

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 20.08.2010

C.R.R. No. 1737 of 2010

Sri Judhithir Das

versus

The State of West Bengal

Points:

Determination of Juvenility: Magistrate accepted the date of birth recorded in the admission register of primary school and refused to take into consideration the date of birth recorded in the Admit Card of the Board- Opportunity of hearing whether to be given to the petitioner in support of the claim- Juvenile Justice (Care and Protection of Children) Act, 2000-S.7A- Juvenile Justice (Care and Protection of Children) Rules, 2007-R 12

Facts:

The petitioner moved an application for bail on 24th of May, 2010 claiming himself to be a juvenile and prayed for passing of necessary order. In support of the claim of juvenility, the petitioner filed a copy of the Admit Card issued by the West Bengal Board of Secondary Education showing that his date of birth was 2nd of April, 1993, whereupon the Learned Magistrate directed the Investigating Officer to verify the genuinity of the same and submit a report. Police filed report along with a copy of the Admission Register of Aurangabad Boys Primary School which shows that his date of birth was May 15, 1991 and the Learned Magistrate accepting the date of birth recorded in the School Admission Register to be

correct one rejected the petitioner's plea of juvenility, hence, this criminal revision.

Held:

However, in the case at hand the approach of the learned court is wholly erroneous and not in accordance with law as the essential requirement of law has been ignored. The Learned Magistrate merely came to a finding on the basis of what has been recorded in the Admission Register and refused to take into consideration the date of birth recorded in the Admit Card but before that no evidence was recorded nor any opportunity was given to any of the parties to adduce evidence in support of their respective claims. Para 4

Cases cited:

Raju Mitra -vs- State of West Bengal, (2007) 2 C Cr LR (Cal) 88

For Petitioner : Mr. Mrityunjoy Chatterjee

For State : Mr. Sandipan Ganguly

The Court: The present petitioner has been arrayed as an accused in connection with Suti P.S. Case No. 170 of 2010 dated 17th March, 2010 under Section 302 of the Indian Penal Code which is now pending before the Learned Additional Chief Judicial Magistrate, Jangipur being G.R. Case No. 554 of 2010. The aforesaid case was registered on 17th March, 2010 and in connection with the said case the petitioner moved an application for bail on 24th of May, 2010 claiming himself to be a juvenile and prayed for passing of necessary order. In

support of the claim of juvenility, the petitioner along with his application filed a copy of the Admit Card issued by the West Bengal Board of Secondary Education showing that his date of birth was 2nd of April, 1993, whereupon the Learned Magistrate directed the Investigating Officer to verify the genuinity of the same and submit a report. After filing of the report by the police, the matter was again taken up for hearing on 29th April, 2010. Along with the said report police filed a copy of the Admission Register of Aurangabad Boys Primary School which shows that his date of birth was May 15, 1991 and the Learned Magistrate accepting the date of birth recorded in the School Admission Register to be correct one rejected the petitioner's plea of juvenility, hence, this criminal revision.

2. Heard the learned advocates appearing on behalf of the parties. Perused the impugned order as well as the case diary.

3. The Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 while prescribes the procedure to be followed when claim of juvenility is raised before any court, the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 prescribes the procedure to be followed in determination of age. The said provisions are read as follows:-

“Section. 7A. Procedure to be followed when claim of juvenility is raised before any court- (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in

terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

- (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

Rule 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, 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 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 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 of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

4. According to the aforesaid provisions the court has to reach to its finding, whether the accused is juvenile or not, after making an inquiry, involving taking of evidence that may be necessary to determine the age of such accused person and in course of such inquiry the court must allow the juvenile to examine in support of his claim as well as the prosecution to adduce evidence controverting the same by production of necessary documents and examining witnesses in support of the same. However, in the case at hand the approach of

the learned court is wholly erroneous and not in accordance with law as the essential requirement of law has been ignored. The Learned Magistrate merely came to a finding on the basis of what has been recorded in the Admission Register and refused to take into consideration the date of birth recorded in the Admit Card but before that no evidence was recorded nor any opportunity was given to any of the parties to adduce evidence in support of their respective claims.

5. In this connection the observation of this court at paragraph 5 in the case of Raju Mitra -vs- State of West Bengal (2007) 2 C Cr LR (Cal) 88, the attention of this court was drawn by Mr. Ganguly in his usual fairness although appearing on behalf of the State, such observations are quoted below:-

“5. In this matter, the FIR was lodged on 22nd March, 1996 and the incident was prior to that. When an accused raises a plea before the court during enquiry, investigation or trial that he was a juvenile and did not complete particular age on the date of incident, the proper course for the said court is to hold an enquiry to ascertain the age of such accused on the date of incident. During enquiry, the court has to record evidence of parents of the accused as the parents of that person are the best persons to lead evidence before the Court in respect of date, month and year of birth. If parents are not alive, the guardians of the accused who can throw proper and direct light before the Court concerning the date, month and year of birth of the accused should be examined. Besides that, if there is a school certificate showing age of the accused, a reasonable person of the said school should be examined before the court to show what was the age that was recorded in the School Admission Register and what type of information was made before the school when the said accused as student was admitted into the school and what was the age that was recorded in the School Admission Register. The court may also call for records from the concerned office of the Registrar of Births and Deaths for ascertaining whether any information relating to the birth of the said person was registered and what were the date, month and year of such birth and who was the

person who gave such information for registration of birth and how competent the said man was to register the information and if required the court may examine any persons of such office. If the accused was born either in any Matrisadan, Hospital or Nursing Home, any responsible person of such Institution may be called for by the court for examination along with relevant papers for verification relating to the date, month, year as well as the sex of the child who was born in such Institution. After such enquiry on the basis of such oral and documentary evidence, the court would arrive at a decision as to the age of the accused petitioner on the date of the incident. The learned court would also take into consideration the age reflected in the ossification test and after consideration of all such papers the court would arrive at a decision relating to the age of the accused petitioner on the date of incident. The School Admission Register has evidentiary value but cannot be regarded as a conclusive proof to establish the age of the accused petitioner.”

6. In view of above, I am of the opinion that the Learned Magistrate has not acted correctly in accordance with the provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Hence the order impugned cannot be sustained and is accordingly set aside.

7. The learned court below is directed to proceed with the matter in accordance with law and in the light of the observation made by this Hon'ble High Court in the case of Raju Mitra –vs- State of West Bengal (supra). The Learned Magistrate is further directed to commence the inquiry at once upon communication of this order and to conclude the same within time stipulated in the statute.

8. This criminal revisional application is, thus, disposed of.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)