

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. Rev. P. No.132/2011 & Crl.MA 3547/2011 (stay)**

Reserved on: 11.11.2011
Pronounced on: 21.11.2011

Pradeep Sehrawat **Petitioner**
Through: Mr. Abdul Sattar, Advocate

Versus

State (NCT of Delhi) **Respondent**
Through: Ms. Fizani Husain, Advocate

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

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

M.L. MEHTA, J.

1. This criminal revision petition has been filed by the petitioner assailing an order dated 27.1.2011 passed by learned Additional Sessions Judge (ASJ) dismissing his petition filed against an order dated 21.12.2010 passed by Juvenile Justice Board (JJB) in a case against him under Section 363, 366, 368, 376, 342, 343, 506 read with Section 34 IPC registered at Police Station Delhi Cantt. vide FIR No. 399 of 2006.

2. The petitioner allegedly committed offence on 07th November, 2006. He claimed to be juvenile on the day of commission of offence and moved application under Section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000 (for short, the Act) before JJB. Learned JJB on the question of age of the petitioner, examined 8 witnesses. The petitioner herein also produced two witnesses of different schools. As per the certificate issued by Solanki Public School, the petitioner was admitted on 6.4.1994 in the first class on the basis of affidavit of his father. The petitioner's date of birth was shown as 10.9.1988. This was so stated by CW-1, Administrative Incharge of that school. It is stated by father of the petitioner that the petitioner was withdrawn from Solanki Public School when he was studying in 7th class on account of some quarrel with the school. He stated that thereafter he was admitted in Rahul Public School. There is no record pertaining to this school. As per petitioner, he was admitted in 10th class privately in National Institute of Open Schooling (NIOS). This was so stated by CW6, Assistant Director of NIOS. Record of NIOS was stated to have been destroyed. He further stated that there was a computerized record showing the date of birth of the petitioner as 9.9.1989. He has stated that since the record qua petitioner was destroyed, he could not say as to what was the document submitted by the petitioner at the time of his admission in their school. He, however, stated that it may either be an affidavit or school leaving certificate which might have been submitted by the petitioner at the time of admission in their institution.

3. Now, on the one hand, there was record of school in which the petitioner was admitted in first class based on the affidavit of his father showing his date of birth to be 10.9.1988 and on the other hand there was evidence of the petitioner having taken admission privately in 10th class in NIOS showing his date of birth to be 9.9.1989. However, there was no record produced as to the basis of admission of the petitioner in private 10th class in NIOS.

4. With this backdrop, the learned JJB got the ossification test of the petitioner done from the Medical Board. As per the report of Medical Board, the age of the petitioner was between 20-21 years on the date of his examination i.e. 25.5.2007. The doctors of Medical Board were examined as CW2 and CW3. CW2 Dr. Arvind categorically stated the age of the petitioner to be 21 years and that it was the majority view of the Medical Board and there was no scope of lower margin of less than 20 years. Similar was the statement of CW3 Dr. Yatish Aggarwal and CW4 Dr. Ajay Kumar. That being so, as per the Medical Board, the age of the petitioner was to be about 19 and half years at the time of commission of alleged offence. The learned JJB relied upon the said report of the Medical Board and the statements of doctors and arrived at a finding that the petitioner was more than 18 years at the time of commission of offence and thus could not be treated as a juvenile as per the provisions contained in Juvenile Justice Act.

5. The matter was taken in appeal to the Court of learned ASJ by the petitioner. The learned ASJ vide the impugned order upheld the findings of learned JJB and dismissed the appeal of the petitioner. The said order passed by learned ASJ is assailed by the petitioner by way of instant petition.

6. Learned counsel for the petitioner vehemently argued that the learned JJB as also the learned ASJ erred in not following the provisions of Rule 12 of Juvenile Justice (Care and Protection) Rules, 2007 (for short, “the Rules”). His submission was that there was no reason to discard the record of NIOS wherein the petitioner was admitted in 10th class and his date of birth was shown to be 9.9.1989. Per contra, learned APP for the State pointed out that the petitioner had taken admission in NIOS in the year 2004 only and had not studied there regularly and continuously for a long period and so the certificate of NIOS was not worth of credence. She further submitted that record of Solanki Public School where the petitioner was first admitted in first class was more reliable than the record of NIOS. She submitted that the learned JJB has rightly relied upon the report of Medical Board. She submitted that learned JJB conducted an enquiry by referring the matter to the Medical Board and also recorded statements of doctors and there was no reason to discard the report of the Medical Board and the statements of doctors.

7. Rule 12 of the said Rules prescribes procedure to be followed for determination of age of a person in conflict with law. Relevant part of Rule 12 reads as under:

12. Procedure to be followed in determination of Age.—

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(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.

8. In the instant case, the question for determination of the age of the petitioner has arisen because of his involvement in a criminal case. Section 14 of the Act makes it obligatory to make an inquiry about the age of the accused and for that purpose to take such evidence as may be necessary. Rule 12 of the Rules prescribes the procedure to be followed in deciding juvenility. From the scheme of provisions of this Act, it would be seen that a due inquiry is required to be conducted by the Magistrate by taking such evidence as may be deemed necessary in the manner as prescribed for trial in summoning cases under the Code for arriving at a finding as regards the accused being a juvenile or not. In other words, the age is required to be determined on the basis of evidence that may be adduced and other materials in support thereto.

9. In such a case, Clause (3) requires the Court or the Board, as the case may be, to conduct an enquiry by seeking evidence of the type as mentioned in Sub Clause (i), (ii) & (iii) of Clause (a) thereof as noted above. The evidence which was contemplated to be considered for conducting an enquiry comprised of Matriculation and equivalent certificate, if available, and in the absence thereof, the date of birth certificate from the school first attended and in the absence thereof, the date of birth certificate issued by the municipal corporation or municipal authority or a *panchayat*. Clause (d) of the said Rules

provides that it was only in the absence of either of the above that the opinion of the Medical Board could be sought. It also provided that if exact assessment of the age could not be done, the benefit was to be given to the child or juvenile by considering his/ her age on lower side within the margin of one year. However, in such a case, the reasons were required to be recorded for giving such benefit.

10. With this procedure of recording evidence for conducting an enquiry, the learned counsel sought to submit that since there was record of NIOS available, it was this piece of evidence which was to be made the basis of the age of the petitioner and not the record of Solanki Public School. On the same premise, he also submitted that since the record of NIOS was available, no reliance could be placed on the report of Medical Board. Apparently the submissions of learned counsel for the petitioner seems to be worth consideration. However, it was to be kept in mind that the record of NIOS which was sought to be relied upon was neither the matriculation nor the equivalent certificate of the petitioner, but only an entry of date of birth that too without any supporting evidence as regards the source of such entry. The official of NIOS who was examined as a witness did not know as to what were the documents which may have been submitted at the time of the admission of petitioner. He could not say that if it was on the basis of an affidavit or school leaving certificate of the petitioner. The petitioner had been admitted in NIOS privately in 10th class after he was withdrawn from 7th class from Solanki Public School. The in between period of three years has not

been explained and there is nothing on record to show that the petitioner was admitted in Rahul Public School or any other school. If he had been so admitted in any school, the record of the same could have been produced by the petitioner. The admission of the petitioner in 10th class in NIOS was not on regular basis, but as a private student. The learned JJB rightly recorded that the admission in such an institution was often given on the basis of an affidavit, irrespective of the age of the child and his having failed or passed the previous class. As against this, if a child goes for regular schooling, the record of date of birth remained constant throughout and could be verified at any stage of schooling.

11. In my opinion, the learned JJB rightly recorded that the admission of the petitioner in NIOS having been given in Class 10 privately, on the strength of an affidavit if any cannot be considered as a proof of the age of a person as contemplated in Rule 12 (3) (a)(i) of the Rules.

12. The petitioner was initially admitted in Solanki Public School from Nursery till 6th class. This factum was also accepted by his father Surender Singh. As was rightly observed by learned ASJ, nothing could be seen in the record of the school to doubt its genuineness. In addition to this reliable record of Solanki Public School wherein the petitioner was first admitted, there was also report of Medical Board and also the statement of the expert doctors, who had assessed the age of the petitioner to be between 20-21 years at the day of his examination on 25.5.2007. They had also categorically affirmed that

they have given lower as well as upper margin of the age and there is no possibility of the age to be less than 20 years at the time of his examination. In the case of *Jyoti Prasad Rai Vs. State of Bihar* [(SC) 2008(2) RCR CrI. 193, the appellant therein had produced a large number of documents to prove his age on the date of commission of the offence. The genuineness of the school certificate and the horoscope had been questioned. The school certificate produced was found to be forged and fabricated and in fact a criminal case was directed to be instituted against the head of the institution. It was in these circumstances that the Court had to determine the age on the basis of medical reports.

13. Though there are catena of authorities on medical jurisprudence holding that there can be error of two years on either side for determination of the age of a person on the basis of ossification test, but it is also trite that each case has to be judged on its own facts and material brought on record. In the case in hand, it was not only the test which was done by the Medical Board, all the doctors who were experts in their field have categorically stated and maintained that they have given lower as well as upper margin of the age while conducting ossification test and there was no possibility of the age to be less than the age given by the Medical Board. In any case, as per Clause (b), if the reliance was put on medical report, the benefit that can be given was to be within the margin of one year. In the instant case, as per the medical opinion of the experts, the age of the petitioner was assessed to be not less than 19 and a half years on the date of offence. Even if he

was given benefit of one year, his age comes to be above 18 years on the relevant date. This fact commensurate with the record of Solanki Public School.

14. Another interesting aspect that can be taken note is that one Shri Bhagwan who was the maternal uncle (Mama) of the petitioner and was the witness examined by the petitioner himself, in his statement before JJB stated that the younger brother of the petitioner was born one and a half year after the birth of the petitioner and the youngest was four years younger to Pradeep. He stated that the youngest was born in the year 1992. Thus, according to him also, the estimated year of birth of the petitioner comes out be 1988 and not 1989.

15. In view of foregoing facts and circumstances, I do not see any infirmity or illegality in the impugned order of learned ASJ. Consequently, the petition has no merit and is hereby dismissed. There shall be no orders as to costs.

M.L. MEHTA, J.

November 21, 2011

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