

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

CRR No.3454 of 2014 (O&M)
Date of Decision: July 14, 2015.

Sandeep @ Sandi

....Petitioner.

VERSUS

State of Haryana

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.
Ms. Trishanjali, Assistant Advocate General, Haryana.

SNEH PRASHAR, J.

This was a revision petition directed against the Order dated 16.10.2013 passed by learned Additional Sessions Judge, Jhajjar, whereby the application filed by the petitioner for transfer of his case to Juvenile Justice Board, Jhajjar was dismissed.

Claiming to be a minor/juvenile on the date of occurrence, petitioner Sandeep @ Sandi son of Ram Kishan moved an application before learned Additional Sessions Judge, Jhajjar in case First Information Report No.52 dated 28.05.2011 under Sections 365, 302 and 201 read with Section 34 of the Indian Penal Code (for short, "I.P.C.") registered at Police Station Linepar, Bahadurgarh, in which he had been arrested. He pleaded that his date of birth is 10.07.1997 as per the birth certificate and therefore, his case be transferred to the Juvenile Justice Board.

The application was resisted by the prosecution who alleged that the petitioner was not a minor on the date of incident.

Learned Additional Sessions Judge, Jhajjar conducted inquiry to ascertain the juvenility of the petitioner. During his evidence, the petitioner examined his mother Smt. Shakuntala (AW1) and Ashwani Nagar, Assistant Public Health Inspector, Shahdara North Zone, EDMC, Delhi (AW2) who produced the summoned record pertaining to the birth certificate bearing registration No.MCVD-OLR-04532393 dated 22.03.2004 of Sandeep, wherein his date of birth was recorded as 10.07.1997.

Considering the ocular as well as documentary evidence led by the parties, learned Additional Sessions Judge, Jhajjar, vide order dated 16.10.2013 came to the conclusion that the petitioner had produced a false and fabricated document to obtain the benefit of juvenility and dismissed the application.

The submissions made by learned counsel for the petitioner and learned State counsel have been considered.

Learned counsel for the petitioner argued that the birth certificate Ex.P2 of the petitioner issued by Sub Registrar/Registrar, Births and Deaths, Municipal Corporation of Delhi was sufficient and substantive proof of date of birth of the petitioner. The mother of the petitioner was an illiterate lady. Even if she was unable to tell the date of birth of her son, the birth certificate proved in evidence by the petitioner could not be ignored.

The birth certificate issued by Registrar, Births and Deaths is

an authentic document for determining the age of a person provided the document is proved to be genuine and reliable. In his evidence, the petitioner examined AW2 Ashwani Nagar, Assistant Public Health Inspector, Shahdara North Zone, EDMC, Delhi to prove his birth certificate Ex.A2. Mark-B, a ration card was also tendered in evidence by him. Analyzing the testimony of AW2 and the documents Ex.A2 and Mark-B the findings of learned Additional Sessions Judge were as under:-

“AW2 Ashwani Nagar, Assistant Public Health Inspector, Shahdara North Zone, EDMC, Delhi in his cross examination deposed that all the data is computerized in their office from year 2004 onwards. Before 2004, they used to maintain only registers. He do not know on what basis entry was made in the system on 22.03.2004. He further deposed that when the child is more than one year old then their office require order from Court of SDM for making the entry in the computer system/database; and same was the procedure before computerization for taking the order of SDM before making the entry. In the present case, order of SDM is not available for issuance birth certificate Ex.A-2. He does not have any personal knowledge about this case (regarding entry). Order of SDM is not traceable in their record.

On the deposition of AW2, it is clear that if the applicant was born in 1997, even then the applicant or his parents moved for registration in 2004 after gap of 7 years. But there

is no order of SDM in this regard, which creates a doubt on the said entry being manipulated by applicant and his family members, in connivance with officials of said office. The applicant has not called any witness from the office of Navyug Shiksha Niketan, Sr. Secondary School, Makrauli Khurd, Rohtak to prove school leaving certificate Mark A; and to further prove that on what basis the said entry was made in the school record. On one hand, this particular certificate bears that date as 21.07.2013, whereas on left hand, the date of issuance of school leaving certificate is written as 21.07.2005, which also creates a doubt on SLC as false and fabricated. Even copy of ration card Mark B, is not duly proved by the applicant by calling the concerned official from the office of Food Supply. It is strange that in ration card, the age of Ram Kishan is mentioned as 65 years and age of Shakuntla is written as 60 years whereas age of Sandeep mentioned as 12 years (though there is apparent over-writing & darkening in the photocopy). Thus, it is quite apparent that the applicant Sandeep was born after reproductive age of Shakuntla i.e. when she was above 48 years old. Even original ration card and school leaving certificate were not produced by the applicant.”

From the findings of learned Additional Sessions Judge, it is apparent that the entry regarding date of birth of the petitioner in the record

of the Municipal Corporation, Delhi had no basis. No document i.e. entry in Chowkidara register or certificate issued by any hospital etc. was produced substantiating the date of birth of the petitioner sought to be recorded. There was also no order of the S.D.M. for making the entry in the computer system/database whereas as admitted by AW2 when a child is more than one year old, an entry regarding his birth in the Municipal Corporation record can be made only on the order of the S.D.M. According to the petitioner, his date of birth is 10.07.1997 which means that he was more than seven years old when the alleged entry in the M.C. record was got made in the year 2004, but there is no order of the S.D.M. according permission to do so.

Apart from the above, the petitioner produced a school leaving certificate Mark-A but did not get the same proved by summoning the relevant record from the school concerned.

As far as the statement of AW1 Smt. Shakuntala, mother of the petitioner is concerned, the outcome of the scrutiny of her deposition noticed by learned Additional Sessions Judge was as under:-

“AW1 Smt. Shakultla in her cross examination stated that she have been married with Ram Kishan last 32 years. She does not remember the year of marriage. She is drawing widow pension. Widow pension is more than senior citizen pension. Her elder son Dharambir is having three children. Usha is elder to Sandeep. Usha is married and is presently residing at Bhadani. Nine children were born during her

marriage. She does not remember in which school, Sandeep was studying. She does not remember that date of birth of her son Sandeep. She is an illiterate lady. Her elder son Dharambir is 25 years old. The gap between her each child is 1-1/2 to 2 years.

From the above cross examination, it is clear that she tendered the affidavit Ex.AW1/A without knowing the date of birth of her children being an illiterate lady. On one hand, she deposed that she married with Ram Kishan since last 32 years whereas on the other hand, she has deposed that her elder son is 25 years old. Thus, deposition of AW1 does not inspire confidence, seeing to the fact that she is even not having knowledge regarding the school of her child Sandeep."

Apparently, the deposition of Smt. Shakuntala (AW1), mother of the petitioner, was inconsistent in itself and was incompetent to inspire truth. Learned counsel for the petitioner failed to demonstrate any illegality or error relating to misappreciation or misreading of evidence by learned trial Court. It was rightly concluded that the petitioner had produced a false and fabricated document to claim the benefit of juvenility.

Finding no illegality or perversity in the order dated 16.10.2013 of learned trial Court warranting intervention by this court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

July 14, 2015
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