

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

CRR No.3958 of 2014

Date of Decision:-14.12.2015

Gurpreet Singh @ Gopi.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. PBS Goraya, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab

JASWANT SINGH, J.(ORAL)

Present revision has been filed under Section 401 of Cr.PC against the order dated 20.09.2014 passed by learned Additional Sessions Judge, Tarn Taran vide which, application dated 5.6.2013 of the petitioner-accused to declare him Juvenile was dismissed and consequently, it was held that petitioner be not treated as juvenile on the date of occurrence under the Juvenile Justice (Care and Protection of Children) Act 2000 (hereinafter referred to as the Act).

Learned Counsel for the petitioner has argued that the age of the petitioner, on the basis of the birth certificate has not been considered by the learned Additional Sessions Judge, Tarn Taran whereas the school leaving Certificate issued by the School authorities, whose source has not

been disclosed has been relied upon and consequently, the application for declaring the petitioner as juvenile has been wrongly dismissed. Therefore, the learned Counsel for the petitioner has submitted that the present petition deserves to be allowed and the impugned order is liable to be set aside and consequently the petitioner be declared as juvenile under the 'Act'.

On the other hand learned State Counsel has argued that while passing the impugned order, learned Additional Sessions Judge, Tarn Taran has taken into consideration the entire facts of the case and after appreciating the evidence led on record has rightly come to the conclusion that petitioner was major at the time of incident. He has further argued that the High Court, in revision can interfere only if any illegality or material irregularity has been committed by the learned trial Court in passing the impugned order and in case the impugned order does not suffer from any such vice, the impugned order should not be set aside. Therefore, prayer has been made for dismissing the petition.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed.

The moot question involved in the present case is as to whether the date of birth of the petitioner is 5.5.1996 as per certificate issued by the Additional District Registrar, Tarn Taran or 1.8.1990 as mentioned in the original register of admission and withdrawal of Government High School (Boys), Dhotian. Before going into the said controversy, it is pertinent to reproduce Rule 12 of the Rules framed under the Act. The same read 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, given 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.”

A careful perusal of the Rule 12 shows that in an enquiry for age determination of a Juvenile, the matriculation or equivalent certificate, if available, has to be given preference and if same is not available then the date of birth certificate from other than the play school is to be given preference and it is only in the absence whereof the medical opinion would

be sought from the duly constituted medical board.

In the present case, the petitioner had examined AW-1 Charan Singh, Clerk office of Sub Registrar, Birth and Deaths, Tarn Taran who has proved attested copy of entry of its register Ex.A-1 and deposed that after seeing the original he has tendered into evidence the certificate which was signed by Dr. Ashwani Kumar Saundhi. However, in his cross examination he stated that has not brought the record from where it can be ascertained that who applied for the birth registration certificate. He further stated that he had not made this entry. The said entry has been made by Chowkidar of the concerned village and then submitted to the police station. He further admitted that he cannot tell the name of the Chowkidar nor he can produce any document from which chowkidar had made the said entry. Apart from AW-1, the petitioner had also examined his mother Balbir Kaur as AW-2 who had stated that her son Gurpreet Singh @ Gopi-petitioner was born on 5.5.1996. However, in her cross examination, she admitted that her son was studying in Government High School (Boys) Dhotian. She further admitted that date of birth of petitioner-accused was told by her husband at the time of admission of her son in the School.

On the other hand, the prosecution examined Mukhtiar Singh, Agriculture Master, Government High School (Boys) Dhotian as RW-1 who while appearing in the witness box had deposed that he produced the original Register of Admission and Withdrawal of the said school and as per the said register, the date of birth of Gurpreet Singh is 1.8.1990 as noted at Sr. No.479. Apart from him the prosecution also examined Dilbagh Singh, Head Teacher, Government Elementary School, Dhotian as RW-2, who

while appearing into the witness box deposed that he has brought the original admission and withdrawal register in the Court as per which, the date of birth of Gurpreet Singh @ Gopi-petitioner is 1.8.1990 and the entry qua the same was made at Sr. No.4355 dated 29.4.1997. A copy of the register was proved as Ex.RW-2/A.

Thus from the evidence led on record, this Court is of the opinion that the prosecution was able to prove its case beyond doubt that the date of birth of petitioner Gurpreet Singh was 1.8.1990 because the prosecution has not only duly proved on the file the date of birth from the Government High School (Boys) Dhotian as Ex.RW-1/A, it has also proved on record the date of birth of petitioner from the Elementary School which is again 1.8.1990 as Ex.RW-2/A.

As per Rule 12 of the Act, for determination of a Juvenile, it is clearly stated that firstly, the matriculation or equivalent certificate, if available would be taken into consideration and in the absence whereof the date of birth certificate from the school (other than play school) first attended and in the absence whereof the birth certificate given by the Corporation or Municipal Authority or Panchayat would be taken into consideration. The interpretation of this rule is no more res-integra, as the Hon'ble Supreme Court in **Jodhbir Singh Vs. State of Punjab 2013(1) RCR (Criminal) 272** has held, on facts, that on the date of commission of offence as per school certificate the accused was juvenile, but as per certificate of Chowkidar he was not juvenile. While giving preference to the School Certificate, accused was declared a juvenile meaning thereby the school certificate was given preference over the birth certificate.

Since, the FIR was registered against the petitioner-accused on 24.11.2011 and his date of birth is proved on record to be 1.8.1990, therefore, the petitioner was more than 18 years of age at the time of alleged occurrence and consequently the learned Additional Sessions Judge, Tarn Taran has rightly rejected the application dated 5.6.2013 by declaring the applicant/accused Gurpreet Singh @ Gopi as Juvenile and this Court is in complete agreement with the findings returned by the Court below and the same are hereby upheld.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

December 14, 2015
Vinay