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Court : Rajasthan

Decided On : Feb-12-2002

Reported in : 2002CriLJ2123; 2002(2)WLC380; 2002(1)WLN707

Judge : Ashok Parihar, J.

Acts : [Juvenile Justice Act, 1986](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) -
Sections 482

Appeal No. : S.B. Criminal Misc. Petition No. 113 of 2001

Appellant : Mehmood Khan

Respondent : State Through Pp

Advocate for Def. : Rizwan Alvi, PP and; Ajay Gupta, Adv.

Advocate for Pet/Ap. : Jagdeep Dhankar, Sr. Adv.,; Himmat Singh,; Praveen Balwa

Disposition : Petition dismissed

Judgement :

Parihar, J.

1. The incident is alleged to have taken place on 6.3.2000. It has been alleged that the petitioner along with three other co-accused threw acid on the family members

of the complainant resulting in multiple acid burns on five persons including four ladies. After investigation, the police filed challan against the petitioner and three other co-accused for offence under Sections 458, 459, 324, 326 and 307/34 IPC.

2. The petitioner submitted a bail application under Section 439 of the Code of Criminal Procedure. This court, vide order dated 31.7.2000, while disposing of the bail application, directed the trial court to determine the age of the petitioner considering the provisions of the [Juvenile Justice Act, 1986](#) (hereinafter to be referred to as 'the Act'). As per the directions of this court, the trial court, after taking evidence of both the sides, held that the petitioner was more than 16 years of age at the time of the incident vide order dated 26.8.2000.

3. The order dated 26.8.2000, passed by the trial court, in regard to determining age of the petitioner, was challenging by the petitioner by way of filing a petition under Section 482 of the Code of Criminal Procedure before this Court. This Court, while disposing of the SB Cr. Misc. Petition No. 734/2000, on 1,12.2000, passed the following order:-

'Perused the order of the learned Additional Sessions Judge, Neem Ka Thana. Counsel for the petitioner pointed out that one of the methods to draw the conclusion about the age is ossification test, the same has not been adopted in this case. It may be stated that it was on the application for bail of the petitioner himself, this court ordered that the learned Addl. Sessions Judge will hold inquiry about the age of the petitioner, he did so but did not get the petitioner medically examined. In these circumstances, it is in the interest of justice that the order dated 26.8.2000 should be set aside and the matter be sent to the learned Addl. Sessions Judge, Neem Ka Thana back to get the petitioner medically examined for the purpose of age and if needed, the Doctor who conducts such examination be examined. He will also be free to look into the documents and evidence produced already in order to come to the conclusion about the age of the petitioner on the date of occurrence. This exercise should be finished within a period of twenty days from the date of receipt of copy of this order. Office is directed to send the copy immediately.'

4. As per the observations made by this court vide order dated 1.12.2000, as referred to above, the trial court again sent the petitioner for medical examination which took place on 15.1.2001. After considering the medical report as well as other documents and evidence on record, the trial court again held that the petitioner has been more than 16 years of age at the time of the incident vide order dated 23.1.2001. The order dated 23.1.2001 passed by the trial court has now been challenged afresh by the petitioner in the present petition under Section 482 of the Code of Criminal Procedure.

5. Mr. Jagdeep Dhankar, learned senior counsel appearing on behalf of the petitioner, with all vehemence at his command, contended that the incident took place on 6.3.2000, whereas, the school certificate, issued prior to the date of incident, bears the date of birth of the petitioner as 5.6.1984, as such, while heavily relying on the judgments of the Supreme Court in the case of 'Umesh Chandra v. State of Rajasthan', AIR 1982 SC 1057 and 'Bhoop Ram v. State of UP', (1989) 3 SCC 1 contended that the trial court has committed grave error in not believing the date of birth of the petitioner as 5.6.1984. It has further been contended by Mr. Dhankar that even as per the medical report the age of the petitioner has been opined to be between 16 to 18 years, more towards 16 years, as such, on the date of the incident, the petitioner should be treated as below 16 years of age. He also contended that the court should take notice of the recent amendment in the [Juvenile Justice Act, 1986](#), by which, the age has been increased from 16 to 18 years.

6. Mr. Rizwan Alvi, the learned PP, as also Mr. Ajay Gupta, learned counsel appearing on behalf of the complainant, on the other hand, supported the impugned order passed by the trial court. Mr. Gupta has further contended that looking to the gravity of the offence committed and alleged against the petitioner, no interference is called for by this court in the present petition.

7. After having considered the submissions made by learned counsel for the parties, I have carefully gone through the material on record, the order impugned, original record as summoned by this court as also gone through the judgments cited at the Bar.

8. There are two sets of school certificates produced on record. In one set, the date of birth has been mentioned as 5.6.1982, whereas, in the other set, the date of birth has been mentioned as 5.6.1984. That apart, in one ration card, the age of the petitioner has been mentioned as 11 years, whereas, in the other ration card, the age has been mentioned as 20 years. In the voters' list of 1999, the age of the petitioner has been mentioned as 21 years. Thus, the statement of the witnesses recorded by the trial court are to be gone through.

9. The father of the petitioner does not dispute the date of birth as 5.6.1982 initially recorded in the record of the school where his son, the petitioner, was admitted in Class V in July 1991. His clarification has been that at the time of filling up of the forms for Secondary School Examination he came to know about this date i.e. 5.6.1982 which was duly corrected to 5.6.1984. The explanation does not seem to be plausible. A boy of just 7 years could not have been admitted to Class V in the year 1991. The record of the school in which the date of birth has been entered as 5.6.1982 has been proved by the authorities of the school concerned. The date of birth from 5.6.1982 to 5.6.1984 was corrected by the school authorities only in 1997 as per order dated 3.9.1997 passed by the District Education Officer, Sikar.

10. That apart, medical examination was done on 15.1.2001, whereas, the incident took place on 6.3.2000. As per medical opinion, the petitioner was of the age of between 16 to 18 years, more towards 16 years, at the time of medical examination. Even if some presumption is to be drawn as per the medical report, the petitioner can safely be presumed to be of more than 16 years of age on the date of the incident i.e. on 6.3.2000. Presumption under service law is entirely different than the presumption to be taken in a trial under the Code of Criminal Procedure. Here the matter has to be considered in its totality.

11. The submission of learned counsel for the petitioner in regard to the recent amendment in the Act so far as prescribed age is not relevant in the facts and circumstances of the present case.

12. After having carefully considered the entire facts and circumstances, since it is a finding of fact, based on material on record, I find no error or illegality in the order dated 23.1.2001 passed by the trial court so as to call for any further

interference of this court in the present matter.

13. The judgments cited by learned counsel for the petitioner are not applicable in the peculiar facts of the present case.

14. Accordingly, I find no merit in this petition. The same is dismissed. The record of the trial court be sent back immediately. The trial court is directed to expedite the trial of the case.

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