IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE G.GIRISH

Monday, the 9th day of December 2024 / 18th Agrahayana, 1946

CRL.M.APPL.NO.1/2024 IN CRL.A NO. 1394 OF 2011

S.C.634/2006 OF THE ADDITIONAL SESSIONS COURT (ADHOC-I), THODUPUZHA, IDUKKI

APPLICANTS/APPELLANTS 2 & 3/ ACCUSED No.2 & 3:

1. **MAHESH, C.NO.5475, CENTRAL PRISON TRIVANDRUM-695 012.**
2. **RAJESH, C.NO.5497 CENTRAL PRISON TRIVANDRUM-695-012.**

RESPONDENT:

STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

Application praying that in the circumstances stated therein the High Court be pleased to recall the Judgment in Crl.A.No.1394/2011 dated 24/02/2016, arising from S.C.634/2006 of the Additional Sessions Court (Adhoc-I), Thodupuzha, Idukki and may be pleased to allow the petition by setting aside the conviction and sentence against the accused 2 and 3, in the interest of Justice.

This Application coming on for orders upon on perusing the petition and hearing the arguments of SRI.JIJO JOSEPH (STATEBRIEF), and SRI.RAMESH.P, advocates for the appellant and PUBLIC PROSECUTOR, DIRECTOR GENERAL OF PROSECUTION ,SHRI.P.NARAYANAN, SPL. G.P.TO DGP AND ADDL. P.P., SHRI.SAJJU.S., SENIOR G.P for the respondent, the court on the same day passed the following:

'CR'

RAJA VIJAYARAGHAVAN V & G. GIRISH, JJ.

Crl.M.A.No.1 of 2024 in Crl.A.No.1394 of 2011

Dated this the 9th day of December,2024

ORDER

G. Girish, J.

This application is filed under section 362 of the Code of Criminal Procedure to recall the judgment passed by this Court on 24.02.2016 in Crl.A.No.1394 of 2011. The aforesaid case arose from S.C.No.634/2006 on the files of the Additional Sessions Court (Adhoc-I), Thodupuzha which convicted and sentenced the accused Nos.1 to 4 for the commission of offence under Section 302 I.P.C. It is stated that accused Nos.2 and 3 in the said case, the siblings by name Mahesh and Rajesh, were juveniles at the time of commission of the aforesaid crime on 21.05.2004.

2. Accused Nos.2 and 3, who are referred hereafter as petitioners, were arrested in connection with the commission of murder on 23.05.2004. The other two accused in the said case were their parents. The age of the petitioners were shown in the F.I.R as well as the other relevant records prepared by the investigating agency as 20 years and 19 years respectively when they were produced for remand before the Magistrate concerned. They were released on bail in the said crime on 10.08.2004. After the commitment of the case to the Sessions Court, the

trial commenced before the III[rd] Additional Sessions Court (Adhoc-I), Thodupuzha on 27.05.2008. Neither the petitioners nor their parents raised any contention before the Investigating Agency, Magistrate or the Sessions Court that the petitioners were minors at the time of commission of the crime. As per the judgment dated 22.09.2010, the Additional Sessions Court, Thodupuzha convicted the petitioners for the commission of offence under section 302 I.P.C and sentenced them to life imprisonment and fine Rs.10,000/- each. Though the petitioners and the other convicts challenged the aforesaid judgments before this Court, their appeal with number Crl.A.No.1394 of 2011 was dismissed on 24.02.2016 by a Division Bench of this Court in which one among us, Raja Vijayaraghavan, J., was a member.

3. On 11.01.2024, the NALSA issued communications to the Member Secretaries of all State Legal Services Authorities to identify persons currently in prison who were potentially minors at the time of commission of offence, and to assist them in filing necessary applications for raising the claim of juvenility. On the basis of the above direction, the Member Secretary of Kerala State Legal Services Authority visited the prison where the petitioners were lodged and ascertained details from them. The petitioners handed over extracts of their school admission registers to the Member Secretary, in which the date of birth of the 1[st]

petitioner was shown as 10.06.1986, and that of the 2nd petitioner as 10.05.1987, giving the indication that both of them were minors at the time of commission of the offence on 21.05.2004. It is under the above circumstances that the petitioners filed the present application to recall judgment dated 24.02.2016 in Crl.Appeal No.1394 of 2011 stating the reason that there was arithmetical error in calculating the age of accused Nos.2 and 3, who are the petitioners herein. It was further stated in the above application that the State Brief, who represented the petitioners in the Crl.Appeal, omitted to bring the above aspect to the notice of this Court. Accordingly, it was prayed that the judgment dated 24.02.2016 in Crl.Appeal No.1394 of 2011 has to be recalled, and the conviction and sentence of the petitioners have to be set aside.

4. In the above application, this Court passed an order on 07.06.2024 directing the Sessions Judge, Thodupuzha to conduct an enquiry about the juvenility of accused Nos.2 and 3 (petitioners herein) in strict adherence to the Juvenile Justice (Care & Protection of Children) Act, 2015.

5. Accordingly, the Additional Sessions Judge-III, Thodupuzha conducted an enquiry and submitted a report dated 27.06.2024 with the finding that the petitioners were juveniles at the time of commission of

offence. In the above enquiry, the learned Additional Sessions Judge relied on the relevant pages of school admission registers of the petitioners, produced by the head of the institution of that school.

6. After considering the above report and other relevant records relied on by the Additional Sessions Judge, and hearing both sides, this Court passed an order on 08.07.2024 directing immediate release of the petitioners from the prison. In the aforesaid order, this Court took serious note of the lapses on the part of the Circle Inspectors concerned (CW31 & CW32) in ascertaining with actual age of the petitioners and reporting the juvenility of the offenders.

7. Accordingly, the officers concerned as well as the State of Kerala were called upon to explain why they should not be mulcted with liability to pay compensation to the petitioners.

8. Pursuant to the receipt of notice from this Court, the Officers who had conducted the Investigation in this case (CW31 and CW32) filed statement contending that the age of the petitioners were recorded as 22 years and 20 years respectively as per the versions given by them and their parents (accused numbers 1 and 4), and that considering the physical features of the petitioners also, there was no reason to entertain a doubt as to their juvenility. It is further stated that the age difference as

per the admission register of the school is only 10 months and 25 days which gives rise to suspicion about its correctness. It is also stated that as per the birth certificate issued from the Munnar Grama Panchayat, the date of birth of one of the male children of Sebastian and Kuttiyamma (accused Nos.1 and 4) is 04-07-1985, which is totally at variance from the indications in the admission register. The fact that the Magistrate before whom the petitioners were produced, and the trial Judge who had the occasion to see them throughout the trial, did not entertain any doubt about the juvenility of the petitioners, is also pointed out in the statement of the above Officers. Accordingly it is contended by them that they are not liable to pay any compensation to the petitioners.

9. It is most unfortunate that the petitioners had to undergo incarceration in prison for a period of about 14 years due to the failure of the authorities concerned to take note of the fact that they were juveniles at the time of commission of the crime. If their juvenility was disclosed to the Magistrate, who conducted the enquiry, or the Additional Sessions Judge, who conducted the trial, the maximum period of detention they would have to undergo in some observation homes would have been three years. Thus, the petitioners had to suffer detention in prison for a period of 11 years in excess of the period of detention in an observation home,

which would have been ordered by the Juvenile Justice Board, subject to the enquiry before that authority.

10. It is true that the failure of the petitioners to disclose their status as juveniles at the time of commission of crime, is no justification for the regrettable event that happened in this case. But at the same time, it is pertinent to note that the two separate counsel engaged by the petitioners to defend them before the trial court, also failed to bring it to the notice of the presiding Judge that it was for the Juvenile Justice Board to proceed with the enquiry about the commission of the crime by the petitioners. Nor had the Magistrate before whom the petitioners were produced for remand on 23.05.2004, looked into the question whether they were liable to be proceeded against, in accordance with the regular criminal law applicable to the persons who attained the age of majority.

11. The failure of the authorities concerned to take note of the minority of the offenders produced before them, though it is a very serious matter, cannot be attributed to their dereliction of duty since there are no express provisions contained in the Code of Criminal Procedure, Criminal Rules of Practice, Kerala Police Act, Juvenile Justice (Care & Protection of Children) Act, 2000, and the Rules framed thereunder, which require such authorities to cross-check and ensure that the offenders booked and brought before them, are not juveniles. As far as the Magistracy is

concerned, the question whether an offender produced for remand was a minor or not would be looked into only in such cases where the appearance of the offender would give rise to suspicion as to whether such offender is below the age of 18 years. In all other cases, the Magistracy would consider the age of the offender noted by the Investigating Agency in the remand report, FIR, etc., as the correct age of that offender and proceed with the matter. This practice often gives rise to issues as happened in this case since the physical appearance of the offenders might, at least in some cases, betray their actual age. There may be cases where the physical growth and appearance of an offender would give the impression that he is an adult person though he may be actually a minor. Likewise, there may be cases in which the physical growth and appearance of an offender would give the impression that he is a minor though the actual age of such offender might be above 18 years. Thus, the recurrence of issues like this could be prevented only if the Magistrates, before whom the offenders are produced, show diligence to ensure that those offenders are not juveniles who are to be dealt with by the Juvenile Justice Board. The responsibility of the Magistracy in this regard has been highlighted by the Apex Court in **Jitendra Singh @ Babboo Singh & Anr. v. State of U.P. [(2013) 11 SCC 193]**, wherein it has been held as follows :

*"**47.** Keeping in mind all these standards and safeguards required to be met as per our international obligations, it becomes obligatory for every Magistrate before whom an accused is produced to ascertain, in the first instance or as soon thereafter as may be possible, whether the accused person is an adult or a juvenile in conflict with law. The reason for this, obviously, is to avoid a twofold difficulty: first, to avoid a juvenile being subjected to procedures under the normal criminal law and dehors the Act and the Rules, and second, a resultant situation, where the "trial" of the juvenile is required to be set aside and quashed as having been conducted by a court not having jurisdiction to do so or a juvenile, on being found guilty, going "unpunished". This is necessary not only in the best interests of the juvenile but also for the better administration of criminal justice so that the Magistrate or the Sessions Judge (as the case may be) does not waste his time and energy on a "trial".*

***48.** It must be appreciated by every Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility, on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from*

anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult undertrial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production.

49. *It must also be appreciated that due to his juvenility, a juvenile in conflict with law may be presumed not to know or understand the legal procedures making it difficult for him to put forth his claim for juvenility when he is produced before a Magistrate. Added to this are the factors of poor education and poor economic set-up that are jointly the main attributes of a juvenile in conflict with law, making it difficult for him to negotiate the legal procedures. We say this on the strength of studies conducted, and which have been referred to by one of us (T.S. Thakur, J.) in Abuzar Hossain v. State of W.B. [(2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] It is worth repeating what has been said: (SCC p. 513, para 47)*

"47. … Studies conducted by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study

is conducted and published by B.N. Mishra in his Book Juvenile Delinquency and Justice System, in which the author states as follows:

> *'One of the prominent features of a delinquent is poor educational attainment. [**Ed.**: The matter between two asterisks is emphasised in original.] More than 63% of delinquents are illiterate. [**Ed.**: The matter between two asterisks is emphasised in original.] Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity.'"*
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> *(emphasis supplied)*

50. *Such being the position, it is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him. We are of the view that this may be a satisfactory way of avoiding the recurrence of a situation such as the one dealt with."*

12. It could be seen from the observations of the Apex Court in the above decision that the responsibility to protect the rights and interests of juveniles, and to ensure that they are not left out to mingle and mix up with other prisoners, is more up on the judiciary, rather than the Investigating Agencies. In a case where the Magistracy did not find it necessary to look in to the question whether the accused produced before it were entitled to be treated as juveniles, it would be superfluous if not beyond the limits, to fasten the Investigating Officers with the liability to pay compensation to the petitioners for their predicament to undergo trial and detention as adult persons. This is especially so in view of the fact that the petitioners and their lawyers did not find it necessary to raise such a contention at any of the stages of the proceedings against them. The absence of any law for the time being in force fixing responsibility on any officers to cross-check the age of the arrestees with reference to the authentic records, and to indicate in the remand report about such verification and findings arrived thereunder, also forecloses the scope of fixing liability on the officers to pay compensation for the detention undergone by the petitioners. In that view of the matter, we are not inclined to direct payment of any compensation to the petitioners by the Investigating Officers or State.

13. In the light of the above guidelines prescribed by the Apex Court to avert unfortunate instances as happened now, we deem it appropriate to issue the following directions to the Investigating Agencies, and District Judiciary for strict compliance :

> *(i) The officer arresting an accused shall ensure the age of the arrestee by verifying any of the authentic documents like Matriculation or Equivalent Certificate, Date of Birth Certificate from the School, Aadhaar Card, Electoral Identity Card, Driving Licence, Ration Card etc. and indicate in the remand report about the course so adopted, before production of such accused before the Magistrate or Judge empowered to order the appropriate custody of such arrestee. The photocopy of such record relied on by the Arresting Officer shall be appended to the Remand Report.*
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> *(ii) In any case, if the Arresting Officer is not able to procure any such authentic document before the production of the arrestee before the competent judicial officer for remand, the said aspect shall be stated in the remand report together with the reasons which prompted the officer to conclude that the arrestee is not a juvenile. In such cases, it shall be the responsibility of the Arresting Officer to embark on an immediate enquiry and produce before the Magistrate or Judge, a report along with authentic records showing the age of the arrestee.*
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> *(iii) The Magistrate or Judge before whom the arrestee is produced shall verify the document produced by the Investigating Agency showing the age of arrestee, and record in the remand order about his subjective satisfaction regarding*

the age, at the time of commission of the crime, of the person being remanded to appropriate custody. Except in cases where the arrestee is apparently age-old, the Magistrate or Judge before whom he is produced shall ascertain his age from him and record that aspect in the order of custody being passed. If the age so stated by the arrestee, and his physical appearance give the indication that he is liable to be treated as a juvenile, the Magistrate/Judge shall conduct an enquiry on that aspect following the procedure envisaged under Section 94(2) of Juvenile Justice (Care and Protection of Children) Act 2015, and pass appropriate orders in the matter of his custody.

(iv) In cases where the Investigating Agency was not in a position to procure authentic document showing the age of the arrestee, the Magistrate or Judge before whom the arrestee is produced shall scrutinize the reasons stated by the Investigating Agency to conclude that the arrestee is not a juvenile, and record in the order of custody whether he concurs with the conclusion of the Investigating Agency in that regard. In cases where the Magistrate or Judge finds the conclusion of the Investigating Agency in that regard unacceptable, and also in cases where the Magistrate or Judge finds the report and records produced after the enquiry conducted as stipulated in clause (ii) hereinabove by the Arresting Officer unacceptable, the arrestee shall not be remanded to Prison or custody of the Investigating Agency. In such cases, appropriate orders shall be passed in respect of his custody pending the enquiry for ascertaining the fact whether he comes under the definition of juvenile as per the relevant law applicable.

14. Registry shall communicate this Order to the Heads of all Investigating Agencies of the State and Centre, and also to all Officers of the District Judiciary of Kerala for strict compliance.

15. We also expect the Legislature to consider the inadequacy in the relevant laws on the issue highlighted in this Order, and take appropriate remedial measures.

(sd/-)

RAJA VIJAYARAGHAVAN V
JUDGE

(sd/-)

G. GIRISH
JUDGE

jsr/vgd