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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-9th August, 2024.*+ **CRL.REV.P. 326/2017, CRL.M.A. 7317/2017 & 20806/2023****VAIBHAV**

.....Petitioner

Through: Mr. Rohan J. Alva, Adv. (DHCLSC)
(M: 98103 65703).

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Luthra and Mr. Manish
Bhojwani Advs.
ACP Ghanshyam, EOW (IO), Insp.
Dinesh Rana PS Dwarka North.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (ORAL)**

1. This hearing has been done through hybrid mode.
2. The present revision petition has been filed on behalf of the Petitioner-Vaibhav challenging the impugned judgment dated 23rd July, 2012 in Cr. Appeal No. 11/2012, arising out of case FIR no. 113/2012 under Sections 363/302/201/120B/34 IPC, registered at PS Dwarka North. Vide judgment dated 23rd July, 2012, an appeal under Section 52 of Juvenile Justice (Care & Protection of children) Act, 2000 (*"hereinafter, 'Act, 2000'"*) against the order dated 4th February, 2011 in another case FIR no. 248/2010 registered at PS Karwal Nagar *qua* the Petitioner was considered by the learned ASJ and the matter was remanded for conduct of a proper



enquiry in respect of juvenility of the Petitioner.

3. A brief background of the case is that the Juvenile Justice Board-III (*hereinafter, 'JJB-III'*) vide its order dated 4th February, 2011 in case FIR no. 248/2010 registered at PS Karwal Nagar *qua* the Petitioner had declared the Petitioner herein as a juvenile. This was challenged under Section 52 of the Act, 2000 by the Complainant-Surinder Singh in case FIR no. 113/2012 registered at PS Dwarka North. In the said appeal, vide judgment dated 23rd July, 2012, the Court considered various documents including documents relating to the Petitioner's school and also recorded statements from various witnesses. The question in the said appeal was whether the date of birth of the Petitioner herein was 22nd April, 1994 or 22nd July, 1995. The Court, based on submissions on behalf of the Complainant (Appellant therein) set aside the order dated 4th February, 2011 declaring the Petitioner herein as a juvenile. The Court further directed for a fresh inquiry with respect to the juvenility of the Petitioner. The operative portion of the said order reads as under:-

"13. Ld. Addl. PP has fairly conceded and supported the contention raised by Ld. Counsel for the appellant. As per section 49 of the 'Act', once finding with respect to the date of birth and juvenility of JCL has been recorded by juvenile court, the same shall become final and binding and in case, the impugned order is not set aside, the declaration made therein shall cause serious prejudice in the proceedings in case FIR No. 113/2012, PS Dwarka North. Accordingly, appeal is partly allowed. Impugned order holding the date of birth of JCL as 22.07.1995 is set aside.

14. The Investigation Officer in respect of case FIR No. 113/12, P.S. Dwarka North, is in attendance and has to appear before Ld. JJB-II where juvenility of JCT



is still under consideration. Therefore, it is directed that Ld. Principal Magistrate, JJB-II shall conduct inquiry keeping in view the facts disclosed and discussed in the appeal and shall pass the appropriate order as per law within a week. IO is directed to conduct investigation against the persons who have issued the different documents without properly considering the SLC issued by the different Institutions and issuing the certificate in which the date of birth of JCL has been subsequently got manipulated and shall take appropriate action against the concerned persons as per law.

15. Copy of judgment in appeal be sent to Ld. Principal Magistrate, JJB-II for information. A copy be given to IO, dasti. Appeal file be consigned to record room.”

4. As can be seen from the above order, the Court directed the Juvenile Justice Board-II (*hereinafter, ‘JJB-II’*) to conduct an enquiry keeping in view the various facts disclosed and discussed in the appeal. A direction was also given to pass appropriate orders within a week.

5. Thereafter, a fresh enquiry was conducted and vide order dated 8th August, 2012, the JJB-II declared that the Petitioner herein is not a juvenile. The JJB-II also held that no documentary evidence was produced to controvert the previous date of birth, i.e., 22nd August, 1994 and to show that the date of birth to be 22nd July, 1995. The operative portion of the said order reads as under:-

“ Thus as per rule 12 of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009, the record of the first attended school is to be considered first and CW1 has already clarified the correction made in the figures and there are other documents which are prior to the correction to show that the date of birth was 22.04.94 and the father of the JCL has supported the said date of birth. Even no other



documentary evidence has been produced on behalf of the JCL to controvert the said date of birth or to show that the date of birth of the JCL was in fact 22.07.95. Date of offence in the present case is 19.05.12. Accordingly the JCL Vaibhav is found not be a juvenile for the purposes of Juvenile Justice (Care and Protection of Children), Act 2000 and for the purposes of this enquiry. He is directed to be produced before the concerned court on 13.08.12. IO to also appear before the said court on the said date. Ahlmad to send the relevant documents before the concerned court on the said date.”

6. Ld. Counsel Mr. Rohan J. Alva appearing for the Appellant, submits that there are two basic grounds of challenge. First that the Appellant was not heard when the impugned judgment dated 23rd July, 2012 was passed and secondly, there were various documents which would have shown that the Appellant’s date of birth is 22nd July, 1995 and not 22nd April, 1994. These documents also were not considered when the impugned order was passed. He, however, concedes that in the subsequent order dated 8th August, 2012, the Appellant got an opportunity to place his case. He further submits that he does not have instructions as to whether the order dated 8th August, 2012 has been challenged or not.

7. The impugned judgment dated 23rd July, 2012 has been challenged by way of the present revision petition.

8. In the opinion of this Court, the impugned judgment dated 23rd July, 2012 merely remanded the matter for a fresh enquiry. The fresh enquiry itself having been conducted and the Appellant having participated in the said enquiry, the judgment dated 23rd July, 2012, in this revision petition, has run in its course.



9. The revision petition challenging this order, in the opinion of this Court, is infructuous. There are various legal issues that have been raised in the revision petition. The legal issues which have been raised are left open to be decided in appropriate proceedings.

10. Ld. Counsel for the Appellant further submits that the Appellant may need to rely upon the documents which are filed in this case, in the substantive appeal which has been filed challenging the conviction being ***Crl. A. 409/2022*** titled ***Vaibhav v. State (NCT of Delhi) &Anr.***

11. Accordingly, the Petitioner is free to move an application to place on record the said documents, which form part of this record. For the purpose of reference, the records of the present revision petition be tagged along with the said appeal record.

12. The Petitioner, if he has not already availed of his remedies against the order dated 8th August, 2012, is at liberty to do so in accordance with law, and raise a plea that the delay for the period during which the present revision petition was pending would be liable to be condoned in terms of Section 14 of the Limitation Act.

13. The revision petition is disposed of as infructuous with liberty as aforesaid. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 09, 2024/MR/RKS/Pc