

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.15845 of 2018

and

Crl.MP.No.8107 of 2018

Kadhal @ Rama

...Petitioner

vs.

The Inspector of Police

Omaller Police Station

Salem District.

(Cr.No.793/12)

...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking a direction to the Additional Sessions Judge No.III, Salem to split up the case in S.C.No.187 of 2016 against the petitioner and further direct to post before the Juvenile Justice Board for necessary adjudication.

For petitioner : Mr.N.Sudharsan

For Respondent : Mr.C.Raghavan

Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed seeking a direction to the Additional Sessions Judge No.III, Salem to split up the case in S.C.No.187 of 2016 against the petitioner and post before the Juvenile Justice Board for necessary adjudication.

2. The petitioner is facing trial in S.C.No.187 of 2016 before the Additional Sessions Judge No.III, Salem for the offences under Sections 120B, 302 r/w 34 IPC and 302 r/w 120B IPC along with other accused. While so, the petitioner filed a petition before the trial Court under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000, contending that as on the date of incident viz., 28.12.2012, he was a Juvenile. The above said petition was not entertained by the trial Court on the ground that this issue was raised in CMP.No.104 of 2018 and was rejected earlier.

3. Mr.N.Sudharshan, learned counsel for the petitioner submitted that the petitioner was born on 08.04.1996 and on the date of incident viz., 28.12.2012, the petitioner was 16 years 8 months and 20 days. He also contended that under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the issue of Juvenility can be raised at any time before the trial Court.

4. Per contra, the learned Government Advocate (Crl. Side) submitted that the trial itself is in part-heard stage

and therefore, the accused has filed the present petition only to prolong the case.

5. This Court gave its anxious consideration to the rival submissions.

6. It is settled law that the plea of Juvenility can be raised at any time during trial. Admittedly, 18 witnesses have been examined and cross-examined in this case. Therefore, this Court is not inclined to issue a direction to the trial Court to decide the Juvenility at this juncture. However, after the petitioner is examined under Section 313 Cr.P.C., an opportunity should be given to the petitioner to show that he was a Juvenile as on the date of incident. If the trial Court finds on the evidence that the petitioner should be acquitted, then there cannot be any problem. If the trial Court is satisfied that the petitioner was a Juvenile as on the date of incident and there are sufficient evidence to convict him, the trial Court will have to record the findings of the Juvenility and shall not convict and sentence the petitioner, instead shall send the matter for re-trial before the Juvenile Court, in the final judgment. As regards the other accused, the trial Court may acquit or convict them in the same judgement.

With the above direction, this petition is ordered, accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(cS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge No.III,
Salem.
2. The Inspector of Police
Omaller Police Station
Salem District.
3. The Public Prosecutor
High Court, Madras.
+lcc to M/s.N.Sudharsan, Advocate Sr.No.38195

SKU(CO)
sm:22.6.2018

Cr1.O.P. No.15845 of 2018