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

CRIMINAL WRIT PETITION NO.2921 OF 2016

Shrihari Rajlingam Guntuka

...Petitioner

Versus

The State of Maharashtra

...Respondent

Ms.Aisha M. Zubair, for the Petitioner.

Mr.R.M.Pethe, A.P.P for the Respondent-State.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 17th JULY, 2018

P.C. :

1. The above Writ Petition filed under Article 226 of the Constitution of India seeks setting aside of the order dated 22nd March, 2017, passed by the learned Additional Sessions Judge, Greater Mumbai, in respect of enquiry as regards the age of the Petitioner - Shrihari Rajlingam Guntuka.

2. The Petitioner herein was tried for the offences punishable

under Sections 302, 324, 114 r/w 34 of the Indian Penal Code for the murder of one Sandeep Maruti Kirve. The Petitioner was convicted by the Sessions Court by Judgment and Order dated 17th November, 1992 for the said offences punishable under Sections 302 r/w 149 of the Indian Penal Code. The Petitioner carried the matter by way of an Appeal to this Court being Criminal Appeal No.952 of 2004. A Division Bench of this Court by Judgment and Order dated 28th July, 2011 dismissed the Appeal and thereby confirmed the conviction and sentence passed by the Sessions Court. The Petitioner thereafter preferred a Special Leave Petition in the Apex Court being Special Leave to Appeal No.9211 of 2011. The Special Leave Petition came to be dismissed by the Apex Court by Judgment and Order dated 9th December, 2011. The Petitioner is presently undergoing his sentence and is therefore incarcerated.

3. The Petitioner has filed the instant Petition which is founded on the documents which he allegedly received from one of his relatives which *inter alia* included the 'Date of Birth Certificate' issued by the P.G. Head Master, Zilla Parishad High School, Gambheerpur, Mdl. Kathalapur, District - Karimnagar, Andhra Pradesh, which according to the Petitioner

was collected by his mother. As per the said Date of Birth Certificate, the date of birth of the Petitioner is 2nd August, 1975. In terms of the said Date of Birth, the age of the Petitioner on the date of the incident i.e. 11th November, 1992 was 17 years 03 months and 09 days and therefore it is claimed that the Petitioner was a juvenile on the day of the offence and therefore direction was sought by the Petitioner under the Juvenile Justice (Care and Protection of Children) Act.

4. In terms of the mandate of the Juvenile Justice (Care and Protection of Children) Act, 2000 and especially Section 7A thereof, a Division Bench of this Court by order dated 8th September, 2016 directed the concerned Sessions Judge in the Sessions Court at Greater Mumbai to conduct an enquiry in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act. In terms of the said directions, the learned Additional Sessions Judge conducted the enquiry and passed the impugned order dated 22nd March, 2017, holding that on the date of the incident i.e. 11th November, 1992, the Petitioner is not proved to be less than 18 years of age or it is not proved that the Petitioner was a juvenile in conflict with law on the date of the incident. During the course of the enquiry, witnesses were

examined as also the documents produced in support of the case that the Petitioner was a juvenile, were considered. Amongst the documents was the School Admission Register, Admission and Withdrawal Register of Students, the Date of Birth Certificate and the Delivery Certificate issued by the Civil Assistant Surgeon, Metpally, District - Karimnagar, Andhra Pradesh. The learned Judge also permitted oral evidence to be lead. The oral evidence was of one Nala Sanjeeva Reddy, the sister of the Petitioner, Suvarna Gangadhar Katam and Gangubai Guntuka, the mother of the Petitioner. The learned Judge did not give weightage to the School Admission Register in view of the fact that column nos.9, 10 and 11 were torn. Insofar as the Date of Birth Certificate is concerned, since the signature of the Head Master was not identified by the witness the said Certificate was not exhibited. The learned Judge held that there is no reason to hold that the Date of Birth Certificate is issued on the basis of the same School Admission Register as the concerned witness has not been examined. The learned Judge did not deem it appropriate to give weightage to the evidence of the mother of the Petitioner as she was illiterate and there was no document to support her contention. The learned Judge held that the evidence of the mother and sister does not support the case of the Petitioner.

The learned Judge came to a conclusion that in terms of Rule 12 and the priorities fixed in respect of the certificates and since no such certificates were forthcoming, the learned Judge reached the conclusion that the Petitioner had failed to prove that his date of birth was 2nd August, 1975 or he was a juvenile in conflict with law on the date of the incident. As indicated above, the learned Judge by the impugned order dated 22nd March, 2017, has rejected the case of the Petitioner.

5. The learned counsel for the Petitioner, Ms.Aisha Zubair would in the teeth of the School Admission Register and the Date of Birth Certificate produced on behalf of the Petitioner would contend that the matter has not been approached by the learned Judge from the correct perspective. In support of her submission the learned counsel relied on the Judgment of the Apex Court in the case of ***Ashwani Kumar Saxena v/s State of M.P.***¹. The said Judgment is an exposition of the Apex Court, as regards the manner in which an enquiry under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, is to be conducted and the matters that are to be kept in mind whilst adjudicating the issue as regards

1 2012 CJ(SC) 1064

the claim of juvenility of a person. In the said case the Apex Court was concerned with a person whose age was 17 years 11 months and 25 days. In the said context the Apex Court held that it is better to err on the side of juvenility rather than rejecting the application filed by the person who claims to be a juvenile. The learned Counsel would therefore contend that having regard to the material on record it ought to have been held by the learned Judge that the date of birth of the Petitioner was 2nd August, 1975 and that he was a juvenile in conflict with law on the date of the incident.

6. The learned APP would support the impugned order and would contend that having regard to the findings recorded by the learned Sessions Judge, no interference was called for, in the writ jurisdiction of this Court under Article 226 of the Constitution of India.

7. Having heard the learned counsel for the Petitioner and the learned APP, we have considered the rival contentions. The issue of juvenility of the person has been to be considered on the touchstone of Section 7A and Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, and the Rules. Insofar as Section 7A and Rule 12 are

concerned, they postulate the manner in which the enquiry is to be held and the importance or priority to be granted to the certificates which are mentioned therein, in the process of the adjudication of the claim. In the instant case as indicated above, the documents produced were extracts of School Admission Register which did not contain the column as regards the date of birth atleast in the ones which were produced before the learned Sessions Judge as columns nos. 9, 10 and 11 of the pages which were produced were mutilated or torn. Insofar as the Date of Birth Certificate is concerned, the case of the Petitioner was that it was based on the Register, since the Register itself has not been given weightage on account of the fact that column nos.9, 10 and 11 were torn or mutilated, the birth certificate was not admitted in evidence in view of the fact that the said certificate was not proved in accordance with law. The learned Judge has also observed that the evidence which has come on record namely the evidence of the mother and the sister of the Petitioner, the same do not support the case of the Petitioner. A reading of the said evidence would indicate that it does not further the case of the Petitioner that his date of birth is 2nd August, 1975. Insofar as, the medical examination is concerned, it is observed by the learned Judge that the said option is available only if the certificate

mentioned in Rule 12(3)(a)(i) to (iii) are not available since in the present case the said certificates were available but were not proved, the learned Judge was of the view that the request to send the Petitioner for medical examination was required to be rejected. The learned Judge therefore recorded a finding of fact applying the principle of preponderance of probabilities, that the Petitioner has not proved his date of birth was 2nd August, 1975 and that he was a juvenile in conflict with law on the date of the incident.

8. In our view therefore the finding of fact recorded by the learned Sessions Judge does not merit any interference as the said finding cannot be said to be perverse neither there is any illegality committed by the learned Sessions Judge whilst recording the said finding.

9. In that view of the matter, no case for interference is made out. The above Criminal Writ Petition is accordingly dismissed.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)