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

+ **CRL.M.C. 1706/2016 & CrI.M.A. 7241/2016**

DEEPANSHU

..... Petitioner

Represented by: **Mr. Gaganpreet Chawla, Adv.**

versus

STATE

..... Respondent

Represented by: **Mr. Hirein Sharma, APP with
Insp. Joginder Singh, PS Patel
Nagar.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

07.09.2016

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1. Vide order dated 24th July, 2015, learned ACMM declared the petitioner to be not juvenile as per the certificate issued by the school (other than a play school) first attended by the petitioner wherein the date of birth of petitioner was mentioned as 15th March, 1997. The date of alleged offence being committed on 14th June, 2015, it was held that the petitioner was not juvenile as he was aged more than 18 years on the date of alleged offence.

2. Thereafter the petitioner filed an application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act') taking the plea of juvenility in terms of Rule 12 of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 (hereinafter referred to as 'the Rules') and as per the date of birth certificate issued by the School (other than a play school) first attended the learned

ACMM vide order dated 4th December, 2015 reiterated that the petitioner was not juvenile and committed the trial to the Court of learned Sessions Judge.

3. Aggrieved by these two orders dated 4th December, 2015 and 24th July, 2015 the petitioner prefers the present petition.

4. Rule 12 of the Rules provides as under:-

“12. Procedure to be followed in determination of Age. (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

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

ii. the birth certificate given by a corporation or a municipal authority or a panchayat;

iii. the matriculation or equivalent certificates, if available;

(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.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the parent/ guardian/ person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

5. From Rule 12 of the Rules it is apparent that the date of birth certificate issued by the School (other than a play school) first attended is given primacy over the date of birth certificate issued by the Municipal Corporation or the ossification test.

6. The plea raised by learned counsel for the petitioner before this Court is that the date of birth entered in the school is on the basis of ration card which shows fabrication in the age of the petitioner and the affidavit of father of the petitioner which is not sworn in as per law. The affidavit of the father on the basis of which date of birth is stated to be 15th March, 1997 has been sworn before the Sub-Divisional Magistrate, Central District and even it was not sworn before the Oath Commissioner it could not be held to be invalid. Further the ration card where tempering is alleged was also got prepared by family of the petitioner long before the alleged offence and mere overwriting would not lead to the inference that the said ration card was got prepared by giving incorrect facts.

7. Considering the provision of Rule 12 of the Rules, I find no infirmity in the two impugned orders.

8. Petition is dismissed.

MUKTA GUPTA, J.

SEPTEMBER 07, 2016

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