

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

**Criminal Revision 2182 of 2013
Date of Decision: November 30, 2015**

Sanjay Kumar	Vs.	Petitioner
Sunny and another		Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
 HON'BLE MR. JUSTICE GURMIT RAM**

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

Mr. Sarfraj Hussain, Advocate
for respondent No. 1.

Mr. Praveen Bhadu, Asst. A.G., Haryana.

T.P.S.MANN, J.

The petitioner, namely, Sanjay Kumar, at whose instance FIR No. 738 dated 15.10.2011 under Sections 148/149/302 IPC was registered at Police Station, Samalkha, District Panipat, against respondent No.1-Sunny besides Ram Sharan, Vinod, Madan, Vijaypal, Sonu and Sanju has filed the present revision under Section 401 of the Code of the Criminal Procedure for challenging the order dated 7.6.2013 passed by the learned Additional Sessions Judge, Panipat, whereby, respondent-Sunny has been held to be below eighteen years of age as on the date of commission of the offences and, being a

juvenile, liable to be tried by the Juvenile Justice Board, in accordance with law.

In his application dated 4.3.2013, respondent-Sunny had pleaded that he stood summoned under Section 319 Cr.P.C. to face trial along with other accused. The occurrence in question had taken place on 15.10.2011 and on the said date he was juvenile as he was born on 4.4.1996. In order to show that he was born on 4.4.1996, he placed on record attested copies of certificates of the Middle Class Examination and the Secondary Examination conducted by the Board of School Education, Haryana. He also pleaded that he already stood declared juvenile in another case FIR No. 263 dated 14.6.2010 under Sections 323/324/325/506/34 IPC of Police Station, Samalkha, by learned Judicial Magistrate 1st Class, Panipat, vide order dated 11.4.2012, photocopy of which, was attached by him with the application. Pleading that he was juvenile and could not be tried along with other accused, who were major, he prayed for sending the case to Juvenile Justice Board for inquiry.

The application was opposed by the complainant by filing a reply stating therein that respondent-Sunny was not a juvenile on the day of commission of the offence as he was born in the month of December, 1992. The school certificates produced by him were not admissible in evidence. His declaration

as juvenile in another case was not binding in the present case.

During consideration of the application preferred by respondent-Sunny, his father Madan Lal appeared before the trial Court as AW1 whereas attested copy of the Matriculation certificate, attested copy of Secondary School Examination certificate, certified copy of order dated 11.4.2012, attested copy of Matriculation certificate of Kajal, sister of respondent-Sunny and certificate regarding admission of Sachin Kumar, brother of respondent-Sunny were brought on record by way of documentary evidence as Exts. A1, A2, A3, A4 and A5, respectively. On the other hand, SI Rameshwar Dutt appeared as RW1 while certificate issued by the Registrar (Births and Deaths) Panipat, birth certificate of Sonia, sister of respondent-Sunny issued by the Registrar (Births and Deaths), Panipat, report submitted by SI Rameshwar Dutt, certified copy of the charge sheet dated 11.6.2012 framed in case titled State Vs. Madan Pal and others bearing FIR No. 311 dated 22.11.2004 registered under Sections 323, 324, 34 IPC Police Station Samalkha and attested copy of the charge sheet dated 25.4.2012 framed in case titled State Vs. Madan and others bearing FIR No. 263 dated 14.6.2011 registered under Sections 323, 324, 325, 34 IPC, Police Station Samalkha were brought on record as Exts.R1, R2, R3, R4 and R5, respectively, by way of documentary evidence.

Vide impugned order, learned Additional Sessions Judge, held that date of birth of respondent-Sunny stood proved to be 4.4.1996 and as the alleged occurrence had taken place on 15.10.2011, he was about 15½ years of age on the date of commission of crime and, accordingly, directed that respondent-Sunny be tried by the Juvenile Justice Board, in accordance with law.

Learned counsel for the petitioner has submitted that learned trial Court has wrongly come to the conclusion that date of birth of respondent-Sunny was 4.4.1996 on the basis of Matriculation certificate as no authenticity could be attached to the said certificate for the reason that Kajal @ Sonia, sister of respondent-Sunny was born on 5.6.1996, i.e. within two months of the birth of respondent-Sunny. In order to show the date of birth of Kajal @ Sonia as 5.6.1996, learned counsel for the petitioner has drawn the attention of the Court to the birth certificate (Annexure P-3) issued by the Registrar (Births and Deaths), Panipat. He has also submitted that Madan Lal, father of respondent-Sunny appeared before the trial Court as AW1 and in his cross-examination, he admitted that his daughter Kajal was younger to Sunny and her date of birth was got recorded with the Chowkidar with her name Sonia and later on her name was changed to Kajal. He further stated that Sunny and Kajal were not

twins. He tried to wriggle out of the factum of Kajal being born in the year 1996 by stating that she was born on 1997. The date of birth of Sonia @ Kajal as reflected in the birth certificate (Annexure P3) as 5.6.1996 goes a long way to establish that respondent-Sunny was not born on 4.4.1996 rather he was born in the year 1993 and, thus, it cannot be said with certainty that he was less than eighteen years of age and, therefore, to be considered as a juvenile.

Learned counsel for respondent No. 1 has submitted that the trial Court has rightly declared Sunny as juvenile on the date of commission of the crime and, therefore, he could not be tried along with accused, who were major. Instead, he be tried by the Juvenile Justice Board.

Having heard learned counsel for the parties and on going through the impugned order, this Court finds it appropriate to refer to the various provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 as well as Rules framed thereunder. Section 2 (k) defines juvenile as person who has not completed eighteenth year of age. Section 2 (l), similarly, defines juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 14 of the Act contemplates an inquiry to be conducted in

order to determine the age of the offender. Rule 12 goes on to describe the procedure to be adopted in order to determine the age of the juvenile. The said Rule is reproduced hereinbelow:-

“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), (iii) 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.

In the present case, as is clear from the Secondary Examination certificate issued by the Board of School Education, Haryana, copy of which is appended as Annexure P2 with the petition, the date of birth of respondent-Sunny stands mentioned therein as 4.4.1996, therein. The said certificate is the best piece of evidence to determine the age of the offender. As the occurrence had taken place on 15.10.2011, respondent-Sunny was about 15½ years of age on that day and, thus, a juvenile or juvenile in conflict with law. The date of birth of respondent-Sunny as mentioned in the Secondary Examination certificate (Annexure P2) is sought to be challenged by the counsel for the petitioner by inviting the attention of the Court to the birth certificate (Annexure P3) issued by the District Registrar (Births and Deaths), Panipat, issued in respect of his sister Sonia, whose date of birth was recorded therein as 5.6.1996. According to the petitioner, in case respondent-Sunny was born on 4.4.1996, his sister-Sonia, whose name was later on changed as Kajal could not have been born on 5.6.1996. However, this Court is of the considered view that the issue under consideration is the age of respondent-Sunny and

not that of his sibling Sonia @ Kajal. Moreover, implicit reliance on birth certificate (Annexure P3) cannot be placed in view of the attested copy of the matriculation certificate Ex.A4 of Kajal, sister of respondent-Sunny, as per which, her date of birth was 15.5.1997. It is not the case of the petitioner that Sonia and Kajal are two different girls. Once, it is established from the matriculation certificate Ex.A4 of Kajal that her date of birth was 15.5.1997, birth certificate (Annexure P3) showing her date of birth as 5.6.1996 deserves to be ruled out of consideration.

It may not be out of place to mention here that in his testimony as AW1, Madan Lal father of respondent-Sunny stated that he got married on 2.4.1994 and respondent-Sunny was born on 4.4.1996. In his cross-examination, he denied the suggestion that he was married in the year 1992. He also denied getting the date of birth of his daughter-Kajal recorded as 1996 as according to him, it was recorded as 1997. He was not confronted with the birth certificate (Annexure P3) issued by the District Registrar (Births and Deaths), Panipat, mentioning the date of birth of his daughter-Sonia as 5.6.1996.

In view of the above, it cannot be said that the impugned order passed by the trial Court declaring respondent-Sunny to be a juvenile suffers from any illegality or perversity.

Resultantly, the revision is without any merit and,
accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

**November 30, 2015
amit rana**

**(GURMIT RAM)
JUDGE**