

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223

Crl. Revision No.3309 of 2013 (O&M)
Date of Decision: 16th February, 2015

Akhil Sahni @ Vakeel

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mrs. Justice Daya Chaudhary

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sanjeev Kumar Panwar, Advocate
for the petitioner.

Mr. Ritu Punj, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.(Oral)

The present revision petition has been filed to challenge impunged order dated 06.05.2013 passed by Additional Sessions Judge (Judge Special Court) Ludhiana in case SC No.35 of 21.05.2013 in case FIR No.24 dated 13.02.2013 under Sections 20/61/85 of NDPS Act at Police Station Sadar Raikot.

Learned counsel for the petitioner submits that an application was moved by the petitioner for declaring him as juvenile only on the basis of ossification test/report issued by the Civil Hospital, Ludhiana where as, as per birth certificate of the petitioner, his actual date of birth is 02.08.1997. The application was dismissed and the said FIR was registered on 13.02.2013. As per birth certificate, the petitioner was juvenile at the time of alleged occurrence. Learned counsel also

submits that this certificate was not available at that time and subsequently by making all efforts, he has got the certificate which clearly shows that the petitioner was juvenile at the time of commission of the offence.

Notice of motion was issued on 24.10.2013. In response thereto, reply on behalf of respondent-State has been filed and the same is on record.

Learned State counsel on the basis of reply submits that the factum of juvenility should have been decided by the Juvenile Justice Board but no such plea was raised at that time and as per ossification test, the petitioner was not juvenile. Learned State counsel also submits that even after framing of the charges, all prosecution witnesses except two have been examined and the date fixed before the trial Court is 04.03.2015.

Heard arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order as well as other documents available on record. Undoubtedly, the application is for determination of the question of juvenility can be raised at any stage. Earlier, the application moved by the petitioner was dismissed as he could not place on record any document in support of his contention. Subsequently, the petitioner has got the copy of birth certificate issued by the Department of Planning and Development, Directorate of Statistics and Evaluation Birth Certificate, State of Bihar wherein the date of birth of the petitioner has been mentioned as 02.08.1997 and the said FIR was registered on 13.02.2013. In case, the date of birth is considered as has been stated by learned counsel for the petitioner, then the petitioner was juvenile at the time of occurrence. Section 7A of the Act and Rule 12 of 2007 which

are relevant to decide the controversy in land and the same are reproduced as under:

“Section 7A- Procedure to be followed when claim of juvenility is raised before any Court.

(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be :

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a Court shall be deemed to have no effect.”

Rule-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 juvenality or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prime 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 specific 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.

(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 off 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 the juvenile in conflict with law.”

Neither any document to show that the petitioner was juvenile at the time of occurrence was before the trial Court nor any request was made. Ossification test was conducted and by considering the same, the petitioner was not found to be juvenile. Undisputedly, it can be considered at any stage of litigation.

Accordingly, the present revision petition is allowed and impugned order dated 06.05.2013 passed by Additional Sessions Judge, Ludhiana (Annexure P-1) is hereby set aside. The petitioner is directed to move an application by annexing the date of birth certificate issued by the Department of Planning and Development, Directorate of Statistics and Evaluation Birth Certificate, State of Bihar, preferably within a period of 02 weeks before the Juvenile Justice Board. The Juvenile Justice Board is also directed to decide the same in accordance with law within a period of one month from filing of such application.

Meanwhile, the proceedings against the petitioner shall remain stayed.

16.02.2015
sonia g.

(DAYA CHAUDHARY)
JUDGE