

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	18.02.2020
Date of Judgment	11.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.949 of 2019****and****Crl.MP(MD)No.11307 of 2019**

Anandharaj

: Petitioner/Petitioner/
Father of the accused
Vs.State represented by
The Inspector of Police,
Elayirampennai Police Station,
Virudhunagar District.
(In Crime No.91 of 2015)

: Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the order passed by the Additional District Sessions Judge, Srivilliputtur, Virudhunagar District, in Crl.MP No.979 of 2019 in SC No.131 of 2017, dated 05.12.2019.

For Petitioner

: Mr.M.Jothi Basu

For Respondent

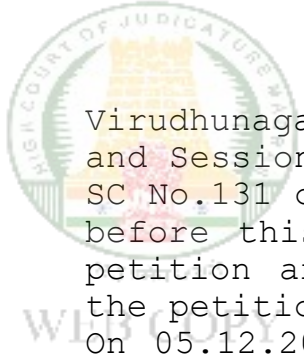
: Mr.V.Neelakandan

Additional Public Prosecutor

J U D G M E N T

This criminal revision is directed against the order passed by the Additional District and Sessions Judge, Srivilliputtur, Virudhunagar District, in Crl.MP No.979 of 2019 in SC No.131 of 2017, dated 05.12.2019.

2.It is the case of the petitioner that his son by name Ponvasanth was falsely implicated in connection with a case in Crime No.91 of 2015 for the alleged offence under section 302 IPC and at the time of occurrence, his age is 17 years 10 months and 8. After bail, the petitioner filed a petition in Crl.MP No.931 of 2015 under Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 before the Judicial Magistrate No.1, Sattur to determine the age of his son. After perusing the relevant records, the learned Magistrate directed the Probation Officer, Virudhunagar District to conduct an enquiry and submit a report. The Probation Officer has conducted an enquiry and submitted a report stating that the son of the petitioner date of birth is 12.06.1997 and at the time of occurrence, he is a Juvenile. Thereafter, the learned Magistrate came to the conclusion and sent the case papers to the Juvenile Justice Board, Virudhunagar for trial. The other three accused in this case also facing trial before the Juvenile Board in J.C No.88 of 2018. That being so, the Juvenile Justice Board returned the case file to the Judicial Magistrate No.1, Sattur, to commit the case to the Sessions Court for trial. The Principal Sessions Judge,



Virudhunagar has transferred the case to the Additional District and Sessions Court, Srivilliputtur, for trial and it was numbered as SC No.131 of 2017. The petitioner filed CrI.O.P(MD) No.1935 of 2018 before this court and on 12.09.2019, this court disposed the said petition and directed the trial court to decide the issue whether the petitioner's son is a juvenile or not on the date of occurrence. On 05.12.2019, the trial court passed an order in Cr.MP No.979 of 2019 holding that the petitioner's son is not a juvenile at the time of occurrence. Aggrieved by the same, the petitioner is before this court.

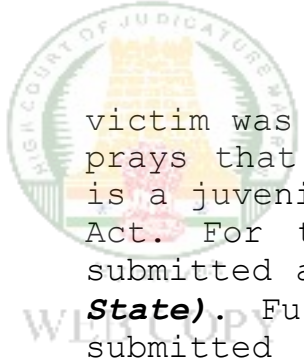
3. Heard both sides and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that his son was born on 12.06.1997 and his birth was registered before the Kovilpatti Municipality and the Registrar issued a birth certificate to that effect and hence, on the date of occurrence, the son of the petitioner is juvenile and it is a normal course that the parents of the children, increase or decrease/high or reduce the age to admit the child in the school and it is the duty of the court to presume the said fact and it is permissible under section 114 of the Indian Evidence Act, 1872 and the Judicial Magistrate No.1, Sattur, determined the age of the petitioner's son on the application filed by the father of the petitioner and the above court came to the conclusion that the son of the petitioner was juvenile at the time of the occurrence and the above order passed by the Judicial Magistrate No.1, Sattur is final since it was not challenged before any court of law and there is no need to the Juvenile Justice Board to raise a question and decide the issue whether the petitioner's son is a juvenile or not and since after enquiry, the Judicial Magistrate Court No.1, Sattur comes to the conclusion that the petitioner's son is a Juvenile and the date of difference between the birth certificate and the school certificate is low and hence, the order passed by the trial court is liable to be set aside.

5. In this case, the father of the juvenile filed a petition before the Judicial Magistrate No.1, Sattur for determining the age of his son and the learned Judicial Magistrate No.1, Sattur has determined the age of the petitioner's son and on the basis of the birth certificate of the petitioner's son, came to the conclusion that at the time of occurrence, the age of the petitioner's son is 17 years and 10 months and hence, the petitioner is a juvenile.

6. It is seen from the records that the petitioner filed CrI.OP(MD)No.1953 of 2018 before this court as against the order passed by the Juvenile Justice Board, dated 19.04.2017 and in the above CrI.OP(MD)No.1953 of 2018, it was ordered that the trial court has to determine the age of the petitioner's son. Trial court after full enquiry came to the conclusion that the petitioner's son is not a juvenile.

7. The learned counsel appearing for the petitioner submitted that no documentary evidence was produced to conclude that the



victim was not a juvenile, since variations in the date of birth and prays that as per the birth certificate, the son of the petitioner is a juvenile and he is entitled to the benefits of Juvenile Justice Act. For that, the learned counsel appearing for the petitioner submitted a ruling reported in **2016(5) CTC 847 (Subramaniam Vs. The State)**. Further, the learned counsel appearing for the petitioner submitted that only the lower court determined the age of the petitioner's son on the basis of the birth certificate and came to the conclusion that the son of the petitioner is not a juvenile and it was not challenged by the prosecution and hence, the order passed by the Judicial Magistrate No.1, Sattur is final and hence, the petitioner is a juvenile at the time of occurrence.

8.It is admitted on the side of the petitioner that as per the school certificate of the petitioner's son, his date of birth is 14.04.1997. The contention of the petitioner is that as per his son birth certificate, his date of birth is 12.06.1997 and hence, he is a juvenile at the time of occurrence. It is to be noted that the petitioner has not taken any steps to correct his son's date of birth as per his birth certificate. In respect of the variation of age between the birth certificate and school certificate, the procedure to be followed is stated in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

9.Section 12 in The Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as follows:-

12 Procedure to be followed in determination of Age. ?

(1) *In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

(2) *The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*

(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.

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), (iii) 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.

_____ (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

_____ (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, _____ further inquiry shall be conducted by the court or the Board after examining and obtaining the



certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

10. In Juvenile Justice (Care and Protection of Children) Rules 2007, in Rule 12 it is stated that the school certificate has preference over the birth certificate. When the petitioner or his son found that as per the birth certificate, his age is different, it is their duty to correct in the school records. But no steps were taken either by the petitioner or his son. As per the Rule 12, in respect of date of birth of a person as juvenile, it should be determined only on the basis of the school certificate at first. In this case, it is admitted on the prosecution side that as per school certificate, his date of birth is 14.04.1997.

11. It is pertinent to note here that the petitioner only filed CrI.OP(MD)No.1935 of 2018 before this court as against the order passed by the Juvenile Justice Board. Rule 12 of the Juvenile Justice (Care and Protection Act) 2007, categorically stated in respect of variation of date of birth, the school certificate has preference over the birth certificate. Hence, as per the school certificate, the date of birth of the petitioner's is 14.04.1997. The date of occurrence is 20.04.2015. Hence, at the time of occurrence, the age of the petitioner's son is above 18 years and hence, it is held that that at the time of occurrence, the petitioner's son is not a juvenile. Hence, the argument put forth on the side of the petitioner stating that as per the birth certificate, his son is a juvenile is not at all acceptable.

12. For the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is correct and accordingly, it does not require any interference by this court.

13. In the result, this criminal revision fails and the same is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

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To,

1.The Additional District Sessions Judge,
Srivilliputtur, Virudhunagar District.

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

Cr1.RC(MD)No.949 of 2019

11.06.2020

SMA/03/07/2020/6P/3C