

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE **R. SURESH KUMAR.**

W.P. 31528 of 2005 and
W.P.M.P.No.34568 of 2005

R.Jayalakshmi

... Petitioner

Vs

1. The Registrar General,
Madras High Court,
High Court Buildings,
Chennai.
2. Mr. Paulraj
XIV City Civil Court,
High Court Building,
Chennai
3. The XVII Metropolitan Magistrate
Saidapet
Chennai
4. The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai.
(Crime No.138 of 2005)

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Prohibition, prohibiting the third Respondent from proceeding with the enquiry insofar as the petitioner's son Sasi Kumar A-3 in Crime No.138 of 2005 is concerned and consequently direct the first respondent to initiate departmental action against the second

respondent for his failure to transfer the case of the petitioner's son in Crime No.138 of 2005, which is pending before the forth respondent, to the Juvenile Justice Board, the XII Metropolitan Magistrate, who is the competent authority to try the same.

For Petitioner : Ms.D.Geetha

For Respondents

For R1 to R3 : Mr.P.Kannan Kumar

For R4 : Mr.K.Ravikumar,
Additional Government Pleader

ORDER

The prayer sought for in this writ petitioner is for a Writ of Prohibition, prohibiting the third respondent from proceeding with the enquiry, insofar as the petitioner's son Sasi Kumar, A-3 in Crime No.138 of 2005, is concerned and consequently direct the first respondent to initiate departmental action against the second respondent for his failure to transfer the case of the petitioner's son in Crime No.138 of 2005, which is pending before the forth respondent, to the Juvenile Justice Board, the XII Metropolitan Magistrate, who is the competent authority to try the same.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

The petitioner filed a bail application for her son on 17.03.2005,

along with a memo stating that the petitioner's son, who was accused No.3 in Crime No.138 of 2005, was under 18 years of age, therefore since he was a Juvenile, he has to be tried by the Juvenile Justice (Care and Protection of Children) Act, 2002 (herein after referred to as the 'Act'). However, the learned Magistrate without considering the said plea of the petitioner, simply ordered notice to the Additional Public Prosecutor and adjourned the case on various dates in March, 2005.

3. It was submitted on behalf of the petitioner that, her son, A3 in that case, was a juvenile and therefore, she requested the learned Magistrate to enlarge him on bail and transfer his case to the Juvenile Justice Board. However, the second respondent had informed that he would consider the bail petition, only if the case is tried before him. Therefore it is the claim of the petitioner that, she was directed to withdraw the memo, which had stated that her son Sasikumar was a Juvenile. Accordingly, she withdrawn the said memo, otherwise, the bail petition would not have been considered. Thereafter on 23.03.2005, the accused was enlarged on bail with a condition to appear before the Chengalpet Police Station twice in a day. Thereafter on 04.04.2005, the petitioner submitted a memo before the second respondent, who was the

presiding over the XVII Metropolitan Magistrate Court, Chennai stating that the accused was only 17 years old at the time of commission of offence and therefore, the accused should be tried by the Juvenile Justice Board, and hence she requested to transfer the same. However, the said Court did not accept the request made by the petitioner and therefore, the petitioner having no other option, except to approach this Court, by way of filing this writ petition with the above said prayer seeking Writ of Prohibition, prohibiting the third respondent from proceedings further in the said case, pending before him.

4. I have heard Ms.D.Geetha, learned counsel appearing for the petitioner, Mr.P.Kannan Kumar, learned counsel appearing for the respondents 1 to 3 and Mr.K.Ravikumar, learned Additional Government Pleader appearing for the fourth respondent.

5. The learned counsel appearing for the respondents 1 to 3, by relying upon the counter affidavit filed by the third respondent would submit that, though it is claimed by the petitioner that her son was minor at the time of commission of offence, except that claim no certificate or proof has been filed before the Court to ascertain the age of the

petitioner's son. Under such circumstances, the procedure contemplated under the Act, to ascertain as to whether, the claim of juvenility made by any accused is genuine or not the Magistrate can conduct an enquiry under Section 7A of the Act and after satisfying the claim of the juvenility is just and acceptable, then only it can be proceeded further.

6. In this context, the learned counsel appearing for the respondents 1 to 3 would further submit that, in the case in hand, the petitioner has never appeared before the Court as has been contemplated under Section 7A of the Act and once he appeared for enquiry, the issue with regard to the juvenility would be decided and accordingly, it would be acted upon further.

7. On the other hand, Ms.D.Geetha, learned counsel appearing for the petitioner would submit that, on behalf of the juvenile, the petitioner filed a memo along with the School Leaving Certificate of the petitioner's son dated 12.09.2003, issued by the Chennai Corporation, where the date of birth of the petitioner's son has been specifically mentioned as 13.12.1987 and that being so, the petitioner's son would not have completed the age of 18 years on the date of the occurrence of the

alleged commission of offence and therefore definitely, the petitioner's son was juvenile. Hence the second respondent have no jurisdiction, except to transfer the case to the Juvenile Justice Board.

8. I have considered the said rival submission made by both the counsel and also perused the materials placed before this Court.

9. It is the case of the petitioner that, his son was minor at the time of commission of offence. In that regard, the School Leaving Certificate issued by the Chennai Corporation has been produced. However, the learned counsel appearing for the respondents 1 to 3 by relying upon Section 7A of the Act would submit that, the claim of juvenility made on behalf of the son of the petitioner can only be decided after conducting enquiry as contemplated under Section 7A of the Act. In this context, on perusal, Section 7A of the Act would disclose that, whether the claim of juvenility raised before any Court and the Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as

nearly as may be. This procedure was contemplated under Section 7A of the Act is only from 22.08.2006. Whereas the case in hand pertains to the year of 2005. Therefore at the time of alleged commission of offence involving the son of the petitioner, the procedure under Section 7A of the Act was not at all available. More over in this case, the School Leaving Certificate dated 12.09.2003, had been produced and based on which, the learned Magistrate ought to have taken a decision and accordingly, the case could have been transferred to the Juvenile Justice Board. Instead of, the learned XVII Magistrate wanted to try the matter by insisting the petitioner to withdraw the memo filed by her. Aggrieved over the said action on the part of the second respondent, which according to the petitioner, is as against the provisions of the Act, the petitioner has approached this Court by filing this writ petition.

10. On perusal of the matter placed before this Court and after hearing the arguments made by both the counsel, this Court is of the view that, the procedure as contemplated under Section 7A of the Act would have no application with the present case. More over to establish her claim, the petitioner had produced her son's School Leaving Certificate dated 12.09.2003, wherein the date of birth of the petitioner's son is

clearly mentioned. Based on the material, the learned Magistrate ought to have transferred the matter to the Juvenile Justice Board. However, since the learned Magistrate had not proceeded to follow the procedure as contemplated under the Act to transfer the case to the Juvenile Justice Board and, had insisted the petitioner to withdraw the said memo. Hence, the petitioner approached this Court seeking Writ of Prohibition.

11. On perusal of all these materials, this Court is of the view that, since the petitioner's son was juvenile at the time of the commission of alleged offence, based on the School Leaving Certificate, where his date of birth was specifically mentioned, the third respondent should transfer the case to the Juvenile Justice Board, to try the case accordingly. In the result, following orders are passed in this writ petition.

(i) The third respondent is hereby directed to transfer the case in Crime No.138 of 2005 on the file of the fourth respondent to the concerned Juvenile Justice Board, for taking appropriate steps to proceed further at their end.

(ii) The above exercise shall be undertaken by the third respondent within a period of two weeks from the date of the receipt of a copy of this Order.

12. With the above directions, this writ petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

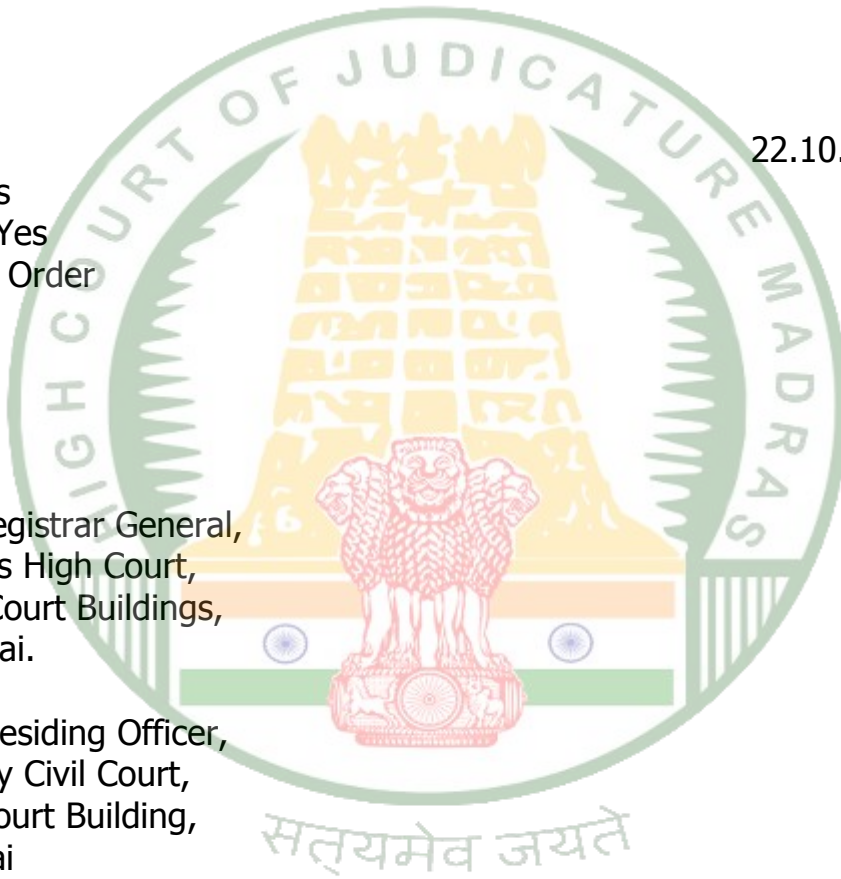
22.10.2018

Index:Yes
Internet:Yes
Speaking Order

rts/jrs

To

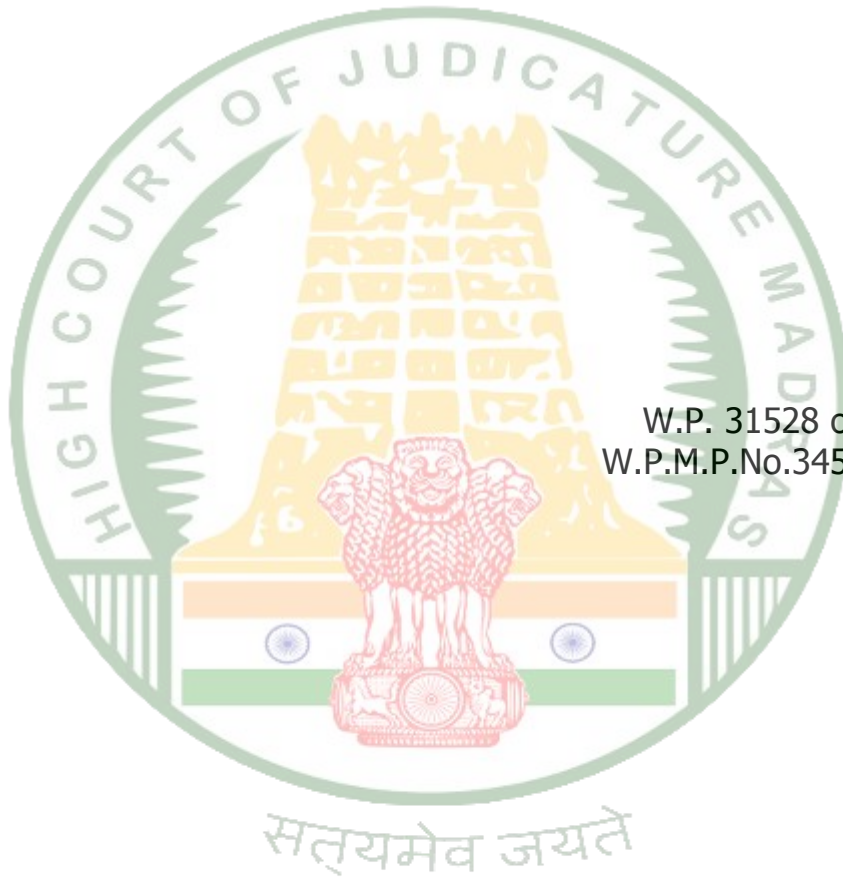
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R. SURESH KUMAR, J.

rts



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