



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) Nos.163 and 185 of 2018
and Crl.M.P.(MD) No.2397 of 2018 in Crl.R.C.(MD) No.185 of 2018

Bugari @ Bugari Sharibu, (M/17)
S/o.Mohammed Kathim,
Rep. by his mother and natural guardian,
Mathina Banu (F/42),
W/o.Mohammed Kathim,
Residing at 129/B21, Seethakathi Street,
Sambanthapuram,
Rajapalayam,
Virudhunagar District. ... Petitioner / Accused No.6 in
both revisions

vs.

1.State through
Inspector of Police,
Rajapalayam North Police Station,
Cr.No.373/17,
Virudhunagar District.
2.Superintendent of Police,
Central Prison,
Madurai District. ... Respondents/Complainants in
both revisions

PRAYER in Crl.R.C.(MD) No.163 of 2018: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to call for the records pertaining to impugned committal order dated 01.11.2017 in P.R.C.No.26 of 2017 on the file of Judicial Magistrate, Rajapalayam and set aside the committal order (S.C.No.173 of 2017 pending before the Principal District and Sessions Judge, Srivilliputhur) as far as this petitioner is concerned.

PRAYER in Crl.R.C.(MD) No.185 of 2018: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to call for the records relating to the impugned order passed in Cr.M.P.No.4847/2017 on the file of Judicial Magistrate, Rajapalayam (now available in P.R.C.No.26/17) dated 12.07.2017 (Now available in S.C.No.173 of



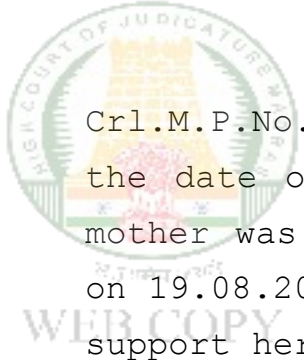
2017 on the file of the Principal District and Sessions Judge, Srivilliputhur) and to set aside the impugned orders regarding the fixing of the age of the revision petitioner as an adult offender and may be pleased to fix the age of the revision petitioner as 17 years of age.

For Petitioner in both revisions	:	Mr.G.Mariappan
For Respondents in both revisions	:	Mrs.S.Bharathi, Government Advocate (Criminal side)

COMMON ORDER

Shorn of unnecessary details, the facts of the case is as under:

On 01.06.2017, one Muhamed Yasik was brutally attacked, pursuant to which, on the complaint given by one Muhamed Rabik, the respondent police registered a F.I.R. in Crime No.373 of 2017 for the offences under Sections 147, 148, 341, 294(b), 323, 324, 307 and 506(ii) I.P.C. against one Nainar Mohammed and others, including the petitioner herein, who has been shown as A6 and hereinafter shall be referred to as A6. On 02.06.2017, Mohamed Yasik succumbed to the injuries and therefore, the case was altered into one under Section 302 I.P.C. On 03.06.2017, A6 was arrested and initially produced before the Juvenile Justice Board, Virudhunagar, since it appeared to the police that he was a juvenile. However, the Juvenile Justice Board, Virudhunagar referred the case to the regular Court and the police produced him before the Judicial Magistrate, Rajapalayam, who remanded A6 to custody on 04.06.2017. At the Central Prison, Madurai, the Superintendent was of the view that A6 should be a juvenile and therefore, he directed the Jail Doctors to conduct necessary examination, which showed that A6 must be between 14 and 17 years. The Superintendent of Prisons, Central Prison, Madurai, sent a report to the Judicial Magistrate, Rajapalayam and the learned Judicial Magistrate, Rajapalayam conducted an enquiry in



Crl.M.P.No.4847 of 2017 and passed an order dated 12.07.2017 fixing the date of birth as 15.03.1999, based on his school records. His mother was examined by the Magistrate. She stated that A6 was born on 19.08.2000, however, she did not produce the birth certificate to support her claim before the Magistrate. Since his date of birth was determined as 15.03.1999, on the date of occurrence, namely, 01.06.2017, his age would be 18 years and 3 months and therefore, he will not be entitled to the benefits of the Juvenile Justice (Care and Protection of Children) Act, 2015. A6 was remanded to the regular prison and was released on regular bail under Section 439 Cr.P.C. by the Sessions Court. The police completed the investigation and filed a final report in P.R.C.No.26 of 2017 before the Judicial Magistrate, Rajapalayam against 7 accused, since one of them named in the F.I.R. had died in the meantime. Even in the final report, this petitioner has been shown as A6. The learned Judicial Magistrate, Rajapalayam committed the case in P.R.C.No.26 of 2017 on 01.11.2017 to Sessions Court and the case now stands trial in S.C.No.173 of 2017 before the Principal and District Judge, Virudhunagar District at Srivilliputhur. While so, A6 has filed the above two Criminal Revision Cases, challenging the order dated 12.07.2017 in Cr.M.P.No.4847 of 2017 and the committal order dated 01.11.2017.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondents.

3.At the outset, learned counsel for the petitioner submitted that the learned Judicial Magistrate, Rajapalayam has failed to take into consideration the birth certificate issued by the Rajapalayam Municipality, which clearly shows that A6 was born on 19.08.2000 to Mohammed Hakkim and Marthina Beevi. He also submitted that the enquiry of this nature should be conducted by the Juvenile Justice Board and not by the regular Magistrate.

4.Per contra, the learned Government Advocate (Criminal side)



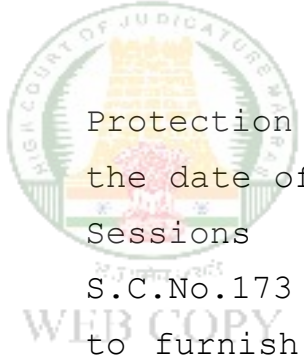
refuted these contentions.

5. This Court gave its anxious consideration to the rival submissions and perused the materials on record.

6. On a reading of the impugned order dated 16.06.2017, in CrI.M.P.No.4847 of 2017 it is seen that there is no reference to the date of birth certificate that has now been filed by the learned counsel for the petitioner in the typed set of papers. That apart, there is sufficient force in the submission of the learned counsel for the petitioner that the determination of the age should have been done by the Juvenile Justice Board and not by the regular Magistrate. However, this Court is of the view that this by itself would not vitiate the committal order as it is too late to call back the committal order and if it is called back it would cause undue prejudice to the other accused as well as to the family of the victim.

7. In such view of the matter, CrI.R.C.(MD) No.163 of 2018 stands dismissed and CrI.R.C.(MD) No.185 of 2018 stands allowed and the order passed by the learned Judicial Magistrate, Rajapalayam on 12.07.2017 in Cr.M.P.No.4847 of 2017 is set aside. Consequently, connected Miscellaneous Petition is closed.

8. Today, Mr.P.Ganapathy, Sub-Inspector of Police, Rajapalayam North Police Station, Virudhunagar District is present. A copy of the birth certificate said to be relating to A6 has been furnished to the police for conducting enquiry on the genuineness and veracity of the same. A6 is directed to appear before the Juvenile Justice Board, Virudhunagar on 09.04.2018 at 10.30 a.m. and on other dates as required by the Board. In the meantime, the police shall complete the enquiry on the date of birth certificate and submit their report along with a copy of the charge sheet to the Juvenile Justice Board, Virudhunagar. The Juvenile Justice Board shall conduct fresh enquiry in terms of Sections 9, 14 and 15 of the Juvenile Justice (Care and



Protection of Children) Act, 2015 and determine the age of A6 as on the date of commission of offence and send a report to the Principal Sessions Judge, Virudhunagar District at Srivilliputhur in S.C.No.173 of 2017 within four weeks from 09.04.2018. A6 is directed to furnish a bond under Section 88 Cr.P.C. to the satisfaction of the Juvenile Justice Board that he will cooperate for the enquiry, failing which he can be remanded to custody under Section 309 Cr.P.C., as laid down by the Hon'ble Supreme Court in State of U.P. vs. Shambhu Nath Singh, reported in 2001 (4) SCC 667 since A6 is not a juvenile now. In the event of Juvenile Justice Board coming to the conclusion that A6 was a juvenile as on the date of the offence, Juvenile Justice Board shall immediately send a report to the Principal Sessions Court so that the case against A6 can be split up and the trial can be proceeded against the other accused. Thereafter, it is for the Juvenile Justice Board to pass appropriate orders under Sections 15, 18 and 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 qua A6. The trial in S.C.No.173 of 2017 can proceed further against the accused. The Juvenile Justice Board is directed to complete the enquiry about the declaration of the age of A6 within one month from 09.04.2018. There will be a stay of further proceedings in S.C.No.173 of 2017 for a period of three months from 09.04.2018 or till the submission of the report by the Juvenile Justice Board, whichever is earlier.

Sd/

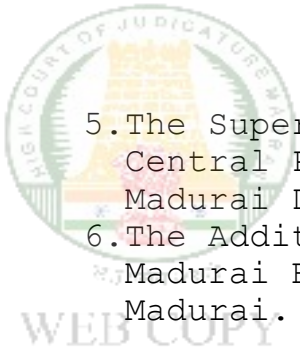
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputhur.
- 2.The Judicial Magistrate,
Rajapalayam.
- 3.The Presiding Officer,
Juvenile Justice Board,
Virudhunagar.
- 4.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.



5.The Superintendent of Police,
Central Prison,
Madurai District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.G.Mariappan, Advocate, SR.No.57883,57884

Crl.R.C.(MD) Nos.163 and 185 of 2018
and Crl.M.P.(MD) No.2397 of 2018 in Crl.R.C.(MD) No.185 of 2018
26.03.2018

SJ

KK/SKN RSK/28.03.2018/SAR-1/6P-9C