

02.08.2023
Item No.09
RP/AN
Ct. No.1

MAT 1166 of 2023
+
IA No.CAN 1 of 2023
Shalu Alam
VS.
State of West Bengal & Ors.

Mr. Tarique Quasimuddin
Mrs. Zainab Tahur
Mrs. Syed Khafiz Zamir
... for Appellant

Mr. Santanu Mitra
Ms. Rama Haldar
... for State

Mr. Kaushik Gupta
Mr. Anirban Tarafdar
Mr. Shraman Sarkar
... for the Respondent No.6

1. The sixth respondent in WPA 3783 of 2023 aggrieved by the impugned order dated 5th June, 2023 has filed the present appeal. The relief sought for by the sixth respondent in the present appeal, being the writ petitioner in WPA 3783 of 2023, was to direct the respondent authorities to transfer the case to Officer-in-Charge, Anti-Fraud Section, Detective Department, Lal Bazar as also to prohibit the respondent authorities or their men, agents, servants, superiors and subordinates and/or assignees from tampering with the evidence relating to his case.

2. Based on the complaint lodged by the sixth respondent/writ petitioner a criminal case was registered against the appellant and other accused persons in which the first charge sheet being Bowbazar PS Charge Sheet No.53 of 2023 dated 10.06.2023 under Sections 468 /467 /471/ 193/ 417/120B of the Indian Penal Code was submitted before the learned Metropolitan Magistrate, Kolkata and the second charge sheet being Bowbazar PS Charge Sheet No.53A of 2023 dated 10.06.2023 under Section 468/467/471/193/417/120B of the Indian Penal Code was submitted before the Court of Learned Principal Magistrate, Juvenile Justice Board, Kolkata.
3. The learned writ Court by the impugned order had held that the appellant as on the date when the impugned order was passed in the writ petition is 29 years of age and she will be tried as major even though at the time when the offence was committed the appellant was slightly below 18 years of age and, accordingly, the order passed by the ACMM, 2nd Court, Kolkata was modified.
4. In our considered view, the learned writ Court could not have issued such a direction altering and/or modifying the order passed by the jurisdictional Metropolitan Magistrate, Kolkata when no such prayer was sought for in the writ

petition. In any event, such a relief may not be maintainable for modification of an order passed by a criminal Court.

5. The sixth respondent/writ petitioner's case is that on the date when the offence was committed by the appellant she was not minor. In this regard the learned advocate for the sixth respondent/writ petitioner submitted that mentioning of date of birth of the appellant as shown in the PAN Card is 06.06.1989, as shown in Aadhar Card is 06.06.1992, as shown in Driving Licence is 14.02.1986 and in the Life Insurance Policy is 06.06.1989. The alleged offence was committed on 13th April, 2008. In three of the date of births the appellant was above 18 years of age as on the crucial date.
6. The appellant's case is that the appellant's date of birth is 06.06.1994 as mentioned in the mark sheet issued by the Board of High School and Intermediate Education. Learned advocate for the appellant refers to the Passport and Aadhar Card of the appellant where the date of birth of the appellant is mentioned as 06.06.1994. The Officer-in-Charge, Bowbazar Police Station has filed a report dated 20th July, 2023 and has stated that certain documents were seized from the appellant and were verified from PLD Education Centre,

Bhawani Nagar, Daheli Sujanpur, Kanpur and the date of birth of the appellant as mentioned therein was 06.06.1994. Such disputed question cannot be decided in a writ petition and it is appropriate for the trial Court to take a decision in the matter after considering all documents. Therefore, the order passed in the writ petition is required to be set aside and the matter to be left open to be decided by the competent criminal Court before whom the charge sheets have been filed and are pending. It is open to the sixth respondent/writ petitioner to place all documents before the learned Metropolitan Magistrate, Kolkata. It is well open to the appellant to establish that on the date when the alleged offence is said to have been committed she was minor.

7. With the above observations, the appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)