

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JUNE 2022 / 16TH JYAISHTA, 1944

CRL.MC NO. 599 OF 2021

AGAINST THE ORDER/JUDGMENT IN SC 768/2019 OF SUB COURT,
CHENGANNUR FROM CMP.NO.5006/2017 OF THE JFCM-I, CHENGANNUR
TO QUASH ANNEXURE A COMPLAINT AND ALL FURTHER PROCEEDINGS
PURSUANT TO THE SAME IN SC 768/2019 OF THE COURT OF THE
ASST.SESIONS JUDGE, CHENGANNUR

PETITIONER/ACCUSED NO.4:

ARJUN REGHU,
AGED 23 YEARS,
S/O.RAGHUTHAMADAS, ASARIPARAMBIL,
SN SADANAM, MULAKUZHA P.O., PIN-689505,
ALAPPUZHA DISTRICT.

BY ADVS.

JACOB P.ALEX

SRI.JOSEPH P.ALEX

SHRI.MANU SANKAR P.

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.

2 G.DANIEL @ SUNNY,
AGED ABOUT 65 YEARS,
S/O.GEORGE, PUTHENVEEDU, PIRALASSERI MURI,
MULAKUZHA P.O., PIN-689505, CHENGANNUR, ALAPPUZHA
DISTRICT.

BY ADVS.

SRI.RINNY STEPHEN CHAMAPARAMPIL

SMT.ASHA ELIZABETH MATHEW

SRI C.S.HRITHWIK, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
17.05.2022, THE COURT ON 06.06.2022 PASSED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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CrI.M.C.No.599 of 2021
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Dated this the 6th day of June, 2022

O R D E R

The petitioner, who got arrayed as accused No.4 in S.C.No.768 of 2019 pending before the Assistant Sessions Judge, Chengannur, has initiated this proceedings under Section 482 of the Code of Criminal Procedure.

2. The prayer herein is to quash Annexure A complaint, Annexure B order and all further proceedings pursuant to the same in S.C.No.768 of 2019 pending before the Assistant Sessions Court, Chengannur.

3. Heard the learned counsel for the petitioner, the learned Public Prosecutor as well as the learned counsel appearing for the

defacto complainant.

4. It is argued by the learned counsel for the petitioner that as on the date of occurrence, ie. on 10.08.2013, the petitioner was aged 15 years and 9 months, therefore, the petitioner should have to be dealt under Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the J.J Act' for short) and the relevant provisions to deal with a juvenile. According to the learned counsel for the petitioner, Annexure A private complaint was lodged based on false allegations, arraying the petitioner as a person, aged 26 years, among other accused alleging commission of offences under Sections 324, 326, 308 r/w 34 I.P.C. The Judicial First Class Magistrate Court-I, Chengannur, conducted enquiry under Section 202 of the Cr.P.C and after having satisfied that the complainant had made out a prima facie case, cognizance was taken for the said offences and ultimately the case was committed to the court of Sessions since the offence under

Section 308 I.P.C, one exclusively triable by a court of session also involved. It is submitted by the learned counsel for the petitioner further that, in this matter, the question of juvenility is not raised before the committing court or before the Sessions Court so far.

5. The learned counsel for the petitioner placed heavy reliance on Annexure C birth certificate of the petitioner showing his date of birth as 10.05.1997 and Annexure D, copy of Secondary School Leaving Certificate (SSLC) showing the same as the date of birth, to assert the point that the petitioner was a minor at the time of occurrence.

6. On perusal of Annexures C and D, it could be gathered that as on the date of occurrence, the petitioner completed 15 years and 9 months and he was a juvenile. Though the learned counsel for the defacto complainant opposed quashment of this proceedings, he also conceded the age of the petitioner as shown in Annexures C and D. The learned Public Prosecutor also not

disputed the said fact. In view of the above factual scenario, the following questions arise for consideration:

(i) What is the procedure to be followed when a person claims juvenility in a regular court where he got arrayed as an accused?

(ii) What is the mode of proof in the matter of juvenility and the burden is upon whom?

(iii) Once it is found that the claim of juvenility in the affirmative, what should be the procedure to be followed?

7. Admittedly, in this matter trial not started so far. In this connection, I would like to refer a recent decision rendered by the Apex Court reported in [2021 KHC 6718], ***Rishipal Singh Solanki v. State of Uttar Pradesh & Ors.*** In the said case, while dealing with the claim of juvenility raised by one among the accused, the Apex Court laid down the following principles:

“Dismissing the appeal, the Court held (B.V.Nagarathna, J.):

(i) A claim of juvenility may be raised at any stage of a

criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of S.9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, S.94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of S.94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of S.9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under S.94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under S.94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned Criminal Court, is higher than when an inquiry is made by a Court before which the case regarding the commission of the offence is pending (vide S.9 of the JJ Act, 2015).

(iii) *That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in R.12(3)(a)(i), (ii) and (iii) of the JJ R.2007 made under the JJ Act, 2000 or sub-section (2) of S.94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.*

(iv) *The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.*

(v) *That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal Court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of S.94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.*

(vi) *That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.*

(vii) *This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the*

accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the Court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per S.35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., S.35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in S.94(2) of the JJ Act, 2015.”

8. Following the ratio in ***Rishipal Singh Solanki v. State of Uttar Pradesh & Ors.***'s case (*supra*), when an application

claiming juvenility is raised before a court, it would be addressed under sub-sections (2) and (3) of Section 9 of the J.J Act. But when a person is brought before a Committee or Juvenile Justice Board, Section 94 of the J.J Act would govern the proceedings. When the claim of juvenility is raised, the burden is on the person raising the claim to satisfy the Court, to discharge the initial burden and the documents mentioned in Rule 12(3)(a)(i), (ii) and (iii) of the JJ Rule, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the J.J Act shall be sufficient for *prima facie* satisfaction of the Court to find the question of juvenility. Similarly, it is also held that hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

9. In view of the above settled law, the question of juvenility raised by the petitioner herein has to be considered by the Assistant Sessions Judge as provided under Section 9(2) and (3) of

the J.J Act. In view of the matter, the proceedings before the Assistant Sessions Judge in so far as the petitioner is concerned, is reverted back to the stage before Section 228 of the Code of Criminal Procedure and the proceedings subsequent to that stage shall stand quashed.

10. Accordingly, this Crl.M.C shall stand allowed in part with direction to the Assistant Sessions Judge, Chengannur to decide the plea of juvenility raised by the petitioner as provided under Section 9(2) and (3) of the J.J Act and take appropriate decision.

The learned Assistant Sessions Judge is directed to complete the said exercise within a period of 2 months from the date of receipt of a copy of this order.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.MC 599/2021

PETITIONER'S ANNEXURES

- ANNEXURE A CERTIFIED COPY OF THE CMP NO.5006 OF
2017 BEFORE THE COURT OF THE JUDICIAL
FIRST CLASS MAGISTRATE I, CHENGANNUR.
- ANNEXURE B CERTIFIED COPY OF THE ORDER DATED
19.10.2017 IN CMP NO.5006 OF 2017 BEFORE
THE COURT OF THE JUDICIAL FIRST CLASS
MAGISTRATE-I, CHENGANNUR.
- ANNEXURE C TRUE COPY OF THE BIRTH CERTIFICATE OF
THE PETITIONER BEARING REGISTRATION
NO.2285/1997.
- ANNEXURE D TRUE COPY OF SECONDARY SCHOOL LEAVING
CERTIFICATE OF THE PETITIONER.