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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON : 14.03.2019

ORDER DELIVERED ON : 30.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE N. SESHASAYEE**

Crl.O.P. (MD) No. 591 of 2019
and Crl.M.P. (MD) Nos. 281 and 282 of 2019

Bensam : Petitioner / Petitioner / Accused No.1

Vs.

The Inspector of Police,
Karungal Police Station,
Kanyakumari District. : Respondent / Respondent / Complainant
[Crime No.62 of 1995]

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order dated 17.12.2018 made in Crl.M.P.No.1167 of 2018 in S.C.No.224 of 2004 on the file of the Principal Sessions Court, Kanyakumari District at Nagercoil

For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

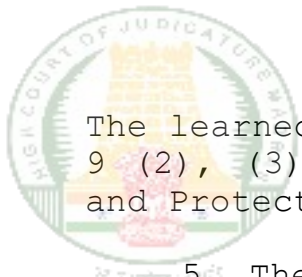
ORDER

This Criminal Original Petition is filed to set aside the order dated 17.12.2018 made in Crl.M.P.No.1167 of 2018 in S.C.No.224 of 2004 on the file of the Principal Sessions Court, Kanyakumari District at Nagercoil.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3.The petitioner herein faces trial for offence under Section 302 IPC along with several other accused persons in S.C.No.224 of 2004 now pending trial before the Principal Sessions Court, Kanyakumari at Nagercoil.

4.The learned counsel appearing for the petitioner would submit that the petitioner was born on 04.06.1977, that on the date of alleged occurrence of the crime on 18.02.1995, he was 17 years, 8 months and 14 days old. Hence, he would be a juvenile under the Juvenile Justice Act, 1986. The petitioner therefore moved the trial Court in Cr.M.P.No.1167 of 2018 for determination of his age.



The learned trial judge has conducted the trial in terms of Sections 9 (2), (3) and 23 of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

5. The Trial Court had considered two documents placed before it. One of the documents is the Certificate issued by the School Headmaster, which shows the petitioner's date of birth as 04.06.1977. The other document is the Certificate issued by the Pastor of the concerned Church.

6. The Trial Court appeared to have relied on the second document, though the Pastor was not examined. That document was produced by the prosecution, according to which, the petitioner's date of birth was 04.06.1980. But it was later said to have been corrected to 04.06.1977. The petitioner had come before this Court for ascertaining his age to establish his minority as on the date of occurrence after 23 years.

7. Second of the reason may not weigh legally, since a person charged of an offence shall be tried and punished only as per law that was prevailing on the date of commission of the offence. If the petitioner is a juvenile as on the date of the offence, necessarily the advantage should go to him. It is not so much as to when petitioner has come before the Court to determine if he was a juvenile when the alleged crime was committed, but it is all about the nature of criminal liability that he was facing.

8. Turning to the other aspect, it is not adequately clear as to why the learned Sessions Judge has preferred a Church record over the school record produced by the petitioner. Admittedly, the Certificate issued by the Church has some correction, and the circumstances as to when the correction came to be made in the Church record has not been established. None was examined to establish the age either.

9. This Court, therefore considers it necessary to direct the learned Session Judge to determine the age of the petitioner taking into account all the materials placed before him, and if he considers that any particular evidence has a greater reliability over the other on the same fact, which in the instant case is the date of birth of the petitioner, he ought to reason the same.

10. For the above stated reason, the order passed in CrI.M.P.No.1167 of 2018 in S.C.No.224 of 2004 on the file of the Principal Sessions Court, Kanyakumari District at Nagercoil, is set aside. The matter is remanded back to the same court.

11. The learned Principal Sessions Judge, Kanyakumari District is directed to re-appreciate the materials in the light of what this court has observed in this order and pass orders afresh within a period of one month from the date of receipt of copy of this Order, but excluding the ensuing vacation period in May, 2019.



12. In fine, this Criminal Original Petition is allowed. Consequently, connected Crl.M.P.(MD)Nos.281 and 282 of 2019 are closed.

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Sd/-

Assistant Registrar (CS-

/ True Copy /

Sub Assistant Registrar (CS-

To,

1.The Principal Sessions Judge,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

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

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate
(SR-64423[F] dated 30/04/2019)

Order made in
Crl.O.P. (MD) No.591 of 2019
and Crl.M.P. (MD) Nos.281 and 282 of 2019
30.04.2019

ES/09.05.2019/3P/5C