

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Cr. Rev. No. 10/2007

Cr. M. P no. 10/2007

Date of decision: 29.10.2008

Mohammad Kalam

Vs.

State

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. Narinder Kumar Attri,
Advocate.

For Respondent(s) : None.

i) Whether approved for reporting
in Press/Journal/Media : **Yes**

ii) Whether to be reported
in Digest/Journal : **Yes**

Mohammad Kalam, a resident of Raniganj Bihar, when produced before learned 3rd Additional Sessions Judge, Jammu for his trial under Section 302 RPC projected his juvenility to oust the jurisdiction of the Court to hold the trial.

Acting in accordance with the provisions of the Jammu and Kashmir Juvenile Justice Act, 1997 (hereinafter referred to as the Act), the Additional Sessions Judge directed the Chief

trate, Jammu to hold inquiry as to the juvenility or otherwise of Mohammad Kalam in terms of the provisions of the Act.

It appears that Mohammad Kalam had produced (1) a Birth Certificate issued by Dr. Debbrata Choudhary, Ex-Medical Officer, Durgapur Steel Plant Mondal Medicine near Bhiringi T. N. School, Nachan Road, Durgapur and another certificate issued by Registrar Durgapur Municipal Corporation under section 12/17 of the Registration of Birth and Deaths Act 1969 incorporating Mohammad Kalam's date of birth as 1st January 1987 to support his contention that he was a juvenile at the time of the alleged commission of offence.

During the course of the inquiry, the Chief Judicial Magistrate, considered it fit and proper to get petitioner Mohammad Kalam examined by Standing Medical Board of Government Medical College and Associated Hospital, Jammu, which after his examination had certified him to be more than twenty years of age at the time of the examination.

the opinion of the Board, the Chief Judicial Magistrate, held him to be more than Seventeen years of age at the time of the commission of the offence, i.e., on 11.02.2002 and accordingly, as desired, transmitted the records to the Additional Sessions Judge, Jammu.

Aggrieved by the Chief Judicial Magistrate's order of 02.07.2005, the petitioner has approached this Court calling in question the findings of the Chief Judicial Magistrate whereby the petitioner had been held major.

I have heard learned counsel for the petitioner alone as none had opted to defend the State.

Learned Chief Judicial Magistrate appears to have been swayed by the concession made by Mrs. Surinder Kour, the petitioner's Advocate who, in view of the report of the Medical Board had opted not to lead any evidence in respect of the juvenility of the petitioner, in determining the age of the petitioner without holding any inquiry into it.

icial Magistrate's records indicate that he had opted to get the petitioner examined by the Medical Board as the genuineness of the certificates produced by the petitioner had been seriously disputed by the Government Prosecutor defending the State.

The question that, in view of the submissions of petitioner's learned counsel, falls for consideration in this petition is as to whether the learned Chief Judicial Magistrate was right in concluding his findings on the issue of petitioner's juvenility or otherwise on the basis of the report which he had received from the Medical Board or was it obligatory on him to hold inquiry, summon the Medical Board and the functionaries who had issued the certificates evidencing the minority of the petitioner.

In order to examine and resolve the above issues, regard needs to be had to the provisions of Section 32 of the Act which are reproduced hereunder for facility of reference:

“32. Presumption and determination of age

(1) Where it appears to a competent authority that a person brought before it under any of the

this Act (otherwise than for the purpose of evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.”

The expressions “shall make due inquiry” and “shall take such evidence as may be necessary” appearing in Section 32 (1) make it explicit that the Legislature has cast a duty on the competent authority to devise such mode of inquiry as may be considered by it to be necessary for arriving at the conclusion regarding the age of the person whose juvenile status is required to be determined.

In case the authority entertains any doubt about the age as claimed by the accused, it has to hold an inquiry with sensitivity keeping in view the beneficial nature of the Socially Oriented Legislation, because otherwise the object of the Act would be frustrated and the effort of the Legislature to reform the delinquent child and

is the useful limb of the Society would be frustrated.

The inquiry which the Legislature mandates the competent authority to conduct, cannot thus be dependent on the concessions of one or the other party appearing before it. The authority is thus required to be satisfied on its own regarding the juvenility or otherwise of the accused and for that purpose has to contemplate the sources where from all available material regarding the age of the accused could be had.

In order to come to a definite conclusion regarding the age of the accused, reliance may be placed by the competent authority on the reports of the Medical Board, Doctors' opinion and on such other documents recording the date of birth of the accused. But before doing that it is required to examine the persons and authorities who had issued such certificates and opinions and provide opportunity to the parties appearing before it to cross-examine such person or authorities when they appear in the Court to support their certificates or opinions. Parole evidence, if found

and reliable may also be relied upon by the authority while formulating its opinion on the issue. The authority is required to spell out reasons before coming to a definite conclusion regarding the age of the accused.

Learned Chief Judicial Magistrate, Jammu has determined the petitioner's age without taking any steps to examine the functionaries of the Medical Board which had given opinion regarding the age of the accused or providing any opportunity to the accused to cross-examine the authorities which had opined his age more than Sixteen years at the time of the occurrence. He has further omitted to take steps to summon the person and the authority which had issued the certificates which had indicated the petitioner a juvenile at the time of the commission of the offence.

Learned Magistrate has, therefore, grossly erred in omitting to take requisite measures for holding "due inquiry" as contemplated by Section 32 to determine the age of the petitioner. He has erred in relying upon the opinion of the Medical

recording their statements and providing opportunity to the petitioner to cross-examine them. Learned Magistrate has thus acted in haste in proceeding to conclude the inquiry merely on the ground that the Learned Advocate of the petitioner had opted not to lead any evidence in the case. Rather than acting on the concession, the Learned Magistrate should have proceeded to summon the persons who had issued certificates regarding the date of birth of the petitioner and provided opportunity to the petitioner to cross-examine the doctors who had opined him to be more than Seventeen years of age at the time of commission of the offence so that the purpose underlying Socially Oriented Legislation of Jammu and Kashmir Juvenile Justice Act, 1997 was not defeated.

I, therefore, find learned Chief Judicial Magistrate to have erred in omitting to hold requisite inquiry in terms of Section 32(1) Act. His finding that the accused was more than seventeen years of age at the time of the commission of the

is vitiated in the absence of due inquiry in terms of Section 32 (1) of the Act.

Allowing this petition and setting aside impugned order dated 02.07.2005, I would accordingly direct learned Chief Judicial Magistrate, Jammu to hold fresh inquiry in accordance with law into the age of the petitioner at the time of the commission of the offence in terms of Section 32 (1) of the Act.

(J. P. Singh)
Judge

JAMMU:
29.10.2008.
Tilak, CS



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