

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

+ CRL.REV. P.No.22/2012 & CrI.M.B.No.72/2012

% Judgment reserved on: 17th April, 2012
Judgment delivered on: 03rd July, 2012

HARJEET SINGH Petitioner
Through: Mr. Manohar Singh Bakshi and
Mr. Lakhbir Bakshi, Advs.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Navin Sharma, APP

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition the petitioner is seeking for setting aside the impugned order dated 30th November 2011 passed in application being moved by the petitioner in case FIR No.1/2011 registered by Police Station Vikas Puri for the offences punishable under Section 302/34 Indian Penal Code, 1860.

2. The petitioner has asserted by the instant petition that the exact date of birth of the petitioner is 28.12.1993, which was confirmed and verified by all witnesses including Registrar, Death and Birth, who issued the birth certificate Annexure P-7 on the proper direction of the

Sub Divisional Magistrate after holding and conducting enquiry. In the statements of witnesses, village Panchayat and other material witnesses like the mother and father of the petitioner having special knowledge who proved and verified during enquiry that petitioner was juvenile at the time of commission of the offence, his date of birth as 28.12.1993.

3. Mr. Manmohan Singh Bakshi, learned counsel for the petitioner submitted the certificate dated 7th January 1994 issued by the Secretary Shiv Gram Panchayat Ex.P-10 and the age confirmed and verified by mid wife, who performed her role during the birth of Harjit Singh and is well acquainted of the age of the petitioner.
4. The case of the petitioner is that incorrect date of birth was inadvertently recorded by strangers having no idea about his date of birth. Once wrong entry was made in the admission register form dated 25.04.2000 on the basis of incorrect documents, it was unnecessarily carried forward.
5. Learned counsel has relied upon ***Brij Mohan Singh v. Priya : AIR 1965 282*** decided by the five Judges' Bench whereby it was held that it will not be proper for the Court to base any conclusion about the petitioner's age on entries in these documents. The conditional Shabat Patter dated 29.04.2000 is incorrect, tainted, contains incorrect date of birth and incorrect date of filing.
6. It is submitted that the crux of the matter is whether the admission application dated 25.04.2000 and an undertaking, taking

Shabat Patter dated 29.04.2000 that date of birth certificate will be submitted to school within one year after obtaining from the concerned authorities which reflects the age on the basis of entry made in the admission register, would seal the fate of the petitioner to claim to be a juvenile specially when no date of birth certificate has come forth from Register Death and Birth.

7. Learned counsel submits the settled law is that the entry in the register of Death and Birth is not which is maintained in accordance with the law after following due procedure. An admission in the register cannot have finality for the purpose of determination of age.

8. The learned counsel submits the J.J. Act is social welfare legislation. It is a special law made under Article 254 of Constitution of India, and its beneficial provisions are for the interests of juvenile, jurisdiction of all other courts are ousted and are solely conferred on Juvenile Courts or as the case may be. Section 2 of the JJ Act, that unless, the context otherwise requires, (k) Juvenile or child means a person who has not completed 18 years of age; Section 4(3) states no Magistrate shall be appointed as a member unless he has special knowledge or training in child psychology or child welfare, Rule 11 states that police concerned shall record information in general daily diary followed by a report, statement of parents and expert opinion “whenever a juvenile is apprehended, “apprehended memo in form XXV shall be prepared, personal search shall be conducted in form XXVII, Juvenile shall be medically examined by specialist in form XXIV shall be prepared. Section 1 (84) to “A (84), states, IO/SHO

shall take serious steps and act as watch dog and have aptitude and appropriate training and orientation to handle the case of juvenile. IO/SHO has to take steps on seeing his physical appearance as was decided in JT 2010 (7) SC 603.

9. Mr. Bakshi further submitted that Section 96 states benefits of act shall not be denied to juvenile, IO/SHO approached the Sukh Khalsa School and did not follow the provisions and rules of JJ Act Rules 2000 and committed Contempt of Law; thus abused the powers and procedure under law and ignored and neglected the juvenile Rule 60 of the Juvenile Rules.

10. The petitioner moved an application under Section 7A of JJ Act 2000 asserting the correct age of the petitioner before the trial court. After sometime, a fresh bail application under Section 12 of JJ Act was moved for releasing the accused on bail during enquiry as per the settled law. However, the learned Addl. Sessions Judge dismissed the application under Section 7A of JJ Act without disposing bail application.

11. The case against the petitioner was registered on 01.01.2011 for the offence punishable under Section 302 Indian Penal Code, 1860 and was arrested on 03.01.2011. On 04.01.2011 Sukho Khalsa School issued a letter regarding petitioner. Thereafter, the petitioner filed an application on 06.07.2011 and the same was dismissed by order dated 30.11.2011.

12. Learned counsel for the petitioner has referred to Annexure P-5

at page 23 to the application for admission dated 25.04.2000 in Gyan Jyoti Modern School wherein the petitioner's date of birth is mentioned as 28.01.1992, whereas the case registered against the petitioner was on 01.01.2011.

13. Learned counsel submits the said application cannot be the fake or after thought since the same is of the year 2000.

14. Even in the affidavit dated 29.04.2000 Annexure P-6 at page 27 the date of birth of the petitioner was mentioned 28.1.1992 and in the birth certificate issued by Registrar, Birth and Death mentioned as 28.12.1993.

15. Learned counsel for the petitioner has referred the statement of AW-6 Indra Kaur recorded by the learned Special Judge and learned Addl. Sessions Judge wherein cross-examination she stated that in the year 1993 there was another midwife namely Sopani who has now expired and therefore she did not remember the day of week on which petitioner was born and she did not remember the date of birth of daughter of Mohan Singh, father of the petitioner, who was also born in the village with her help. She did not remember the date of birth of children born in the village with her help.

16. Learned counsel submits since the said witness came in the Court to depose therefore she did remembered the age of the petitioner and definitely not remembered the age of other children born with her help.

17. AW-9 Mohan Singh, father of the petitioner, stated that the

petitioner was born on 28.12.1993 on Tuesday. At that time she was present in village Manchi. The petitioner was born at 7.00/.15 PM in his house with the help of Indra Bai. He further stated that Ardas was performed on 28.12.1993 in Gurudwara to celebrate the birth of his son. On 01.01.1994 the namkaran ceremony was also performed for Shukrana for giving son after two daughters.

18. He further stated that at the time of admission of his son in Gyan Jyoti school, several persons were collected and he requested them to fill up the form as he was illiterate and only know to put the signature in Gurumukhi. The date of birth was told by him as 28.12.1993 and they had filed the form with wrong date of birth with wrong date of birth and told him to sign the form.

19. Learned counsel also referred Annexure P-7 at page 38. The certificate issued by Secretary, Gram Panchayat Mach, Kishan Garh Bas, Alwar, Rajasthan, wherein the date of birth of the petitioner is mentioned as 28.12.1993. The same has been proved by AW-3 Sh.Kailash Lal, Gram Sevak of the aforesaid block, who stated that the father of the petitioner approached him to issued date of birth certificate. He inspected the panchayat record but there was no entry of the birth of his son Harjit Singh/petitioner. He informed him about the procedure of the approaching the area SDM, who would order enquiry by the Gram Panchayat.

20. Accordingly, SDM directed the enquiry and marked the same to Secretary, Gram Panchayat vide order dated 20.07.2011. The same is Ex.AW-3/B (OSR). During enquiry he recorded statement of one

Darshan Singh, Arjun Singh, Balvir Singh Mukhiya of the ward and sent enquiry report to the SDM alongwith original statements. The SDM ordered for the issuance of birth certificate as per Section 12/17 of Birth and Death Registered Rules 1969. On the basis of directions of the SDM, Ex.PW-3/B the birth certificate Ex.AW-3/A and date of the birth of the petitioner was recorded as 28.12.1993.

21. Learned counsel has asserted that the learned Addl. Sessions Judge ignored the evidence in favour of the petitioner and passed the impugned order by recording that the correct date of birth of petitioner is held to be 28.01.1992, as is being relied upon by the prosecution on the basis of school leaving certificate Ex.AW-1/D which has been issued by the school first attended by the petitioner and said date of birth was recorded in school register as well as in the admission form on the basis of information on affidavit given by the applicant/father of the petitioner.

22. The trial Judge on the basis of date of birth 28.01.1992, as at the time commission of offence i.e. 31.12.2010, he was aged about 18 years about 18 years, 11 months and 3 days old and, thus not a juvenile.

23. The learned counsel for the petitioner has relied upon case of ***Brij Mohan Singh v. Priya Brat Narain Sinha and Others : AIR 1965 SC 282 (V) 52 C 1*** as under:-

“On an examination of the physical appearance on the hathchitha and the entries made therein, the evidence of the Chowkidar and the circumstances under which this document was ultimately produced before the

Tribunal we are inclined to agree with the view of the Election Tribunal that this is a genuine document which was maintained by the Chowkidar in the discharge of his official duty. If the document had been manufactured to assist the appellant we do not think it likely that the Chowkidar would have refused to produce it readily when summoned to do so. The fact that a warrant of arrest had to be executed against him is a convincing circumstance that the Chowkidar was unwilling to produce it. We are not impressed by the argument of Mr. Sarjoo Prasad that the omission of the Chowkidar to produce the document in obedience to the summons and the issue of warrant of arrest to secure its production were all pre-arranged to create an atmosphere for the acceptance of the document as genuine. The appellant's lawyers before the Election Tribunal could not possibly have been sure that the Tribunal would in the last resort issue a warrant of arrest. It is not likely that they would take such risk so that the document might not come at all.

In our opinion, this document is genuine and is the book that was maintained by the Chowkidar for noting the births in his llaka during the years 1934 to 1936. The entry therein showing the birth of a son to Sarjoo Singh on October 15, 1935 can however be of no assistance to the appellant unless this entry is admissible in evidence under the Evidence Act. If this entry had been made by the Chowkidar himself this entry would have been relevant under s. 35 of the Evidence Act. Admittedly, however, the Chowkidar himself did not make it. Mr. Agarwal tried to convince us that when an illiterate public servant is unable to make an entry himself and he gets the entry made by somebody else this should be treated as an entry made by the public servant. This argument must be rejected. The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has

been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant himself is illiterate and has to depend on somebody else to make the entry. We have therefore come to the conclusion that the High Court is right in holding that the entry made in an official record maintained by illiterate Chowkidar, by somebody else at his request does not come within s. [35](#) of the Evidence Act. It is not suggested that the entry is admissible in evidence under any other provision of the Evidence Act. The entry in the hath-chitha has therefore to be left out of consideration in coming to a conclusion about the appellant's age.

24. On the other hand, Mr. Naveen Sharma, learned APP has argued that the procedure to be followed in determining the age of the applicant has been prescribed under Rule 12 of DJJ Rules sub Rule 3,(a),(i). Date of birth certificate from the school other than a play school first attended is relevant in evidence for determining the age of the accused/applicant at the time of commission of the offence. In the absence of said evidence the Court can consider the birth certificate given by the corporation or municipal authority or Panchayat or an ossification test can be conducted, if any of the three type of evidence is not available as is provided in sub Section 3(a)(i) of Rule 12.

25. He further submits that the evidence of AW-1 has clearly stated that entry was made first time in their school on the basis of the affidavit Ex.AW-1/B of Manmohan Singh/applicant father of the applicant. The petitioner was admitted in second class on 25.4.2000 and studied upto 5th class till he left the school on 31.3.2004.

26. Learned APP has further argued that there is no force of the argument of learned counsel for the petitioner that the said date of birth was recorded wrongly in the affidavit of Manmohan Singh, father of the petitioner because no such suggestion was given to AW-1 that Ex.AW-1/B was not correct.

27. He further argued that the other witnesses examined by the applicant were tutored and therefore they deposed as tutored about the date of birth. They did not remember date of birth of any other child born in the village. Even mother of the applicant/petitioner did not remember the date of birth of two daughters born earlier to the petitioner. Even midwife Indra Kaur did not remember the date of birth of any other child born with her assistance. Lastly, he submits that at the time of moving the applicant and in the application, the alleged date of birth i.e. 28.12.1993 is not mentioned and the said date of birth is later on is being imagined to make false story for the benefit to be given to the petitioner.

28. Learned APP has pointed out that a contradiction in the application of the petitioner that Mohan Singh AW-9 (father of the petitioner) has claimed that Secretary and Gram Panchayat of the village has given letter in writing mark - 4A to him at the time of birth of the child in the village where the correct date of birth 28.12.1993 is mentioned. He argued that date of birth recorded in Gyan Jyoti school and Sukho Khalsa Senior Secondary school and also in the CBSE has not been changed by the petitioner in any manner. The father of the petitioner even got recorded his name in the records who has never

challenged the date of birth recorded in both the schools in any manner. He specifically pointed out that Ex.AW-2/C issued by CBSE that the change of the name of the father of the petitioner has not been effected from Manmohan Singh to Mohan Singh.

29. He also pointed out that if Mohan Singh was in possession of the said letter at the time of moving of the application why he has not mentioned the said date of birth in the application and why he has not told the said date of birth in the Court at the time of moving the application.

30. I have heard learned counsel for the parties. Perused the impugned order. The learned Trial Judge has adopted the proper procedure for determining the age of the petitioner. As per Rule 12 of DJJ Rule 2009, date of birth certificate from school other than the play school first attended is first evidence on the basis of which age of applicant is to be determined. It is only in the absence of this evidence the subsequent evidence provided in the rules can be considered by the Court in determining the question of juvenility.

31. The testimony of AW-1 Amarjit Singh, Manager of Gyan Jyoti Modern School who has brought the original record of the application form of the petitioner which is Ex. AW-1/A. He deposed that his father Manmohan Singh has filed an affidavit Ex.AW1/B regarding date of birth as 28.1.1992 and petitioner was admitted in 2nd class in the school in the year 2000 and he has passed 5th class. Therefore, left school in the year 2004 i.e. 31.3.2004. The said witness proved the admission and withdrawal register Ex. AW-1/C showing the entry at

serial No. 215.

32. In the cross-examination he has stated that as per their record all these documents have been deposited with the school by their parents.

33. The learned trial Judge has recorded in it impugned order that Ex. AW-1/B is the affidavit of the father of the petitioner. On perusal, it was found that correct performa stating that petitioner was born in village Mancha, Tehsil Kishangarh, Rajasthan and as per his complete information his date of birth is 28.1.1992. In the said affidavit of the deponent/father of the applicant stated that he declares that he was not hiding anything and because of date of birth on the basis of this affidavit he will never seek change in the date of birth.

34. In Ex AW-1/C entry No.215 dated 25.4.2000 i.e. admission and withdrawal register, the date of birth mentioned is 28.1.1992. Neither in the evidence of Mohan Singh as AW-9 anything stated about the affidavit Ex.AW-1/B to the effect that it was not a correct affidavit nor anything suggested to AW-1 with regard to the date of birth recorded in the school on the basis of affidavit Ex.AW-1/B.

35. I note the learned Trial Judge specifically asked the counsel for the petitioner as to why nothing was suggested to AW-1 and nothing was deposed by AW-9 regarding this incorrect affidavit. The learned counsel could not clarify the same.

36. Moreover, on examination of AW-3 Kailash Lal, Pradhan Sachiv, Gram Panchayat Mancha, District Alwar who stated that father of the petitioner approached them to issue date of birth and he

inspected the panchayat record but there was no entry of birth of his son Harjit Singh/petitioner. If the mark 4A dated 7.1.1994 was genuine document issued by the office of Gram Panchayat, there must have been entry in the record of his birth. Neither Sucha Singh nor Secretary Gram Panchayat who has signed this mark P-4 has been examined despite availability of Secretary Gram Panchayat. The said documents placed on record is not admissible in evidence. Moreover, there is contradictory stand taken by the applicant, father of the petitioner, in the application he has stated nothing about the date of birth as 28.12.1993 as he was allegedly not aware about the correct date of birth. Therefore existence of this document at the time of moving of applicant become doubtful and there is every possibility that some might have been procured manipulated by the father the applicant/accused.

37. I further note the learned trial Judge also relied upon the cross-examination of AW-3 wherein he stated that in the year 1993 the date of birth recorded was maintained by the teachers of the school but he did not check the record in the school for the year 1993 with regard to date of birth of petitioner if it was recorded or not. The trial Judge was of the opinion that this deposition of AW-3 shows that he was not satisfied with himself to issue the date of birth certificate Ex. AW-3/A which purported to have been issued on the basis of enquiry conducted by him as per direction of SDM and the date of birth is purported to have been recorded on the basis of information in affidavit of Manmohan Singh/father of the petitioner.

38. The learned trial Judge has further recorded that date of birth certificate Ex. AW-3/A dated 22.7.2011 though issued by the competent authority i.e. Registrar Birth and Death Gram Panchayat, Mancha District Alwar on the basis of affidavit of applicant/father of the accused as per Rule 12 sub Rule 3 of DJJ Rules 2009, the birth certificate given by corporation or municipal authority or Panchayat is to be considered only in the absence of date of birth from the first school attended. Thus this birth certificate dated 22.7.2011 issued by Gram Panchayat Mancha after moving of present applicant on 6.7.2011 cannot be considered because school leaving certificate issued by Gyan Jyoti School Ex. AW-1/D has been issued on the basis of date of birth recorded in the school first attended by the petitioner and that date of birth was recorded on the basis of affidavit of his father/applicant.

39. The law settled in a case of *Sunil vs. State of Haryana: 2010 SC 742* that entry contained in the admission form must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth by the parents concerned. It was further held that if the entry in school's register regarding date of birth made on the basis of information given by the parents, the entry would have evidentiary value. Therefore, as per Rule 12 sub Rule (3), (a), (i) of DJJ Rules 2009, the school leaving certificate Ex.AW-1/D showing the date of birth of the petitioner as 28.1.1992, is only required to be considered for determining the age of the petitioner at the time of commission of the offence.

40. I note in such a situation the petitioner also prayed for getting the ossification test which was denied by the learned Addl. Sessions Judge in view of the proper procedure has been followed in determining the age of the petitioner as per Section 12 of DJJ Rules 2009.

41. In the present case, though, the parents of the petitioner are illiterate. However, even illiterate parents are able to tell as to how many years old (their son/daughter) if not a correct date of birth i.e. 28.12.1993 & 28.01.1992, even months are different i.e. December and January. A person who wrote it in the application, would not have confused in writing in month and year.

42. For my satisfaction, I called parents of the petitioner and on asking the specific question when they were married, father of the petitioner replied, in 1983, first daughter born in 1984 and second daughter in the year 1987 and the petitioner born on 28.12.1993 not on 28.1.1992. Therefore, I am of the view the father of the petitioner is not so innocent, who did not know the date of birth of the petitioner at the first instance.

43. On perusal of the judgement, the learned Judge has followed the proper procedure and appreciated the evidence on record in detail, therefore, I find no discrepancy in the order and I concur with the same.

44. Accordingly, the instant petition is dismissed.

45. No order as to costs.

CRL. M.B. No. 72/2012

Dismissed as infructuous.

SURESH KAIT, J

JULY 03, 2012

AG