

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revn No. 2970 of 2014 (O&M)
Date of decision : 05.01.2015

Arjun Paswan

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Sandhu, Advocate
for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab

RITU BAHRI, J.

The present revision petition is directed against the order dated 04.08.2014 passed by the learned Judge, Special Court, Ludhiana, whereby the application filed by the petitioner for declaring him juvenile, has been dismissed.

Brief facts of the case are that the petitioner is facing trial in F.I.R No. 41 dated 15.03.2013 u/ss 18/61/85 of the The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

The case of the petitioner is that he was born on 10.05.1997, as per his date of birth certificate. The present F.I.R was registered on 15.03.2013, thus, he was juvenile, as such, he be declared juvenile or inquiry be conducted in this regard.

To prove his date of birth, he examined his father

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Umesh Paswan, AW1, who stated that the petitioner was born on 10.05.1997 at village Salempur, P.S Konch, P.O Chichora District Gaya. The original date of birth was Ex P1, transfer certificate Ex A2 and ration card Ex A3.

Thereafter, Gurbans Singh Bans Inspector appeared as RW1 and deposed that in the year 2013, he was posted as Incharge in CIA-II Ludhiana and was Investigating Officer of the present case. At the time of arrest of the petitioner, he disclosed his age to be 21 years.

While dismissing application of the petitioner for declaring him juvenile, vide order dated 04.08.2014, it has been observed that no relevant record with regard to issuance of any certificate stands placed on file and birth certificate was only issued on 21.09.2013 whereas transfer certificate merely relates period for which the petitioner studied whereas ration card Ex A3 does not depict the date of birth of the petitioner.

On notice, a reply by way of affidavit dated 21.11.2014 has been filed by A.C.P, Sahnewal, District Ludhiana stating therein that the police visited Govt. Middle School, Karai Konch, Gaya, Bihar to verify the authenticity of the school certificate i.e P-3 and found that the school certificate has not been issued by the School Authorities. It was found that certificate No. 18 is issued in the name of Kanchan Kumari wife of Krishna Paswan and the school

Principal also issued the attested copy of the same i.e R-1/T. The attested copy of the Admission Register was also given by the Principal of the said school and as per admission entry No. 33, the student name is mentioned as Chandan Kumar i.e R-2/T. Hence, the certificate was found to be false.

This Court, vide order dated 28.11.2014, directed the State to verify date of birth certificate of the petitioner. In compliance of order dated 28.11.2014, short affidavit dated 24.12.2014 has been filed by A.C.P, Sahnewal, District Ludhiana stating therein that ASI Sukhwinder Singh was deputed to verify the authenticity of date of birth of the petitioner (P-2). He went to village Konch, Distt Gaya Bihar and checked the register of village Konch and it was found that there is a entry at Sr. No. 21 in the register (R-3/T), vide which the date of birth of the petitioner has been recorded as 10.05.1997 and the date of issue of certificate is also mentioned as 21.09.2013. The said certificate was issued on the basis of application (R-4/T) submitted by the mother of the petitioner. The certified copy of the same was also supplied by Block Development Officer, Konch, Distt Gaya Bihar.

After going through the affidavits filed by A.C.P, Ludhiana, the date of birth of petitioner cannot be taken as 10.05.1997 as both birth certificate (P-2) and transfer certificate (P-3) have been found to be false by the

respondents.

Before deciding the case, it would be necessary to read out Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 'the Act'), which reads as under:

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 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 off cases, where the status of juvenility has not been determined in accordance with the provisions contained in subrule(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.”

A perusal of Section 12 of the Rule shows that as per clause 3 (a) (ii), in the absence or authenticity of the date of birth or school certificate, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

In the present case, both date of birth as well as school transfer certificate have been found to be false by the respondents, in that eventuality, the procedure under Rule 12(3)(a) has to be followed.

Hon'ble the Supreme Court while dealing with the application filed under Section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 'the Act') in a case titled as Anil Agarwala and another vs. State of West Bengal, 2012 (9) SCC 768 has held

that as per Section 7-A of the Act, 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 the commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary, so as to determine the age of such person. In para 5 of the judgment, it has been held as under:-

“5. Having regard to the above provisions, we set aside the order passed by the High Court which is incompatible with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and direct the trial Court to first of all look into the question of juvenility, as claimed by the appellants herein and after disposal of the claim made by the appellants that they were minors on the date of alleged incident, it shall proceed with the trial. In the event, the trial Court comes to a finding that the appellants were minor at the time of commission of the offence, it shall immediately send them to the concerned Juvenile Justice Board for considering their cases in accordance with the provisions of the 2000 Act. It is expected that these applications which have been filed on behalf of the appellants will be disposed of within three months from the date of receipt of a copy of this order.”

Considering the totality of the facts and circumstances of the case, this Court has no hesitation to conclude that the impugned order dated 04.08.2014 passed by the Court below is not sustainable in law and the same is dismissed.

Resultantly, the instant revision petition is allowed. A direction is given to Judge, Special Court, Ludhiana to send the petitioner to a Medical Board and get a report regarding his age and thereafter, pass a fresh order, in accordance with law.

05.01.2015

G.Arora

(RITU BAHRI)
JUDGE