
(2007) 03 MAD CK 0187

Madras High Court (Madurai Bench)

Case No: Criminal R.C. No"s. 77 and 78 of 2007 and M.P. No"s. 1 and 1 of 2007

S.K. Mydeen (as per
the charge sheet) M.S.
Moideen Abdul Kader
(Real Name)

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: March 21, 2007

Acts Referred:

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 20
- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 302, 326

Citation: (2007) 03 MAD CK 0187

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: T. Lajapathy Roy, for the Appellant; M. Ravishankar, Government Advocate (Crl. Side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G. Rajasuria, J.

These Criminal Revision Petitions have been filed to call for the records in Cr.M.P. Nos. 13 of 2007 and 12 of 2007 in S.C. Nos. 230 of 2005 and 229 of 2005 respectively, on the file of the Additional Sessions Court cum Fast Track Court No. I, Tirunelveli and set aside the orders passed therein.

2. A resume of facts absolutely necessary for the disposal of these petitions would run thus:

The respondent police registered a case in Cr. No. 234 of 1997 under Sections 120-B, 147, 449, 452 and 302 read with 148 and 427, 326 read with 34 I.P.C and ultimately laid the police report. The police also registered a case in Cr. No. 233 of 1997 under Sections

120-B, 147, 449, 452 and 302 read with 148, 427, 326 read with 34 I.P.C and laid the police report. Both the cases have been taken on file and pending as S.C. Nos. 230 of 2005 and 229 of 2005 on the file of the Additional Sessions Court - cum - Fast Track Court No. I, Tirunelveli.

3. The nitty gritty of the grievance of the petitioner is that as on the date of the alleged offence, the petitioner herein was a juvenile aged 14 years and 8 months as his date of birth was 19.11.1982 as revealed by the school certificate. Accordingly, he prayed for separating the case of the petitioner from the other accused and for transferring his cases to the Juvenile Justice Board for being dealt with as per law.

4. Per contra, the learned Government Advocate (Criminal Side) would highlight that these matters have been pending for more than a decade and there was no whisper at all about the status of the petitioner as a juvenile as on the date of the commission of the offence; only, when the matters are nearing completion and the judgments have to be pronounced, the petitioner has chosen to petition the same Court raising this issue, thereupon, the learned Sessions Judge also considered the matter and passed a detailed order to the effect that the petitioner could not be treated as a juvenile; the Judge also referred to Section 20 of the Current Juvenile Justice Act and accordingly, dismissed the prayer of the petitioner and that no interference is warranted.

5. Heard both sides in entirety.

6. The indubitable and incontrovertible facts are to the effect that the petitioner is facing two sessions cases before the learned Additional Sessions Judge - cum - Fast Track Court No. I, Tirunelveli, and both the cases are murder cases. Trait, the legal position, is that if really, as on the date of the commission of the offence, the petitioner herein was below 16 years, then without mincing words and without any hesitation, the petitioner should be ordered to be produced only before the Juvenile Justice Board and Section 20 of the Current Juvenile Justice Act will not be come into operation as it is obvious that only relating to the accused who were above 16 years and below 18 years at the time of the commission of the offence, Section 20 of the new Act will have the operation and it is quite obvious and no more elaboration is required in this regard.

7. In this connection, the decision of the Honourable Apex Court in Pratap Singh v. State of Jharkhand and Anr. reported in 2005 1 L.W.(CrI.)405 could also be fruitfully and profitably cited. An excerpt from it could be reproduced hereunder for ready reference:

36. We, therefore, hold that the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 01.04.2001.

37. The net result is:

(a) The reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 01.04.2001.

38. The appeal stands disposed of in the above terms.

8. The perusal of the Judgment of the learned Sessions Judge fails to carry conviction with this Court for the reason that no birth certificate was produced before him and he has not referred to Medical Board the petitioner for getting opinion. If birth certificate is available, the same could be relied on. In the absence of birth certificates, the authority should necessarily ask for medical opinion from the Medical Board. But, in this case, it has not been done so. Both sides in unison prayed for sending back the matter to the learned Sessions Judge for enquiring into the factum of the petitioner's age as on the date of the commission of the offence after obtaining medical opinion from the Medical Board.

9. The learned Counsel for the petitioner would make an extempore representation to the effect that while the learned Sessions Judge is enquiring into the matter, the petitioner's evidence also might be considered as he is also ready to produce some school authorities.

10. The learned Government Advocate (Criminal Side) would correctly submit that even though the petitions filed by the petitioner are actuated by malafide intention, yet because of the legally settled procedure, importance/ significance should be attached to the petitioner's representation. Much water has been flown under the bridge. The petitioner who was defended by his lawyer, has chosen to keep quiet all along and that delay aspect on the petitioner's side should be depreciated. Be that as it may, there is no estoppel against the law. At any stage, the issue can be raised. The reason for highlighting the delay is that there should not be any further delay as there are two murders involved in one case and one murder is involved in another case and it cannot be viewed lightly.

11. Hence, time limit should be fixed necessarily and the learned Additional Sessions Court cum Fast Track Court No. I, Tirunelveli, is directed to complete the entire process relating to these matters within one month from the date of receipt of a copy of this order and the judgments have to be pronounced, keeping in view the law points detailed and delineated above. Inasmuch as the matter has been pending before the learned Sessions Judge for a long time and it is just and necessary for the learned Sessions Judge himself to assess the age of the petitioner as on the date of the commission of the offence. Both sides shall co-operate and no further extension shall be granted. Accordingly, both the Criminal Revisions Cases are disposed of. Consequently, connected M.P.(MD)Nos.1 and

1 of 2007 are also closed.