

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

**CRR No. 687 of 2015
DECIDED ON : April 23, 2015**

Sumit

.....Petitioner.

versus

State of Haryana

.....Respondent.

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. P.S. Hundal, Sr. Advocate with
Mr. Vijay Sangwan, Advocate
for the petitioner.

Mr. Charanjit Singh Bakshi, Addl. AG, Haryana.

JASPAL SINGH, J. (ORAL)

Challenged in the instant revision petition is to order dated February 12, 2015 passed by learned Additional Sessions Judge, Narnaul whereby, an application moved by petitioner for declaring him juvenile and sending his case to Juvenile Justice Board, Narnaul was dismissed.

2. While assailing the impugned order dated February 12, 2015, it has been contended by learned counsel for the petitioner that learned trial Court has failed to appreciate the legal proposition of Juvenile Justice (Care and Protection of Children) Act, 2000 as

well as rules framed thereunder. Impugned order is also against documentary evidence available on file. In fact, petitioner has placed on record his secondary examination certificate, in which, his date of birth has been clearly mentioned as January 01, 1998, which is conclusive of the fact that petitioner was juvenile on the day of alleged occurrence i.e. April 22, 2014. Hence, order of learned trial Court is liable to be set aside on this score alone and he deserves to be declared as juvenile.

3. Elaborating his arguments further, it has been urged by learned counsel for the petitioner that Rule 12 of Juvenile Justice (Care and Protection of Children Rule 2007) (for short '2007 Rules'), provides the procedure to be followed in determination of age of a child. Clause 3 of Rule 12 envisages that in every case concerning a child or a juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board as the case may be by seeking evidence by obtaining matriculation or equivalent certificates, if available; and in the absence whereof; the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; the birth certificate given by a corporation or a municipal authority or a panchayat;

4. The preference is to be given to the matriculation or equivalent certificates, if available. In the present case, the matriculation certificate Ex.A6 is available on record, in which, the date of birth of the petitioner stood recorded as January 01, 1998.

The other certificates or the evidence can only be taken into consideration in the absence of matriculation certificate and when

matriculation certificate is available, the determination of age is to be made on the basis thereof. Though, at the initial stage i.e. at the time of admission of petitioner in Krishna Public School in 1st Class, the date of birth of petitioner was got recorded as August 15, 1996 but it was subsequently, got changed on the basis of an affidavit at the time of his re-admission in the same school in the year 2006 in 5th Class. The copy of an affidavit of Rakesh Kumar AW-2 has also been placed and proved on record; besides the testimony of Rakesh Kumar AW-2. But these facts have been ignored and disbelieved by learned trial Court without assigning any cogent reason. Thus, learned trial Court has erroneously concluded that petitioner is not a juvenile and is more than 18 years of age on the day of alleged occurrence. Impugned order being against evidence available on file as well as settled cannons of law is liable to be set aside and application filed by petitioner before learned trial Court declaring him juvenile deserves to be allowed.

5. On the other hand, learned State counsel has strongly opposed the submission made by learned counsel for the petitioner. He has submitted that date of birth mentioned in secondary certificate is absolutely wrong on the face of it. In such a situation, Court is bound to ignore matriculation or equivalent certificates. Even, as per provisions of Rule 12 of 2007 Rules, it is not mandatory that date of birth recorded in matriculation certificate is considered to be a conclusive proof of date of birth of a child. It only provides that age determination inquiry shall be conducted by the Court or the Board as the case may be by seeking evidence by obtaining

matriculation or equivalent certificates, if available; and in the absence whereof; the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; the birth certificate given by a Corporation or a Municipal authority or a Panchayat. Rakesh Kumar AW-2, father of petitioner deposed that at the time of admission of petitioner in Krishna Public School in 1st Class his date of birth in the admission and record register Ex.A3 is mentioned as August 15, 1996. As per testimony of AW-1 Hanuman Prashad, petitioner was re-admitted in the same school in the year 2006 in 5th Class and at that time father of petitioner furnished an affidavit to the effect that date of birth of his son was January 01, 1998 and accordingly, date of birth of petitioner was changed in school record.

6. Similarly the case put forth by the father of petitioner is that his eldest son was Anoop, who was born on December 10, 1995, whose date of birth certificate is Ex.RW-1/A but the petitioner could not produce any entry with regard to his death. In fact, petitioner is the only son of Rakesh Kumar who took birth on December 10, 1995. Therebeing, no illegality or infirmity in the impugned order, instant revision petition is liable to be dismissed.

7. After bestowing due consideration on the submissions made by learned counsel for the parties and scrutinising the record available on file, this Court is of the considered view that instant petition is without any merits and contentions put forth by learned counsel for the petitioner are without any substance.

8.

Before delving deep in the controversy and deciding the

same on merits, it was appropriate to reproduce Rule 12 of 2007 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. X X X X X X X X X

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) X X X X X X X X

4. X X X X X X X X

5. X X X X X X X X

6. X X X X X X X X

9. A glance at the afore-said provisions transpires that the above-said rules envisages the procedure to be followed for determination of age of a child. Clause 3 provides that in every case concerning a child a juvenile in conflict with law, the age

determination inquiry shall be conducted by the Court or the Board or as the case may be by seeking evidence by obtaining matriculation or equivalent certificates, if available; and in the absence whereof; the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; the birth certificate given by a corporation or a municipal authority or a panchayat;

10. Adverting to the facts of the case in hand, matriculation certificate Ex.A6 has been placed and proved on record by the petitioner, which discloses his age as January 01, 1998. According to the said certificate petitioner was juvenile on the day of alleged occurrence i.e. April 22, 2014 but in the case in hand, record reveals that date of birth of petitioner recorded in certificate Ex.A6 is wrong on the face of it and is against the oral as well as documentary evidence. In fact, date of birth has been got changed by Rakesh Kumar AW-2 father of petitioner while getting him admitted in 5th class in the year 2006. There is no documentary evidence except an entry in the matriculation certificate that date of birth of petitioner is January 01, 1998. Though the story was coined by father of petitioner namely Rakesh Kumar appearing in the witness box as AW-2 that Anoop was his eldest son, who was born on December 10, 1995 but he breathes his last when he was 2/3 months old. But this version has been falsified from the fact that he could not place on record the date of birth certificate of Anoop. Rather, it emerges that there was no son of Rakesh Kumar and Anita of the name of Anoop and the couple only gave birth to the petitioner, who is the eldest son and a daughter namely Tanuja whose date of birth is June

25, 1998.

11. Moreover, it is highly improbable that after the birth of a son on January 01, 1998 the mother of petitioner would give birth to a female child on June 25, 1998 i.e. within a period of six months. It appears that a false affidavit was furnished by Rakesh Kumar before school authorities while getting the petitioner admitted in 5th class for the reasons close to his chest. The respondent has proved RW-4 Bimla Yadav, ANM, Sub Centre Village Chelawas who has proved that a female child was born to Anita wife of Rakesh Kumar on June 25, 1998. She has also categorically deposed that there is no entry with regard to the birth of any male or female child to Anita wife of Rakesh Kumar on January 01, 1998. RW-3 Santosh is an Anganwari worker of village Chelawas, as per record brought by her Anita wife of Rakesh delivered a male child on December 10, 1995 and an entry to this effect was made at Serial No.4 in the month of December 1995. She has also deposed that the name of Anita wife of Rakesh was mentioned in the record of woman feeding their babies upto the month of June 1996. Not only this, it has further been stated by her that in the month of June 1996, the name of the child born on December 10, 1995 was mentioned as Sumit son of Rakesh and Anita, as per record available.

12. Thus taking the case of petitioner from any of the angles, it is established that date of birth of petitioner is December 10, 1995 and not January 01, 1998 as has been projected by petitioner as well as his father Rakesh Kumar.

13. As a sequel to the aforesaid discussion, this court does

not find any illegality or infirmity in the impugned order dated February 12, 2015. Accordingly, instant petition stands dismissed whereby, impugned order is upheld.

April 23, 2015
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(JASPAL SINGH)
JUDGE