

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 325 OF 2018**

Mr. Pradeep Mahipat Shinde .Petitioner  
Age : 32 yrs, Occu : Service,  
R/at : At Post – Nagaon (Ramwadi),  
Tahsil – Mahad,  
District – Raigad.

Vs.

1. The State of Maharashtra .Respondents
2. Ms Sujata Pandurang Jogale  
Age : 31 yrs, Occu : Household,  
Tahsil – Mahad,  
District – Raigad.

Mr. S. P. Batavia, Advocate, for the Petitioner  
Mr. Y. Y. Dabke, APP, for the Respondent No. 1 – State

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 09.02.2018**

**ORAL ORDER**

. Heard learned counsel for the parties.

2. Rule.

3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

4. By this Petition, the Petitioner has impugned the Order dated 30.12.2017 passed by the learned Additional Sessions Judge, Mangaon, District – Raigad below Exh. 57 in S. C. No. 4 of 2008, by which the Petitioner's Application for sending the case to the Juvenile Justice Board came to be rejected.

5. Perused the papers including the impugned order.

6. The Petitioner has been prosecuted in connection with C. R. No. 21 of 2002 registered with the Mahad Police Station for the alleged offences punishable under Sections 376, 302, 201 r/w 34 of the Indian Penal Code ( for short 'IPC' ). It appears from the prosecution case, that the alleged offence punishable under Section 376 of IPC was committed by the Petitioner on 26.01.2001; whereas the FIR was lodged on 30.06.2002. After investigation, charge-sheet was filed as against the Petitioner and other accused. On 30.12.2017, the Petitioner filed an Application under Section 20 of the Juvenile Justice ( Care and Protection of Children ) Act, praying therein, that since the Petitioner was a juvenile at the time of the alleged offences, the case be sent to the Juvenile Justice Board for enquiry. The said Application ( Exh. 57 ) filed in S. C. No. 4 of 2008, was rejected by the learned

Additional Sessions Judge, Mangaon, District – Raigad vide Order dated 30.12.2017.

7. According to the learned counsel for the Petitioner, the Petitioner was a juvenile at the time when the alleged offences took place i. e. 26.01.2001. Learned counsel for the Petitioner relied on the School Leaving Certificate of the Petitioner, wherein, the Petitioner's date of birth is shown as 12.01.1985. He submitted that in view of the School Leaving Certificate, considering the Petitioner's date of birth, the Petitioner was a juvenile when the alleged incident took place i. e. on 26.01.2001.

8. The learned Sessions Judge having regard to the new Act i. e. The Juvenile Justice ( Care and Protection of Children ) Act, 2015, rejected the said Application. The impugned order cannot be sustained. The Application will necessarily have to be decided under the Juvenile Justice ( Care and Protection of Children ) Act, 2000 and not under the new Act. Penal consequences can never be given retrospective effect.

9. Hence, it is incumbent for the learned Judge to follow the procedure laid down in Section 7-A of the Juvenile Justice Act, 2000.

Under Section 7-A, if a claim of juvenility is raised before the Court, an enquiry has to be conducted.

10. In this view of the matter, the impugned Order dated 30.12.2017 passed by the learned Additional Sessions Judge, Mangaon, District – Raigad passed below Exh. 57 in S. C. No. 4 of 2008 is quashed & set aside. The Application, being Exh. 57 is restored back to its original file. The learned Judge shall follow the procedure as laid down under Section 7-A of the Juvenile Justice Act, 2000 and pass appropriate orders thereon.

11. Accordingly, the Writ Petition is disposed of in the aforesaid terms.

12. It is made clear, that this Court has not considered the claim of juvenility on merits and as such, the learned Judge shall pass the appropriate orders after following the procedure as set out in Section -7A of the Juvenile Justice Act, 2000.

All concerned to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**