

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2018

DELIVERED ON : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.59 of 2018
and
Crl.M.P.No.440 of 2018

A.Naveen ... Petitioner /Petitioner

Vs

1.District Superintendent of Police,
Tiruvallur District.

2.The Sub-Inspector of Police,
Tiruttani Police Station,
Tiruttani. RespondentsRespondents
(Crime No.543 of 2017)

Prayer: Criminal Revision filed under Section 397 and 401 of Cr.P.C., against the judgment dated 13.10.2017 and made in Crl.M.P.No.3164 of 2017 in Crime No.543 of 2017 on the file of the Judicial Magistrate, Tiruttani.

For Petitioner : Mr.B.Ramamoorthy

For Respondents: Mr.G.Harihara Arun Soma Sankar
Government Advocate (Crl.Side)

JUDGMENT

This criminal Revision Petition is preferred by the petitioner/ accused A1 against the order passed by the learned Judicial Magistrate, Tiruttani in Crl.M.P.No.3164 of 2017 dated 13.10.2017 wherein the learned trial Court dismissed the petition filed under section 7-A of the Juvenile justice (care and protection of children) Amendment Act 2006 r/w rule 12 of the Juvenile Justice (Care and Protection of Children) rule 2007.

2.Brief case of the revision petitioner:

The petitioner/A1 was remanded to judicial custody for alleged offence under sections 147, 148, 294(b), 341, 323, 324, and 307 @ 302 of IPC by the respondent Police Station in Cr.No.543 of 2017. The contention of the petitioner is that on

the date of commission of alleged offence he was a Juvenile. To prove his juvenility, the petitioner relay his birth certificate showing that he was born on 6.11.1999 at Irunguvai village, Nindra Mandal, Andra Pradesh. The date of commission of offence is 10.8.2017 and the age of the petitioner is only 17 years 9 months and he should be only tried before the Juvenile board. The Petitioner filed a petition in Crl.M.P.No.3164 of 2017 before the Learned Judicial Magistrate, Tiruttani seeking the respondent police to produce the petitioner before Juvenile Board.

3.The main contention of the Petitioner/ Accused A1 is that he is a Juvenile as per the birth certificate issued by the Revenue Officer, Nindra Mandal, Chittoor District, Andhra Pradesh showing date of birth of Accused/Petitioner A1 as 06.11.1999. The learned trial Court sent a letter to the Tahsidlar, Nindra Mandal, Chittoor District, Andhra Pradesh to verify the genuineness of the said document and the said officer sent a reply letter vide No. Roc B/234/2017 dated 03.10.2017 stating that the birth certificate is not a genuine document. The other documents pertaining to the petitioner viz., Transfer Certificate and Higher Secondary Mark Sheet received from Government Higher Secondary School show his date of birth as 03.06.1999. Therefore the learned trial Court after appreciating the documents and the evidences held that the petitioner is not a juvenile and he is a major at the time of occurrence. Aggrieved over the same, the petitioner challenged the order passed by the learned trial Court by this revision.

4.The learned counsel for the Petitioner/ Accused submits that the Court below went wrong in dismissing the petition filed under section 7-A of the Juvenile Justice (care and protection of children) Amendment Act, 2006 r/w rule 12 of the Juvenile Justice (Care and Protection of Children) rules 2007 and failed to see that birth certificate of the petitioner shows the date of birth is mentioned as 06.11.1999 and he was born at Irunguvai village, Nindra Mandal, Andhra Pradesh as per those public records.

5.The learned counsel for the Petitioner/ Accused submits that the Court below failed to see that as per the original Aadhar card of the petitioner the date of birth of the petitioner mentioned as is 06.11.1999 issued by the Unique Identification Authority of India which will relevant the correct date of birth of the petitioner.

6.The learned counsel for the Petitioner/ Accused submits that the Court below failed to see that the evidence of CW-1 who is the Headmaster deposed that at the time of the admission of the petitioner in the school, the birth extract was not attached.

7.The learned counsel for the Petitioner/ Accused submits that the Court below went wrong in considering the evidence of

respondent police who obtained the letter from Birth certificate issuing authority and the Thasildar admittedly not disputed birth certificate or Aadhar card of the Petitioner/ Accused.

8.The learned counsel for the Petitioner/ Accused submits that the Court below went wrong and finding that the letter addressed to the respondent police by Thasildar is sufficient to decide the present issue whether the petitioner is a Juvenile or not and failed to see that the letter issued by Thasildar without being marked by any witness.

9.The learned counsel for the Petitioner/ Accused submits that the Court below failed to see follow the procedure to decide age determination Inquiry as contemplated by rule 12(3) of the Juvenile Justice (Care and Protection of children) rule 2007.

10.The learned counsel for the Petitioner cited the reported in 2013(2) MWN (Cr) 48(DB) in support of his submissions.

11.The learned counsel for the respondent objected the contentions raised by the petitioner and supported the findings of the learned trial judge and filed his counter.

12.I have heard Mr.B.Ramamoorthy, learned counsel for the petitioner and Mr.G.Harihara Arun Soma Sankar, learned Government Advocate (Criminal Side) for the respondents and perused the impugned order passed by the learned trial judge.

13.To determine the age, the New Juvenile Justice Act, 2000 and the 2007 Rules (hereinafter referred as new J.J.Act) framed thereunder laid down elaborate guidelines.

14.Section 49 of New J.J. Act runs as under:-

"49. Presumption and determination of age.-

(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of

this Act, be deemed to be the true age of that person."

47. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 runs as under:-

"12. Procedure to be followed in determination of Age:-

..... 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..."

15. Thus, procedure for "Age determination inquiry" has been clearly laid down under the provisions of New J.J. Act, 2000 and detailed procedure has been prescribed in Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007. Yet, the subordinate Courts are not following them and are adopting different procedure. Recently, in ASHWANI KUMAR SAXENA Vs. STATE OF MADHYA PRADESH [2012(9) SCC 750], this has also been voiced by the Hon'ble Supreme Court.

16. In ASHWANI KUMAR SAXENA (supra), the Hon'ble Apex Court observed as under:

"25. Section 7-A, obliges the Court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal Courts, Juvenile Justice Board, Committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the Court or the Board only to make an "inquiry" and

in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7-A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions "Court shall make an inquiry", "take such evidence as may be necessary" and but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7-A has also used certain expressions which are also borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7-A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word "inquiry" has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. Let us now examine the meaning of the words "inquiry", "enquiry", "investigation" and "trial" as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. "Inquiry" as defined in Section 2(g) Cr.P.C. reads as follows:

"2. (g) 'Inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"

The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in Section 2(h) of Cr.P.C. reads as follows:

"2. (h) 'Investigation' includes all the proceedings

under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

The expression "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure."

28. The expression "trial" has been generally understood as the examination by Court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the Court /the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Penal Code or under other penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7-A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold the inquiry.

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the Court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the specific procedure has been laid down in Section

7-A read with Rule 12.

31. We also remind all Courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rule 12 (3) (a) (i) to (iii). The Courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the Court to seek evidence and in that process, the Court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the Court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the Court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the Court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. 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, Juvenile Justice Board or a Committee functioning under the JJ 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 JJ Board or the Committee need to go for medical report for age determination.

35. 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.

39. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial Courts and the appellate Courts, when the question regarding the claim of juvenility is raised.

40. The legislature and the rule-making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

17. In this connection, it is relevant to note the following observations of the Hon'ble Apex Court made in *GOPINATH GHOSH Vs. STATE OF WEST BENGAL* [1984 SCC (Cri) 478] which has also been reiterated as follows:

"13. Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court. A way has therefore, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where Special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining credit worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey upto the Apex Court and the return journey to the grass-root Court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

18. In the light of the provisions of Rule 12 of the Juvenile Justice (care and protection of children) Rules 2007 and the various decisions of the Hon'ble Apex Court, the enquiry conducted by the learned Judicial Magistrate without referring the case to the Juvenile Justice Board is a miscarriage of justice.

19. The Revision Petitioner, Naveen claimed that he was born on 6.11.1999. If that is so, on the date of commission of the offence, namely, on 10.8.2017, he was 17 years, 9 months.

20. The Revision Petitioner claimed his date of birth on the basis of birth certificate issued by the competent authorities. Rule 12(3) of the Juvenile Justice (Care and Protection of

Children) Rules, 2007 contemplates three type of evidence, namely, matriculation or equivalent certificate, if that is not available, birth certificate from school (other than play school) first attended, if that is also not available, then birth certificate issued by Corporation or Municipality or Panchayat. If the said three certificates are also not available then only medical evidence has to be sought for to determine the age of the person.

21.Now in the case before me, the petitioner has claimed his date of birth on the basis of the birth certificate issued by the competent authority of Medical and Health Department, Government of Andhra Pradesh. It will come under Rule 12(3). In such circumstances, consideration of the school certificates by the learned Judicial Magistrate need not arise at all.

22.However, as against the provisions of J.J. Act and the Rules, the learned Judicial Magistrate besides conducting enquiry as to the genuineness of the birth certificate relied on the letter issued by the Thasildar on the requisition made by the respondent police. Further the Thasildar was not examined before the trial Court for proving the competence of the letter issued by him. This is not correct and against Juvenile justice Rules, 2007. Further, without providing sufficient opportunity for cross examination, the examination of the Headmaster of the school by the learned Judicial Magistrate, where the petitioner studied and marking of the documents Exhibits C1 to C3 namely Transfer Certificate, 10th Standard Mark Sheet and application form is improper and un-fair.

23.In view of the above, the criminal revision is allowed and the order passed by the learned Judicial Magistrate in CrI.M.P.No.3164 of 2017 is set aside and the learned Magistrate is hereby directed to transfer the case records to the Juvenile Justice Board, Thiruvallur and proceed further in accordance with law as per Juvenile Justice (Care and Protection of Children) Act, 2006. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

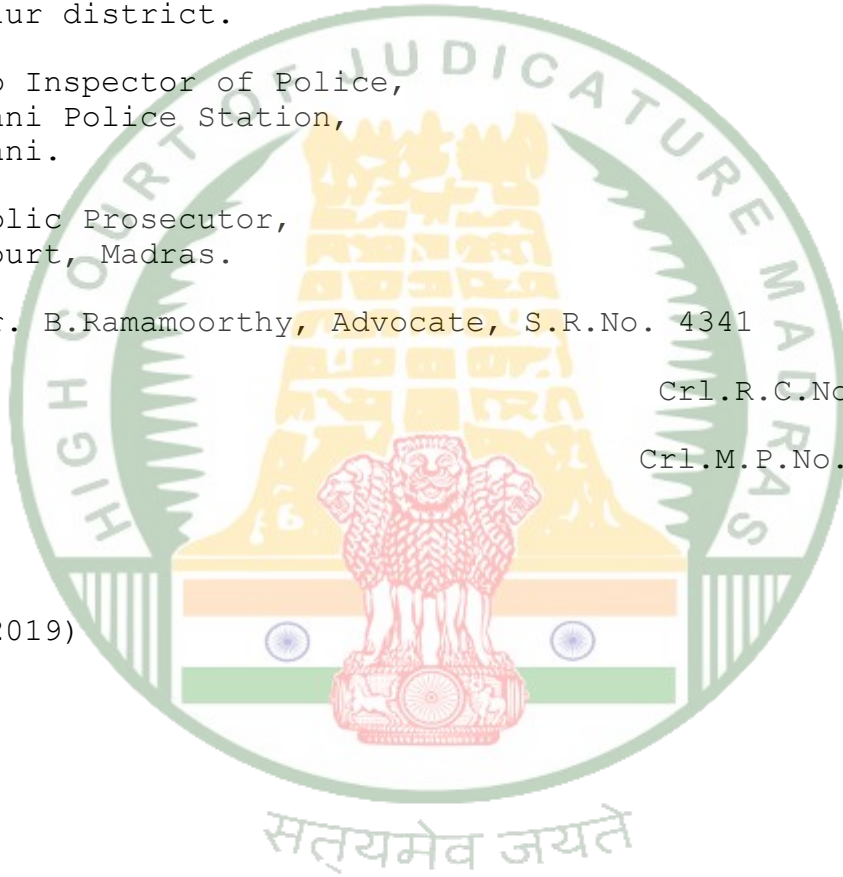
vs

To

- 1.The Judicial Magistrate,
Tiruttani.
 2. do Thr Chief Judicial Magistrate,
Tiruvallur District.
 3. The Juvenile Justice Board,
Thiruvallur.
 - 4.The District Superintendent of Police,
Tiruvallur district.
 5. The Sub Inspector of Police,
Tiruttani Police Station,
Tiruttani.
 6. The Public Prosecutor,
High Court, Madras.
- +1cc to Mr. B.Ramamoorthy, Advocate, S.R.No. 4341

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and
CrI.M.P.No.440 of 2018

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