

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12176 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the notice dated 09.11.2017 in Enquiry No.1 of 2017 issued by the Chairman, Juvenile Justice Board-cum-Judicial Magistrate of First Class, Adilabad, calling upon the Head Master/Principal, Government Primary school, U/M, Vinayaknagar, Nizamabad, to produce the records to determine the age of the alleged Juvenile/A-3 for genuinity of the *bona fide* Birth Certificate of the petitioner/A-3/alleged Juvenile namely Syed Nayyer issued in reference 2 and 3 cited respectively and the Head Master and the Registrar of Births & Deaths, Municipal Corporation, Nizamabad and another person authorised by them on or before 20.11.2017 at 10.30 am and the Station House Officer, P.S. Basar, Nirmal District is further directed to produce the Juvenile/A-3 to determine his age before Medical Board and file report into the Court on or before 20.11.2017 at 10.30 am.

The main contention before this Court is that the Juvenile Justice Board/Principal Judicial Magistrate of First Class at Adilabad cannot direct the Juvenile/A-3 to undergo medical examination to determine the age of the Juvenile i.e. Ossification Test. The counsel for the petitioner placed reliance on the judgment of the Apex Court reported in **Ashwani Kumar Saxena v. State of Madhya Pradesh**¹ in support of his contention.

¹ 2012 Law Suit (SC) 607

The dispute is with regard to the age of the Juvenile/A-3 and if, for any reason on production of evidence to the satisfaction of the Magistrate, the Magistrate found that he is not a Juvenile, the case has to be tried by regular Court and not by the Juvenile Justice Board. Therefore, the age of the Juvenile/A-3 is the determinative factor as to the jurisdiction of the Court and it is provided under the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the Act" for brevity) and the Juvenile Justice (Care and Protection of Children) Rules, 2007 for determination of age as on the date of the incident. The Apex Court in the judgment referred held in paragraph Nos.37 and 38 as under.

"We have come across several cases in which trial Courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the Courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

We notice that none of the above mentioned principles have been followed by the Courts below in the instant case. The Court examined the question of juvenility of the appellant as if it was conducting criminal trial or inquiry under the Code. Notice was issued on the application filed by the juvenile and in response to that State as well as the widow of the victim filed objection to the application. The father of the appellant was cross examined as P.W.1 and was permitted to produce several documents including the mark sheet of class five marked as exhibit P-1, mark sheet of class eight marked as exhibit P-2, mark sheet of Intermediate Education Board, MP, marked as exhibit P-3, horoscope prepared by Daya Ram Pandey marked as exhibit P-4. Further, the mother of the appellant was examined as P.W.4. Transfer Certificate was

produced on the side of the appellant which was marked as exhibit P-6. Noticing that the parents of the appellant were attempting to show a lesser age of the child so as to escape from the criminal case, the Court took steps to conduct ossification test. Dr. R.P.Gupta was examined as P.W.2 who had submitted the report. Dr. S.K.Sharma was examined as P.W.3. Placing considerable reliance on the report submitted after conducting ossification test, the application was dismissed by the trial Court.”

By following the principle laid down in the above judgment, I find that the second part of the notice is contrary to the principle laid down therein directing the Station House Officer to produce the Juvenile/A-3 before the Medical Board to determine the age and the direction so issued by the Chairman, Juvenile Justice Board-cum-Judicial Magistrate of First Class, Adilabad is premature.

On the basis of production of material by the Head Master as per the first part of the direction, if the Court dissatisfies with the age of the Juvenile/A-3, then the Board may resort to the second part of the notice i.e. referring the Juvenile/A-3 to the Medical Board for determination of the age. Therefore, the direction issued by the Chairman, Juvenile Justice Board directing the Station House Officer to produce the Juvenile/A-3 before the Medical Board to determine the age of the minor is set aside for the present since it is premature. However, the Chairman is at liberty to pass appropriate order after following the procedure prescribed under Section 7A of the Act and the Rules made thereunder.

In the result, the Criminal Petition is allowed in part setting aside the direction given to the Station House Officer, Basar Police Station, Nirmal District, calling upon him to produce the

Juvenile/A-3 before the Medical Board for determination of the age. Further, the Chairman, Juvenile Justice Board-cum-Judicial Magistrate of First Class, Adilabad, is given liberty to pass appropriate order in terms of the judgment referred to supra at appropriate stage. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

2nd January 2018

NOTE: Issue CC by Friday
B/O
RRB

