

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1441-2014 (O&M)
Date of Decision: August 11, 2015

Sanjay

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Chanderhas Yadav, Advocate,
for the petitioner.

Mr. R.K. Doon, AAG, Haryana,
for respondent No. 1.

Mr. Jitender Nara, Advocate,
for respondent No. 2.

1. *Whether Reporters of local papers may be allowed to see the judgment?* **YES**
2. *To be referred to the Reporters or not?* **YES**
3. *Whether the judgment should be reported in the Digest?* **YES**

NARESH KUMAR SANGHI, J (Oral)

Challenge in the present criminal revision petition is to the judgment dated 17.4.2014, passed by learned Additional Sessions Judge, Rohtak, whereby the appeal filed by the informant-Narender Kumar, against the order dated 25.1.2014, passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak (for brevity, 'learned Juvenile Court'), was set aside and the petitioner was held not to be a juvenile in conflict with the law.

Though narration of facts would not be necessary for the purpose of disposing of present petition, yet to be clear on all aspects it is deemed necessary to give a brief description of the relevant facts. On 26.2.2009, an information was received by the Station House Officer, Government Railway Police, Rohtak, that two persons were run-over by Train No. 2556 DN Express. Out of them, one had died while the second one was seriously injured. On 27.2.2009, informant-Narender Kumar identified the dead body of his daughter, Kajal. He suffered a statement before the police that Kajal was aged about 15 years and a student of 10th standard; on 26.2.2009, at about 2:45 p.m., the petitioner, who also belonged to his village, had fled along with his daughter, Kajal, from the village; it was also averred that the petitioner, Sanjay, had been teasing Kajal for last one year and wanted to develop illicit relations with her; and that Kajal had been murdered by the petitioner.

A case FIR No. 14, dated 27.2.2009, for the offence punishable under Section 302, IPC, was registered at Police Station, GRP, Rohtak. During investigation it emerged on record that the petitioner by catching the hand of Kajal, had jumped before the train and, as such, Section 309, IPC, was also added.

After investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented before learned Juvenile Court. An enquiry by following the procedure under Rule 12 of the

Juvenile Justice (Care and Protection of Children) Rules, 2007 (for brevity, 'the Rules') was conducted and it was held by learned Juvenile Court that on the date of occurrence, i.e. 26.2.2009, the petitioner was less than 18 years of age and, as such, he was 'juvenile in conflict with law'.

The informant, Narender Kumar, was not satisfied with the observations made by learned Juvenile Court and, thus, he filed an appeal before learned Sessions Court at Rohtak. The said appeal was accepted and it was held by learned Additional Sessions Judge, Rohtak, that the petitioner, Sanjay, was more than 18 years of age on the date of occurrence.

Now the present revision petition has been filed by the petitioner, Sanjay, challenging the judgment of learned Additional Sessions Judge, Rohtak, on the premise that as per school record and the matriculation certificate, date of his birth was 20.12.1991. The alleged occurrence had taken place on 26.2.2009 and, hence, he was less than 18 years of age on the date of occurrence and learned Additional Sessions Judge has wrongly set aside the well reasoned order passed by learned Juvenile Court. In support of the present revision petition, learned counsel for the petitioner submits that as per sub-rule (3) of Rule 12 of the Rules, a certificate issued by the Central Board of Secondary Education (CBSE), containing the age of the person, has to be taken as correct. He

further submits that from the very beginning of the admission of the petitioner in a school, the date of birth of the petitioner was mentioned as 20.12.1991. At that time it was not in the notice of father of the petitioner that he (petitioner) would be involved in a criminal case in the year 2009 and, therefore, to take benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, date of his birth is undermined. In support of his submissions, learned counsel for the petitioner has placed reliance on **Ashwani Kumar Saxena v. State of M.P.**, 2012 (4) R.C.R. (Criminal) 391 (SC); **State of Bihar v. Chhotu Pandey @ Roshan Pandey**, 2015 (1) R.C.R. (Criminal) 914 (SC); **Jarnail Singh v. State of Haryana**, 2013 (3) R.C.R. (Criminal) 644 (SC); **Shah Nawaz v. State of U.P. and another**, 2011 (3) R.C.R. (Criminal) 884 (SC); and **Abdul Qayoom Gani v. State of Punjab**, 2012 (2) R.C.R. (Criminal) 910 (P&H).

On the other hand, learned counsel for the State assisted by Mr. Jitender Nara, counsel for the informant, submits that the accused has to conclusively prove on record the fact that he was juvenile and without the same he cannot derive any benefit from the beneficial legislation codified by the Central Government. To elaborate his arguments, it was submitted that during enquiry by Juvenile Court, father of the petitioner had appeared as 'PW1' and in his cross-examination he (Ram Karan) was constrained to admit

that there was a difference of 22 months between the birth of his daughter Kavita and the petitioner, Sanjay. He also admitted during cross-examination that Kavita had taken birth on 28.2.1989. If 22 months are added from the date of birth of Kavita, then it would be clear that the petitioner, Sanjay, had taken birth in the month of December, 1990, i.e. on 20.12.1990. It was also pointed out that statement of Ram Karan was a bundle of lies and he could not stand the test of cross-examination conducted by the Assistant Public Prosecutor, assisted by counsel for the informant. In support of his contentions, he has placed reliance on a judgment of Delhi High Court in the matter of **Mor Pal v. State, 2014 (7) R.C.R. (Criminal) 1035.**

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Before dealing with the factual aspects of the case, it is deemed appropriate to refer to the case law cited by rival parties.

In the matter of **Ashwani Kumar Saxena (supra)**, Hon'ble the Supreme Court held that the Court or the Board can accept something more than an affidavit, i.e. certificates etc., as evidence. It was further held that entry related to date of birth, entered in the mark sheet and the school leaving certificate are valid evidence for determining the age of the accused. While

referring to Rule 12 of the Rules, it was held that medical opinion to determine the age of juvenile should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any other birth certificate issued by a corporation or a municipal authority or a panchayat is not available. It was further held that entry related to the date of birth, entered in the mark sheet, is a valid evidence for determining the age of the accused.

In the matter of **Chhotu Pandey @ Roshan Pandey (supra)**, Hon'ble the Supreme Court held that if claim of juvenility can be ascertained from matriculation certificate then it is not open to opposite party to demand medical examination to establish the age.

In the matter of **Jarnail Singh (supra)**, Hon'ble the Supreme Court on the facts of the case held that in the absence of matriculation certificate the age could be determined on the basis of school record.

In the matter of **Shah Nawaz (supra)**, Hon'ble the Supreme Court held that date of birth of 'juvenile in conflict with law' may be determined on the basis of matriculation certificate and in absence of matriculation certificate, entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The

school leaving certificate is also a valid proof in determining the age of the accused person. It was further held that under Rule 12 medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available.

In the matter of **Abdul Qayoom Gani (supra)**, this Court while interpreting Rule 12(3)(b) of the Rules, held that medical opinion can be sought only in the absence of documentary evidence regarding date of birth which is (i) Matriculation Certificate, (ii) date of birth from school, (iii) birth certificate given by corporation or municipal authority or panchayat.

In the matter of **Mor Pal (supra)**, Delhi High Court while dealing with facts of the said case held that due consideration must be given to ascertain as to whether the manner in which the certificates were prepared by the school authority was trustworthy; whether the officer of the admission department, who might be illiterate/semi-literate in most of the cases and literate in few, had made the entries in the record book meticulously; whether the record books had been kept and retained by the school authority in a safe and secure custody immune from any kind of manipulation or tampering. Such degree of care and caution to be exercised by the courts might vary from case to case, not to dwell

so as to threadbare examine every document but also not to let the offender take a blanket protection under the said Act.

In the present case, learned Juvenile Court while declaring the petitioner, Sanjay, as 'juvenile in conflict with law' held as under:-

“4. Thus, the first and foremost requirements has to be recorded by the board on the prima facie appearance of the juvenile and thereafter, further enquiry on the basis of certificates produced by him. In the present case, on the physical appearance of the accused, he seems to be around the age of 18 years. Further, as per the matriculation certificate the date of birth of accused is 20.12.1991 and the occurrence took place on 27.02.2009. The main plea taken by the Learned APP for the State is that the father of juvenile has recorded the wrong date of birth of accused on the basis of affidavit and further the date of birth of his daughter Kavita is 28.2.1989 and the father of juvenile Ram Karan PW1 admittedly in his cross-examination that there is a difference of 22 months in the date of birth of his son Sanjay and his daughter Kavita, so, they argued that on the basis of admission of his father the date of birth of the juvenile in conflict with law is wrong as mention in matriculation certificate. In the case titled as Rajender Chandra vs. State of Chattisgarh and Anr., 2002 (1) RCR Cri., 586, it was held that while dealing with the question of determination of the age of accused for the purpose of finding out whether he is juvenile or not, a hyper-technical

approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases.

5. *Hence, the juvenile has produced his matriculation certificate and from this, it has come on record that at the time of the alleged offence, the date of birth of Sanjay is less than 18 years. Therefore, he was declared juvenile in conflict with law.”*

It is not in dispute that in the matriculation certificate issued by the Central Board of Secondary Education, dated 27.5.2006, the date of birth of the petitioner has been mentioned as 20.12.1991. The only dispute is as to whether at the time of admission of the petitioner in the school, first time, the date of his birth was correctly disclosed by his father Ram Karan.

Learned counsel for the State assisted by learned counsel for the informant, has vehemently argued that from the deposition of Ram Karan it was substantiated on record that hypothetical date of birth of Sanjay was disclosed to the school authorities at the time of his admission in the school first time. He also submitted that during cross-examination Ram Karan had admitted that there was difference of 22 months between the dates of birth of Kavita, his daughter and the petitioner Sanjay. Father of

the petitioner had also admitted that in his service record the date of birth of Kavita was mentioned as 18.2.1990, however, the actual date of her birth was 18.2.1989, therefore, Ram Karan was in habit of under estimating the date of birth of his children and as a result thereof he had wrongly disclosed the date of birth of Sanjay as 20.12.1991 as against the actual date of birth of 20.12.1990.

In his examination-in-chief, Ram Karan was very clear that date of birth of his son Sanjay was 20.12.1991 and he had correctly disclosed the said date of birth to the school authorities at the time of admission in the school first time. The said date of birth was continuing throughout his education career. Even in the matriculation certificate issued by the Central Board of Secondary Education the said date of birth is mentioned.

As per sub-rule (3) of Rule 12 of the Rules, during enquiry the Principal Magistrate Juvenile Justice Board or the Court has to first look to the matriculation certificate and the school record and thereafter to bank upon other material while determining the age of the accused person.

In the case in hand, not only the school record, but also the certificate issued by the Central Board of Secondary Education would clearly spell out that the date of birth of Sanjay was 20.12.1991. The date of occurrence is 26.2.2009 and, hence, he was 17 years and approximately 2 months old and, as such, he was a

'juvenile in conflict with law'.

Learned Appellate Court has wholly based its order in discussing the cross-examination of Ram Karan, father of the petitioner. Ordinarily, the oral version cannot be given much credence in comparison to the documentary evidence.

At this stage, it would be appropriate to refer to para 45 of the judgment of Hon'ble the Supreme Court in the matter of **Ashwani Kumar Saxena (supra)**, which reads as under:-

“45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”

This Court is also of the considered opinion that Ram Karan, father of the petitioner, while getting his son admitted in the school for the first time, had not kept in mind that his son would commit a crime in future and would be involved in the case in hand.

This Court is of the view that learned Juvenile Court has rightly arrived at a conclusion that the petitioner was a 'juvenile in

conflict with law' and, hence, learned Appellate Court had gone wrong in setting aside the well based order passed by learned Juvenile Court.

Resultantly, the present criminal revision petition is allowed. The impugned judgment passed by learned Appellate Court is set aside and the order passed by learned Juvenile Court is restored.

The parties to the *lis* shall appear before learned Juvenile Court on 4.9.2015, for further proceedings in accordance with law.

(NARESH KUMAR SANGHI)
JUDGE

August 11, 2015
Pkapoor