

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(Crl.) No. 1278/2009**

Date of Order: 2nd February, 2010

KAMLESH & ORS. Petitioner
! Through: Mr.M.A.Rahman, Advocate.

versus

\$ STATE &ORS. Respondent
^ Through: Mr.Ranjeet Kapoor, ASC.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

: **V.K. JAIN, J. (Oral)**

1. This is a petition for quashing FIR No.312/2009 registered at Police Station Sangam Vihar under Section 363 of IPC.

2. Petitioner No.1, who is the daughter of respondent No.4, claims to have married petitioner No.2. Though it has been stated in the petition that petitioner No.1 is a major aged 19 years, no proof of age of the petitioner No.1 has been filed by the petitioners. On the other hand, the Investigating Officer has collected copy of School Leaving Certificate of petitioner No.1 and as per the School Leaving Certificate,

the date of birth of petitioner No.1 is 25.12.1995. As per the Ossification Test, the age of the petitioner No.1 has been opined to be between 14.5 to 14.9 years though there can be variation upto two years in the age determined by way of Ossification Test. The documentary evidence in the form of the School Leaving Certificate of the petitioner No.1 has necessarily be preferred over the opinion given by the Radiologist on the basis of the examination of her X-Ray Plates.

3. In the case of **Madan Gopal Kakkad vs. Naval Dubey & Anr.** (1992) 3 SCC 204 the Hon'ble Supreme Court, inter alia, observed as under:

"34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court."

4. In **Vishnu vs. State of Maharashtra** AIR 2006 SC 508, the Birth Certificate of Municipal Corporation and register of the hospital where the prosecutrix was born showed that she was less than 16 years of age. On the other hand as per the Ossification Test her age was 18-19 years with error of margin of six months on either side. It

was contended before the Hon'ble Supreme Court that determination of the age of the prosecutrix having been scientifically proved by conducting Ossification Test, should be accepted. Rejecting the contention, the Hon'ble Supreme Court, inter alia, held as under:-

“24.In the case of determination of date of birth of the child, the best evidence is of the father and the mother. In the present case, the father and the mother - PW-1 and PW-13 categorically stated that PW-4 the prosecutrix was born on 29.11.64, which is supported by the unimpeachable documents, as referred to above in all material particulars. These are the statements of facts. If the statements of facts are pitted against the so called expert opinion of the doctor with regard to the determination of age based on ossification test scientifically conducted, the evidence of facts of the former will prevail over the expert opinion based on the basis of ossification test. Even as per the doctor's opinion in the ossification test for determination of age, the age varies. In the present case, therefore, the ossification test cannot form the basis for determination of the age of the prosecutrix on the face of witness effects tendered by PW-1 and PW-13, supported by unimpeachable documents.”

5. The judgment in the case of Vishnu (supra) was followed by the Hon'ble Supreme Court in Arjun Singh vs. State of H.P. AIR 2009 SC 1568. In view of the above referred authoritative pronouncements of the Hon'ble Supreme Court, no reliance can be placed upon the report of Ossification Test in the face of the unimpeachable documentary evidence produced by the prosecution.

Hence, it appears that even today the petitioner No.1 is less than fifteen years of age.

There is no ground for quashing the FIR registered against petitioner No.2 and the same is hereby dismissed.

**V.K. JAIN
(JUDGE)**

**FEBRUARY 2, 2010
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