

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CRL.REVN.P. NO.(SH)49/2013

1. Shri.Witting N Marak,
S/o (L) F. Sangma,
Aged about 47 years,
(Father of Shri.Ribrak M. Sangma Juvenile/Accused).
2. Shri.Peturi K. Marak,
S/o (L) M. Sangma,
Aged about 45 years,
(Father of Shri.Laston Marak Juvenile/Accused).
3. Shri.Simichar R Marak,
S/o (L) K. Marak,
Aged about 40 years,
(Father of Shri.Platon C. Marak Juvenile/Accused).
4. Shri.Asanur Islam,
S/o Shri. S. Bapari,
Aged about 38 years,
(Father of Shri.Tobath A. Sangma Juvenile/Accused)
All residents of Williamnagar,
East Garo Hills, Meghalaya. :::: Petitioners

- Vrs -

1. State of Meghalaya,
Represented by the Chief Secretary,
Govt. of Meghalaya, Shillong.
2. The Secretary,
Govt. of Meghalaya,
Department of Home and Police Affairs,
Meghalaya, Shillong.
3. The Superintendent of Police,
East Garo Hills District, Meghalaya.
4. The Investigating Officer,
Williamnagar, PS Case No.4(12)2012,
Williamnagar Police Station,
East Garo Hills District, Meghalaya. :::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioners : Mr. SP Mahanta, Adv

For the Respondents : Mr. K Khan, PP

Date of hearing : **30.07.2013**

Date of Judgment & Order : **30.07.2013**

JUDGMENT AND ORDER (ORAL)

Heard Mr. SP Mahanta, learned counsel appearing for the petitioners and Mr. K Khan, learned PP appearing for the respondents.

2. This criminal revision petition is directed against the order of the Ad-hoc Judge, Fast Track Court, Tura dated 04.07.2013 declining to consider the claim of the petitioners/applicants that they were juvenile at the time of commission of the offence. On bare perusal of the order dated 04.07.2013, it is crystal clear that the learned Ad-hoc Judge, Fast Track Court, Tura had misread Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

3. The petitioners had filed the bail applications before this Court and those bail applications had been rejected by this Court vide order dated 13.05.2013 with the observations that "*let the parties approach the learned Trial Court who shall decide the age of the accused in accordance with law.*" The copies of the said orders of this Court dated 13.05.2013 are available at Annexure-12 (in series).

4. It is requirement of Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000, that whenever a claim of juvenility is raised before any court or a court is of the opinion that the accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall recording a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be. Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000 is quoted hereunder:-

“7 A. Procedure to be followed when claim of juvenility is raised before any court – (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that the accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall recording a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be;

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

Rule 12 of the Juvenile Justice (Care and Protection of Children)

Rules, 2007, reads as follows:-

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

(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 inquiry 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.

(4) *If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.*

(5) *Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.*

(6) *The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under*

the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

5. It is unfortunate that the learned Ad-hoc Judge, Fast Track Court, Tura, who is also a senior Judicial Officer, had misunderstood Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, while passing the impugned order dated 04.07.2013.

6. For the foregoing reasons, the impugned order dated 04.07.2013 is illegal and is accordingly set aside. The learned Ad-hoc Judge, Fast Track Court, West Garo Hills, Tura is directed to determine the claim of the petitioners that they were juvenile at the time of commission of the offence in accordance with the provisions under Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 before further proceeding of the trial against the petitioners.

7. With the above observations and directions, this criminal revision petition is allowed.

JUDGE

LAM