

Mool Chand Vs. State

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Court : Rajasthan

Decided On : Aug-21-2006

Reported in : RLW2007(1)Raj8

Judge : Harbans Lal, J.

Appellant : Mool Chand

Respondent : State

Disposition : Petition allowed

Judgement :

Harbans Lal, J.

1. The instant petition under Section 482 Cr.P.C. has been filed against the order dated 11.10.2004 of the learned Addl. Sessions Judge, Shahpura District Jaipur in Criminal Case No. 9/2004 arising out of FIR No. 138/2004 PS Shahpura for the offences under Sections 392 and 365 IPC whereby the learned court below has held that the petitioner is more than 18 years of age and is not & juvenile.

2. The relevant facts are that on the complaint of complainant Rajendra Singh, the aforesaid FIR came to be registered on 11.3.2004. As the petitioner was not represented by a learned Counsel, amicus curiae was appointed who filed an application stating that the date of birth of the petitioner was 5.7.1987 as per the

transfer certificate (TC) issued by the Government Middle School Paota and he being a juvenile, his case should be sent to the Juvenile Justice Board for trial whereupon the learned court below conducted the so called inquiry with regard to his age and held as indicated above holding that the petitioner is not a juvenile vide impugned order. Aggrieved by the said order, the petitioner has Tiled the instant petition.

3. I have heard learned Counsel for the petitioner, learned PP for the State and perused the impugned order as well as the relevant documents placed before me including the original TC issued by the Head Master of Gyandeeep Public Upper Primary School, Paota.

4. A bare perusal of the order reveals that the learned court below has not relied upon the TC and other documents on the ground that only photo copies thereof have been filed and originals have not been filed and they have not been duly proved and Sonaram, the witness has not been produced for cross examination. The court below has, therefore, relied upon his age mentioned in the charge-sheet and in the medical report.

5. It is not clear from the petition and the order dated 11.10.2004 as to how the matter came before the learned Addl. Sessions Judge, Shahpura and how and why the inquiry with regard to the age was conducted by him because the same ought to have been conducted by the competent authority as per the provisions of the Act.

6. Be that as it may, the so called inquiry conducted by the learned Addl. Sessions Judge, Shahpura and the findings with regard to the age of the petitioner recorded by him are not sustainable in law. The original transfer certificate and another certificate issued by the Head Master, Gyandeeep Public Upper Primary School, Paota have been placed before me. It is also not clear from the order as to what efforts were made to procure the attendance of Sonaram for cross-examination by the learned PP. It is also apparent from the order that while conducting the inquiry with regard to the age of the petitioner, the provisions of Rule 22(5) of the Rajasthan Juvenile Justice (Care & Protection of Children) Rules, 2002 have not been kept in view. The order impugned, therefore, cannot be sustained and

deserves to be quashed and set aside and the matter deserves to be remitted to the competent authority for conducting inquiry with regard to the age of the petitioner in accordance with the provisions of Section 49 of the Juvenile Justice (Care & Protection of Children) Act, 2000 and keeping In view the provisions of Rule 22(5) of the Rajasthan Juvenile Justice (Care & Protection of Children) Rules, 2002.

7. Consequently, the petition is allowed and the order dated 11.10.2004 of the learned Addl. Sessions Judge, Shahpura is quashed and set aside and the matter is remitted to the competent authority with the direction to conduct the inquiry in accordance with the provisions of Section 49 of the Juvenile Justice (Care & Protection of Children) Act, 2000 and keeping in view the provisions of Rule 22(5) of the Rajasthan Juvenile Justice (Care & Protection of Children) Rules, 2002 with regard to the age of the petitioner within a period of one month from the date of filing of certified copy of the order.

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