

(2011) 07 GUJ CK 0007
In the Gujarat High Court

Case No : Criminal Revision Application No. 460 of 2010 with Criminal Miscellaneous Application No. 7731 of 2011 in Criminal Revision Application No. 460 of 2010

State of Gujarat

APPELLANT

Vs

Koli Babubhai Virjibhai

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366, 376(2)

Citation : (2011) 3 GLH 277

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : K.P. Raval, APP, for the Appellant; Sanjay Prajapati for Respondents 1, for the Respondent

Judgement

Mr. M.R. Shah, J.—Present Criminal Revision Application has been preferred by the applicant - State of Gujarat to quash and set aside the impugned order dated 02.08.2010 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Palanpur below Exh.28 in Special Case No.44/2009, by which the learned trial Court has allowed the said application submitted by the respondent - co-accused to transfer the trial to juvenile Court so far as he is concerned.

2. That offence came to be registered against the respondent herein - co-accused alongwith other accused persons punishable u/s 363, 366, 376(2) of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") After the investigation, all the accused persons came to be charge-sheeted and the case was committed to the Sessions Court and the trial was going on before the learned trial Court. That during the course of the trial, respondent herein co-accused submitted the application Exh.28 to the effect that he was minor at the time of commission of offence and therefore, his case was required to be referred to Juvenile Court. In support of his case that he was minor at the relevant time, respondent relied upon the school leaving certificate wherein his date of birth

was mentioned as 01.06.1991. That the said application was opposed by the State by submitting that as per the certificate issued by the Gram Panchayat, under the provisions of Birth and Death Registration Act, produced at Exh.48, his date of birth is 26.12.1989 and therefore, at the relevant time when the offence was committed, he was major. Despite the above, the learned trial Court passed the impugned order accepting the case on behalf of the respondent relying upon the school leaving certificate and held that at the relevant time the respondent was minor and therefore, passed an order to transfer the case against him to the Juvenile Court. Being aggrieved and dissatisfied with the impugned order, the State has preferred the present Criminal Revision Application.

3. Though served, nobody appears on behalf of respondent.

4. Shri K.P. Raval, learned Additional Public Prosecutor has vehemently submitted that the impugned order passed by the learned trial Court is absolutely illegal and contrary to the settled proposition of law and even contrary to the evidence on record which deserves to be quashed and set aside.

4.1. It is further submitted that the learned trial Court has materially erred in not properly appreciating the documentary evidences Exhs.47 and 48 i.e. certificate issued by Talati cum Mantri under the provisions of Birth and Death Registration Act as well as zerox copy of the register of the relevant year 1989. It is submitted that learned trial Court has materially erred in giving more weightage to school leaving certificate rather than the certificate issued by the competent Authority issued under the provisions of Birth and Death Registration Act. It is submitted that as such the certificate issued by the Authority under the Birth and Death Registration Act is required to be considered as a conclusive proof and/or it should be given more weightage rather than the school leaving certificate. Shri Raval, learned Additional Public Prosecutor has relied upon the decision of the Hon"ble Supreme Court in the case of Sidheswar Ganguly Vs. The State of West Bengal, Criminal Law Journal Pg.8491 (Head Note B) and the decision of this Court in the case of Ashokkumar Amrutlal Patel Vs. State of Gujarat, in support of his prayer to allow the present criminal revision application.

5. As stated hereinabove, though served nobody appears on behalf of respondent No.2 and after respondent No.2 was served, the matter has been adjourned time and again. The application has been submitted by other co-accused persons being Criminal Miscellaneous Application No.7731/ 2011 for vacating the ad-interim relief order as because of the interim order passed by this Court, the trial against them is not proceeding further and they are in jail. Therefore, the revision application is heard ex-parte.

5.1. Having heard Shri Raval, learned Additional Public Prosecutor and considering the impugned order as well as record and proceedings which has been received from the trial Court, it appears that it was the case on behalf of the respondent that his date of birth is 01.06.1991 and in support of his case, he has relied upon the school leaving certificate issued by the school. However, on

the other hand, the State has relied upon documentary evidence produced at Exhs.47 and 48 i.e. certificate issued by the competent Authority - Talati cum Mantri issued under provisions of Birth and Death Registration Act as well as the zerox copy of the register of the relevant year 1989 showing the date of birth of respondent as 26.12.1989. Despite the above, documentary evidences produced at Exhs.47 and 48, the learned trial Court has relied upon the entry in the school leaving certificate and has given more weightage to the school leaving certificate rather than the certificate issued by the competent Authority under the provisions of Birth and Death Registration Act. It appears that the learned trial Court has not believed the certificate issued by the competent Authority under the Birth and Death Registration Act on the ground that in the said certificate the name of respondent is not mentioned. However, the same is mentioned as "Babo". However, it is to be noted that in the said certificate, name of the father of the respondent as well as father and mother of the respondent has been mentioned. The learned trial Court ought to have appreciated that when there is a conflict between the school leaving certificate and the certificate issued by the competent Authority issued under the Birth and Death Registration Act, entry in the certificate issued by the competent Authority under the Birth and Death Registration Act as well as entry in the register maintained by the competent Authority is required to be considered and/or given more weightage than the entry in the school leaving certificate. From the certificate issued by Talati cum Mantri Exh.47 which is supported by the zerox copy of the register of the relevant year 1989, the date of birth of the respondent is mentioned as 26.12.1989 and therefore, at the relevant time when the offence was committed, the respondent was major. Under the circumstances, the learned trial Court has materially erred in allowing the application Exh.28 and transferring the case against the respondent to Juvenile Court. Considering the above, impugned order passed by the learned trial Court cannot be sustained and the same deserves to be quashed and set aside.

6. In view of the above and for the reasons stated above, present criminal revision application succeeds. The impugned order dated 02.08.2010 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Palanpur below Exh.28 in Special Case No.44/2009 is hereby quashed and set aside and it is ordered that the respondent be tried alongwith other co-accused persons by the learned trial Court. Rule is made absolute accordingly. Ad-interim relief granted earlier is directed to be vacated forthwith. Registry is directed to send-back the R & P of the trial Court immediately and the learned trial Court is directed to conclude the trial at the earliest.

7. In view of the disposal of criminal revision application, no order in Criminal Miscellaneous Application No.7731/2011.