

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No. M. 43731 of 2013
Date of decision 23.01.2015.

Sukhdev Singh

..... Petitioner.

versus

State of Haryana & another

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr. Ashit Malik Advocate for petitioner.
Mr. Rajesh Sheoran, Additional AG, Haryana.
Mr. Sandeep Lather, Advocate for respondent No.2.

K.C.PURI, J.

Sukhdev Singh has directed the present petition under Section 482 of the Code of Criminal Procedure (in short – the Cr.P.C.) for setting aside the order dated 26.09.2013 (Annexure P-5) passed by Juvenile Justice Board, Karnal whereby respondent Gurmeet Singh was declared as Juvenile in case FIR No.48 dated 13.3.2011 registered under Sections 323, 324, 506 read with Section 34 of the Indian Penal Code (in short – the IPC), and also order dated 7.12.2013 (Annexure P-6) passed by Additional Sessions Judge, Karnal upholding the order dated 26.09.2013 passed by the Juvenile Justice Board.

2. It is alleged by the petitioner that in case FIR No.48 dated 13.3.2001 under Sections 323, 324, 506 read with Section 34 of the IPC), Gurmeet Singh accused is facing trial on the allegations that on 12.09.2013 at about 8.00am wife of the complainant Asha Rani was going from the duel of Jagdish and his son Gurmeet stopped her from using the duel and abused her. He was irrigating the fields. The complainant heard the noise and went to the spot. Jagdish and Gurmeet attacked him. Jagdish was armed with a sharp darati gave a blow with it on his head and the second blow landed on back of the thigh of right leg. Gurmeet gave a danda blow from its end on his waist. They also gave slaps and fist blows to his wife and torn her clothes. On hearing the noise of fight his brother Krishan came to the spot. Jagdish and Gurmeet caused injuries to his brother Krishan also.

3. The trial Court vide order dated 26.9.2013 held that Gurdeep accused is juvenile on the date of occurrence.

4. Feeling dissatisfied with the order dated 26.9.2013, complainant filed revision and the learned Additional Sessions Judge, Karnal vide order dated 07.12.2013 dismissed the revision and affirmed the order dated 26.9.2013 passed by the trial Court.

5. Still feeling dissatisfied with both the aforesaid orders, the present petition has been directed by the complainant.

6. On notice, respondents appeared and state of Haryana filed reply and denied the averments raised by the petitioner and prayed for dismissal of the petition.

7. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

8. Learned counsel for the complainant/petitioner has submitted that the Courts below have committed grave error while accepting the birth certificate i.e. Middle School Examination certificate, which has been proved as Annexure P-2 before the Juvenile Justice Board as the age of Gurmeet Singh has been mentioned therein as 28.05.1995 which is against the birth certificate Annexure P-4 produced before the Juvenile Justice Board. It is submitted that date of birth of Gurmeet Singh has been mentioned in the birth certificate as 02.03.1993 which should have been accepted in pursuance of the middle school examination certificate.

9. Counsel for the respondents have supported the orders passed by the Courts below.

10. The Juvenile Justice Board as well as the Id. Additional Sessions Judge have relied upon the middle school examination certificate in pursuance to the birth certificate. The relevant rule No.12 of the Juvenile Justice Act (hereinafter referred - the Act) are reproduced as under :-

11. Section 12 in The Juvenile Justice (Care and Protection of Children) Rules, 2007 :-

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

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of

the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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) 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.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, *inter alia*, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of juvenile in conflict with law.”

12. So, the learned Juvenile Justice Board has relied upon Rule 12 clause 3(ii) of the Act and as such no fault can be said to be lie in the finding recorded by both the Courts below. Otherwise also, the learned trial court has rightly held that in case there are two views in that case, view in favour of the accused should have been accepted.

13. So, in these circumstances, the petition is without any merit and the same stands dismissed.

14. A copy of this order be conveyed to the trial Court for strict compliance.

January , 2015
SV

(K. C. PURI)
JUDGE