

Criminal Miscellaneous No.M-30177 of 2014 (O & M)

Date of Decision: *April 20, 2015*

Ram Jeewan

..... PETITIONER

VERSUS

State of Haryana & another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Jitender Nara, Advocate, for the petitioner.

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Jaspal Singh, J

1. Ram Jeewan has preferred instant petition under Section 482 Cr.P.C. for quashing order dated November 16, 2009 (Annexure P-3) passed by Principal Magistrate, Juvenile Justice Board, Jhajjar (for brevity, 'Board') whereby respondent No.2 – Sudhir was declared as juvenile; and order dated March 25, 2014 (Annexure P4) passed by learned Additional Sessions

Judge, Jhajjar vide which above said order dated November 16, 2009 has been upheld; as well as all subsequent proceedings.

2. Brief history of matter in controversy is that FIR No.304 dated December 17, 2006 under Sections 302, 323, 34 IPC, was registered at Police Station, Sadar, Bahadurgarh, against respondent No.2 – Sudhir and his cronies, all residents of village Mandothi, District Jhajjar, for commission of murder of Raj Kumar of their village. After making enquiry as per provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 and providing proper opportunity to both parties, the Board came to conclusion that respondent No.2 – Sudhir is not juvenile but in appeal, that order was set aside by learned Additional Sessions Judge vide his judgment dated April 24, 2008 (Annexure P-2), which was challenged before this Court and vide this Court's order dated September 19, 2008, order passed by learned Additional Sessions Judge was set aside and matter as remitted for fresh enquiry to Board.

3. Being aggrieved against order dated September 19, 2008 passed by this Court, petitioner preferred an appeal before Hon'ble Supreme Court. However, order passed by this Court was upheld and a direction was given to hold de-novo/ fresh enquiry. Pursuant thereto, Board held respondent No.2 –

Sudhir as juvenile vide order dated November 16, 2009 (Annexure P-3) and an appeal preferred by petitioner against said order was dismissed by learned Additional Sessions Judge vide order dated March 25, 2014 (Annexure P-4).

4. While assailing impugned orders, Annexure P-3 & P-4, it has been argued with vehemence by learned counsel for petitioner that same are absolutely illegal, arbitrary and not sustainable in the eyes of law being against basic principles of law of evidence as well as legal proposition. Both the courts below failed to appreciate that AW-2 – Mahender Singh, father of respondent No.2 – Sudhir, made his statement by way of an affidavit, whereas, he was not a formal witness for determination of age of his son. So, his evidence could not be looked into and relied upon in view of Section 296 Cr.P.C. Not only this, even both the courts below have also failed to appreciate that school leaving certificate, Ex.A1/A is neither proved as per provisions of law nor teacher who is alleged to have issued this certificate, could satisfy the court about its genuineness and authenticity showing any record or material on the basis of which, alleged date of birth i.e. June 8, 1989 was incorporated. Infact, it is amply proved on record adduced by petitioner that date of birth of respondent No.2 is May 14, 1988.

To buttress this contention, learned counsel has placed reliance upon document Ex.R-1 i.e. diary (pothi) which has been proved by RW-2 – Rajeev Sharma, Bhat of village Mandothi who brought Bahi of Dalal Gotra, wherein he maintained dates of births of all residents of village Mandothi. It has also emerged on record that respondent No.2 are three brothers and sisters, and age gap between them is normal/ usual. Date of birth of elder sister – Meena Devi is June 3, 1980, whereas, date of birth of Kumari Reena is January 5, 1987, and that of respondent No.2 – Sudhir is May 14, 1988. In such circumstances, thus, order dated November 16, 2009 (Annexure P-3) passed by Board, which was subsequently upheld by learned Additional Sessions Judge vide order dated March 25, 2014 (Annexure P-4), is not sustainable in eyes of law, whereas orders dated September 17, 2007 (Annexure P-1) and April 24, 2008 (Annexure P-2) deserve to be restored and upheld.

5. This court has given an anxious thought to submissions made by learned counsel and perused the record.

6. From the contentions of learned counsel, which have been referred to above, it emerges that petitioner has mainly relied upon diary (pothi) Ex.R-1, whereas, respondent No.2 has relied upon school leaving certificate. There is no

authenticity to diary (pothi) Ex.R-1 and it cannot be said that same was also maintained in a regular course of its business. Even otherwise, in given circumstances, school leaving certificate Ex.AW1/A, has been proved by AW-1 Ved Parkash, Head Teacher, Government Senior Secondary School, Mandothi. A perusal of above referred certificate reveals that respondent No.2 – Sudhir was admitted in Government Senior Secondary School, Mandothi on August 19, 1996 and he left school on May 23, 2000 while he was a student of 5th class. His date of birth has been reflected as June 8, 1989 in the above said certificate which also contains the name of his parents. Diary (pothi), which is stated to be more than 30 years old, has got no evidentiary value and cannot prevail upon entries appearing in school record. An observation has also been given by learned Additional Sessions Judge in impugned order (Annexure P-4) that entries in diary (pothi) are not under set pattern as blank spaces have been left here and there; different ink has been used almost in every alternative line, and diary (pothi) is, otherwise, a private hand written diary. So, both the courts below have rightly ignored and disbelieved the said document. There is no infirmity or illegality in conclusion arrived at by courts below which call for any interference by this Court.

7. Instant petition being devoid of any merit is dismissed.

April 20, 2015
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(Jaspal Singh)
Judge