



W.P.No.28198 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

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Krishnan

.. Petitioner

Versus

1. The State represented by its,
The Superintendent of Prison,
Central Prison at Puzhal-I,
Thriuvallur District - 600 066.

2. The Inspector of Police,
Avadi All Women Police Station,
Thiruvallur District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to place the petitioner before the Juvenile Justice Board at Tiruvallur to consider the plea of juvenility in pursuant to the petitioner's representation, dated 16.05.2023.

For Petitioner : Mr.S.Selvakumar

**For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor**



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ORDER

(Order of the Court was made by **V.SIVAGNANAM, J.**)

The Writ Petition is filed for a direction to the first respondent to place the petitioner before the Juvenile Justice Board at Tiruvallur to consider the plea of juvenility in pursuant to the petitioner's representation, dated 16.05.2023.

2. The petitioner was convicted by the Trial Court in S.C.No.41 of 2018 by the judgment, dated 22.08.2019 for the charges under Section 450 of I.P.C and sentenced to undergo five years Rigorous Imprisonment and also imposed a fine of Rs.2,500/-, in default, to undergo six months Simple Imprisonment; under Section 5(i) r/w 6 of POCSO Act, 2012 and sentenced to under life imprisonment and also imposed a fine of Rs.2,500/-, in default, to undergo six months Simple Imprisonment and under Section 5(m) r/w 6 of POCSO Act, to undergo life imprisonment and also imposed a fine of Rs.2,500/-, in default, sentenced to undergo six months Simple Imprisonment. Thereafter, the present Writ Petition is filed for a direction



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to the first respondent to consider the plea of juvenility in pursuant to the petitioner's representation, dated 16.05.2023.

3. This Court sought for a report from the Juvenile Justice Board, Tiruvallur to fix the age of the petitioner/accused. In pursuance of this direction, the Juvenile Justice Board fixed the age of petitioner as 17 years 9 months and 27 days. We have considered the age. In view of the report of the Juvenile Justice Board, this Court considers that the petitioner was a juvenile at the time of commission of offence. This fact was not brought to the Trial Court at the time of conducting the trial. The Trial Court found guilty and convicted and sentenced.

4. This writ petitioner, without preferring the statutory appeal, filed this Writ Petition challenging the conviction and sentence. To decide whether the conviction is illegal, we rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Karan alias Fatiya Vs. State of Madhya Pradesh***, reported in ***(2023) 5 SCC 504***. The Apex Court considered the cases where plea of juvenile has been taken after conviction. The relevant portion of the judgment are as under:-



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" **32.** It will be pertinent to mention that in this judgment also there is no discussion with regard to the issue as to whether the conviction should be set aside. This judgment also does not lay down any ratio that if with respect to a juvenile a trial has been conducted by a Sessions Court without the accused having claimed juvenility before it, conviction could be set aside as being vitiated in law if subsequently it is held that the accused was a juvenile.

....

34. There is another reason why a trial conducted and conviction recorded by the Sessions Court would not be held to be vitiated in law even though subsequently the person tried has been held to be a child.

35. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court would have been completely excluded not only under Section 9 of the 2015 Act but also under Section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, under Section 25 of the 2015 Act, it is clearly provided that any proceeding pending before any Board or court on the date of commencement of the 2015 Act shall be continued in that Board or court as if this Act had not been enacted.

...

37. Having considered the statutory provisions laid down in Section 9 of the 2015 Act and also Section 7-A of the 2000 Act which is identical to Section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the accused who has committed a heinous offence and who did not



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claim juvenility before the trial court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the mainstream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

38. In view of the above discussion and the position in law as laid down by the aforesaid judgments and many others referred to in the above judgments, we approve the view taken by this Court in *Jitendra Singh* [*Jitendra Singh v. State of U.P.*, (2013) 11 SCC 193 : (2013) 4 SCC (Cri) 725] , *Mahesh* [*Mahesh v. State of Rajasthan*, (2021) 18 SCC 582 : 2018 SCC OnLine SC 3655] and *Satya Deo* [*Satya Deo v. State of U.P.*, (2020) 10 SCC 555 : (2021) 1 SCC (Cri) 61] .

39. For all the reasons recorded above, it is ordered as follows : The conviction of the appellant is upheld; however, the sentence is set aside. Further as the appellant at present would be more than 20 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. The appellant is in judicial custody. He shall be released forthwith. The impugned judgment [*Karan v. State of M.P.*, 2018 SCC OnLine MP 1849] shall stand modified to the aforesaid extent."

Therefore, this Writ Petition is unsustainable since the conviction is a valid one. With regard to the sentence, the petitioner may file a statutory appeal challenging the conviction and sentence if so desires.

5. Accordingly, this Writ Petition stands dismissed. No costs.

[S.M.S., J]

[V.S.G., J]



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Index : yes

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

To

1. The Superintendent of Prison,
Central Prison at Puzhal-I,
Thriuvallur District - 600 066.
2. The Inspector of Police,
Avadi All Women Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court of Madras.



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**S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.**

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