

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.179 OF 2023

Risu S/o Hiralal Yadav,
Age L Minor, Occ. Nil,
under guardian of father
Hiralal Bhura Yadav,
Age : 48 Years, Occ. Business
R/o. Semri, Asawar, Ghazipura,
Uttar Pradesh

... Applicant

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Parner Police Station, Taluka Parner,
Dist. Ahmednagar.

... Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 180 OF 2023

Shaktinarayan Vijaynarayan Rai,
Age : Minor, Occ. Nil,
under guardian of brother
Laxminarayan Vijaynarayan Rai,
Age : 19 Years, Occ. Labour,
R/o. Newasa Post Dubihan,
Ghazipura Uttar Pradesh

... Applicant

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Parner Police Station, Taluka Parner,
Dist. Ahmednagar.

... Respondent

...

Advocate for Applicant : Rahul R. Karpe

APP for Respondents: Mrs. Vaishali N Patil Jadhav

...

CORAM : S. G. MEHARE, J.

DATE : 06.07.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. These are revisions against the orders passed by the learned Additional Sessions Judge, Ahmednagar, dated 20th March 2023 below Exh. 10 and 13 in Sessions Case No. 41 of 2023. The applicants were accused in Crime No. 766/2022 registered with the Police Station Parner for the offences punishable under Sections 302, 307, 394, 397, 341 read with Section 34 of the Indian Penal Code.

3. A few facts relevant to the facts in issue were that after their arrest, both applicants were produced before the learned Judicial Magistrate at Parner. However, the question of juvenility was raised before it; hence, the learned Magistrate held an enquiry. The relatives of the applicants had produced documents of their age. The police personally verified those documents by going to the places from where those documents were obtained. The investigating officer revealed that the documents produced before the learned Judicial Magistrate were fake, and the birth certificate was prepared after the incident. Hence

he declined to hold the accused child in conflict with the law. Subsequently, the case was committed to the Sessions Court, and the applicant, again claiming juvenility in the bail application, produced the school leaving certificates. The learned Additional Sessions Judge considered the earlier observations of the learned Judicial Magistrate and declined to hold the applicants as juveniles.

4. The learned counsel for the applicants would submit that new and genuine documents, placed before the learned Additional Sessions Judge, were not considered, and the opportunity to prove those documents by leading the evidence was also not given. Therefore, the learned Sessions Judge, Ahmednagar, committed a mistake of law in outrightly rejecting the juvenile claim of the applicants. The procedure has been prescribed to determine the age under the Juvenile Justice (Care and Protection of Children) Act 2015 (J.J Act for short). The juveniles have a right to prove that they were juveniles on the date of the incident for which they have been charged. It is an apparent mistake on the face of the record. Hence, the impugned orders are liable to be quashed and set aside.

5. Per contra, the learned A.P.P for the respondent/State would submit that the applicant had produced the fake documents of age, and the custodian of documents was also fake. The conduct of the

applicants is doubtful. They are not coming before the Court with clean hands. Therefore, the impugned orders are legal, correct and proper and do not warrant interference at the instance of this Court.

6. Believing the statement of the learned counsel for the applicants at the bar, that new documents of date of birth of the applicants were produced before the learned Additional Sessions Judge. The enquiry ought to have been conducted as contemplated under Section 9(2) of the J.J. Act. The process to determine the age as contemplated under Section 94 (2) of the same Act was to be followed. Sub-section 9(2) of the above Act provides that the Court has to take such evidence as it may be necessary (but not an affidavit) to determine the age of such persons. There is nothing mentioned in the impugned orders that the evidence required to prove the age of the applicants was recorded, and it was also not sought by the applicants' counsel. The juvenile claim of the applicant goes to the root of the matter dealing with the child in conflict with the law. If there are two documents, out of which one is believed to be fake, the explanation and the facts with further documents ought to have been considered. The procedure prescribed under Section 9(2) of The J. J. Act is mandatory to determine the age of the accused at the time of committing the alleged offence.

7. The impugned order does not reflect the strict procedure that was followed as provided under Sections 9(2) of The J.J.Act. The opportunity needs to be granted to the applicants to prove the documents filed on record to prove the claim of juvenility by adopting the strict procedure of law as regards proof of age. The applicants, only for someone else's mistake, shall not suffer. Therefore, the Court is of the view that the impugned orders are liable to be quashed and set aside, and the matter is to be remitted back to the learned Additional Sessions Judge, Ahmednagar, for determining the age as prescribed under Section 9(2) and 94(2) of the J. J. Act. Hence, the following order.

ORDER

- (i) Both applications are allowed.
- (ii) The impugned orders passed below Exh. 10 and 13 along with Criminal Bail Application No. 20/2023 and 21/2023 in Sessions Case 41/2023 on 20th March 2023 by the learned Additional Sessions Judge, Ahmednagar is quashed and set aside.
- (iii) The case is remitted to the Court of learned Additional Sessions Judge Ahmednagar to determine the age of the applicants adhering to the provisions of Section 9(2) and 94 (2) of The

Juvenile Justice (Care and Protection of Children) Act, 2015 by
allowing both parties to lead the evidence.

- (iv) No order as to costs.
- (v) Rule made absolute in the above terms.

(S. G. MEHARE)
JUDGE

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