



2024:DHC:6558



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28th May, 2024

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CRL.REV.P. 996/2023

THE STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Adv. Harsh Mor,
Adv. Harsha Garg, Adv.
Sukriti Kapoor & Adv.
Perna Chaudhary.
SI Vishal, PS Ashok
Vihar.

versus

SAHIL @ CHIKNA

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

CRL.M.A. 25450/2023 (*exemption from filing certified copies of the annexures and true typed copies of dim/ ill-legible/ handwritten annexures*).

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 (CrPC) challenging the order dated 23.11.2021, passed by the learned Additional Sessions Judge (ASJ), Rohini Courts, Delhi in Sessions Case No. 1047/2019 in FIR No. 339/2019 (hereafter '**the impugned order**').

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4. The learned ASJ by the impugned order, on an application filed by the respondent / accused, held that the respondent at the time of commission of offence was a juvenile. The date of the alleged offence is 16 – 17/08.2019 and the date of birth of the respondent as per his birth certificate 04.11.2001 and, therefore, the petitioner at the time of commission of offence, is held to be juvenile.

5. The learned Additional Public Prosecutor for the State submits that the respondent was not a juvenile at the time of commission of offence since his date of birth was 04.04.2001. He submits that the school record of the respondent clearly mentions the date of birth to be 04.04.2001. He relies upon Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (**JJ Act**) to contend that – in order to determine whether the person who is brought before the Committee or Board is a child or not, the Committee or Board shall determine the age by obtaining the date of birth certificate from the school and in the absence thereof, the birth certificate given by the Corporation or a Municipal Authority and in the absence of both, the procedure of ossification test can be resorted.

6. He submits that the preference must be given to the birth certificate that is issued by the school and only in case where the school certificate is not available, the other methods can be resorted.

7. Section 94 of the JJ Act reads as under:

“94. Presumption and determination of age. – (1)

Where, it is obvious to the Committee or the Board,

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based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

8. In terms of Section 94 of the Act, the Committee, or the Board before whom the accused person being juvenile is brought, is empowered to record observations in regard to the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36 of the JJ Act as the case may be.

9. In case where the Committee or the Board has reasonable ground to doubt whether the person brought before it is a child or



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not, the age is determined on the basis of the certificate as prescribed. It is apparent that the Committee or the Board can call for the date of birth certificate from the school and, if the same is not available, can rely upon the birth certificate given by the Corporation or the Municipal Authority or a Panchyat, and in the absence of the certificates as stated above, the resort to ossification test can be taken.

10. The contention that the Court while deciding the age of the accused should have resorted to the provisions of Section 94 of the JJ Act is meritless.

11. Section 9 of the JJ Act reads as under:

“Procedure to be followed by a Magistrate who has not been empowered under this Act.

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

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(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.”

12. Section 9 of the JJ Act provides the procedure to be followed by the Magistrate in case a person, who is alleged to have committed the offence, claims before it that he is a child or was a child on the date of commission of the offence.

13. Section 9(2) of the JJ Act categorically provides that when such claim is made before a Court other than a Board or if the Court itself is of the opinion that that the person was a child on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary to determine the age of such person and shall record a finding on the matter stating the age of the person as early as may be.

14. In the present case, the learned Trial Court noted that there are conflicting dates of birth of the respondent in the school certificate and birth certificate. The learned Trial Court then examined the Vice Principal of the concerned school, the official of the MCD and the parents of the accused. After noting the evidences and the cross examination as held before the learned Trial Court and after relying upon the provisions of Section 35 of the Indian Evidence Act, the learned Trial Court held that the birth certificate issued by the Registrar of Birth and Death being a public document showing the date of birth of the applicant as

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04.11.2001 is authentic and admissible in evidence and declared the respondent as juvenile at the time of commission of offence.

15. This Court finds no infirmity in the impugned order passed by the learned Trial Court.

16. The Vice Principal of the concerned school deposed that the noting in the file/admission register was done on the basis of affidavit provided by the mother of the respondent at the time of taking the admission. During her cross examination, she also stated that the affidavit of the father of the respondent was not available. She further admitted that the school had no verification report regarding the said document.

17. The Sub-Registrar, Birth and Death Department, NDMC also deposed before the learned Trial Court and produced the birth record of the respondent. He deposed that the birth entry was made in the Municipal record on the basis of order dated 20.01.2010 by the Ex-Magistrate, Model Town.

18. The parents of the respondent were also examined and they deposed in favour of the respondent. Their evidence, however, in the opinion of this Court is not important. They being the interested witnesses.

19. The learned Trial Court rightly noted that recording of date of birth and school record is only on the basis of the affidavit submitted by the parents without any authentication. The date of birth was entered in the Municipal record on 20.01.2010, that is, 09 years before the alleged incident. It cannot be claimed that the entry was made 09 years earlier in order to take benefit at a later stage.

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20. The learned Trial Court also observed that the report of the SDM has verified the fact of issue of the order vide which the entry on the Municipal record was made. The birth certificate issued by the Registrar of Birth and Death is a public document being admissible under Section 35 of the Indian Evidence Act.

21. In view of the above, this Court finds no merits in the present petition. The same is dismissed.

CRL.M.A. 25451/2023 (for condonation of 441 days delay in filing the petition.)

1. The impugned order was passed on 23.11.2021 is challenged by the State belatedly in September, 2023. Clearly, there is an inordinate delay of about 441 days in filing the present petition.

2. It is well-settled that each day of the delay is required to be explained. In the present case, no sufficient reasons are mentioned in the application which would entitle the petitioner for condonation of delay. The application for condonation of delay, that is, CRL.M.A. 25451/2023, mentions that though the order was passed on 23.11.2021, the report was prepared by the learned APP and forwarded to the learned Chief Prosecutor. Thereafter the file was marked to then APP on 18.01.2022, which was returned to the office of learned Standing Counsel Criminal on 16.06.2023, as the panel of the Public Prosecutors was revised in July 2022 whereafter, the file was remarked on 16.06.2023 for the purpose of drafting and filing of the present petition.

3. No reason has been mentioned as to why the petition was



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thereafter filed in September, 2023, except for stating that the Hon'ble Supreme Court had extended the period of limitation from 15.03.2020 till 28.02.2022 on account of COVID-19.

4. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. The Hon'ble Apex Court, in the case of ***Postmaster General v. Living Media India Ltd. : (2012) 3 SCC 563***, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

5. The Hon'ble Supreme Court in the case of ***State of M.P. v. Bherulal : (2020) 10 SCC 654***, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

“6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer

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concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.”

6. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be accepted. As held by the Hon'ble Apex Court, the Government departments are under such obligation to ensure that they perform their duties with diligence and commitment.

7. As noted above, no worthy reason is pleaded so as to entitle the application for condonation of delay being allowed.

22. In view of the above, the present petition is also dismissed on the ground of delay.

AMIT MAHAJAN, J

MAY 28, 2024
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