

Rejual Karim and Others Vs. Sub Inspector of Police, Parasala Police Station, Rep. by Public Prosecutor High Court of Kerala, Ernakulam.

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Court : Kerala

Decided On : Apr-02-2012

Judge : The Honourable Mr.Justice. P.S. Gopinathan

Appeal No. : CRL. M.C. 1024 OF 2012

Appellant : Rejual Karim and Others

Respondent : Sub Inspector of Police, Parasala Police Station, Rep. by Public Prosecutor High Court of Kerala, Ernakulam.

Judgement :

ORDER

In this petition under Section 482 of the Code of Criminal Procedure, petitioners, who are accused 5 to 7 in Crime No. 1143 of 2011 of Parasala Police Station for offences under Section 489B and 489C r/w Section 34 of the Indian Penal Code seek an order to quash Annexure A-10 order whereby the court below, after rejecting the plea of the petitioners that they are juvenile, found them not juvenile.

2. The petitioners produced Annexure-1 to 6 before the court below in support of their plea that they are juveniles. But without considering those documents, petitioners were referred to Forensic Department of the Medical College and obtained certificate certifying that they are aged between 18 years and 21 years.

3. According to the learned counsel for the petitioners, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 deals with the procedure for deciding the juvenility concerning a child or a juvenile in conflict with law and that the juvenility should be determined on the basis of matriculation or equivalent certificates, birth certificate from the school or local authorities as contemplated under Rule 12(3)(a) and only in the absence of such certificate, report from the medical board can be obtained. Here, in this case, according to the learned counsel, the petitioners were not even referred to the medical board as contemplated under Rule 12(3)(b), but referred to the Forensic Department and therefore, the procedure adopted by the court below is illegal and not sustainable.

4. For a correct appraisal of the case, a reading of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 would be appropriate. Rule 12 reads thus: "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, while 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 the 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 in sub- rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the At 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 7A, 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 o the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Clause (b) of Rule 12 (3) would show that to decide juvenility of a child or juvenile in conflict with law, he can be referred to medical board only in the absence of documents under category (i), (ii) or (iii) of clause (a) of sub-clause (3) of Rule 12.

Such being the position of the Rule, I find merit in the submission made by the learned counsel for the petitioner. Going by sub-clause (b) of Clause (3) of Rule 12, I find that in the absence of documents coming under category (i), (ii) or (iii) of clause (a) to Rule 12 (3), the procedure under clause (b) ought to have been adopted by the magistrate. Under clause (b) the court has to refer the child or juvenile to the medical board and never to the Forensic Department of the Medical College or any other hospital. Therefore, I have no hesitation to hold that Annexure 10 order is contrary to the rules and therefore it is not legally sustainable. I find that interest of justice demands intervention under Section 482 of the Code of Criminal Procedure.

In the result, this petition is allowed. Annexure 10 order would stand quashed. The court below is directed to conduct a fresh enquiry as per Rule 12 and to pass appropriate orders as early as possible, at any rate, within two weeks from the date of receipt of a copy of this order, which the petitioners shall produce before the court below. The petitioners are at liberty to produce the documents as stipulated under sub-clause (a) to Rule 12(3).

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