 5th FEBRUARY, 2016

+ **CRL.M.C.689/2015 & CRL.M.A.No.2617/2015**

DEEPAK @ RANJAN

..... Petitioner

Through : Mr.Jitender Nath Pathak, Advocate
with Mr.Durga Dutt, Advocate.

versus

STATE & ANR.

..... Respondents

Through : Mr.Amit Gupta, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing / setting aside of order dated 20.12.2014 of learned Addl. Sessions Judge in Crl.Revision Petition No.56/2014 by which order dated 07.12.2013 of learned Chief Metropolitan Magistrate declining to declare the petitioner juvenile on the date of incident was upheld. Petition is contested by the State.

2. I have heard the learned counsel for the parties and have examined the file. Indisputably, the petitioner is facing trial in case FIR No.275/2013 under Sections 363/342/376 IPC and Sections 4/6 POCSO Act PS Ashok Vihar. During committal proceedings before the Trial Court, the petitioner / accused claimed that he was juvenile on the date of offence i.e. 17.09.2013. A detailed enquiry was conducted and vide order dated 07.12.2013, the Trial Court was of the view that the petitioner was not juvenile on the date of occurrence. The petitioner challenged the said order in revision unsuccessfully.

3. Admittedly, the date of offence is 17.09.2013. It is not specifically denied that the first attended school by the petitioner is M.C.Primary Co-Ed School, C-2, Ashok Vihar, Delhi. Petitioner's father admitted that his son studied in a school near mother dairy in Ashok Vihar, Delhi for 2 or 3 months. He did not, however, disclose the petitioner's date of birth. During enquiry proceedings, statement of Rejender Singh, Principal, M.C. Primary Co-Ed School was recorded and he proved the documents Ex.X-1 to X-3. As per the certificate issued by him, the petitioner was admitted in the school in 1st standard on 07.04.2000 and his date of birth was recorded as 17.10.1994. He studied in the said school till 5th standard and date of withdrawal recorded is

29.03.2006. The genuineness and authenticity of these documents have not been suspected. These documents came into existence long back. For the purpose of enquiry, ossification test was also conducted and as per ossification report, petitioner's age was determined in between 20 – 22 years as on 26.11.2013. Learned counsel for the petitioner emphasized that as per the matriculation certificate on record date of birth of the petitioner was 05.09.1996. It was, however, not elaborated / explained as to how two different dates of birth surfaced in two different schools' records. Nothing has emerged to ascertain as to for how many years the petitioner studied in BSHSS Raypur Kuhikala Jaunpur (U.P.). No evidence has come to infer as to when the petitioner got admission in the said school and what date of birth was recorded therein at the time of initial admission. Since the petitioner had studied from 1st to 5th standard in Delhi, there is possibility of the petitioner to have taken admission in 6th standard in the said school. The petitioner did not summon the relevant record from the said school to prove as to when he took admission there and what date of birth was recorded on the basis of any birth certificate or other document there. The certificate containing date of birth 05.09.1996 is a Certificate-Cum-Mark-Sheet issued by the Board of High School and Intermediate Education, U.P. on 10.06.2011.

4. The Courts below have committed no error to rely upon the date of birth recorded in the school first attended by the petitioner. It is in consonance with Rule 12 (3) of Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 framed vide Notification F.No.61(9)J.J. Amend. Act/AD-I.DWCD/2009/25362-391 dated 24.09.2009 published in Delhi Gazette (extraordinary).

5. It is relevant to note that Writ Petition (C) 1308/2013 was filed before this Court to declare Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and Rule 12 (3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 *ultra vires* and unconstitutional being violative of the Constitution of India. This writ petition was dismissed by Division Bench No.1 of this Court vide order dated 19.11.2015. It was categorically held therein that JJBs in Delhi were required to follow the procedure prescribed in Rule 12 (3) of the State Rules.

6. No other document has been placed on record by the petitioner to prove his exact date of birth. As per the date of birth recorded in school first attended, apparently, the petitioner was not juvenile on the date of incident.

7. The petition lacks merits and is dismissed. It is, however, made clear that if the petitioner comes across any cogent document about his date of birth as 05.09.1996 he will be at liberty to move the Trial Court to claim juvenility.

8. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 05, 2016 / *tr*