

(2013) 05 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1672 of 2013

Nanuram @ Nanchuram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 7A

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 365, 394

Citation : (2013) 3 WLN 183

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Laxman Meena, Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.—The present petition under Sec. 482 Cr.P.C has been filed praying that the order dt. 4.4.2013 passed by the Addl. District Judge, Chomu, Jaipur whereby he had accepted the revision petition and had disturbed the order passed by the Magistrate be set aside. Counsel for the petitioner has submitted that the petitioner has been nominated as an accused in FIR No. 140/2012 registered at PS Kaladera for the offences under Secs. 365, 302, 201, 394 and 120-B IPC. Counsel states that when the case was committed, petitioner was produced before the Magistrate, then a plea was raised regarding juvenility of the petitioner. It is stated that vide Annexure P-2, the learned Magistrate relying upon transfer certificate and scholar register had held that the petitioner was born on 30.10.1996 and his age on day of occurrence was 15 years and 9 months. Counsel submits that however the Court of Addl. Sessions Judge while exercising revisional jurisdiction had set aside the order primarily relying upon Section 7A of the Juvenile Justice (Care and protection of Children) Act.

2. Counsel for the petitioner has stated that for determining the age of the

petitioner, the Court had to take into consideration Rule 12.3 of the Juvenile Justice (Care and Protection of Children) Rules 2007, It shall be apposite here to reproduce Rule 12.3, which reads as under.

12.3. 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 equivalent certificates if available 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.

3. Counsel for the State has submitted that the charge sheet has been submitted and therefore the inquiry regarding juvenility is required to be conducted by the concerned Juvenile Justice Board.

4. After hearing counsel for the parties, it is apparent that neither concerned Magistrate while determining the age nor the learned Addl. Sessions Judge while accepting the revision has considered the application of Rule 12.3 of the Rules.

5. Consequently, the orders passed by the Magistrate and the revisional Court are set aside and the matter is remanded back to the concerned Juvenile Justice Board to hold an inquiry to determine the age of the petitioner after recording evidence in terms of Rule 12.3 of the Rules. The inquiry shall be concluded by the concerned Juvenile Justice Board within three weeks from the receipt of copy of this order. At this juncture, counsel for the petitioner submits that the petitioner has been granted bail by the High Court. That being so, there would be no fetter on the bail already secured by the petitioner and same shall enure till the conclusion of the inquiry or trial as the case may be.