

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.636 of 1999

Saravanan

.. Appellant

Vs.

Inspector of Police
Cheyyar Police Station

.. Respondent

Prayer: Appeal filed against the order dated 05.08.1999 made in S.C.No.72 of 1997, on the file of the Principal District Sessions Judge, Thiruvannamalai.

For Appellant : Mr.V.Karthik, Senior counsel for
M/s.T.S.Gopalan & Co.,

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl. Side)

JUDGMENT

Today the matter is listed without E.B.

2.The appellant has been convicted for the offence under Section 302, 324 (2 counts) and 449 IPC and was ordered to be kept in Bosstal School, Pudukottai as per Section 22 of Juvenile Justice Act, 1986 (Act 53/86) till he attains the age of 23.

3.Though, there is no dispute with regard to the age of the appellant at the relevant point of time, the Trial Court had accepted the appellant as minor and convicted the appellant under the Juvenile Justice Act, 1986 (Act 53/86).

4.The learned Senior counsel Mr.V.Karthic appearing for the appellant urged that the appellant was born on 05.06.1980, to the extent he has produced the polytechnic certificate. Even the Sessions Court has arrived to a conclusion that the appellant is a Juvenile, however convicted the appellant. The Sessions Court is not the competent Court to try the case against the Juvenile, as per the Act. Only the Juvenile Court is the competent court to try the offence against the Juvenile. The learned Senior Counsel relied upon the judgment of the Hon'ble Apex Court reported in (2000) 6 Supreme Court Cases 759 (Raj Singh V. State of Haryana).

"2.In this appeal it is urged that the appellant was born on 09.12.1974 and as the date of alleged committal of offence was 22.05.1990, and on that day, he was a juvenile being less than 16 years of age, he could not have been tried by the Sessions Court but by the Juvenile Court and hence his conviction is bad. Unfortunately this contention has not been raised at any stage earlier. Section 2(h) of the Juvenile Justice Act, 1986 (hereinafter referred to as "The Act") defines a Juvenile to be a person of less than 16 years of age. Section 2(e) of the Act defines that a juvenile who has been found to have committed an offence is a delinquent juvenile. Section 22 of the Act provides that in no case a delinquent juvenile is liable to imprisonment but has to be tried by the Juvenile Court and cannot be tried by the Court of Session. We are fortified in this view by a decision of this Court in Raghbir v. State of Haryana.

3.It is on record that the appellant's date of birth is 09.12.1974 as per the certificate issued by the Board of School Education, Haryana. This certificate stands reaffirmed by another certificate produced today before the Court verifying the said fact. In the circumstances, there cannot be any serious dispute about the date of birth of the appellant i.e. 09.12.1974. If that is so, the trial should have been held only as provided under Section 22 of the Act so a different procedure followed leading to conviction of the appellant is vitiated.

4.We allow this appeal and set aside the conviction and sentence imposed upon the appellant. We direct that the entire trial shall stand quashed and the appellant should be dealt with in accordance with the provisions of the Act."

5.In view of the above decision the learned Senior counsel seeks appropriate orders for quashing of the entire trial and sentence imposed by the Sessions Court.

6.The learned Government Advocate (Crl. Side) has perused the decision relied upon by the learned Senior Counsel and and sought liberty to move an appropriate application before the Juvenile Court.

7.In view of the categorical decision made by the Hon'ble Apex Court, I am inclined to set aside the conviction and sentence imposed upon the appellant. Accordingly, the entire trial shall stand quashed and the appellant should be dealt with in accordance with the provisions of the Juvenile Justice Act, 1986.

8.However, liberty is given to the respondent to proceed in accordance with Juvenile Justice Act, 1986 and also liberty is granted to the appellant to work out the remedy in the manner known to law.

9.Accordingly, this criminal appeal stands allowed with the above terms.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Sessions Judge,
Thiruvannamalai.

2.Inspector of Police
Cheyyar Police Station

3.The Public Prosecutor
High Court, Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.T.S.Gopalan & Co, Advocate sr.no.81154

Cr1.A.No.636 of 1999

kj(co)
nr 03/01/2019