

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.1003 of 2010(O&M)****Date of Decision: November 06, 2015**

Harbans Singh alias Roop Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Yogesh Goel, Advocate
for the petitioner.Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.Ms.J.S.Cooner, Advocate
for the complainant.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Harbans Singh alias Roop Singh against State of Punjab, challenging the judgment dated 09.02.2010 passed by learned Addl. Sessions Judge, Fast Track Court, Ludhiana, vide which application under Section 6(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000, filed by the petitioner was dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as

learned State counsel and have gone through the record.

From the record, I find that vide impugned judgment dated 09.02.2010 learned Addl. Sessions Judge, Fast Track Court, Ludhiana, dismissed the application filed by Harbans Singh alias Roop Singh under Section 6(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000 for conducting enquiry regarding juvenility of applicant. It is stated in the application that he (present petitioner) has been convicted and sentenced vide judgment of conviction and order of sentence dated 09.02.2008 passed by learned JMJC, Khanna. It is also stated that applicant during the trial could not take the plea of juvenility that he was juvenile at the time of occurrence. It is further stated that age of the applicant was 14 years 3 months and 10 days at the time of his marriage. As per matric certificate, his date of birth is 03.04.1980. Upon notice, the reply was taken. Learned Addl. Sessions Judge, Ludhiana, after hearing the parties, dismissed the application mainly on the ground that applicant remained silent during investigation as well as during the trial before the Magistrate. Therefore, he cannot take the benefit of his own wrong. Learned Addl. Sessions Judge, Ludhiana also held that application is belated one. The appeal has been filed on 27.02.2008 whereas the application was filed on 25.09.2008 i.e. after seven months of filing of the appeal. It is further held that all these facts cast a doubt regarding authenticity of the certificate on the basis of which appellant-applicant claims himself to be minor at the time of alleged occurrence and the Court held that the marriage of the applicant was

solemnized at the age of about 15 years also become doubtful.

After perusing the impugned judgment dated 09.02.2010, firstly, I find that learned Addl. Sessions Judge, Ludhiana has not given the parties any opportunity to lead the evidence. Secondly, without appreciating any evidence, the Court cannot raise doubt regarding the authenticity of the certificate and also cannot raise presumption that marriage cannot take place at the age of 15 years. These are the facts to be determined on the basis of the evidence while appreciating the evidence. The reasoning given by learned Addl. Sessions Judge, Ludhiana regarding the delay that application for conducting enquiry has been filed in the appeal and this plea was not taken earlier, is also not as per law. The plea of juvenility can be taken even in the appeal before this Court and even before the Hon'ble Supreme Court.

From the record, I find that the judgment dated 09.02.2010 passed by learned Addl. Sessions Judge, Fast Track Court, Ludhiana, is illegal and not as per law and the same is set aside. Finding merit in the present revision petition, the same is accepted. The matter is remanded back to the lower Appellate Court/Sessions Judge, Ludhiana to give opportunity to the parties to lead evidence and to decide the application afresh, as per law.

November 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE