

(2011) 07 DEL CK 0237
In the Delhi High Court
Case No : Criminal Appeal No. 106 of 1998

Suresh	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 7A, 7A(2)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12(2), 12(3),
19, 3

Citation : (2012) 1 RCR(Criminal) 922

Hon'ble Judges : S. Ravindra Bhat, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Sumeet Verma, Amicus Curiae, for the Appellant; Lokesh Sawhney, APP For the State, for the Respondent

Judgement

S. Ravindra Bhat, J.—This Court had, on the previous date of hearing, directed the police to verify the Certificate issued by the Government School Pilkhi, PS Sakra, District Muzaffarpur, Bihar, which states that the Appellant's date of birth is 09.09.1974. The document had been issued on 03.02.1988. The learned APP has produced the verification report. The report encloses the duly attested copy of the Certificate produced by the Appellant as well as the statement of one Mr. Ram Narayan Mishra, the Head Master of Government Middle School. The status report. Learned Amicus Curiae for the Appellant urges that in view of the status report placed on record by the prosecution, the enquiry contemplated u/s 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as "Juvenile Justice Act") has been completed and the consequence which would flow naturally on an application u/s 7A(2) should be applied. He further urges that the Appellant does not wish to press the proceedings further and that having regard to the entirety of circumstances, the Court may not remit the matter for consideration by Juvenile Justice Board or by the competent authority under the Juvenile Justice Act. It is urged that even if the Appellant was found to be implicated and convicted for the offence, he would have been

under the supervision of a correction facility by virtue of Section 15 for a period of 3 years. The Appellant has undergone about 11 year's imprisonment. The incident in this case occurred on the night intervening 14.03.1991. The Certificate which was relied upon by the Appellant states that he was born on 09.09.1974. The State's verification report reads as follows :-

Most respectfully, it is submitted that H.C. Kamal Singh No. 231/SW was sent for verification of school leaving certificate of Suresh Kumar S/o. Dhayani R/o V.P.O. Pilkhi, Distt. Muzaffarpur (Bihar) in present matter of Crl. A. No. 106/1998. Sh. Ram Narayan Mishra, the Head Master of Govt. Middle School Pilkhi Distt. Muzaffarpur (Bihar) was contacted and asked to verify the certificate in R/o. Sh. Suresh Kumar. The Head Master told that all the documents of School record prior to year 2004 have been destroyed and are not available due to the flood in the area in the year 2004. However, the head Master has verified and given in writing that this school leaving certificate of Suresh Kumar had been issued from Govt. middle School, Distt. Muzaffarpur (Bihar) Statements of two of residents of village Pilkhi are enclosed for kind perusal. The original school leaving certificate is also enclosed.

2. Learned A.P.P. urges that the report should not treat the Certificate or the statement of the Head Master as conclusive and should take further test for age verification of the Appellant, Suresh. It was submitted that since the Certificate in the present case only mentions about the date of birth incidentally, and is in fact a transfer Certificate, it does not answer the description of a Birth Certificate under Rule 12 (2)(3)(a)(i), (ii)(iii) &(h) of the Juvenile Justice Rules framed in 2007. This Court is unable to subscribe to the interpretation advanced by the learned APP. Rule 12(2)(3)(a)(i), (ii)(iii) &(b) of the Juvenile Justice Act reads as follows :-

12. Procedure to be followed in determination of Age - (1) In every case concerning a child or it 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 it juvenile in conflict with law within a period of thirty days from the date of making of the application for that propose.

(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 enquiry 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.

3. It is thus evident that in the event a Birth Certificate is produced in the proceedings held by the Court to enquire into the correct age of the juvenile, the Court has to address itself as to whether it answers to the description given in sub Rule 3 of Rule 12. Here we can state that Act and Rules are benevolent provisions which prescribed for sub procedure in respect of juveniles. Thus the Court has to take a liberal construction of the enactment of the Rules framed which are it part of the principle Act. If such an approach is taken, the description of "Birth Certificate" in Rule 12(3)(a)(i), (ii)(iii) & (b) should be read broadly in a generic manner and not confine it to a Birth Certificate. This is specially so having regard to the Indian conditions. In the present case, the Appellant had studied in a Village Government School in Bihar. It is a known fact that not everyone can produce a Birth Certificate and by and large in the Villages and Rural Areas, the best proof of birth which authorities rely upon is a School Leaving Certificate. In these circumstances, this Court is of the opinion that this answers description of date of Birth Certificate under Rule 12(3)(a)(i), (ii), (iii) & (b). Consequently, by virtue of Rule 12(3)(a)(i), (iii) & (b), further enquiry by obtaining opinion is expressly precluded. In view of the above discussion and having regard to the statement made on behalf of the Appellant the Court hereby takes on record the status report in regard to his date of birth. As a result, the Appellant is entitled to be set at liberty since he has served more than 3 years prescribed under the Juvenile Justice Act. In view of the statement made on his behalf, no further enquiry into his charges is answered. The bail and surety bonds furnished on behalf of the Appellant are hereby discharged.

The Appeal is disposed of in the above terms.