

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION No. 2186 OF 2016

Dilip @ Chotu Shatrughna Mandal ... Petitioner
VS.
The State of Maharashtra ... Respondent

Mr. Keshav Chavan, Advocate for the petitioner.
Mrs. Veera Shinde, APP for the respondent/State.

CORAM : Mrs.MRIDULA BHATKAR, J.
RESERVED ON : 8th February, 2019
PRONOUNCED ON : 22nd February, 2019

JUDGMENT :

Rule. Rule made returnable forthwith. By consent, the Writ
Petition is heard finally and disposed of at the stage of admission.

2. This Criminal Writ Petition is directed against the order dated
21st November, 2015 passed on Exhibit 3 by the Additional
Sessions Judge, Greater Mumbai in Sessions Case No. 507 of
2015 thereby rejecting the plea of juvenility in the said
Miscellaneous Application.

3. The petitioner is original accused no. 1 in C.R. No. 76 of
2015 of Juhu Police Station and was arrested on 25th February,
2015 for the offences punishable under sections 302, 381, 382,

120(B), 394, 459 of Indian Penal Code. The incident has taken place on 23rd February, 2015 and the birth date of applicant/accused is 2nd May, 1998.

4. The learned counsel for the petitioner/accused has submitted that in view of the date of birth, the age of the petitioner/accused was 16 years 9 months and 21 days as on the date of incident, i.e., 23rd February, 2015 and therefore, he should get the benefit of juvenility under Juvenile Justice Act. He submitted that the order passed by the learned Additional Sessions Judge rejecting his school leaving certificate is illegal and hence is to be set aside. In support of his submissions, the learned counsel relied on the judgment of the Supreme Court in the case of **Ashwani Kumar Saxena vs. State of Madhya Pradesh, reported in AIR 2013 SC 553.**

5. Learned APP has submitted that though the accused has produced matriculation certificate, the statement of Mrs. Champadevi, mother of the petitioner/accused is recorded and she has stated that she did not know the date of birth of her son because she is uneducated. Learned APP has submitted that

when the mother is not aware of the date of birth of the child, therefore, the date of birth mentioned in the S.S.C. examination certificate or in school record, becomes doubtful and under such circumstances, he was rightly referred for medical opinion as to his age and by order dated 3rd October, 2015, ossification test of the petitioner/accused was directed. The report was submitted on 30th October, 2015. It reveals that the age was more than 21 years including margin of errors. She submitted that the trial Court has rightly accepted the medical certificate and rejected the claim of juvenility. In support of her submissions, learned APP relied on the judgment of Hon'ble Supreme Court in the case of **Parag Bhati (Juvenile) through legal guardian-mother-Rajni Bhati vs. State of Uttar Pradesh & Anr.**, reported in **(2016) 12 SCC744**.

6. It is necessary to reproduce Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007:

12. Procedure to be followed in determination of Age.

(1)

(2)

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
 - (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
 - (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
 - (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.
- and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

7. In this case, the accused has produced his secondary school examination of 2014 of Bihar School Examination Board, Patna. He also produced a registration card of Board Examination of Patna wherein his date of birth is mentioned as 2nd May, 1998. Thus, he has produced two documents as per the requirement of Rule 12(3)(a)(i) and (ii). As per Rule 12(3)(b) if these documents are not produced, then only the medical opinion of the Medical

Board is to be sought as a proof of age of the accused. In the present case, these two documents are not relied by the Sessions Court due to the statement of the mother of accused that she did not know the date of birth of the accused. The learned Judge has committed error in discarding these two documents on the basis of the statement of the mother. The mother might not have been aware of the date of birth of her son but the father or other relative might have given the correct date of birth of the petitioner/accused. This possibility ought to have been taken into account before discarding these two documents. Moreover, she has stated in the statement that she is illiterate and therefore she does not know the date of birth of her three children including the petitioner/accused. Her statement should not have been given weightage to ignore the date of birth mentioned in the matriculation certificate or the registration card issued by the school authority. In ossification test, the age of the accused is mentioned as 21 years including margin of error, however, as per Rule 12, the date of birth mentioned in school record as 2nd May, 2018 should not have been doubted.

8. In the case of **Ashwani Kumar Saxena** (*supra*), the Supreme Court has considered Section 7A of the Juvenile Justice

(Care & Protection of Children) Act r/w. Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007. As per rule 12, the claim of juvenility is to be decided within fixed period of time on the basis of the documents enlisted therein. In the said judgment, the Court has considered many earlier rulings. It is held that :

“36. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

37. 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.”

9. In the case of **Parag Bhati** (*supra*) along with Ashwani Kumar Saxena, the ratio laid down in the case of **Abuzar Hossainvs. State of West Bengal**, (2012) 10 SCC 489 is relied. The case of Abuzar was decided by three Judges Bench of the Supreme Court. It is held that credibility and acceptability of the document would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In the said case, the Supreme Court has written a note of caution that when the accused commits grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not, cannot be permitted. However, the benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus apply to only such cases, wherein

the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority.

10. Thus, the Court should not create arbitrary doubt about the date of birth when there is no evidence of fabrication of the documents or other manipulations. In the present case, no such evidence is brought by the police that the document itself is fabricated and therefore, the document is genuine and therefore, the date of birth mentioned in the documents cannot be doubted. Thus, the order dated 21st November, 2015 passed by the learned Additional Sessions Judge, Mumbai is found illegal and set aside. The petitioner deserves benefit under Juvenile Justice Act.

11. Writ Petition is allowed accordingly..

(MRIDULA BHATKAR, J.)