

3. The Petitioner preferred an application before the Court of learned Metropolitan Magistrate under Section 7(a)(2) of the Juvenile Justice Act, 2000. It was contended that the date of birth of the Petitioner is 2nd October, 1995. The offence was committed in 2013. At the time of commission of offence she was below 18 years. As per Juvenile Justice Act, 2000, if the person is minor at the time of offence the case has to be tried by the Juvenile Justice Board. Hence, the case may be transferred to the Juvenile Justice Court.

4. The prosecution filed its say stating that during the education period 2013-2014 the Petitioner was aged around 18 years. The cause of action i.e. knowledge of being fake and forge documents in the year 2016. So, cause of action arose in the year 2016. The Petitioner was aged around 20 years at that point of time. Hence, application may be rejected.

5. Learned Magistrate vide Order dated 5th October, 2019 rejected the application below Exhibit D-7 on the ground that the Accused continued her education till 2016 when the offence was registered against her. Thus, it cannot be said that on the day of commission of offence the Accused was below 18 years. The Accused produced certificates in 2013. There is no specific date of

produce the certificate. In 2013, she completed 18 years of her age and she continued her education till 2016 in the category as a reserved candidate. The offence continued till 2016.

6. The Petitioner preferred Criminal Revision Application No.1268 of 2019 before the Sessions Court. The revision application was rejected vide Order dated 19th December, 2019.

7. Learned Advocate for the Petitioner submitted that the date of birth of the Petitioner is 2nd October, 1995. The date of admission to the medical course is 5th August, 2013. On the date of commission of offence the Petitioner was minor. Hence, the case is required to be tried before the Juvenile Justice Board.

8. Learned Advocate for the Petitioner has relied upon the decisions in the case of *Union of India And Others V/s. Ex-GNR Ajeet Singh, (2013) 4 SCC 186* and *Vimal Chadha V/s. Vikas Choudhary and Anr., 2008 CRI. L.J. 3190*.

9. Learned APP submitted that although the Petitioner took admission in 2013, she continued to pursue her studies in 2016. It was revealed that the caste certificate was fabricated and FIR was registered in 2016. In 2016 the Petitioner was major aged around

20 years. She cannot be tried before Juvenile Justice Board.

10. Learned APP has produced the letter dated 25th January, 2024 issued by B.Y.L. Nair Hospital addressed to the Police Inspector stating that the Petitioner had taken admission to the medical college during academic year 2013-2014 and she was admitted to the course from reserved category on 5th August, 2013. The receipt of payment of fees is enclosed with the letter.

11. It is not disputed that on the date of admission to the college, the Petitioner was minor. The charge against the Petitioner is despite knowing that the caste certificate relied upon by her is fabricated, it was used for taking admission to the MBBS Course. Thus, the offence was committed when the alleged document was used by the Accused and admission was taken for the course. At that point of time undisputedly the Petitioner was minor/juvenile within the provisions of Juvenile Justice Act, 2000. The contention of the Respondents is that the offence was revealed in 2016 and she continued to pursue her studies after taking admission till 2016 and at later point of time she was major. It is difficult to accept the contention the factual matrix of this case clearly indicate that fabricated documents was used for taking admission, despite

knowledge that it is fabricated. The admission was taken on 5th August, 2013. It cannot be accepted that subsequently she became major and since she continued her studies, she cannot be treated as juvenile.

11. In the case of *Union of India And Others (supra)*, it was observed that it is a date of commission of offence and not date of taking cognizance or framing of charges or of conviction that is to be taken into consideration to determine the person committing the offence was juvenile.

12. In the case of *Vimal Chadha (supra)*, it was observed that the issue about the age of the Accused to determine juvenility must be determined as and when an application is filed and the relevant date for determination is date on which the incident happened.

13. Considering the aforesaid circumstances, the impugned Order dated 5th October, 2019 and 19th October, 2019 passed by Sessions Court are required to be set aside.

ORDER

- i. Criminal Writ Petition No.618 of 2020 is allowed;
- ii. Impugned Order dated 5th October, 2019 passed by

learned Metropolitan Magistrate, 46th Court at Mazgaon, Mumbai as well as Order dated 19th December, 2019 passed by the Sessions Court Mumbai in Criminal Revision Application No.1268 of 2019 are set aside.

iii. Application preferred by the Petitioner below Exhibit D-7 before the Court of Metropolitan Magistrate 46th Court at Mazgaon, Mumbai in C.C. No.4600965/PW/2018 stands allowed and the case of the Petitioner is transferred to the Juvenile Justice Board for further consideration.

iv. Petition stands disposed off.

(PRAKASH D. NAIK, J.)