

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2343 of 2014 (O & M)

Date of Decision: April 01, 2015

Neha

..... PETITIONER

VERSUS

State of Haryana & another

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of 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?

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PRESENT: - Mr. Johan Kumar, Advocate, for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate
General, Haryana, for respondent No.1.

Mr. Rajesh Lamba, Advocate, for respondent
No.2.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated May 27, 2014 passed by learned Additional Sessions Judge, Faridabad whereby an order dated April 9, 2014 passed by Principal Magistrate, Juvenile Justice Board, Faridabad (for

short, 'Board') dismissing an application for review/ recalling order dated July 31, 2013, was dismissed.

2. Briefly stated, facts leading to instant revision petition are that respondent No.2 – Amit, filed an application declaring him juvenile on the date of alleged occurrence i.e. December 21, 2012, regarding which FIR No.545 dated June 24, 2013 was registered at Police Station, Sector-7, Faridabad, under Sections 354-D, 506, 376 IPC, which was allowed vide order dated July 31, 2013. Subsequent thereto, revisionist filed an application for review/ recalling said order dated July 31, 2013 but that application was dismissed by Board vide order dated April 9, 2014. Revision preferred against order dated April 9, 2014 was also dismissed vide order dated May 27, 2014 passed by Additional Sessions Judge, Faridabad.

3. As per claim put-forth by respondent No.2 – Amit, his date of birth is May 2, 1995, whereas, as per contention of prosecutrix – petitioner, his date of birth is July 22, 1992, and that, he was not a juvenile on the date of occurrence.

4. An application moved by Amit before Board has been allowed holding him to be juvenile vide order dated April 9, 2014. Said order was challenged by revisionist Ms. Neha by

way of an appeal which was dismissed vide order dated May 27, 2014.

5. In response to notice issued by this Court, respondent No.2 has been represented by Mr. Rajesh Lamba, Advocate, whereas, Mr. C.S. Bakhshi, Additional Advocate General, Haryana, represented State.

6. Before delving deep into merits of claim of revisionist and stand of respondent No.2, it would be desirable to consider Section 2(k) of Juvenile Justice (Care & Protection of Children) Act, 2000 (for short, 'Act') wherein juvenile or child has been defined. Section 2(k) of the Act reads as under:-

“2(k) “juvenile” or “child” means a person who has not completed eighteenth year of age.”

7. From aforesaid provisions, it is crystal clear that a juvenile is person who has not attained the age of 18 years on the date of commission of offence.

8. It would also be desirable to consider Rule 12 of Juvenile Justice (Care & Protection of children) Rules, 2007 (for short, 'Rules'), which reads as under:-

“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.

(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 of 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.”

9. A glance at aforesaid Rule depicts that a specific procedure has been prescribed which is required to be followed while determining the age of child or juvenile. Sub-Rule (2) of Rule 12 provides that while determining the age of a juvenile or child or a juvenile in conflict with law could be done on the basis of physical appearance, all documents if available and if the Court or Board or Committee is satisfied, it can decide the question of juvenility. Sub rule (3) of Rule 12 prescribes evidence to be considered for the purpose of determining juvenility of a person; firstly in the form of matriculation or equivalent certificate, if available and in the absence whereof, date of birth certificate issued by the school (other than a play school) first attendant and in the absence whereof, birth certificate given by Corporation or a Municipal Authority or a Panchayat. If none of these are available, then medical opinion is to be sought from a duly constituted medical board which would declare the age of such juvenile.

10. Adverting to facts and circumstances of the case in hand, occurrence is alleged to have taken place on December

21, 2012. During the course of evidence, respondent No.2 – Amit, himself appeared in witness box and placed on record copy of his school certificate (transfer certificate) wherein his date of birth is recorded as May 2, 1995. Similarly, certificate issued by Head Mistress of Sarvodya High School was also placed on record which fortifies and corroborates his date of birth as May 2, 1995. Even, copy of certificate of secondary examination issued by Board of School Education, Haryana, also corroborates version of respondent No.2 - Amit. To rebut this evidence, revisionist Ms. Neha examined Anil Kumar, Clerk of Office of SDM/ Licensing Authority, Ballabgarh, who brought the record with regard to issuance of driving license and proved driving license Ex.AW1/A. Besides it, she also placed on record birth certificate, allegedly pertaining to respondent No.2 – Amit, issued by Sub-Registrar, Births & Deaths, Ballabgarh. Both these documents reflect date of birth of respondent No.2 – Amit, as July 22, 1992.

11. Contention of learned counsel for revisionist is that both the courts below have ignored and disbelieved driving license as well as birth certificate issued by Sub Registrar, Births & Deaths, Ballabgarh, without any cogent reason. Infact, petitioner is guilty of concealment of actual facts and committed

forgery by cutting the name in register of Births & Deaths. So, from documents available on file, respondent No.2 was a major on the date of occurrence and as such, impugned orders passed by both the courts below are not sustainable in the eyes of law.

12. This Court has given an anxious thought to rival submissions made by learned counsel for parties and perused the record.

13. As discussed above, Rule 12(3) of Rules, provides primacy of matriculation certificate or equivalent certificate, if available and in the absence whereof, date of birth certificate issued by school authorities where concerned person, first attended and it is only in the absence of said certificate, birth certificate given by Corporation or a Municipal Authority or a Panchayat can only be entertained. In this case, during the course of arguments, respondent No.2 has placed on record copy of secondary examination held on April 2, 2012 issued by Board of School Education, Haryana, on June 20, 2012. According to said certificate, his date of birth is May 2, 1995. Similarly, another certificate issued by District Primary Education Officer, Faridabad, also reflects his date of birth as May 2, 1995. Documents which have been placed on record by revisionist deserve to be ignored and has rightly been done so

by both the courts below as Rule 12(3) specifically provides primacy to matriculation certificate or equivalent thereto and in the absence whereof, school leaving certificate issued by concerned authority which was first attended could be entertained.

14. In the light of aforesaid discussion, this Court is of the considered view that there is no infirmity or illegality in impugned orders passed by the courts below and respondent No.2 is proved to be a juvenile on the date of occurrence. The petition is accordingly dismissed.

April 01, 2015
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(Jaspal Singh)
Judge