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Court : Delhi

Decided On : Nov-23-2015

Judge : Suresh Kait

Appeal No. : CRL.M.C. No. 4713 of 2015

Appellant : Bal Kumar

Respondent : State Thr. Standing Counsel and Another

Judgement :

Oral:

Crl. M.A.No.16957/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 4713/2015

1. Vide the present petition, petitioner seeks directions to quash the order dated 07.09.2015 passed by the learned Additional Sessions Judge in Criminal Revision No.30/2015 filed by the petitioner.

2. The petitioner filed the aforesaid revision against the order dated 23.05.2015 passed by the learned Principal Magistrate, JJB-II, Delhi, whereby date of birth of

the respondent No.2 was determined as 08.02.1997 and he was declared a juvenile in conflict with law (JCL). By the same order, application of the petitioner for conducting medical age determination test of respondent No. 2 was dismissed.

3. The respondent No.2 has been accused of causing death of one Saurabh Rana. As alleged on 05.09.2014, respondent No.2 was driving a motorcycle bearing registration No.UP-15AU-9529 rashly and negligently and hit the deceased who was riding Activa Scooter bearing registration No.DL-14SA-7967. Scooter rider Saurabh Rana expired on 08.09.2014 during treatment. Accordingly, FIR under Sections 279/304-A IPC was registered. However, respondent No.2 was found to be juvenile as his date of birth was disclosed as 01.02.1997.

4. Learned counsel appearing on behalf of the petitioner submits that the learned Trial Court and the learned Revisional Court had relied upon the certificate of first attended school, i.e., R.K. Memorial Junior High School, as per which, date of birth of the respondent No.2 is 08.02.1997. He submits that the said school has not filed any material to prove the factum of the same, on the contrary, it was submitted that record of the respondent No.2 had been destroyed due to fire. In such an eventuality, the learned Board and the learned Revisional Court instead of relying upon the said document should have directed to get the ossification test done of the respondent No.2. However, said prayer of the petitioner was rejected by both the courts below.

5. Learned counsel submits that in the absence of documents both the orders passed by the courts below are contrary to the law settled by this Court in the case of Mor Pal Vs. State, 198 (2013) DLT 487, wherein held as under:-

12. Thus, the three documentary evidences as envisaged under Rule 12(3) (a) (i) (ii) (iii) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 are the relevant facts to determine the age of the offender but before they are admitted in evidence they must be proved in accordance with law. Section 35 of the Indian Evidence Act, 1872 lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35 of the Indian

Evidence Act, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty especially enjoined by law. An entry relating to a date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded as held by the Apex Court in the case of Birad Mal Singhvi v. Anand Purohit, 1988 (Supp) SCC 604. It would be thus manifest that for proving any entry in the admission register of a school, the offender claiming to be a juvenile has to prove the said entry in accordance with law and based on the appreciation of evidence, the Court or the Board can arrive at a finding as to whether there is a correct entry of date of birth made in such an admission register. The Hon'ble Supreme Court in Arnit Das v. State of Bihar, (2000) 5 SCC 488 observed that while dealing with a question of determination of age of an accused for the purpose of finding out whether he is a juvenile or not, a hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of his plea that he was a juvenile at the time of commission of the offence. The Apex Court further observed that while taking a view, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The Apex Court also gave a word of caution that being a welfare legislation, the courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences.

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14. Hence, the application of the yardsticks to determine the age of an offender is at times an arduous task enjoined upon the courts of law and therefore the responsibility sacrosanct. In the eventuality of the fact that a mere decision as to the age of the offender at the time of the offence, of either being less or more than 18 years, can seal the fate of a person, the courts are therefore expected to

decide the issue with utmost care and sensitivity, involving meticulous deliberation and diligence. It is an unfortunate but a bitter reality, that a seemingly large number of provisions on the statute book that are enacted to serve an honorable and equitable purpose are arm twisted for ulterior motives, and this provision is no different. The courts thus have to be vigilant to prevent its misuse by those trying to evade punishment under the garb of juvenility. The courts must carefully scrutinize the documentary evidence in support of the offender's claim of juvenility, placed on record by him, more so, when the ossification test has been held to be a non-conclusive test. The court is not to act as a mute spectator to blindly trust the matriculation or school certificates produced by the offender but must make every endeavour to ascertain the genuineness of such documents by directing the offender to lead evidence in support of it. The courts must not act obliviously and overlook the practical realities prevailing in our country with respect to the poor school administration, especially in schools located in the rural areas and also the aspect that rackets of engineering fake certificates are not uncommon in our country. Due consideration must be given to ascertain as to whether the manner in which the certificates are prepared by the school authority is trustworthy; whether the officer of the admission department, who may be illiterate/ semi-literate in most of the cases and literate in few, has made the entries in the record book meticulously; whether the record books have been kept and retained by the school authority in a safe and secure custody immune from any kind of manipulation or tampering. Such degree of care and caution to be exercised by the courts may vary from case to case, not to dwell so as to threadbare examine every document but also not to let the offender take a blanket protection under the said Act. ?

6. The facts remain that in the present case, as per certificate of first attended school, i.e., R. K. Memorial Junior High School, date of birth of the respondent No.2 is 08.02.1997 and as per another certificate of Lav Kush Public Secondary School, date of birth is 01.02.1997. In addition to it, as per Matriculation Certificate of CBSE of 10th class, date of birth of the respondent No.2 is 01.02.1997. All these documents are genuine documents and existing documents. These are not forged or fabricated documents.

7. As noticed by this Court, the contradiction in the date of birth of the respondent No.2 recorded in the first attended school, i.e., R.K. Memorial Junior High School and another two institutions noted above is qua the dateonly, as the same is recorded as eight(08.02.1997) in the first attended school and in other two institutions, it is recorded as first(01.02.1997).

8. For determination of the age, the learned Board and the learned Revisional Court have relied upon the case of Ashwani Kumar Saxena Vs. State of M.P. (2012) 9 SCC 750, wherein taking note of the situation, the Supreme Court has deprecated the practice of recording detailed witnesses in age determination enquiries. It also clarified the exact scope of age determination enquiry. It has observed as under:

25. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an inquiryand in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression court shall make an inquiry ?, take such evidence as may be necessary and but not an affidavit ?. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

26. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression prima facie and on the basis of physical appearance or documents, if available ?. Rule 12(3) uses the expression by seeking evidence by obtaining ?. These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be

conducted and completed. The word inquiryhas not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. X X X X X

28. X X X X X

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

30. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

31. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. Age determination inquiry contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted. ?

9. The learned Revisional Court has recorded that sequence of preference to be given to the documents as noted in paras 31 and 32 of the judgment of the Apex Court is different when applied to Delhi. As per Rule 12 of the Delhi Rules, certificate given by the school first attended comes as a first preference; thereafter comes birth certificate issued by a Municipal Authority; and lastly comes a matriculation certificate. Thus judgment of the Supreme Court has to be construed accordingly.

10. It has been held in the aforesaid judgment that whenever any document described in Rule 12 of Delhi Rules is available, no further inquiry can be made regarding the age of the juvenile and the date of birth mentioned in those documents has to be accepted as true. There is only one situation in which this principle will not apply and that is when any of these documents is found to be forged, fabricated or manipulated, which is not germane in the present case.

11. In such a scenario, this Court does not find any infirmity, illegality or perversity in the impugned order dated 07.09.2015 passed by the learned Revisional Court. Therefore, finding no merit in the instant petition, the same is hereby dismissed.

Crl. M.A.No.16956/2015 (for stay)

With the dismissal of the petition itself, the instant application has become infructuous. The same is dismissed accordingly.

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