

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2359 OF 2017

ORDER:

Questioning the order, dated 10.03.2017, in CrI.M.P. No.102 of 2017 in S.C. No.29 of 2016 on the file of V Additional Sessions Judge, Karimnagar; whereby and where-under, the application filed by the petitioner - accused No.2 in the above Sessions Case to produce the 10th Class Memorandum of Marks of accused No.2 and to get it marked as exhibit in defence evidence, was dismissed, the petitioner herein filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to set aside the said order and to direct PW.21 to produce 10th Class original marks memo said to have submitted by the petitioner herein.

2. Heard Sri K. Venumadhav, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

3. The learned counsel would submit that PW.21, the Investigating Officer, seized the original 10th Class marks memo of the petitioner and retained it with himself by filing a photostat copy of the said memo along with charge sheet and the photostat copies were attested by PW.22 (Additional Deputy Commissioner of Police); as per the memo of the 10th class of the petitioner, he was a minor on the date of alleged offence and the prosecution has intentionally ignored

the said memo and not marked the same at the time of evidence; the said document is crucial and material to come to a correct and proper conclusion of the matter in controversy; and therefore, filed the aforesaid petition to reopen the evidence of the petitioner and summon PW.21 to produce the original 10th class memo so as to exhibit the same.

4. It appears the State resisted it strongly contending that the Juvenile Justice Board has thoroughly dealt with the issue by referring the petitioner to Medical Board and basing on the Medical Report, the date of birth certificate and the study certificate produced by the petitioner, recorded a finding that the petitioner was not minor and he was a major on the date of offence and, therefore, sought to dismiss the petition.

5. The learned I Additional Sessions Judge, Karimnagar, holding full additional charge of V Additional Sessions Judge, Karimnagar, having formulated the point for consideration, recorded reasons stating that the date of birth of the petitioner recorded in the admission register of Government Primary School, Kalvala village of Shankarapatnam Mandal, shows as '13.03.1995' and the petitioner was admitted in First Class, and in case the date of birth of the petitioner was taken as 24.04.1998, as on 26.06.2000 as contended by the petitioner, he would be only aged 2 years 2 months and there was no possibility of the petitioner being admitted in the said School as on

that date, and when the petitioner joined in Zilla Parishad High School, the petitioner got changed his date of birth only to gain two years of age or to derive some benefit if he gets employment and, therefore, there was no possibility of the petitioner being a minor on the date of offence and the request is without any merit and accordingly, dismissed the petition.

6. The submission of the learned counsel is that the original marks memo itself was taken by PW.21 and it was not returned and only photostat copy was filed and, therefore, it is absolutely necessary as the petitioner will have to use it in his future career.

7. When it was questioned, the learned counsel would fairly admit that the finding recorded by the Juvenile Justice Board to the effect that the petitioner was major on the critical date was not questioned or challenged by the petitioner by carrying the matter to the Higher Court. When once the finding recorded remains on record and attains finality, accordingly, the relief in the present petition is nothing but setting aside that finding. This apart, the aforesaid petition was filed at a belated stage only with a view to see that the disposal of the Sessions Case is protracted. The learned Sessions Court has rightly observed that moving such application at the stage of argument re-agitating the said issue is nothing but only abuse of process of law and to drag on the case. There is no patent illegality in

the order passed by the learned Sessions Court so as to warrant interference.

Therefore, the present Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

March 22, 2017.

Mgr

