

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

CRM-M-943-2015

Date of decision : 19.05.2015

Banti alias Ved Parkash

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the 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 ?

Present: Mr. Rajesh Lamba, Advocate for petitioner.

DARSHAN SINGH, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') for setting aside the order dated 02.12.2013, passed by learned Judicial Magistrate First Class, Palwal and the order dated 14.10.2014, passed by the learned Additional Sessions Judge (I), Palwal, vide which the plea of the petitioner for declaring him as juvenile in conflict with law as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after called 'the Act'), has been dismissed.

2- The petitioner is facing prosecution in case FIR No.330 dated 14.08.2013 under Sections 323, 324, 341, 302 read with Section 34 of the Indian Penal Code, 1860 (here-in-after called 'IPC'), Police Station Camp Palwal, Distt. Palwal. He moved an application before the learned Judicial Magistrate First Class, Palwal for declaring him as juvenile in conflict with law claiming his date of birth to be 20.11.1995 and that he was of 17 years, 08 months and 06 days of age on the date of occurrence i.e. 14.8.2013. After recording the evidence of the parties, the application moved by the petitioner was dismissed by the learned Judicial Magistrate First Class, Palwal vide impugned order dated 02.12.2013. The criminal revision filed against the said order was also dismissed by the learned Additional Sessions Judge (I), Palwal vide impugned order dated 14.10.2014. Hence, this petition.

3- Learned counsel for the petitioner contended that the petitioner has produced his date of birth certificate Ex.AW2/A and as per that certificate, the date of birth of the petitioner was 20.11.1995. He contended that the date of birth certificate is more authentic than the school certificate relied upon by the prosecution. Thus, he pleaded that the orders passed by the courts below suffers from material illegality.

4- The aforesaid contentions have been duly considered.

5- The perusal of the impugned orders shows that the petitioner has produced his date of birth certificate Ex.AW2/A in support of his application. The respondent-State has produced Ex.R1 copy of marks-sheet of 5th Class of the petitioner, Ex.R2 copy of marks-sheet of

8th class of the petitioner and Ex.R3 copy of the Matriculation marks-sheet of the petitioner.

6- The procedure to be followed in determination of the age has been provided in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (here-in-after called 'the Rules'). As per Rule 12 (3) (a), the age shall be determined by seeking evidence by obtaining

- (i) the matriculation or equivalent certificate, 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 the corporation or a municipal authority or a panchayat.

7- As per the aforesaid rules, the first priority is given to the matriculation or equivalent certificate, in the absence whereof then to the date of birth certificate issued by the school other than a play school first attended by the accused. In the absence of the above mentioned certificates, the birth certificate issued by the corporation or a municipal authority or a panchayat can be taken into consideration. In the instant case, the prosecution has produced the Matriculation marks-sheet which falls in the first category and will have to give the first preference. The date of birth certificate relied upon by the petitioner could only have been taken into consideration if the said Matriculation or equivalent certificate and the date of birth certificate issued by the school, would not have been available. Thus, in the presence of the Matriculation marks-sheet/certificate, the birth certificate produced by the petitioner cannot be taken

into consideration. The Hon'ble Supreme Court in case **Jodhbir Singh Vs. State of Punjab, 2013 (1) RCR (Criminal) 272** has laid down as under:

“We are of the view that in a case where genuineness of the school leaving certificate has not been questioned, the Sessions Court and the High Court were not justified in placing reliance on certain statements made by Parkash Kaur, mother of the accused in the cross-examination. The Sessions Court also committed an error in placing reliance on the certificate issued by the village Chowkidar who was examined as RW2. When the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.”

8- This Court in case **Rajbir Vs. State of Haryana, 2011(3) RCR (Criminal) 222** has laid down as under:

“In enquiry for age determination of a juvenile in conflict with law the Matriculation or equivalent certificate if available is to be given preference and if the same is not available, the date of birth certificate from the school other than the play school is to be given preference and it is the only in the absence whereof, the medical opinion would be sought from the duly constituted medical board.”

9- In view of the aforesaid ratio of law, no illegality has been committed by the learned courts below by relying upon the Matriculation marks-sheet/certificate produced by the prosecution in preference to the

birth certificate relied upon by the petitioner. As per the Matriculation certificate, the date of birth of the petitioner was 16.03.1995 and in this manner, he was more than 18 years of age on the date of occurrence and does not fall within the definition of “juvenile” as provided under Section 2 (k) of the Act.

10- Thus, the impugned orders passed by the learned courts below do not suffer from any illegality, inviting any interference by this Court exercising the extra ordinary jurisdiction under Section 482 Cr.P.C.

11- Resultantly, the present petition has no merits and the same is hereby dismissed in *limine*.

19.05.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**