

Siddu Vs. The State, through Hulsoor P.S., represented by Addl. State Public Prosecutor, Kalaburagi

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Court : Karnataka Kalaburagi

Decided On : Apr-23-2016

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 200464 of 2015

Appellant : Siddu

Respondent : The State, through Hulsoor P.S., represented by Addl. State Public Prosecutor, Kalaburagi

Judgement :

(Prayer: This Crl. Petition is filed u/s. 482 of Cr.P.C. praying to quash the impugned order dated 22.04.2015 passed by the Principal District and Sessions Judge at Bidar (holding Concurrent charge of Addl. Sessions Judge, Bidar), in special case No. 4/2015 while passing order under Section 34 of Pocso Act .)

1. The petitioner, who is arraigned as an accused in Special Case No. 4/2015 on the file of the Principal District and Sessions Judge, Bidar (hereinafter referred to as the Special Judge for short), has approached this Court seeking quashing of the order dated 22.04.2015. The Learned Special Judge in the said case has passed an order under Section 34 of the POCSO Act, 2012 holding that the petitioner is aged more than 18 years as on the date of the alleged offence and

therefore, he can be tried before the Special Court itself.

2. The records disclose that, earlier, the petitioner has approached this Court in Criminal Petition No. 200335/2015 calling in question the order dated 23.02.2015 passed by the Principal Sessions Judge, Bidar, refusing to transfer the Spl. Case No. 4/2015 to the Juvenile Justice Board for further proceedings.

3. Through-out the proceedings in the above said case, the petitioner has claimed that, he was a Juvenile in conflict with law as on the date of the alleged offence. The records also disclose that the Hulsoor Police, Basavakalyan Taluk, have laid a charge sheet against the petitioner/accused on the allegations that he has committed rape on a victim-girl aged six years. A serious allegation was made that it was a penetrative sexual assault against the victim-girl. Therefore, the police have laid the charge sheet under Section 376(f) and 506 of IPC and also under Section-6 of the POCSO Act, 2012.

4. At the earlier stages, ie., vide order dated 11.08.2014, the learned Special Judge after considering the documents and relying upon the evidence of Vice Principal, Government PU College, Mehkar, High School Section, found that the petitioner was a Juvenile aged less than 18 years as on the date of alleged offence and therefore, referred the accused to the Juvenile Justice Board for further proceedings. During the proceedings before the Juvenile Justice Board on 22.02.2013, the Juvenile Justice Board expressing its doubt about the school records and also on the basis of the physic of the accused pertaining to his age, has once again directed the police to obtain one more certificate from the Expert Doctor for the purpose of considering the age of the petitioner. Thereafter, it appears the Investigating Officer subjected the petitioner for medical examination at Victoria Hospital, Bengaluru and PW. 18-Dr. Kusuma, the Radiologist of the Victoria Hospital, after examination of the petitioner, submitted a report stating that he was aged more than 20 years. Based on the said report, the Juvenile Justice Board, Bidar, once again referred the case to the Special/Sessions Court for determination of the age of the petitioner.

5. In the order passed in Criminal Petition No. 200335/2015, this Court found that there are divergent opinions of the Doctors and also the documents produced

along with the charge sheet regarding the age of the petitioner. Therefore, this Court has directed the learned Special Judge that, he has to record the evidence of the necessary witnesses, who are relevant for the purpose of determining the age of the accused and thereafter pass the order under Section 34 of the POSCO Act, 2012. If for any reason, the Trial Court holds that the petitioner is not a Juvenile, then only it can proceed to record the further evidence on merits of the case, otherwise, the learned Special Judge has to refer the petitioner to Juvenile Justice Board for further proceedings.

6. On the basis of the above said direction, the learned Special Judge proceeded to record the evidence of some of the witnesses, who are relevant for the purpose of considering the age of the petitioner and by passing the impugned order, the learned Special Judge has passed the order under Section 34 of the POSCO Act holding that the petitioner was aged more than 18 years as on the date of the alleged offence and ordered him to face the trial before the Special Court itself. In this background, calling in question the said order, the petitioner has once again is before this Court.

7. Learned counsel for the petitioner strenuously contended that on the basis of the same documents, earlier the learned Special Judge has already come to the conclusion that the petitioner is a Juvenile. He further contended that the learned Special Judge has in fact relied upon both the medical reports submitted by two Doctors i.e., one certificate which was secured during the investigation, which is part and parcel of the charge sheet and another certificate issued by Dr. Kusuma, after filing of the charge sheet on the direction issued by the Juvenile Justice Board. The learned Special Judge considering all the documents on record, though expressed that some documents have been attempted to be tampered, in spite of that he erroneously relied upon some portion of the same documents and also relied upon the subsequent certificate issued by Dr. Kusuma and ultimately concluded that the petitioner was aged more than 18 years as on the date of the alleged offence. In support of his contentions, the learned counsel has relied upon several rulings of the Hon ble Apex Court, which I am going to discuss later.

8. Per contra, Sri. Maqbool Ahmed, the learned HCGP submitted before this Court that the learned Special Judge has evaluated the entire oral and documentary evidence on record and came to a definite conclusion that the petitioner was aged more than 18 years as on the date of offence. Therefore, the learned Special Judge has complied strictly the order passed by this Court and therefore, such a reasoned order does not call for any interference. Hence, he prayed for dismissal of the petition.

9. I have carefully examined the material on record and also the order impugned in this petition. As could be seen from the records, there are two parallel set of documents and two parallel opinions of the expert Doctors with reference to the age of the petitioner. The school records (Exs. P.16 to P.20) produced would show the date of birth of the petitioner/accused as 14.06.1997, whereas the date of birth of his younger sister was shown as 29.07.1997. Therefore, there was hardly 1 months difference between the age of the petitioner and his younger sister. Therefore, the Special Court has suspected that, the age of the petitioner may not be correctly mentioned in the school records.

Further, the trial Court has summoned some of the documents at the instance of the accused during the course of the evidence, which are marked at Exs. 35 to 38. Exs. 35 to 38 are the records and the registers maintained by the Anganawadi viz, Mehkar D. Kendra of Mehkar Village within whose jurisdiction, the petitioner and his sister were born. PW. 19 CDPO has produced the said register. Ex.P31 to 34 are the medical certificate and the process done by Dr. Kusuma (PW. 18) in order to come to the conclusion that the petitioner was aged more than 18 years, as on the date of his physical examination. Another Doctor PW.8, who is also given the certificate marked at Ex.P7 (secured during investigation), which shows that the said Doctor has referred the petitioner to a Dentist and Radiologist and on the basis of the said reports, he has given the age of the petitioner as between 16 to 17 years as on the date of the alleged offence. During the course of the investigation, the police have also collected the School Certificate of the petitioner, which disclosed the date of birth of the accused as 14.06.1997. Exs. P16 to P.20 are the certificates issued by the Government School viz., Admission Form, Original Transfer Certificate, etc., which show that the age of the petitioner was

less than 18 years as on the date of the alleged offence. In view of the above parallel documents and parallel opinions of the Doctors, the learned Special Judge has considered all the materials and came to the conclusion that the petitioner was aged more than 18 years as on the date of the alleged offence.

10. The main ground on which the learned Special Judge came to that conclusion is that, though the school certificates are produced at the time of filing of the charge sheet, subsequently before the Court some more documents have been summoned, which are marked at Exs. 35 to 38. It is observed by the learned Special Judge that PW. 19 has stated that those Exs. P35 to 38 are maintained in the regular course of business. It is stated by PW. 13 that the mother of the accused gave birth to the petitioner on 18.06.1994 as per Ex.P36(a) as mentioned in the Register. In Ex. P37, the name of the family members of the newly born children in the village of Mehkar are mentioned, which also showed that the names of father, mother and sister of the accused. In those documents, the date of birth of the petitioner was shown as 05.04.1995. It is also observed by the learned Special Judge that in these documents there are some over-writings showing the year as 1997 in the place of 1995 so far as the petitioner s date of birth is concerned and 1999, insofar as the sister of the accused is concerned. Of course, these documents were secured by the accused himself by filing application under Section 91 of Cr.P.C. The learned Special Judge has also observed that the documents Exs. P35 to P38 were maintained during the course of the regular business, therefore, they are admissible under Section 35 of the Indian Evidence Act.

But as could be seen, the learned Special Judge himself has expressed doubt with regard to the maintenance of those documents. It is observed at several places in the order that, somebody has attempted to tamper the documents Ex.P35 to P38. The date of birth and year of the petitioner and his sister have been attempted to be changed in the said documents. When such inference has been drawn by the learned Special Judge that the said documents were subjected to tampering by somebody, whether still such documents could be relied upon under Section 35 of the Indian Evidence Act and whether it can still be said that they are maintained in the regular course of business, without there being any access for tampering those

documents. The learned Special Judge has mainly concentrated on these documents and the opinion given by the Doctor for the second time ie., the evidence of PW. 18- Dr. Kusuma (Ex.P31 to P34). The learned Special Judge did not touch upon the veracity of the documents viz., school certificates which are collected by the police during the course of investigation and produced along with the charge sheet, to ascertain as to whether those documents are also maintained during the regular course of business and also to ascertain whether Section 35 of the Indian Evidence Act is equally applicable to those documents or not. The learned Special Judge has observed that, it happens in various cases that while admitting the children to the school the parents may give different age than the real age of the children. In my opinion, it is a too general observation made by the learned Special Judge without even calling for the school records with regard to the admission of the children (petitioner and his sister) and how the entries were made in Exs. P.16 to P.20. If the learned Special Judge has any doubt with regard to Exs. P.16 to P.20, he would have secured the original school records like Admission Register from the School Authorities and Birth Register from the Competent Authorities and thereafter he would have taken a decision. If the general observation made by the learned Special Judge is accepted, no school records can be relied upon by the Court at all. Therefore, every case has to be tested on the basis of the materials available on record as to whether while admitting the children to the school, the parents have given wrong age than the real age of the child. Therefore, the learned Special Judge though expressed some doubt with regard to Exs. P35 to P38, but relied upon the same coupled with the second medical certificate issued by PW. 18, which is my opinion is not correct.

11. In order to appreciate and also before accepting the documents in this case, particularly Exs. P. 35 to P.38, the Court has to be very cautious and careful. The Court has to look into the acceptability and credibility of those documents before relying upon such documents. Before the Court makes any observation with regard to the credibility of any portion of such document, the Court has to judiciously apply its mind on perusing the entire document, whether such document has attempted to be tampered only to the extent of the portion which the Court wanted to rely upon or whether the entire document was subjected to such

tampering or over-writing. With all curiosity, I have gone through the documents Exs. P.35 to P.38. In each and every document, in every page, there are over-writings and also scoring of the entries therein. The point is that, when the surroundings of the disputed entries are also shrouded with mysteries, whether still such documents can be relied upon by the Court. Exs. P.35 to P.38 though produced from the competent person, but the learned Special Judge has not applied his judicious mind and has not made any effort to look into the entire document, but he only relied upon the disputed portion of the document and made an observation that there was an attempt to tamper the said document. Further, added to that, when this particular document was tampered or an attempt has been made to tamper the document, there is no finding given by the learned Special Judge, as to who has tampered the said documents. The other documents produced before the Court show that there are also documents issued by the competent authorities like School Certificates, Marks Card, Transfer Certificate, Admission Form etc., which are marked at Exs. P. 16 to P. 20. Unless the Court comes to the conclusion that only after the case has been registered, Exs. P35 to P.38 have been tampered, the Court cannot give any such finding that the Court can rely upon the entries made in Exs. 35 to P. 38. In this regard also the Court ought to have secured the Original Birth Register or Original Admission Register from the competent authorities in order to test the veracity of Exs. P.16 to P.20 in comparison with Exs. P35 to P.38. That has not been done by the learned Special Judge so far as this case is concerned.

12. Of course, if any doubt arises, on the basis of the material on record, the Court can subject the petitioner/accused to medical examination once again in order to get the confirmation of the age of the accused. In this regard it is worth to note here that, for the purpose of getting the accused medically examined, there are certain procedures contemplated under the law. If those legal aspects are complied or fulfilled, then only the Court can rely upon such medical reports.

13. It is seen from the records that PW. 8 (Doctor) has produced Ex.P7, which shows that the said Doctor has referred the accused to the Dentist and the Radiologist and on the basis of their reports, he has concluded that the age of the accused is between 16 to 17 years as on the date of alleged offence. The learned

Special Judge has brushed aside this piece of evidence on the ground that the said Doctor has not explained as to what are the tests have been conducted for the purpose of assessing the age. The learned Special Judge compared the said evidence with the evidence of PW. 18- Dr. Kusuma and opined that she has conducted the tests as contemplated under the medical field to ascertain the age of the petitioner and she has given the details with regard to Exs. P.31 to P.34 and drawn an inference with regard to the age of the petitioner. But, here, when the Doctor (PW.8) has categorically stated that he has referred the petitioner to Dentist and Radiologist, how he could explain as to the tests conducted by those persons who have assessed the age of the petitioner. It has to be spoken to by the experts who have assessed the age of the accused. The certificates which are issued by the Dentist or the Radiologist have not been produced by the police along with the charge sheet nor they have cited the said Dentist or the Radiologist, who have issued their report earlier and the Court also not made any efforts to secure those Doctors for the purpose of ascertaining as to on what basis they have issued such certificates determining the age of the petitioner as, in between 16 to 17 years. When a strong responsibility is bestowed on the Court to ascertain the approximate or correct age of the petitioner, the Court has to deal with such anomaly in detail with regard to the age of the petitioner. In fact, that is the reason why this Court has remitted the matter to the learned Special/Sessions Judge on the previous occasion with a direction to record the evidence of all necessary witnesses for the limited purpose to ascertain the age of the petitioner. But, the learned Special Judge has not bestowed his attention in examining those Doctors who have conducted tests and assessed the age of the petitioner on the basis of Denture and Radiology. But he has simply stated that PW. 8 has not given any such details. PW. 18 Dr. Kusuma, of course has given details with regard to process through which she has assessed the age of the petitioner.

14. Now the question arises is, whether the evidence of the Doctors viz., PW. 8 and PW. 18 and the documents furnished by them partakes the nature of admissible evidence before the Court of law. In this regard, the learned counsel Sri. Sanjay A. Patil has seriously argued before the Court that the said Doctors are not competent to issue such certificates because, the law contemplates that the Medical Board is the competent authority to issue such certificate and if such

statutory requirement is not fulfilled, the evidence or the documents produced by PW. 8 or PW. 18 may not be made use of for any purpose.

15. Now let me examine so far as the said aspect is concerned. Of course, in this case there are two parallel documents and two parallel opinions of the Doctors are available. Therefore, let me see as to what exactly the law contemplates in this regard. In respect of that, it is worth to note here that, the Juvenile Justice Board or the learned Special Judge have not applied their judicious mind to ascertain whether there is any statutory requirement to be fulfilled with reference to the medical examination of the petitioner.

16. Section 34 of the POCSO Act, 2012 is the substantive provision which empowers the Special Judge to determine the age of the person whether he is a Juvenile or an adult person and that particular person has to be tried before the Juvenile Justice Board or before the Special Court. The said provision reads thus:-

Sect. 34 The procedure in case of commission of offence by child and determination of age by Special Court, -

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

(2) If any question arises in any proceeding before the special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

16.1 Sub-clause (2) of the said provision clearly indicates that if any question arise in a proceeding before the Special Court, whether the person is child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person. In this provision stress has to be given to the words for

satisfying itself and how this satisfaction can be arrived at by the Court has to be tested by other surrounding circumstances like oral and documentary evidence placed before the Court and also the relevant rules under the law for the time being in force.

17. Another important aspect that should be borne in mind is that the Government has framed the Juvenile Justice (Care and Protection of Children) Rules, 2007. (for short JJ (CPC) Rules, 2007). The said Rules provide a specific special procedure as to how the age of the child or the Juvenile in conflict with law has to be determined. Section 34 gives substantive right to the Court to determine the age, whereas Rule 12 of JJ (CPC) Rules, 2007 provides the procedure to be followed as to in which manner the Court has to consider the age of the disputed person. Rule-12 of the said Rules, 2007 reads as follows:-

12. Procedure to be followed in determination of age

1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available and send him to the observation home or in jail.

3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

(a)(i) the matriculation or equivalent certificates, if available, and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

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

(b) and only in the absence of either (I)(ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be record a finding in respect of his age and either of the evidence specified in any of clauses (a) (I), (ii), (iii) or in the absence whereof, clause

(b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

(Emphasis supplied)

18. In the light of the above procedure, the Court has to consider the point whether the person who is before the Court is a Juvenile in conflict with law or not. This provision itself clearly discloses that the Court is guided by certain principles as to what decision the Court should take if the documents are available, like matriculation or equivalent certificate and the date of birth certificate from the school and birth certificate issued by the Corporation or the Municipal Authority. If these materials are available before the Court, the Court should not venture upon to look into the medical opinion, or even it is not necessary for the police to get the medical opinion with regard to the age sought to be established before the Court. Only when in the absence of such documents as mentioned in Rule 12(3) of Rules, 2007, the Court has to venture upon to refer the person to a duly constituted Medical Board, which will declare the age of the Juvenile or the child. In case exact assessment of the age may not be done, the Court or the Board, as the case may be, for the reasons to be recorded by them, may if consider necessary to give the benefit to the child or the Juvenile by considering his age on lower side within the margin of one year and the Court should also take care while passing the order in such cases that only after taking into consideration such evidence as may be available or the medical opinion, as the case may be, by recording a finding in respect of the age of the person and then only should proceed with the case. If the age of the victim is above 18 years, as on the date of the commission of the alleged offence, the Special Court can proceed with the case to try the offender and if he is below 18 years, the Court shall pass an order referring the Juvenile before the competent authority i.e., Juvenile Justice Board.

19. In view of the above provisions, it is abundantly clear as to under what circumstances the Court can secure the opinion of the Medical Board. In this regard, before reverting to the factual matrix of this case, it is just and necessary to bear in mind certain decisions of the Hon ble Apex Court with regard to the duties of the Court. In the case of Shah Nawaz Vs. State of Uttar Pradesh and Another reported in 2011 (13) SCC 751, at Head Notes A, B and C the Hon ble Apex Court has held as under:-

A. Juvenile Justice (Care and Protection of Children) Rules, 2007 R. 12 Juvenility Procedure to be followed in determination of age Reliability of marksheet and/or

school leaving certificate for determination of age of accused-Held, entry relating to date of birth entered in marksheet as well as school leaving certificate are valid proofs for determination of age of accused person R. 12 categorically envisages that medical opinion from Medical Board should be sought only when matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available Additional Sessions Judge and High Court committed error in taking a contrary view-Moreover both marksheet and school leaving certificate corroborated each other, and testimony of School Principal and clerk and mother of accused further corroborated the same-Appellant declared a juvenile on date of occurrence Evidence Act, 1872- S. 35- Juvenile Justice (Care and Protection of Children) Act, 2000 Ss 14 and 15 Penal Code, 1860, Ss 302 and 307 Benefit of juvenility given.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007 R. 12 Juvenility Borderline cases Procedure to be followed in determination of age Marksheet School leaving certificate Acceptability for determination of age of an accused Hypertechnical approach should not be adopted If two views may be possible on said evidence, Court should lean in favour of holding accused to be juvenile in borderline cases Juvenile Justice (Case and Protection of Children) Act, 2000 Ss. 14 and 15 Evidence Act, 1872, S. 35.

C. Juvenile Justice (Care and Protection of Children) Rules, 2007 R. 12 Juvenility Procedure to be followed in determination of age Marksheet School leaving certificate Appreciation of evidence Preference has been given to school certificate over medical report Juvenile Justice (Care and Protection of Children) Act, 2000. Ss. 14 and 15 Evidence Act, 1872, S.35.

20. In detail the Hon ble Apex Court at paragraphs 11 to 27 has dealt with the above said aspects narrating the procedures to be followed by the courts and also stating as to how the materials have to be appreciated, and what is the benefit available under the provision and how it should be given to the accused or otherwise.

21. In another Ruling, which is reported in 2014(12) SCC 332 between Kulai Ibrahim @ Ibrahim Vs. State, Rep. by B-1, Bazaar Police Station, Coimbatore, at

Head Notes C and D, the Hon ble Apex Court has specifically observed as to under what circumstances the medical report can be sought for and appreciated by the courts, which reads as under (Head Notes C and D):-

C. Juvenile Justice (Care and Protection of Children) Rules, 2007 R. 12(3) Claim of juvenility when Juvenile Justice Board or Committee should seek medical report for age determination of accused Held, it is only in cases where documents mentioned in Rr. 12(3) (a) (i) to (iii) of J.J. Rules, 2007 are unavailable or where they are found to be fabricated or manipulated, that it is necessary to obtain medical report for age determination of accused In instant case, such documents are available, but they are according to police, fabrication is confirmed, it is necessary to obtain medical report for age determination of appellant- Delay cannot act as an impediment in seeking medical report, as S.7-A of JJ Act, 2000 gives right to an accused to raise question of juvenility at any point of time even after disposal of case Juvenile Justice (Care and Protection of Children) Act, 2000, S. 7-A

D. Juvenile Justice (Care and Protection of Children) Act, 2000 Ss. 2(k) and (l) Claim of juvenility If two views are possible Held, JJ Act, 2000 is a beneficent legislation if two views are possible, scales must tilt in favour of view that supports claim of juvenility.

(Emphasis supplied)

22. Now let me consider whether the trial Court has in fact applied the above said rules and guidelines in determining the age of the petitioner/accused. The school certificates produced before the Court are marked as Exs. P16 to Ex.P20. During the course of evidence, certain other documents - Exs. P.35 to P.38 viz., registers and documents maintained by Mehakar D. Kendra are produced before the Court to show the date of birth of the accused and his sister, which I have already referred to above. As already stated, there are two opinions of different Doctors, viz., PW.8 and PW. 18. When two sets of documents are there, if the Court comes to any conclusion that those documents or any of the documents produced before the Court cannot be believed for any reason on the ground that they are fabricated or otherwise, and the Court cannot give a conclusive opinion on the basis of such

document, then only the Court should venture upon to get the accused examined by the Medical Board and thereafter the opinion of the Medical Board can be considered. In this particular case, as I have already mentioned, neither the Investigating Officer nor the Court have given any specific opinion with regard to the documentary evidence on record as to whether they are fabricated or those documents create a serious doubt and therefore, the Court cannot determine the age of the accused on the basis of such documents, therefore, it can rely upon the medical evidence.

23. Be that as it may. So far as the Medical evidence is concerned, in this case, the two independent Doctors viz., PW. 8 and PW. 18 have given their individual opinion. According to Rule 12 of the said Rules 2007 noted supra, no individual Doctor, who is not declared to be the Medical Board can give such opinion. It is mandate of law that under Rule 12 of the Rules, 2007, the accused has to be referred to the Medical Board duly constituted, which will declare the age of the Juvenile or the child as on the date of offence. Therefore, it is crystal clear that this rule is neither been followed by the Investigating Officer or the Juvenile Justice Board, nor the Special Court. When the law says, a particular thing has to be done in a particular manner, it should be done in such a manner only. Any other manner which is not recognized or contemplated under law, even though it appears to be proper and correct, but such procedure cannot be accepted in view of the statutory requirement. Therefore, in this case, if at all the Special Court comes to any conclusion that the documents which are available before the Court, cannot be relied upon and they are doubtful or fabricated, or any forgery or other things are forthcoming, or any forgery or other things are forthcoming, then only, by giving finding as to under what circumstances, the Court cannot rely upon those documents and thereafter refer the accused or the alleged Juvenile to the Medical Board duly constituted in accordance with law, for the purpose of seeking medical opinion.

24. On perusal of the order passed by the learned Special Judge and the Juvenile Justice Board and also the Investigating Officer, the above said procedure has not been followed. The learned Special Judge has also discussed in detail about the medical report given by PW. 8 and also PW. 18 and the documents produced by

them for the purpose of determining the age of the accused. In my opinion, the said procedure adopted by the learned Special Judge is against to the procedure contemplated under rule 12 of the said Rules, 2007. On this ground, the order deserves to be set aside.

25. In the above said circumstances, when the Court has relied upon some documentary evidence on record, particularly the school records and also the records maintained by Mehakar D. Kendra, as narrated in the order by the learned Special Judge, have to be tested as to whether they are the documents which can be safely and unerringly relied upon or if the Court comes to the conclusion that, if for any reason those documents cannot be relied upon as there is some doubt with regard to those documents, then the Court can refer the accused to the Medical Board and then after obtaining the opinion from the Medical Board, the Court can take appropriate decision in this regard. The learned Special Judge has expressed so far as the documents Exs. P35 to P38 are concerned that they are the documents wherein an attempt was made to fabricate some of the contents of the said document. However, he relied upon one portion of the said document and rejected the other portion of the same document as manipulated (which is favourable to the accused) in corroboration to the evidence of PW. 18 and Exs. P31 to 34. Under the above said circumstances, the learned Special Judge has to apply his judicious mind as to when the same document gives two views, whether still the Court can unerringly rely upon such material coupled with inadmissible medical evidence. Therefore, in this regard, the learned Special Judge has committed a serious error in relying upon the medical evidence issued by a non-competent person as the rule contemplate that the competency of giving certificate of age vests with the Medical Board.

26. The term Medical Board is not defined under the J.J (CPC) Act, 2000 or under the POCSO Act or under the J.J (CPC) Rules, 2007. The Dictionary meaning of the Medical Board according to the Collins Dictionary, it is described as follows:-

Medical Board A group of people qualified to give opinions on medical matters.

According to the General Medical Dictionary, the definition of the Medical Board is described as under:-

Medical Board A group of persons having supervisory, managerial, investigatory or advisory powers .

27. The above said definition clearly gives a picture that the Government has to constitute a Medical Board consisting of two or more experts in that field for the purpose assessment of the age as contemplated under Rule 12 of the J.J (CPC) Rules, 2007. In order to facilitate the Investigating Officers and the Courts, it is necessary that the Government has to constitute the Medical Board at each and every District Government Hospitals, preferably the Medical Board shall consist of experts like Physiologist, Dental Examiner (expert), Radiologist and Forensic Expert so that they shall give their individual report based on the respective examination and the same shall be mentioned in the report and based on which the Chair Person of the Board shall give final opinion on the age as on the date of the offence, within the margin of one year as contemplated under Rule 12 of the J.J (CPC) Rules, 2007. Further, as per this Rule, the Medical Board shall carry out medical examination of age and shall give the report not later than 15 days of the request being made in that regard.

28. In the above said background, it is just and necessary for this Court to issue certain directions to the State of Karnataka and other stake-holders, who are concerned with determination of the age of the Juvenile in conflict with law.

29. The State of Karnataka is hereby directed to constitute the Medical Boards consisting of Physiologist, Dental Examiner, Radiologist and Forensic Expert, who are experts in the field in the District Hospitals to carry - out the age determination whenever the Juvenile in conflict with law is referred for his age determination, the Government has to issue directions to the said Medical Boards in the State that each expert shall give his individual report based on the respective examination and the same shall be mentioned in the report and based on which the Chair Person of the Board shall give Final Report regarding the age of the person, as on the date of offence, within the margin of one year as contemplated under Rule 12 of the JJ (CPC) Rules, 2007, with further direction that the Medical Board shall carry-out the Medical Examination pertaining to the age of the Juvenile and shall give report not later than 15 days from the date of request being made in that

regard.

30. The State of Karnataka through its Medical Department shall inform all the District Surgeons in turn to inform all the Doctors in the State that they shall not individually conduct any age determination examination of any Juvenile in conflict with law referred to them for age determination, unless they are declared as Medical Board. In turn, if any Juvenile is referred to them for age determination, they shall bring it to the notice of the District Surgeon or to the concerned authorities, who shall constitute the Medical Board and then refer the Juvenile in conflict with law to the medical Board for its report.

31. The Director General of Police of the Karnataka State is hereby directed to issue necessary circulars to all the Investigating Officers, who are empowered to investigate the offences under the POCSO Act to strictly adhere to Rule 12 of the JJ (CPC) Rules, 2007 and they shall make all their efforts to collect the Matriculation or equivalent certificates or the date of birth certificate from the school (other than the play school) first attended or birth certificate given by the Corporation or Municipal or panchayaths, and in the absence of such material, they shall refer the Juvenile in conflict with law to the Medical Board for age determination or if the Investigating Officers are of the opinion that the documents noted above though available, they are manipulated or they are not reliable, then only they can refer the Juvenile to the Medical Board for age determination.

32. The Director General of Police is further directed to communicate this order by circulating the copy of this order and also the judgment of the Hon ble Apex Court reported in Shah Nawaz [2011(13) SCC 751] and Kulai Ibrahim @ Ibrahim [2014 (12) SC 332] (cited supra) to all the Investigating Officers to facilitate them to follow the directions issued by the Courts in their letter and spirit in dealing with the age determination of the Juvenile in conflict with law.

33. It is also hereby directed that all the Special Judges notified under the POCSO Act and the Members of the Juvenile Justice Board, who are entrusted with the work of determining the age of the Juvenile in conflict with law to deal with the matter first in accordance with Rule 12 of the JJ (CPC) Rules, 2007 and only thereafter the competent authority under Section 34 of the POCSO Act shall give

its finding with regard to the documents produced before the Court as referred under Rule 12 of JJ (CPC) Rules, 2007, whether those documents are reliable or not and if they are reliable, then give its finding with regard to the credibility and reliability of those documents, and if for any reason, the Court comes to the conclusion that those documents are not reliable and those documents are manipulated or tampered, then only it can rely upon the medical evidence or if the Court has got any doubt with regard to the documents, then only it can refer the Juvenile in conflict with law to the Medical Board for his age determination and thereafter before recording the judgment, at any stage, the Court can give a finding with regard to the age of the Juvenile in conflict with law. If the Special Court comes to the conclusion that the Juvenile in conflict with law is aged less than 18 years, then he shall be referred to Juvenile Justice Board for all further proceedings as per the provisions of the POCSO Act.

34. It is also necessary to direct the Karnataka State Judicial Academy and Karnataka Legal Services Authorities to conduct appropriate Legal Awareness Programs to all stake-holders, particularly the Chairmen of Juvenile Justice Board and its Members, Presiding Officers of Special Courts under the POCSO Act, Police Officers and Doctors, who are the stake-holders entrusted with the task of age determination of the Juvenile in conflict with law in any manner and appraise and enlighten them with regard to the provisions of the JJ (CPC) Act, 2000, JJ (CPC) Rules, 2007 and also POCSO Act, in order to strictly adhere to the legal requirements to deal with the Juvenile in conflict with law.

35. In the above said circumstances, there is no reason to sustain the order of the learned Special Judge. Hence, the same is liable to be set aside.

36. In view of above, I proceed to pass the following:

ORDER

The petition is allowed. The order passed by the learned Sessions Judge (Special Judge), Bidar, in Special Case No. 4/2015 dated 22.04.2015 is hereby set aside. Consequently, the matter is remitted to the learned Special Judge for fresh consideration of the age of the accused before him after strictly following Rule 12

of the J.J (CPC) Rules, 2007 in its letter and spirit, and thereafter pass appropriate orders bearing in mind the guidelines laid down in the decisions of the Hon ble Apex Court reported in the case of Shah Nawaz [2011 (13) SCC 751] and Kulai Ibrahim @ Ibrahim [2014 (12) SC 332] (cited supra) and also in the body of this order.

The Registry is hereby directed to send a copy of this order to the Chief Secretary of the State of Karnataka, Secretary to Department of Medical Education, Secretary to Health and Family Welfare Department of State of Karnataka, and also to the Director General of Police of State, for proper instructions to the concerned and needful action as per the directions issued by this Court at Paragraphs 28 to 33 of this order.

The Registry is also directed to send a copy of this order to the Member Secretary to the Karnataka State Legal Services Authority and to the Director of Karnataka Judicial Academy for kind information and appropriate action as narrated in the body of this order.

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