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Court : Delhi

Decided On : Nov-25-2011

Judge : M.L. Mehta, J.

Acts : Code Of Criminal Procedure (CPC) - Section 397 ; Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 7A; Indian Penal Code (IPC) - Section 302; The Juvenile (Care & Protection of Children) Rules, 2007 - Clause 3 of Rule 12

Appeal No. : Crl. Rev. P.No.127 of 2011

Appellant : Nate Kumar Sonkar

Respondent : State

Judgement :

1. This is a revision petition under Section 397 Cr.P.C preferred by the petitioner assailing an order dated 25.02.2011 passed by learned trial court whereby an application under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the Act" for short) made by the petitioner seeking transfer of the case to Juvenile Court was dismissed.

2. The petitioner was charge-sheeted under Section 302 IPC vide FIR No. 388 of 2006 registered at Police Station Kotla Mubarak Pur, New Delhi. The petitioner filed the aforementioned application claiming himself to be a juvenile and hence prayed that he should be tried by Juvenile Justice Board (JJB) under the Act. The

incident occurred on 5.6.2006. The bone test and dental examination of the petitioner was conducted by the Medical Board on 23.4.2008. As per this the age of the petitioner was opined to be 20 to 22 years.

3. In the MLC of the petitioner conducted after his arrest, his age was mentioned as 18 years. In the letter written by the SHO to the FSL for examination of exhibits, the age of the petitioner was mentioned as 18 years. So, was the age mentioned in the arrest memo prepared on 5.6.2006. However, in the conviction slip filed by the police, the age of the petitioner was stated to be 19 years. It is also an admitted position that the petitioner is illiterate and has not attended any school and he also does not possess any birth certificate. In all these documents which have been referred above, the age of the petitioner was mentioned to be 18 or 19 years either on the saying of the petitioner himself or as a guess work done by the police. However, as per the ossification test which was got conducted in DDU Hospital the age of the petitioner was opined to be about 20 years but less than 22 years. This test was conducted on 23.4.2008. Referring to the ossification test report, the learned ASJ considered the age of the petitioner to be in between 21 years and after giving margin of one year as per Sub Clause (b) of Clause 3 of Rule 12 of The Juvenile (Care & Protection of Children) Rules, 2007 (for short, the 'Rules'), he assessed the age of the petitioner to be 20 years. He further deducted one year 10 months and 18 days being the difference between the date of the incident i.e. 5.6.2006 and the ossification test i.e. 23.4.2008. He arrived at a finding that the age of the petitioner was 18 years one month and 12 days as on the date of the incident. Consequently, he held the petitioner to be not a juvenile.

4. The impugned order is assailed mainly on the ground that the learned ASJ has erred in arriving at his own assessment of 21 years taking the average of 20 years and 22 years as opined by the Medical Board. Apparently, the learned ASJ seems to have erred in making his own estimate of 21 years by taking the average of 20 years and 22 years. What was opined by the Medical Board was that the petitioner was about 20 years but less than 22 years. Keeping in view the beneficial provisions of the Act, one ought to have taken the lower side of 20 years and not the higher side of 22 years or the average of the two. Thus, as per medical report, the age of the petitioner could be taken to be 20 years on the day of test and

examination.

5. In fact, the question for consideration of the medical report arose because there was no evidence as contemplated under Sub clause (a) of Clause (3) of Rule 12 and the age which was mentioned in the MLC, letter, conviction slip etc. were all on the basis of estimation. Though the ossification test itself was also not a conclusive proof of determination of date of birth of the petitioner, but in the absence of there being any reliable evidence, the ossification test could certainly be made the basis for assessing the age of the petitioner. Thus, there was a difference of one year ten months and 18 days between the date of the incident and the ossification test. Making a deduction of this period from 20 years, the age of the petitioner would come out to be 18 years one month and 12 days. Now the question for consideration is as to whether the petitioner was to be entitled to be given the benefit under sub Clause (b) of Clause (3) of the Rules.

6. There is catena of judgments which say that ossification test itself was not a conclusive proof of determination of exact age or date of birth of a person and that in the absence of there being any reliable evidence, the ossification test could certainly be made the basis for ascertaining the age of a person by considering his or her age on the lower side. Further the law recognizes in Clause (3) Sub-Clause (b) that if exact assessment of the age could not be done, the benefit was to be given to the child or juvenile by considering his/her age on lower side within the margin of one year. Reference in this regard can be made to the judgments of this Court in Azim (Mohd.) V NCT of Delhi [2010 (VII) AD (Delhi) 161] and Pradeep Sehrawat v NCT of Delhi [Crl. MC No.132 of 2011 decided on 21.11.2011].

7. In view of my foregoing discussion, I do not see any reason to deprive the petitioner from this well recognized beneficial provision. In that view of the matter, the age of the petitioner would come out to be 17 years 1 month and 12 days on the date of the incident and he would thus be a juvenile on the said date.

8. Resultantly, the case be remanded back to the Court of learned ASJ for further proceedings towards trial of the petitioner before the Juvenile Justice Board as per law.

9. The petition stands allowed.

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