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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.03.2018

+ **CRL.REV.P. 599/2017**

NEELAM DEVI MAHTO

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr H.S.Phoolka, Senior Advocate with Ms Prabhsahay Kaur, Ms Shilpa Dewan and Ms Akansha Badkur, Advocates.
Mr Anand Kumar, Mr Virender Verma and Ms Shashi, Advocates.

For the Respondent: Mr Harsh Prabhakar with Mr Anirudh Tanwar, Advocates for R-2.
Mr Mukesh Kumar, Addl. PP for the State.
W/SI Ranjana, PS Gandhi Nagar. Insp Girish Jain.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

16.03.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 12.04.2017, whereby the application of respondent No.2 regarding juvenility claim has been allowed and his aged reckoned to less than 18 years during the alleged period of commission of offence.

2. Learned counsel for the petitioner contends that the learned Court has incorrectly relied upon the Admission Register whereas other contemporaneous document established that the entry in the Admission Register, did not correctly record the date of birth and was not reliable.

3. Learned counsel appearing for respondent No.2 submits that though the finding returned by the Court with regard to the juvenility claim is a correct finding, however, he very fairly states that the Trial Court has not taken into account the decision of the Supreme Court in *Babloo Pasi versus State of Jharkhand & Another*, (2008) 13 SCC 133, and has not examined the foundational documents based on which the subject entry was recorded.

4. The Supreme Court in *Babloo Pasi* (supra), held as under:-

“28. It is trite that to render a document admissible under section 35, three conditions have to be satisfied, namely: (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. (See Birad Mal Singhvi v. Anand Purohit).”

5. Though the entry in the Register, which has been relied upon by the Trial Court is relevant under Section 35, however in terms of *Babloo Pasi* (supra), the said entry would not be of much evidentiary value in the absence of proof of material being produced before the Court based on which the age is recorded.

6. In view of the above, the impugned order is set aside. The matter is remitted to the Trial Court to re-consider the application of respondent No.2 with regard to the juvenility claim.
7. In case the Trial Court seeks to rely upon the Admission Register, the Trial Court should also examine the foundational material based on which the age in the Admission Register has been recorded.
8. Parties would also be at liberty to produce such evidence, as may be relevant for the purpose of determining the age in respect of the juvenility claim, in accordance with law and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.
9. Keeping in view the severity of the offence and the fact that substantial time has already been spent on determining the juvenility claim, the Trial Court is directed to expedite the disposal of the application and preferably consider the same on a day to day basis.
10. Let the matter be listed before the Trial Court, on 22.03.2018, for issuing appropriate directions in terms of this order.
11. Order Dasti under signatures of the Court Master.

SANJEEV SACHDEVA, J

MARCH 16, 2018
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