

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

Crl. Rev. No.2573 of 2014

Date of Decision: 09.01.2015

Mahesh

....Petitioner

Versus

State of U.T. Chandigarh

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. Gurpreet Singh, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for the respondent-U.T. Chandigarh.

DAYA CHAUDHARY, J.

The present revision petition has been filed for quashing of order dated 30.05.2014 as well as order dated 15.07.2014 passed by the Additional Sessions Judge, Chandigarh, whereby, the application dated 31.03.2014 of the petitioner for declaring him juvenile and application dated 07.06.2014 for conducting his ossification test has been declined.

As per case of the petitioner, he was juvenile at the time of alleged occurrence. The alleged incident occurred on 04.01.2014 and FIR No.7 was registered on that very day under Sections 302, 506, 201 read with Section 34 IPC at Police Station Sector 11, Chandigarh. The date of birth of the petitioner is 26.12.1996. However, during pendency of the trial, the petitioner moved an application dated 31.03.2014 for declaring him juvenile, keeping in view his date of birth, which is supported by birth

certificate dated 07.01.2014 and also school leaving certificate dated 18.02.2014. Reply of the application was filed by the State. The application moved by the petitioner was dismissed on 30.05.2014 by the Additional Sessions Judge, Chandigarh. The petitioner also moved an application dated 07.06.2014 praying for conducting his ossification test to prove the factum of juvenility but the same, too, was dismissed on 15.07.2014.

The impugned orders dated 30.05.2014 as well as 15.07.2014 are subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the impugned orders have been passed contrary to the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as 'the Act'). No reasoning, whatsoever, has been mentioned in the impugned orders while dismissing the application of the petitioner for declaring him juvenile. Simply, it has been mentioned that only photostat copy of the document was placed on record. Similarly, while declining prayer for ossification test, it has been mentioned that the applicant was not juvenile on the date of alleged occurrence and in case, the ossification test is ordered, there would be a margin of two years on either side and as such, the ossification test of the petitioner is not required. .

Learned counsel for the petitioner has also relied upon the judgments of Hon'ble the Apex Court in cases **Nate Kumar Sonkar vs State** passed in **Criminal Revision Petition No.127 of 2011**, decided on **25.11.2011**, **Mor Pal vs State 2013(198) DLT 487**, **Ashwani Kumar Saxena vs State of Madhya Pradesh 2012(9) SCC 750** and **Babloo Pasi vs State of Jharkhand and another 2008(13) SCC 133**, in support of his contentions.

Learned counsel for respondent-U.T. Chandigarh opposes the

submissions made by learned counsel for the petitioner on the ground that it was for the petitioner to prove his date of birth to show that he was juvenile at the time of occurrence but he could not prove this fact and hence, both the applications were dismissed.

After considering the rival contentions raised by learned counsel for the parties and the factual position of this case, it would be relevant to reproduce the relevant provisions of 'the Act' and also Juvenile Justice (Care and Protection of Children) Rules, 2007 (here-in-after referred to as 'the Rules'), which are as under :-

“Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000- 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 recognised 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 of Juvenile Justice (Care and Protection of

Children) Rules, 2007 – 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) of the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

As per provisions of Rule 12 of the Rules, 2007, the age determination inquiry is to be conducted by the court or by the Juvenile Justice Board, as the case may be on the basis of documents produced by the accused in support of his contention. As per the Rules, in the order of

priority, the first precedence has been given to matriculation or equivalent certificates, if available. In case, such a certificate is duly proved on record in accordance with law then such a certificate is sufficient to determine the age of the offender. In the absence of matriculation or equivalent certificate, the second priority is to be given to date of birth certificate from the school (other than a play school) first attended; or in absence of said two certificates, the third priority is to be given to the birth certificate given by a corporation, municipal authority or a Panchayat.

As per Rule 12(3)(b) of the said Rules, in the absence of the said three documentary evidence, the Court or the Board can seek medical opinion from any duly constituted Medical Board in order to determine the age of offender by conducting an ossification test. It has further been provided under Rule 12(3)(b) that in case the exact assessment of the age cannot be done by the Court or the Board then the reasons are to be recorded by the Court, in case, the benefit is to be given to the offender by considering his/her age on the lower side within a margin of one year and while passing such an order, the Court may take into consideration such evidence as may be available on record or the medical opinion or by recording a finding in respect of his age based on either of the evidence produced before the Court as specified in any of the clause (a)(i), (ii), (iii) or in the absence whereof, the medical evidence in terms of clause (b) which shall be a conclusive proof of the age. In case of absence of a documentary evidence of first category, the Court has to look for the documentary evidence of second or third category and finally the medical proof. This view has been observed in **Mor Pal's** case (supra). Similar view has also been observed in **Ashwani Kumar Saxena's** case (supra). The relevant paragraphs of said judgment are referred as under :-

“27. Section 7A, obliges the court only to make an inquiry,

not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit." The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available." Rule 12(3) uses the expression "by seeking evidence by obtaining." These expressions in our view reemphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

29. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial as we see in the Code of

Criminal Procedure and their several meanings attributed to those expressions.

“Inquiry” as defined in Section 2(g), Code of Criminal Procedure reads as follows :

“Inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

The word “enquiry” is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

“Investigation” as defined in section 2(h), Code of Criminal Procedure reads as follows :

Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

The expressions “trial” has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions “inquiry” or “investigation” as contained in sections 2(g) and 2(h) of the Code of Criminal Procedure.

30. The expression “trial” has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. We find in very many cases that the Court/the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J. Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

31. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid

down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12(3)(a)(i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. “Age determination inquiry” contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a

municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.”

In view of the facts as well as law position as mentioned above, whether the offender was juvenile or not on the date of commission of offence, is a question of fact and the same can be considered only by proving on record in accordance with law. This issue has also been discussed in judgment of Hon’ble the Apex Court in case ***Jyoti Prakash Rai vs State of Bihar 2008(15) SCC 223*** as well as judgment in case ***Ravinder Singh Gorkhi vs State of U.P. 2006(5) SCC 584***. The relevant para of said judgment is reproduced as under :-

“9. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which

is required to be determined on the basis of the materials brought on records by the parties. In absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Indian Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.”

In the present case, neither any inquiry has been conducted nor any finding, whatsoever, has been recorded. The application moved by the petitioner has been dismissed only on this ground that he has placed on record the photocopies of the documents, whereas, the Court was under obligation to give finding and to decide the application as per provisions of law applicable. Similarly, another application for conducting ossification test has also been dismissed without giving any reason. By accepting the submissions made by learned counsel for the petitioner, the impugned orders dated 30.05.2014 as well as 15.07.2014 passed by the Additional Sessions Judge, Chandigarh are set aside and the case is remanded back to Additional Sessions Judge, Chandigarh to decide the applications afresh in view of the provisions of the Act as well as the Rules, 2007 as discussed above and pass necessary order in accordance with law accordingly.

09.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE