



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD)No.5616 of 2019

(Through video Conference)

Moses Prabaharan

.. Petitioner

Vs.

The Inspector of Police,
City Crime Branch,
Palayamkottai,
Tirunelveli City.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration, declaring the petitioner is entitled to the benefits of the Juvenile Justice (Care and Protection) Act, 2000, in C.C.No.38 of 2000 ended in judgment, dated 24.03.2000 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

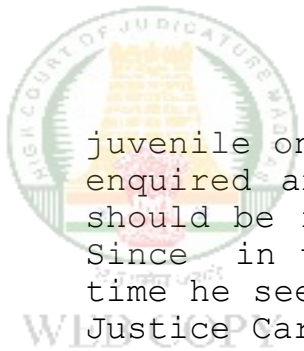
For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

The present writ petition is filed by Mr.Moses Prabaharan, who is an accused in C.C.No.38 of 2000 on the file of the learned Judicial Magistrate No.I, Tirunelveli and convicted vide judgment, dated 24.03.2000. He was found guilty for the offence under Sections 457 and 380 IPC. The learned Judicial Magistrate having found him guilty had released him under Section 4(i) of the Probation of Offenders Act, 1958 after obtaining bond. Thereafter there had been several cases against him for similar kind of offences. The grievance of the petitioner is that when Crime No.1498 of 1999 registered against him on 15.12.1999, which was taken on file by the Judicial Magistrate No.I, Tirunelveli in C.C.No.38 of 2000 he was only 15 years 7 months 15 days old. Therefore, he should have been treated as a juvenile and he is entitled for the benefit of the said Act as it was prevailing when the alleged offence was committed. According to the petitioner, as per Section 7 A of the Juvenile Justice Act, 2000, claim on juvenility can be raised before any Court or the Court is of the opinion that the accused person was a



juvenile on the date of commission of the crime, the claim has to be enquired and if the Court finds the person is a juvenile, matter should be forwarded to the Juvenile Justice Board for adjudication. Since in this case, he could not raise juvenility at that point of time he seeks for a declaration that he is entitled for the Juvenile Justice Care and Protection Act, 2000 in C.C.No.38 of 2000.

2. The learned counsel for the petitioner referring Section 7 A of the Juvenile Justice Act, 2000 emphasise that a writ petition seeking declaration is maintainable and the petitioner must be extended the benefit of the Juvenile Justice Act so that the conviction in C.C.No.38 of 2000 will not prejudice his interest in the pending criminal cases.

3. The learned Additional Public Prosecutor would submit that the present writ petition is not maintainable for the reason that it is filed 19 years after the judgment passed by the learned Judicial Magistrate No.I, Tirunelveli. The petitioner herein never claimed juvenility before the trial Court and neither he preferred any appeal against the judgment passed in C.C.No.38 of 2000, dated 24.03.2000. In any event, the order passed by the Judicial Magistrate No.I, Tirunelveli in C.C.No.38 of 2000 will not prejudice the interest of the petitioner herein in the subsequent cases filed against him, which were committed 12 years after the judgment.

4. The petitioner herein relying upon his school Transfer Certificate claims that his date of birth is 03.05.1984. Therefore, on 15.12.1999, when the case was registered against him at Palayamkottai police station in Crime No.1498 of 1999, he was less than 16 years old. The learned counsel relies upon Section 7 A of the Juvenile Justice (Care and Protection) Act, 2000, which reads as below:

"7A. Procedure to be followed when claim of juvenility is raised before any court:

1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder,



even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.]”

5. Section 7 A was inserted in the Juvenile Justice Act, 2000 in the year 2006 by way of an amendment, which came into effect from 2.08.2006. The Juvenile Justice Act, 2000 itself came into effect only from 01.04.2001. The crime in C.C.No.38 of 2000 was committed on 15.12.1999, which is prior to Juvenile Justice Act, 2000 came into force. Nonetheless the plea of the petitioner herein by way of writ petition wants to declare him as a juvenile when offence in Crime No.1498 of 1999 alleged to have committed, that cannot be done through a writ petition unless and until enquiry regarding his date of birth is conducted by a Court, which is competent to conduct the enquiry. Even assuming Section 7 A to be applied in the case of the petitioner herein, the enquiry has been done by the competent Court, which has dealt the case of the petitioner or the Court, which has appellate jurisdiction over the judgment passed by the trial Court. In a writ jurisdiction, enquiry regarding age of a person cannot be done. Apart from the legal position, factually also, the conviction of the petitioner in C.C.No.38 of 2000 has been differed and the learned Magistrate has extended the protection under the Probation of Offenders Act and released the petitioner herein on obtaining a bond and the period of probation was fixed as one year, which has lapsed long ago.

6. The learned counsel for the petitioner expresses apprehension that the previous conviction in C.C.No.38 of 2000 may cause prejudice to the interest of the petitioner while defending the subsequent cases registered against him. To that extent, this Court is of the view that it is sufficient to record that the conviction of the petitioner in C.C.No.38 of 2000 shall not be considered as a previous conviction, while considering imposition of sentence in the later cases pending against him, if the petitioner found guilty.

7. With these observations, this writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.I,
Tirunelveli.
- 2.The Inspector of Police,
City Crime Branch,
Palayamkottai,
Tirunelveli City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**W.P. (MD)No.5616 of 2019
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MGJ(11.02.2022) 4P 4C