

07.06.2023
SL No.5
Court No.1
(gc)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

**CRA (DB) 1 of 2023
CRAN 1 of 2023**

In the matter of : **Krishna Sha Turaha @ Krishna Turha**
- Appellant.

Mr. Arijit Ghosh
... For the Appellant.
Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,
Mr. Aniruddha Biswas,
... For the State.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appellant/petitioner claims to be a juvenile at the time of commission of the alleged offence. However, he was treated as an adult as the question of juvenility was not raised at the time of trial. At the time of admission of appeal, a new point has been taken in the grounds of appeal, namely, he was juvenile at the time of commission of the alleged offence and due to oversight this point was not urged although there was sufficient material to justify his juvenility at the time of commission of offence. The appellant/petitioner has disclosed documents which, inter alia, include the school certificate to show that at the time of commission of offence he was juvenile.

In the affidavit-in-opposition filed by the State it is alleged that the document relied upon by the appellant is an Academic

Examination Result (Secondary) issued by the National Institute of Open Schooling which does not come within the category of the documents prescribed by Rule 12 sub-Rule 3 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

The learned Counsel for the appellant/petitioner has relied upon the decision of the Hon'ble Supreme Court in ***Abdul Razzaq Vs. State of U.P.*** reported at ***AIR 2015 SC 1770: (2015) 1 SCC 637*** to argue the benefit of Section 7-A and Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 would be available to the petitioner if it is established at the trial that he was juvenile at the time of commission of the offence.

We feel that the best course would be to have this issue decided by the Trial Court. Once the authenticity of the document produced is established the learned Trial Court is requested to find out whether the said document conforms to the documents mentioned in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

We, accordingly, remand the matter to the Trial Court to decide on the said issue and in the event the said issue is decided in favour of the appellant then a fresh consideration on the other issues are to be undertaken. In deciding the said issue, the Trial Court shall also consider the decision of the Hon'ble Supreme Court in ***Chaddu @ Shailesh Vs. State of Uttar Pradesh & Anr.*** reported at ***2019(15) SCC 19***.

However, in the event the issue is decided not in favour of the appellant/petitioner it would be open for the appellant to file a fresh appeal against the original as well as the subsequent finding of the Trial Court.

We make it clear that we have not gone into the merits of the matter.

Accordingly, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.)

(Soumen Sen, J.)