



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD)No. 15892 of 2017

and

Crl.M.P. (MD) .No.10553 of 2017

Bala Subramanian ... Petitioner/Defacto Complainant/
Respondent/Accused
Vs.

1.Muthukumar @ Ajith Kumar

2.State through Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
(Crime No.57 of 2014)

... Respondent/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned order dated 14.11.2016, made in Cr.M.P.No.3663 of 2015 in S.C.No.56 of 2015, on the file of the Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District, now the case is pending before the Juvenile Justice Board, Virudhunagar District, in J.C.No.1 of 2017 and set aside the same.

For Petitioner : Mr.G.Mariappan

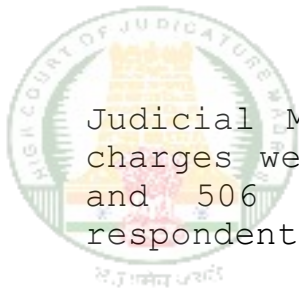
For R1 : Mr.M.Jothi Basu

For R2 : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below in Cr.M.P.No.3663 of 2015, allowing the application filed by the first respondent to enquire into his age and to declare him as juvenile and transfer the case to the Juvenile Justice Board.

2.The petitioner is the *de facto* complainant. Based on the complaint given by the petitioner, an F.I.R came to be registered in Crime No.57 of 2014, by the second respondent Police. After completion of the investigation, a final report came to be filed before the learned Judicial Magistrate No.II, Srivilliputhur and the case was committed to the learned Chief



Judicial Magistrate, Srivilliputhur, Virudhunagar District. The charges were framed for the offences under Sections 341, 326, 307 and 506 (ii) of the Indian Penal Code against the first respondent.

3.The first respondent filed a petition before the learned Chief Judicial Magistrate / Assistant Sessions Judge to fix the age, as he claimed juvenility. This petition was taken on file by the Court below and the Court below took into consideration Ex.P1, which is a family ration card, Ex.P.2, which is the birth certificate of the first respondent and also the evidence of P.W.1, who is said to be the mother of the first respondent. The Court below also directed the Medical Officer to examine the first respondent and determine his age and a report was also received from the Medical Officer. After considering all these materials, the Court below has declared the first respondent as a juvenile on the ground that as on date of occurrence on 12.04.2014, the first respondent had completed only 17 years and 10 months and therefore, he was a juvenile on the date of the alleged occurrence. The Court below proceeded to transfer the entire case records to the Juvenile Justice Board. Aggrieved by this order, the petitioner / de facto complainant has preferred the present Criminal Original Petition before this Court.

4.The learned counsel appearing for the petitioner submitted that the Juvenile Justice (Care and Protection of Children) Rules, 2007, specifically provides for the procedure to be followed for the determination of age. The learned counsel brought to the notice of this Court Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and submitted that there is a specific procedure that is contemplated, wherein, the Court has to first obtain matriculation or equivalent certificates of the accused person and in the absence of the same, the date of birth certificate from the School first attended and only in the absence of the same, the date of birth given by a Corporation or a Municipal Authority or a Panchayat can be taken into consideration.

5.The learned counsel appearing for the petitioner by pointing out to the concerned Rule, submitted that the Court below did not take any efforts to get a Certificate from the concerned School. Even without making any such efforts, the Court below has straight away relied upon the birth certificate that was given in favour of the petitioner and also the report of the Medical Officer. This procedure adopted by the learned counsel appearing for the petitioner is illegal and it is opposed to the mandate that is prescribed under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.



6.The learned counsel appearing for the petitioner concluded his arguments by submitting that the petitioner after making great efforts was able to get the School Certificate of the first respondent from Sivanthipatti Nadar Higher Secondary School, Mamsapuram, Srivilliputhur Taluk, Virudhunagar District, wherein, the date of birth of the petitioner has been mentioned as 10.04.1995. The learned counsel submitted that if this date of birth is taken into consideration, the first respondent had completed 18 years as on the date of commission of offences and therefore, he should be treated only as an adult offender before the regular Court.

7.Per contra, the learned counsel appearing for the first respondent submitted that the School Certificate was not available before the Court below and therefore, the Court below had to necessarily take into consideration, the birth certificate that was marked through the mother of the first respondent (P.W.1). This birth certificate reflected the date of birth of the first respondent as 10.06.1996 and if this Birth Certificate is taken into account, the first respondent was only 17 years and 10 months on the date of occurrence and therefore, he should be treated as juvenile. The learned counsel further submitted that the case has already been transferred to the Juvenile Justice Board and the same is pending. The learned counsel concluded his arguments by submitting that he is not aware about the School Certificate that was produced before this Court by the learned counsel appearing for the petitioner and the same cannot be acted upon till its authenticity is tested and necessary information is collected from the concerned School.

8.Heard the learned Additional Public Prosecutor appearing on behalf of the second respondent Police.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.The procedure to be followed in determination of age has been specifically provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is extracted hereunder:-

"12.(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;

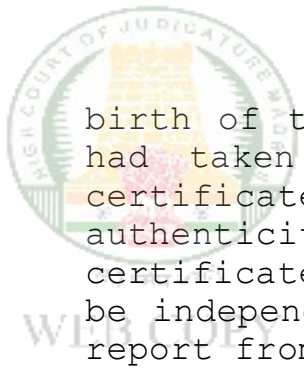
(iv) and only in the absence of either (i) (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, 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) 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."

11.It is an admitted case that these Rules will apply to the facts of the present case. Therefore, it must be seen whether the Court below had followed the procedure prescribed under the Rules.

12.On a careful reading of the order, it can be seen that the Court below has not taken any efforts to verify the School Certificate, if any, given to the first respondent. The procedure which has been extracted hereinabove clearly states that this Certificate will have to be first scrutinized and only in the absence of the same, the Birth Certificate can be taken into consideration. However, the Court below has straight away taken into consideration the birth certificate that was issued to the first respondent. The Court below has also taken into consideration the medical report given by the Medical Officer, who has determined the age of the first respondent. With these two materials, the Court below has come to a conclusion that the first respondent was aged about 17 years and 10 months as on the date of the alleged occurrence.

13.This Court is of the considered view that the procedure followed by the Court below is not in accordance with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. It is now brought to the notice of this Court that there is a Certificate available, which shows that the date of



birth of the first respondent as 10.04.1995. If the Court below had taken some efforts, it could have easily found out the certificate given by the School. This Court is not going into the authenticity and the details that are available in the School certificate that has been placed before this Court. This has to be independently enquired by the concerned Court by calling for a report from the concerned School.

14. In view of the above discussions, this Court has no hesitation to interfere with the order passed by the Court below in Cr.M.P.No.3663 of 2015 dated 14.11.2016. Accordingly, the said order is hereby set aside.

15. It is brought to the notice of this Court that, the case is now pending before the Juvenile Justice Board in J.C.NO.1 of 2017. In view of this order, there shall be a direction to the Juvenile Justice Board, Virudhunagar, to immediately transmit the entire case records to the file of the learned Chief Judicial Magistrate / Assistant Sessions Judge, Srivilliputhur, Virudhunagar District, within a period of two weeks from the date of receipt of a copy of this order. Immediately, on receipt of the case records, the learned Chief Judicial Magistrate / Assistant Sessions Judge, Srivilliputhur, Virudhunagar District, shall enquire into the Certificate that has been given by the Sivanthipatti Nadar Higher Secondary School, Mamsapuram, Virudhunagar District and check the authenticity of the said Certificate. The Court below shall also get a report from the concerned School regarding the Certificate. The learned Chief Judicial Magistrate / Assistant Sessions Judge shall thereafter proceed to determine the age of the first respondent strictly in accordance with the procedure given under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Sufficient opportunity shall be given to the petitioner / de facto complainant, the first respondent and the second respondent Police, before a final decision is arrived at by the Court below. If the Concerned Court comes to the conclusion that the first respondent had completed 18 years on the date of the occurrence, the case shall be retained before the same Court and shall be completed within a period of three months thereafter. If it is found that the first respondent had not completed 18 years as on the date of the alleged occurrence, the case records shall be transferred to the Juvenile Justice Board, Virudhunagar and the Juvenile Justice Board shall proceed further and complete the proceedings within a period of three months thereafter. The petitioner / de facto complainant is a victim in this case and therefore, he shall be permitted to assist the prosecution and render assistance before the Court below during the proceedings.

<https://hcservices.ecourts.gov.in/hcservices/> 16. The Criminal Original Petition stands allowed



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accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

tsg

To

1.The Principal District and Sessions Judge,
Srivilliputhur, Virudhunagar District

2.The Judicial Magistrate, Srivilliputhur,
Virudhunagar District

2.The Juvenile Justice Board, Virudhunagar.

3.The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.

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

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-89737[F] dated
26/09/2019)

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-89970[F] dated 27/09/2019
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