

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6224 OF 2019

KIRAN KANIFNATH JADHAV

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Sana Raees Khan i/b. Hulyalkar and Associates, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY 2020

P.C. :

1 Order passed by the learned Judicial Magistrate First Class, Junnar, in R.C.C. No.232 of 2019 below application Exhibits 5 and 9 on 15th October 2019 is impugned in the instant petition. Applications at Exhibits 5 and 9 on which the impugned order is passed by the learned Magistrate were applications filed by the petitioner/accused no.2 Kiran Kanifnath Jadhav claiming juvenility by stating that on the day of the incident i.e. on 15th

May 2019, he was below 18 years of age. Said applications came to be rejected by the learned Judicial Magistrate First Class, Junnar, by the impugned order.

2 Heard the learned counsel appearing for the petitioner /accused no.2. She vehemently argued that Juvenile Justice (Care and Protection of Children) Act (hereinafter referred to as the Juvenile Justice Act for the sake of brevity) is a piece of welfare legislation and when two views are possible, the court ought to have leaned in view of holding juvenility of the accused. The learned counsel further argued that when two certificates are contradictory in nature, the certificate which is favourable to the subject of Juvenile Justice Act ought to have been accepted by the learned trial Magistrate, by holding that the petitioner/accused no.2 was below the age of 18 years, at the time of incident in question. Reliance is placed by the learned counsel for the petitioner/accused no.2 on the judgment of the Hon'ble Apex Court in the matter of Ashwani Kumar Saxena vs. State of Madhya Pradesh¹. With the aid of this judgment, the learned counsel

1 Criminal Appeal No.1403 of 2012 (Special Leave Petition (Crl.) No.7271 of 2011 decided on 13th

argued that Birth Certificate of the petitioner/accused no.2 is not available and as such, the certificate of the Gram Panchayat ought to have been relied on by the learned trial Magistrate. She argued that the petitioner/accused no.2 ought to have been sent for ossification test by the learned trial Magistrate for collecting evidence regarding his age. The School Leaving Certificate ought not to have been relied by the learned trial Magistrate. With this, it is prayed that the impugned judgment and order needs to be quashed and set aside.

3 The learned APP by relying on Sections 9 and 94 of the Juvenile Justice Act opposed the contention so raised by submitting that evidence in the form of School Leaving Certificate issued by the school run by Zilla Parishad, Pune, reflecting date of birth of the petitioner/accused no.2 was on record of the learned trial Magistrate when the claim for juvenility came to be rejected. According to the learned APP, certificate relied by the petitioner/accused no.2 which is issued by Gram Panchayat, Narayangaon, Taluka Junnar, District Pune, is not admissible in

September 2012

law, as it is not the certificate issued under the relevant provisions of Registration of Births and Deaths Act, 1969. The learned APP pointed out contents of the said certificate, which are to the effect that date of birth given in the said certificate is on the basis of statement made by the father of the petitioner/accused no.2 and that too, post the incident in question.

4 The learned APP further submitted that when the petitioner/accused no.2 was arrested, he had disclosed his age as 19 years and the same is reflecting in the Arrest Panchnama prepared by the Investigating Officer.

5 I have considered the submissions so advanced and also perused the material placed before me.

6 Section 9 of the Juvenile Justice Act makes it clear that when a person alleging to have committed an offence, claims before a court other than a Board that he is a child or was a child on the day of commission of the offence, the said court is required to make an inquiry and then it is suppose to determine age of such

person. Section 94 of the Juvenile Justice Act makes it clear that evidence such as date of birth certificate from the school or the Matriculation or equivalent certificate from the concerned Examination Board, if available, can be take into consideration. Apart from this, Birth Certificate given by the Corporation or Municipal Authority or Panchayat can be considered for determining the age. In absence of such certificates, ossification test is required to be conducted.

7 In the case in hand, the petitioner/accused no.2 claims juvenility by stating that his date of birth is 11th October 2001. For this purpose, he placed reliance on a certificate dated 24th July 2019 issued by the Village Development Officer, Gram Panchayat, Narayangaon. The incident in question took place on 15th May 2019. The certificate issued by the Village Development Officer, Gram Panchayat, Narayangaon, is to the effect that Kanifnath Jadhav (father of the petitioner/accused no.2) visited the Gram Panchayat and told that his son Kiran Jadhav is born on 11th October 2001. With this, it is further stated in the certificate that

no note of such birth is available in the relevant register maintained at the Gram Panchayat. Thus, by no stretch of imagination this certificate relied by the petitioner/accused no.2 before the learned trial Magistrate can be said to be Birth Certificate of the petitioner. Provisions of Registration of Births and Death Act, 1969 and Maharashtra Registration of Births and Deaths Rules, 1976, mandates reporting of birth to the Registrar under the said Act and Rules. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, the Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within the jurisdiction of the municipality, panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance of register for

recording birth and death within the local area. Section 17 of the Registration of Births and Deaths Act, 1969, provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized Officer. Section 17 of the said Act provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. No such certificate was placed on record of the learned trial Magistrate by the petitioner/accused no.2 to support his claim of juvenility.

8 On the contrary, prosecution has relied upon School Leaving Certificate issued by the school run by the Zilla Parishad, Pune, which records the date of birth of the petitioner/accused no.2 as 11th October 1999.

9 Considering this certificate, the learned trial Magistrate rejected the claim of juvenility of the petitioner/accused no.2. Section 94 of the Juvenile Justice Act makes this certificate issued by the school relevant. No evidence, to show that the petitioner/accused no.2 was below 18 years of

age at the time of the incident in question, was led before the learned trial Magistrate.

10 In this view of the matter, it cannot be said that the impugned order is perverse or illegal.

11 The petition, therefore, fails, and the same is dismissed.

(A. M. BADAR, J.)