



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	19.06.2019
Date of Judgment	25.06.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.276 of 2019

Tmt.S.Mariammal

: Petitioner/Petitioner

Vs.

State represented by
The Sub Inspector of Police,
Alangulam Police Station,
Virudhungar District.
In Crime No.67 of 2019.

: Respondent/Respondent

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the order passed by the Judicial Magistrate No.II, Sattur, in Crl.M.PNo.2341 of 2019, dated 11.04.2019.

For Revision Petitioner

: Mr.S.Kumaravelu

For Respondent

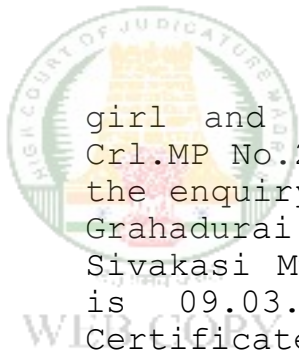
: Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This Criminal Revision has been filed against the order passed by the Judicial Magistrate No.II, Sattur, in Crl.M.PNo.2341 of 2019, dated 11.04.2019.

2.The petitioner is de-facto complainant and she is none other than the mother of the victim girl Subbalakshmi and the petitioner is working as daily wage labour in Match Factory and the petitioner's husband is in abroad, Kuwait and the petitioner's daughter is missing from 06.04.2019 onwards and on 07.04.2019 and hence, the petitioner lodged a complaint before the respondent police and the same was registered as Crime No.67 of 2019 under Women Missing and during the investigation, the victim girl and one Ramasamy, S/o.Subburaj appeared before the All Women Police Station, Sattur and informed that the victim girl is a major and his date of birth is 14.02.2001 and the police produced the victim girl before the Judicial Magistrate No.II, Sattur and as per the direction, the victim girl was directed to keep the Government Children's Welfare Home, Virudhu Nagar.

3.In the meantime, on 08.04.2019, the said Ramasamy filed an application in Crl.M.P No.2281 of 2019 seeking custody of the victim



girl and on 10.04.2019, the petitioner filed an application in Crl.MP No.2341 of 2019 seeking interim custody of the child. During the enquiry, the petitioner produced birth certificate issued by the Grahadurai Hospital and Birth Registration Certificate issued by the Sivakasi Municipality showing the date of birth of the victim girl is 09.03.2002. The respondent police produced the Transfer Certificate issued by KKS Higher Secondary School, Sithurajapuram showing the date of birth of the victim as 14.02.2001 and as per the said Transfer Certificate, the victim completed 18 years of age. The learned Judicial Magistrate No.II, Sattur has dismissed the petition filed by the petitioner in Crl.MP No.2341 of 2019 on 11.04.2019 stating that as per the school certificate of victim girl, she is major, by setting at liberty of the victim girl. Challenging the said order of dismissal, the petitioner is before this court.

4.Heard both sides and perused the materials available on record.

5.It is mainly contended by the learned counsel appearing for the petitioner that the decision taken by the Judicial Magistrate with regard to the age on the basis of the School Leaving Certificate is not correct and the Birth Certificate and Birth Registration Certificate are the documents rather than the School Leaving Certificate and the petitioner is the mother of the victim and without examining her, the order passed by the trial court is illegal and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007 provides equal importance of School Leaving Certificate and Birth certificate to decide the age of the juvenile and prays that the impugned order passed by the trial court has to be set and the criminal revision has to be allowed.

6.It is seen from the records that the petitioner has filed the birth slip issued by Gnahadurai Hospital, Sivakasi, Horoscope and Birth Certificate issued by the Sivakasi Municipality and as per the above documents, the date of birth of the victim girl is 09.03.2002 that is 17 years old on the date of passing of the order by the trial court.

7.It is the contention of the respondent that the victim girl is major as per the Transfer Certificate issued by KKS Hr. Sec. School, Sithurajapuram. In the Transfer Certificate, the date of birth of the victim is mentioned as 14.02.2001 that is 19 years on the date of passing of the order by the trial court.

8.To resolve the issue in determining the age of a victim, the Hon'ble Supreme Court has laid down the dictum in the decision reported in **(2013) 14 SCC 637 (Mahadeo Vs. State of Maharastra)** wherein it was held that Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007 is applicable in determination of age of Child. Rule 12(3) reads as under:-

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"(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.

9. As per the Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, School Certificate shall have precedence over the birth certificate.

10. It is mainly contended by the learned counsel appearing for the petitioner that as per 2001 Rules, birth certificate will prevail over the matriculation certificate and further, the Hon'ble Supreme Court in the decision reported in **2019 (2) SCC (Cri) 314** (Gaurav Kumar @ Monu Vs. The State of Haryana) held as follows:-

"16. Thus, the relevant Rule occupying the field in the present case were 2001 Rules. Rule 22 of 2001 Rules dealt with "procedure to be followed by a board in the holding inquiry in the determination of age." Rule 22 sub-rule (5) which is relevant for the present case is as follows: -

"22(5). In every case concerning a juvenile or a child, the Board shall either obtain, -

(i) a birth certificate given by a corporation or a municipal authority;

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificates, if available;

and

(iv) in the absence of (i) to (iii) above, the

medical opinion by a duly constituted Medical Board,



subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, regarding his age; and, when 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."

11.In the case on hand, Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, shall prevail over Rule 2001.

12.Keeping in view of the above facts, this court is of the considered view that the trial court has rightly dismissed the petition filed by the petitioner, which does not require any interference by this court.

13.In the result, the criminal revision fails and the same is **dismissed**.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.II,
Sattur.
2. The Sub Inspector of Police,
Alangulam Police Station,
Virudhungar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-71195[F] dated
25/06/2019)

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25.06.2019

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