

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

CRR No. 2679 OF 2012 (O&M)
DATE OF DECISION : 7th JULY, 2015

Nitesh Kumar @ Tesu

.... Petitioner

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Arvind Singh, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Deputy Advocate General, Haryana.

Mr. Rohtash Birtt, Advocate for
Mr. S. S. Dinarpur, Advocate for respondent No.2.

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SURINDER GUPTA, J. (ORAL)

Heard.

In case bearing FIR No.443 dated 30.12.2010 registered at police station Shahabad, Kurukshetra for offence punishable under Sections 302, 394 read with Section 120-B and 25 of the Arms Act, the petitioner moved application on 02.05.2011 for declaring him juvenile. On 09.05.2011 the case was fixed for filing the reply to application which was not filed and the learned Magistrate, Kurukshetra declared the petitioner juvenile relying upon the material on record. The complainant filed appeal before the Additional Sessions Judge, Kurukshetra which was allowed vide order dated 28.08.2012 with the observations as follows:

“7. The learned Magistrate was in error in adopting the procedure adopted by him in reaching the decision of

juvenility of respondent No.1. Moreover, appellant was not granted an opportunity of hearing. Learned A.P.P. was also remiss in rendering proper assistance to the learned Magistrate.

8. xxx xxx xxx

9. In view of the above discussion, the Court is of the considered view that there is no legal evidence in terms of Section 35 of the Indian Evidence Act, 1872 and also no opportunity was granted to the appellant and therefore, interest of justice, would be served if case is remanded to the learned trial Court which would decide the question of juvenility at the earliest by conducting the proceedings almost on day to day basis and would also grant opportunity of hearing to the appellant.”

The learned counsel for the petitioner argues that the learned Magistrate has relied upon a verification report submitted by the prosecution about date of birth of petitioner recorded in school record, while allowing the application of the petitioner to declare him a juvenile. No other evidence was required in this regard. The statement of parents of the petitioner was also recorded by trial Court before recording its verdicts about juvenility of petitioner.

Section 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 prescribe the procedure to be followed while

determining the age of a person in conflict with law claiming himself to be juvenile. Sub-Rule 3 of Rule 12 prescribed that in every case concerning a child or juvenile in conflict with law, the age determination enquiry shall be conducted by the court/board as the case may be. As is apparent in this case, learned Magistrate did not conduct any enquiry after the filing of application on 02.05.2011 by the petitioner claiming himself to be juvenile on the day of occurrence in this case. The case was fixed for filing of reply by the prosecution on 09.05.2011 and on that date without opting to proceed for enquiry; to take any evidence in support of the application of the petitioner; providing any opportunity to the prosecution or to cross-examine the witnesses examined by the petitioner, learned Magistrate proceeded to declare the petitioner a juvenile.

Learned Appellate Court has looked into these aspect in detail while observing that the order of the learned Magistrate is not in accordance with procedure as laid down under rule referred above. In view of the above facts and on perusal of the order of Court of revision, I find no legal or factual infirmity therein calling for any interference. This petition has no merit.

Dismissed.

7th July, 2015
'raj'

(SURINDER GUPTA)
JUDGE