

KARNATAKA STATE HUMAN RIGHTS COMMISSION

1-4th Floor, M.S Building, 5th Stage, Bengaluru-560001

H.R.C. No: 1720/10/11/2019-JCD

Date: 08-07-2022

PRESENT

Justice D.H. Waghela
Chairperson

Shri K B Changappa
Member

Shri R K Dutta
Member

Informant: Chief Superintendent,
Central Prison,
Kalburgi.

V.

Respondent: Additional Chief Secretary,
Department of Home,
Govt. of Karnataka.

OPINION, REPORT AND RECOMMENDATION

- 1) This case was registered upon report filed by the Chief Superintendent, Central Prison, Kalburgi that, CTP No. 401, G Mahesh s/o Jayasheelan, aged about 35 years and convicted in S.C.No. 413/1999 under Sections 302 and 394 of IPC by 10th City Civil and Session Court, Bengaluru and sentenced to life

imprisonment, has died on 25.04.2019, while undergoing imprisonment in Central Prison, Kalburgi. The enquiry and hearing was initiated by calling the relevant post-mortem, inquest and MER reports. Upon receipt of such reports, the matter was reported for opinion of in charge A.D.G.P, Karnataka State Human Rights Commission, Bengaluru. In view of the deceased being shown on record to be aged 35 years after having undergone imprisonment for nearly 20 years, after his conviction on 04.04.2002. The age of the deceased at the time of offence on 20.02.1999 came into question.

- 2) After preliminary investigation, the in-charge A.D.G.P, Karnataka State Human Rights Commission, Bengaluru has submitted the finding, based on the birth documents from the school where the deceased obtained his primary education, that his date of birth was 18.05.1982 and hence, his age at the time of offence was 16 years and 8 Months. Although death of the deceased prisoner was certified and mentioned to be “Cardiac Arrest as a result of Coronary Artery disease” the very arrest, trial and sentence were

questionable, in so far as *prima facie* the provisions of the Juvenile Justice Act did not appear to have been considered and applied. Since the other accused persons also appeared to have been similarly prosecuted, tried and convicted. And the judgment of the Sessions Court in criminal case no. 413/1999 did not contain any discussion as regards the age of persons accused and tried in that case. By report dated 28.01.2022, the Dy.S.P, Karnataka State Human Rights Commission, Bengaluru has reported further after due enquiry and verification as under:

“With reference to the above, as per the order of the Honorable Commission the age of the other convicted persons namely 1. Manikanta s/o muniswami 2. Velu s/o chinniah 3. Vijaykumar s/o ravi in S.C No. 413/1999 is ascertained and as per the available School Transfer certificate their respective age during when they were admitted to Bangalore Central prison was (as) follows 1. Manikanta- 17 years 9 months, 2. Velu -17 years 2 months, 3. Vijaykumar -16

years 1 month and the same photocopy of the School Transfer Certificate of the above said convicted persons has been attached and submitted here with for kind perusal of the Honorable Commission.'

3) In the above facts, father of the deceased prisoner Mahesh and elder brother of the deceased were called upon to make their statements on oath before this Commission. The father Shri Jayasheelan *inter alia* stated on oath that, his son Mahesh was called Mahendra and he was admitted into Government Higher Primary School, Siddana Hosahalli, Bengaluru North. The admission register extract of that school was shown to him at page 50 thereof the date of birth of Mahesh was recorded as 18.05.1982. However, he had not told to the police or court that the birth date of Mahesh was 18.05.1982 or that he was a minor. He himself had studied up to 1st standard only in Tamil Language.

4) The Brother of the deceased *inter alia* stated that, he had studied in Tamil Nadu up to 3rd standard and he was working as loader in a go down in Bengaluru.

His own birth date is 31.03.1978 but, no documents in that regard was available.

- 5) Upon further investigation, it was also revealed that the other accused persons were also most likely to have been minor, and in absence of any advocate or proper legal advise the plea of age was neither raised nor was their age ascertained at any stage of the trial. One of the accused is reported to have stated before Dy.S.P, Karnataka State Human Rights Commission, Bengaluru as under:

“Vijaykumar S/o Ravi

“.....in the year 1999, I have murdered Chandramma of Bommanahalli, Bangalore along with Velu, Mahesh and Manikanta. I must have been about 15 years at that time and after one month's time Mahalakshmi Layout police traced us and subjected us to enquiry. We have confessed about the murder committed by us and when the police asked me about my age, I informed them that I might be between 15 to 16

years to which the police said they knew what has to be done. I do not remember the name of that police. Later we were sent to Madivala police custody who arrested us and produced before the Honourable Court. The Honourable Magistrate did not ask anything about my age and I was sent to judicial custody. Later in this case when I was convicted, I informed the Honourable Magistrate that I was still 18 years. Velu, Mahesh, Manikanta and myself were convicted to life imprisonment. Mahesh and Manikanta died while they were in the prisons I have completed about 19 years of my punishment. In the year 2021, the government released me on the basis of good conduct. While I was involved in this murder case I had informed the government advocate Omkarappa about my age for which he said that they wanted documents for the same and that he would examine it,

*but I did not have any documents as proof
for my age to produce.”*

- 6) Upon above material coming on record, it *prima facie* appeared that the provisions of the then prevailing Juvenile (Care and Protection of Children) Act, 2000 had not been referred at the time of judgment and sentence and consequent imprisonment for life. Therefore, it also appeared that the Human Rights of the accused and convicted persons, as especially their to right of equality and equal protection of law were violated and subsequent amendments of the law and several judgments of the Hon'ble Supreme Court were also not applied in the cases of all the four accused persons, two of whom have died during the imprisonment and two of whom were released from jail.
- 7) Therefore, notice was issued to the Additional Chief Secretary, Home Department, Bengaluru to assist the Commission and submit reasons as to why, necessary recommendations may not be made to ensure full and proper implementation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the earlier Act. Responding to such notice, 1) the

D.I.G, Prison, 2) the Chief Superintendent, Central Prison, Bengaluru, 3) the Under Secretary, Home Department, and 4) Asst. Administrative Officer in the office of DG and IGP etc., remained personally present and submitted written response, besides making statements to the effect that by now adequate precautions are being taken by the police and prison department before arresting, detaining and putting young persons into prison in view of the amended provisions of the Juvenile Justice Act. As for the present case, it was submitted that the then police officers concerned may not be held responsible in view of the fact that the accused persons were admitted to jail under an order of the court. The issue of awarding appropriate amount by way of compensation was left to the discretion of this Commission.

- 8) The response of the aforesaid officers reads as under.

“RESPONSE

*1) Details of accused in
S.C.No.413/1999 on the file of Hon'ble
10th Additional City Sessions Judge,*

Bengaluru (in Crime No. 46/1999 of Madiwala P.S) are as below: -

<i>Accused No.</i>	<i>Name of the Accused</i>	<i>Date of Admission into the Prison</i>	<i>Age as per admission register</i>	<i>Date of Sentence</i>	<i>Age as per Judgment copy</i>	<i>Remarks</i>
1	R. Vijaykumar	20.02.1999	20 years	04.04.2022	20 years	Released on 26.05.2021 from Central Prison, Bengaluru (Pre-Mature release).
2	Manikant h	20.02.1999	19 years	04.04.2022	19 years	While undergoing sentence at Central Prison, Bengaluru, died on 31.07.2016 at Victoria Hospital, Bengaluru and the case is closed by Hon'ble Commission on 14.10.2019
3	G. Mahesha	20.02.1999	18 years	04.04.2022	18 years	While undergoing sentence at Kalburgi Central Prison, died on 25.04.2019 at Central Prison, Kalburgi (present case)
4	Velu @ Murugesh	20.02.1999	18 years	04.04.2022	18 years	Released on 26.05.2021 from Central Prison, Bengaluru (Pre-Mature release).

“2 The accused are admitted into the prison upon remand warrant issued by the concerned Courts.

“3) Only such remand warrants, in which age of the accused is mentioned as 18 years and above, are admitted into the prisons.

“4) In the above cases, the age of all the accused was 18 years and above as mentioned in the remand warrants and as

per the entries made in the admission register of the prison. The remand warrants have been returned back to the Courts.

“5) The Prison Authorities depend for age of the accused as mentioned in the remand warrants issued by the concerned Courts and have no independent source to reverify the age of the accused.

“6) It is for the Investigating Police Officer and the concerned Courts to check and verify the age of the accused before issuing remand warrants against the accused.

“As per the observations made by the Hon'ble Commission in its Order dated:31-03-2022 it is suggested that: -

“i) At the time of arrest and during the investigation of the crime, the Police Authorities and the Investigating Police Officers must check the age of the accused and ensure the age is based on valid age proofs.

“ii). When the accused are produced before the Courts, the age of the accused must be reverified and checked by the concerned Courts, before issuing remand warrants.

“ If the above suggestions are followed, the remand of juveniles into the prisons can be totally stopped.”

- 9) In the facts and circumstances as discussed above, the legal position in the instant case is that the offence was committed on 19.01.1999. On the date of offence the deceased C.T.P. G. Mahesh was 16 years and 8 months old. As per Section 2(h) of the old Juvenile Justice Act, 1986 he was not a juvenile. But, as per section 2(k) of new Juvenile Justice Act, 2000 he was a juvenile. On the date of offence, i.e. on 19.01.1999, he was below 18 years of age but, subsequently, he had crossed 18 years of age and before 01.04.2001 he was above 18 years of age. As per Section 2 (l) of the new Juvenile Justice Act, 2000 he is “juvenile in conflict with law.” Section 7-A was introduced in the Juvenile Justice Act, 2000 and Section 20 thereof was amended, whereas rule 12 was included in the Juvenile Justice Rules, 2007 which gave retrospective effect to the provisions of the new Juvenile Justice Act, 2000. Section 7-A of the Juvenile Justice Act, 2000 made provision for the claim of juvenility to be raised before any court at any stage,

and such claim is required to be determined in terms of provisions contained in Juvenile Justice Act, 2000 and Rules framed there under, even if the juvenile had ceased to be juvenile on or before the date of commencement of the new Juvenile Justice Act, 2000. As per the dictum of the Hon'ble Supreme Court in **Hari Ram V. State of Rajasthan and another (2009) 13 SCC 211**, the issue or plea of juvenility can be raised at any time even after crossing 18 years of age at any stage of the case, trial, revision, appeal or any other criminal proceedings and even before the Apex Court. As per Section 16 of the Juvenile Justice Act, 2000 the deceased CTP G Mahesh could not have been sentenced to life. However, as per Section 15 of the said Act, he could have been detained in the special home for 03 years. Juvenile Justice Act, 2000 is a child oriented, child-friendly law and a piece of welfare legislation containing various beneficial measures for rehabilitation of young persons having deviant

behaviour and it completely prohibits awarding them death sentence, life sentence and detention beyond 3 years. Factually, the judgment of the Sessions Court against the accused was delivered on 04.04.2022 alongwith the order of sentence.

10) In the above facts and circumstances, it clearly appears that the deceased G Mahesh, or his family never got benefit of the aforesaid express provisions of law, and they were denied the fundamental right to equal protection of laws. One of the important theories of penology and purpose of punishment by imprisonment is reformation of the delinquent and a juvenile would generally have better prospect of being reformed, which is why the period of detention and punishment are restricted by the successive Juvenile Justice Act's. In the facts of the present case, all such prospects of reformation and rehabilitation or co-habitation with his family appear to have been unwittingly ruined. It is difficult to assess the loss caused to the deceased or his family or the society. However, such miscarriage of the process of arrest, detention, and imprisonment needs to be prevented by effective and vigilant implementation of

the provisions of now prevailing Juvenile Justice Act, 2015.

11) Therefore, it is recommended that, in all cases where an accused person appears to be or reported to be around 18 years of age.

a) All police stations, police officers and investigating officers should be instructed by a mandatory circular to collect proof of age of such child in conflict with law at the earliest. The proof of age should be produced before the Juvenile Justice Board, at the time of first production of the child before the Juvenile Justice Board.

b) In case, for some reasons, beyond the control of the investigating officer, the proof of age cannot be collected at the time of apprehension of “child in conflict with law”, then proof of age should be collected and produced before the court concerned at the earliest, in any event before filing of the charge sheet/ final report before the Juvenile Justice Board or the court concerned.

c) In case no document of age is available then “child in conflict with law” should be examined by a duly constituted Medical Board for opinion as to the age.

d) A police officer dealing with child in conflict with law should make sincere effort to acquire knowledge of acts/laws/notifications which recognize and protect rights of juveniles.

e) Every child in conflict with law should be treated in a manner consistent with the promotion of child's sense of dignity, taking into account the child's age and desirability of promoting the child's reintegration with family and encouraging his or her constructive role in the society.

f) The father of deceased Shri Jaysheelan should be paid by way of compensation the sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only as interim compensation, by demand draft or account payee cheque in his favour.

12) It may be appropriate to point out at the end that under the provisions of Sec.18(e) of The Protection of Human Rights Act, 1993, the State Government or the authority concerned is duty bound to forward within a month, its comments on this report and also report the

action taken or proposed to be taken. It is hereby brought to kind notice of the authorities concerned that, under the provisions of Regulation 22 of the Karnataka State Human Rights Commission (Procedure) Regulations 2020, if any application seeking modification or review of order or proceeding passed by this Commission is received, it may be considered by the Commission for appropriate order.

- 13) A copy of this Opinion, Report and Recommendations shall be sent to the informant and respondent forthwith.

Sd/-
(Justice D. H. Waghela)
Chairperson

Sd/-
(Shri K. B Changappa)
Member

Sd/-
(Shri R. K. Dutta)
Member

PSD