

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1389 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner, Listed Witness no.1 (LW1) in S.C.No.506 of 2013 on the file of the Court of the learned I Additional Sessions Judge, Anantapuramu, assailing the orders, dated 13.04.2017, of the said learned Additional Sessions Judge passed in CrI.MP.No.598 of 2015 in S.C.No.506 of 2013.

2. I have heard the submissions of *Sri T. Pradyumna Kumar Reddy*, learned counsel appearing for the petitioner-LW1, and of the learned Public Prosecutor (AP) at the stage of admission.

3. The revision case is coming up for consideration with regard to admission or otherwise of the revision case.

4. I have perused the material record.

5. The facts, which are to be stated as a prelude to this order, in brief, are as follows: "The 1<sup>st</sup> respondent herein is accused no.5 in the afore-stated S.C.No.506 of 2013 and he was charge sheeted along with the other accused for the offences punishable under Sections 498-A, 302 & 201 of IPC and Sections 3 & 4 of the Dowry Prohibition Act. According to the prosecution version, the incident constituting the said offences had taken place on 27.07.2012. The 1<sup>st</sup> respondent filed the subject application under Section 7(A) of the Juvenile Justice (Care and Protection of Children) Act, 2000, claiming, *inter alia*, that his date of birth is 09.06.1995 and that, therefore, he is below the age of 18 years on the date of the alleged offence and hence, he is a juvenile on the date of the alleged offence and requesting to forward him to Juvenile Justice Board for dealing with him in accordance with the

procedure established by law. The said application was resisted by the prosecution. On merits and by the orders impugned in this revision, the Court below declared the 1<sup>st</sup> respondent-A5 as juvenile as on the date of the offence alleged and directed that he be forwarded to the Juvenile Justice Board, Anantapuramu. Aggrieved thereof, the petitioner-LW1 filed this revision case.”

6. Learned counsel for the petitioner-LW1 would submit as follows: “The order impugned is illegal, improper and incorrect. The learned Judge erred in holding that if matriculation or equivalent certificate is available, it is to be treated as conclusive proof of age and basing on the said document the age of the juvenile can be determined. The learned Judge erred in holding that the name of the male child-1<sup>st</sup> respondent-A5 was not mentioned in the hospital register. The learned Judge ought to have considered the documents produced by the petitioner-LW1 and not the ones produced by the 1<sup>st</sup> respondent-A5. The learned Judge ought to have seen that exhibits X1 to X3 are not authenticated documents to prove the exact date of birth of the 1<sup>st</sup> respondent-A5. Exhibits X1 and X3 reflect that the 1<sup>st</sup> respondent-A5 joined in Priyadashini Vidya Mandir, Dharmavaram, on 12.02.2008, when he was studying 9<sup>th</sup> class; and, that his date of birth is 09.06.1995. The 1<sup>st</sup> respondent-A5 has not filed the school certificate from the school in which he studied at the first instance. The trial Court failed to note that the non examination of the parents of the 1<sup>st</sup> respondent-A5 is fatal to the case of the said accused. The learned Judge ought to have seen that as per the provision of Section 35 of the Evidence Act, date of birth entry in a school record is not conclusive. Exhibit X7, birth certificate issued by the Registrar of Births & Deaths of Anathapur Municipality contains the date of birth of the 1<sup>st</sup> respondent-A5 as 22.09.1993. The said document is an authenticated document prepared in the ordinary course of official duty and the same is authenticated to prove that the 1<sup>st</sup> respondent-A5 was a major as on

27.07.2012, the date of the alleged incident, and hence, he is not a juvenile and therefore, he should be tried by the learned Sessions Judge. The learned Judge erred in relying upon the judgment reported in [2016] 0 Supreme SC 366.”

7. The learned Public Prosecutor would submit that the 1<sup>st</sup> respondent-A5 was a major as on the date of the commission of the offences as per the contents of the charge sheet.

8. I have given earnest consideration to the facts and submissions.

9. By the order impugned, the trial Court declared the 1<sup>st</sup> respondent-A5 as a juvenile. Now the short question is as to whether the said order is sustainable under facts and in law.

10. A careful perusal of the material record reflects that at the time of enquiry before the Court below, the 1<sup>st</sup> respondent-A5, who claims to be a minor and a juvenile, as on the date of the commission of the alleged offences, produced exhibit X4, the copy of his Secondary School Certificate issued by the Board of Secondary School Education, State of Andhra Pradesh, and also exhibit X3, the copy of his transfer certificate issued by the Headmaster of Priyadarshini Vidya Mandir, Dharmavaram, showing his date of birth as 09.06.1995 and that he further examined the Headmaster of the said school as one of the witnesses to prove the contents of the said two documents and to establish his contention that his date of birth is 09.06.1995 and that he was a minor and a juvenile as on the date, the alleged offences were allegedly committed. The said witness (Head Master of the School) produced exhibit-X1, register of admissions; exhibit-X2, relevant entry at S.no.1661 relating to the 1<sup>st</sup> respondent-A5. Thus, the 1<sup>st</sup> respondent-A5 got exhibited the said exhibits X1 to X4 and further examined the headmaster of the school in which he studied to prove the contents of the said exhibits X1 to X4. The prosecution examined the Assistant Statistical Officer of

Ananthapuramu Municipal Corporation and one G. Papa Rao and exhibited X7, birth certificate and X8, attested photostat copy of the relevant entry in the 'birth and death register' of the Municipal Corporation, through the said witnesses. The other exhibits, being the witness summons and authorisation letter given by the Commissioner to PW2 for giving evidence before the Court, are not material documents.

10.1 I have carefully gone through the copies of depositions and the said exhibits which are filed along with the material papers. Exhibit X7 is stated to be a birth certificate; its corresponding register was produced by PW2 during the course of his evidence and the said document reveals that one K. Siva Prasad and his wife K. Padmavathi are the parents of one male child who was born on 22.09.1993 at GGH, Ananthapuramu. Exhibit X10, which contains the information that was maintained by the said Government hospital, discloses that K. Padmavathi gave birth to one male child and that the said K. Siva Prasad and his wife K. Padmavathi are the parents of the male child; of-course, the said documents do not reflect the name of the child as by that time the child born to the said parents was not named. The said documents however show that K. Siva Prasad and K. Padmavathi who are admittedly the parents of the 1<sup>st</sup> respondent-A5 gave birth to a male child on 22.09.1993. The trial Court in its order noted that there is a gap of 21 months between the two exhibits, exhibits X7 & X10 on one hand and the date of birth mentioned in exhibit X4, Secondary School Certificate, wherein the date of birth of the 1<sup>st</sup> respondent-A5 is mentioned as 09.06.1995. The trial Court came to the conclusion that there is no clear evidence to show that exhibits X7 & X10 relate to the 1<sup>st</sup> respondent-A5 and, therefore, they cannot be safely relied upon. The Court below for reasons assigned has not given credence to the birth certificates, exhibits X7 & X10. It further assigned reasons for accepting the version of the 1<sup>st</sup> respondent. The trial Court also followed the ratio in the decision of the Supreme Court in Parag Bhati (Juvenile) through



Legal Guardian-mother-Smt Rajini Bhati v. State of UP<sup>1</sup> for accepting the version of the 1<sup>st</sup> respondent/ A5.

10.2 Before proceeding further, it is necessary to refer to Rule 12 (3) of the Juvenile Justice (Case and Protection) Rules, 2007, which is indubitably applicable to the facts of case and which reads as follows:

"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 matriculation or equivalent certificates, if available, and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a Panchayat,
- (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."

A plain consideration of the said Rule makes it manifest that the Courts shall determine the age of the child or juvenile in conflict with law by obtaining matriculation or equivalent certificate if available. Only in the absence whereof the date of birth certificate from the school first attended shall be considered. Further, only in the absence of such certificate from the school first attended, the birth certificate given by a Corporation or a Municipal Authority or a Panchayat shall be considered. The 1<sup>st</sup> respondent-A5 produced copy of his Secondary School Certificate which can be considered as a certificate equivalent to a matriculation certificate. In the presence of such

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<sup>1</sup> (2016) 0 Supreme (SC) 366

certificate, the date of birth certificate from the school first attended or the birth certificate given by a Corporation or Municipal Authority or a Panchayat need not be insisted upon. In the case on hand, since the copy of the Secondary School Certificate is produced along with the copy of the transfer certificate and as the Headmaster of the school was also examined as PW1 to prove the contents of the said documents, the trial Court rightly relied upon the said documents while determining the age of the 1<sup>st</sup> respondent-A5 for the purpose of coming to a conclusion that the 1<sup>st</sup> respondent-A5 is a juvenile. Therefore, in the case on hand there was no necessity to examine the parents of the 1<sup>st</sup> respondent-A5.

10.3 In the decision in *Parag Bhati (Juvenile) through Legal Guardian-mother-Smt Rajini Bhati v. State of UP* (1 supra) relied upon by the Court below, the Supreme Court held as follows:

While considering a similar question, this Court in *Ashwani Kumar Saxena v. State of Madhya Pradesh* [(2012) 9 SCC 750] held as under:-

“32. Age determination inquiry contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry 22 made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the

court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”  
(emphasis supplied by us)

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It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in *Abuzar Hossain alias Gulam Hossain v. State of West Bengal* [(2012) 10 SCC 489], an enquiry for determination of the age of the accused is permissible which has been done in the present case.

10.4 In the case on hand, in a detailed enquiry held by the Court below, oral and documentary evidence was adduced. On a detailed consideration of such evidence, the Court below determined the age of the 1<sup>st</sup> respondent-A5 and came to a conclusion that he is a juvenile as on the date of the alleged offence. From the legal position it is fairly evident that even when two views are possible, the view favourable to the child or juvenile shall be preferred and the benefit must be given to the child or the juvenile. Be that as it may, it is necessary to now refer to the decision in *Jabar Singh v. Dinesh and another*<sup>2</sup> relied upon by the learned counsel for the petitioner. Relying upon the proposition in this decision it is urged that the entry of date of birth of the 1<sup>st</sup> respondent-A5 in the school records like exhibits X2 and X3 does not satisfy the conditions laid down in Section 35 of the Indian Evidence Act inasmuch as the entry in such records was not equivalent to an entry in any public or official register and as the said entry was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the Country. Accordingly, it was further urged that the entries in the said exhibits are not relevant under Section 35 of the Evidence Act for the purpose of determining the age of the 1<sup>st</sup> respondent-A5 as on the date of commission of the offences. In the considered view of this Court, the proposition in the said decision is not helpful to the petitioner, in view of the peculiar facts & the special law

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<sup>2</sup> 2010(2) ALT (CrI) 372 (SC)

applicable to the present case and the ratio in the later decision viz., Parag Bhati of the Supreme Court (1 supra).

11. On the above analysis, this Court finds that the contentions of the petitioner-LW1 are devoid of merit and that the well reasoned order of the trial Court, which does not suffer from any legal infirmity, does not warrant any interference in this criminal revision case.

12. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

08.06.2017  
VJI

M. Seetharama Murti, J

