
(2013) 09 MAD CK 0222

In the Madras High Court

Case No : Criminal O.P. No's. 24166 to 24169 of 2013

Master Jithu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 4 MLJ(Cri) 311

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : M.L. Joseph for M/s. Chennai Law Associates and Mr. C. Emalias, app, for the Appellant; C. Emalias, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

P. Devadass, J.—Since the contentions are common in the four petitions, similar order is being rendered. Master Jithu, the petitioner is accused of having committed property offences in association with another person. He has been booked in four cases, by S-7, Madipakkam Police Station, namely, Crime Nos. 534, 1370, 1314 and 1289 of 2013. He has been arrested with reference to these cases and he has been produced before the learned Judicial Magistrate, Alandur, who has remanded him in all the four cases. Now, he has been lodged in Central Prison, Vellore.

2. The submission of the learned counsel for the petitioner is that the petitioner is a "Juvenile in conflict with law". As per the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000, it is the duty of the Magistrate to forward him to the Juvenile Justice Board, Chengalpet. However, in spite of fervent appeal to do so, the learned Magistrate has not taken any action. Consequently, a Juvenile in conflict with law has been mixed with adult accused persons, which is completely against the spirit of the Juvenile Justice Act.

3. Heard the learned Additional Public Prosecutor.

4. The new Juvenile Justice Act 2000, contains many benevolent provisions for the benefit of the Juveniles, who becomes a "Juveniles in conflict with law", since he is alleged to have exhibited a "deviant behaviour" and committed a "delinquent act". A Juvenile in conflict with law cannot be charged. He shall not be mixed with adult accused persons. He shall be kept in a Government observation Home. The children are National Wealth and are hopes of future of this Nation. The idea of the Juvenile law is not to push them, but to reform and rehabilitate them and bring them back to the main stream of life.

5. Now, in this case, the petitioner has been produced before the learned Judicial Magistrate, Alandur, by the police mentioning that he is a person of 20 years old. Thus, the learned Magistrate treated him like an adult accused.

6. There are many instances, where in the remand report, police mentions inflated version as to the age of the Juvenile to show him as an adult accused. Some times, the person in police captivity will be tutored to declare falsely that he is a major before the Magistrate. It is because of the reason that there are many practical difficulties for the police to produce the arrested person before the Juvenile Justice Board and the procedure there is also not conducive for the regular police. Some times, the Juvenile themselves pretend to be adult person making false statement as to their age as they wish to be along with the company of the adult co-accused in an adult prison than the Government observation Home, where there is more restriction for the Juvenile in Conflict with law.

7. It is pertinent here to mention that at that stage, if the Magistrate has got reason to entertain a doubt as to the age of the person produced, it is his duty to hold a preliminary enquiry as to his age, on the date of commission of the offence and take further action as prescribed under the Juvenile Justice (Care and Protection of Children) Act 2000.

8. In this case, the uncle of the petitioner produced school transfer certificate of the petitioner (in Hindi with English translation). As per that, the petitioner is far below 18. However, the learned Judicial Magistrate, Alandur, not properly dealt with the matter, simply returned it, consequently, the petitioner is kept in a regular jail along with adult (accused persons). This is not in accordance with law.

9. Keeping a Juvenile in conflict with law along with adult accused person is a very serious matter. In fact, the Sessions Judges and the Chief Judicial Magistrates, have the power to make surprise visit to the jails and verify whether any Juvenile in conflict with law is kept along with adult accused persons and if a Juvenile is there, immediately they have to take action as per law because it is a human right violation.

10. As per Section 2(K) of New J.J. Act, 2000 a uniform age of 18 years has been fixed both for the male and female Juveniles. When a Juvenile commits a delinquent act (offence), he becomes a "Juvenile in conflict with law".[See: Section 2(I)].

11. The first and foremost thing is determination of the age of person " as on the date of commission of the offence". (see Hari Ram Vs. State of Rajasthan and Another,).

12. In Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, , a three Judge Bench of the Hon"ble Apex Court, directed that where a person produced before a Magistrate is stated to be 21 years old, the Magistrate shall must determine his age on the date of the alleged commission of the offence. It is the mandatory duty imposed on the Magistrate"s.

13. As regards "age determination enquiry, it is relevant to note Section 49 of New J.J. Act. and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 27.

14. 49 Presumption and determination of age:-

(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

15. Rule 12 Procedure to be followed in determination of Age:-

... 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....

16. In the circumstances, the learned Judicial Magistrate, Alandur, is directed to hold enquiry as to the age of the petitioner on the date of alleged commission offence and if it is below 18, he shall immediately take further action as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder. It is made clear that this enquiry shall be completed within three days from the date of receipt of a copy of this order. The learned Judicial Magistrate, Alandur, is also directed to submit an action taken report to the learned Principal Sessions Judge and Chief Judicial Magistrate, Chengalpet. With this direction, the Criminal Original Petitions are disposed of.