

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1060 of 2015

Date of decision : 01.09.2016

Ravi Paswan

..... Petitioner

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Rajesh Arora, Advocate
for the petitioner**

Mr. Sharad Kumar Yadav, DAG Haryana

**Ms. Bindu Goel, Advocate
for respondent No. 2**

ANITA CHAUDHRY, J. (ORAL)

This revision petition is directed against the order dated 04.03.2015 vide which the Juvenile Justice Board (hereinafter referred to as 'Board') has held the petitioner to be major.

The submission of the petitioner is that FIR under Section 306 IPC was registered and the petitioner was arrested and was held to be a juvenile and the trial had started and after a year, an application was given by the applicant/ complainant and a school leaving certificate was filed and the Board relied upon the school leaving certificate and rejected the ossification test report. It was urged that they had placed the documents relating to Akhil Bhartiya Vidhya Mandir School where the petitioner had studied and he did not study in school referred to by the applicant. It was urged that Section 43 of Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 2000 Act) creates a bar and there can be no second enquiry.

Photocopy of the trial Court record has been received.

Learned counsel for the petitioner was asked to refer to the application on the basis of which the enquiry was made for the first time and the evidence that

had been led before the Court below.

The counsel had referred to the application available at page 59 of the Lower Court record. The counsel had urged that the mother of the petitioner is illiterate and she had never signed any document and as per ossification report the age was stated to be about 17 years and the Court could not have relied upon the school leaving certificate to determine the juvenility of the accused. It was urged that the Court was only to make an enquiry as per Juvenile Justice Act and not make an investigation and the enquiry is to be made within 30 days from the date of making the application. Reliance was placed upon *Nagendra @ Wireless vs. State of Uttar Pradesh, 2015(3) RCR(Criminal) 543, Rajbir vs. State of Haryana and another, 2011(3) RCR(Criminal) 222, Vijay Singh vs. State of Delhi, 2012(4) RCR(Criminal) 532, Ashwani Kumar Saxena vs. State of M.P., 2013 AIR (SC) 553 and Ketankumar Gopalbhai Tandel vs. State of Gujarat, 2014(12) SCC 341.*

The counsel appearing for the complainant urges that the age of the juvenile was not determined and they had moved an application and had examined the Principal of the school and the record was brought and the date of birth in their record is indicated and the mother had signed the application while admitting the child to the school and she feigned ignorance and the stand taken by the petitioner gets demolished as the mother had denied that the petitioner had studied in Akhil Bhartiya Vidhya Mandir School. Reliance was placed upon *Shah Nawaz vs. State of U.P. and another, AIR 2011 Supreme Court 3107 and Jodhbir Singh vs. State of Punjab, AIR 2013 Supreme Court 1.*

The record reveals a sorry state. The petitioner did not allow the proceedings to go and repeated adjournments were being sought. The petitioner did not produce the relevant record here for adjudication of this petition. The respondents were then asked to produce the documents and ultimately the

The record shows that the police after the petitioner was arrested approached the doctor for his radiological examination and it was opined that the accused was 17 years of age. On the basis of doctor report, the petitioner was treated as juvenile by the Police and challan was filed before the Board. It is not the case where the petitioner was held to be juvenile pursuant to an enquiry conducted by the Board. No application had been given either by the accused or by the prosecution for determination of his juvenility. It was for the first time before the Board when the trial was going on, an application was filed by the mother of the victim and challenge to the juvenility of the petitioner was made.

The next contention of learned counsel was that the Board had gone wrong in placing reliance upon the documents i.e admission form of Janta Sr. Sec. School and the petitioner had never studied therein.

During enquiry, Dr. Bimla, Principal of the Govt. Senior Secondary School, Kurukshetra appeared as PW1. She had brought the admission and withdrawal register. She had referred to entry No.750(Ex.PW1/A) made in the name of Ravi Paswan, mother's name was mentioned as Sunita and father as Chanderpal Paswan, resident of Kalyan Nagar, Kurukhetra and the date of birth as 25.07.1994. She deposed that the student was given admission in 6th Class on the basis of School Leaving Certificate issued by Janta Primary School. The address indicated in that record is the same which was given by the accused to the police.

PW2 Arun Kumar Clerk from the Janta Senior Secondary School, Kurukshetra had also been summoned. He had brought the admission and withdrawal register pertaining to Ravi Paswan son of Chanderpal and Sunita, resident of Kalyan Nagar and proved the same as Ex.PW2/A according to which the date of birth of the petitioner was 25.07.1994. He deposed that Ravi Paswan was given admission in the school and his admission form Ex.PW2/D was filled by his

Vidya Mandir was annexed with the admission form. In these documents also the date of birth of Ravi Paswan was mentioned as 25.07.1994. He further deposed that they had issued the School Leaving Certificate, Ex.PW2/B on 18.04.2006.

PW3 Satyawati, Teacher, Govt. Sen. Sec. School also proved the School Leaving Certificate, Ex.PW3/A issued by Janta Primary School, Kurukshetra wherein it was mentioned that Ravi Paswan studied there from 02.07.2005 to 31.03.2006 and his date of birth was mentioned as 25.07.1994.

As against it, the mother of the juvenile namely Sunita appeared as RW.1. The petitioner had tendered the excerpt of attendance register Ex.R1.

From the oral as well as documentary evidence on record, referred to above, it is apparent that as per School Leaving Certificate, Ex.PW2/C the petitioner had studied in Akhil Bhartiya Mandir from 01.07.1999 to 31.03.2005. He took admission in Janta Senior Secondary School, Kurukshetra in 5th Class and admission form, Ex.PW2/C was shown to have been signed by Sunita, mother of the petitioner. He studied there upto 31.03.2006 and after passing 5th standard he was issued School Leaving Certificate, Ex.PW2/A. As per admission and withdrawal register, Ex.PW1/A, his name was mentioned at Sr. No.750 and it was mentioned that his name was struck off due to continuous absence. It is not clear the petitioner had studied thereafter or not.

The complainant led overwhelming evidence in the shape of documentary evidence to show that the date of birth of the petitioner was 25.07.1994. He was major on the date of occurrence i.e. 18.06.2013. The witnesses have deposed on the strength of the documents available in the school record. They have no reason to depose falsely.

The petitioner has put forth the plea that during the academic session 2005-06 he was studying in Akhil Bhartiya Vidya Mandir and not in Janta Primary School and has placed on record the attendance register, Ex.R1. But it does not help

the petitioner and rather strengthens the plea of the complainant. As per the School Leaving Certificate, Ex.PW2/C issued by Akhil Bhartiya Vidya Mandir the date of birth in their record is 25.07.1994. The petitioner has not disputed that he had never studied in that school. The petitioner purposely did not summon the record from Akhil Bhartiya Vidya Mandir School and only produced the attendance register. The mother had denied that the petitioner had studied in the school mentioned in the admission form Ex.PW2/D i.e. Janta Primary School. She feigned ignorance that her son had studied in Akhil Bhartiya Vidya Mandir. She stated so to wriggle out of the document placed on record by the applicant. Even if the certificate issued by Janta Primary School is excluded from the zone of consideration and it is taken that the petitioner had studied in Akhil Bhartiya Vidya Mandir during the academic session 2005-06, then also as per the certificate given by the said school, the date of birth of the petitioner was 25.07.1994. The Registration number i.e. 122 given in Ex.R1 is the same which is mentioned in Ex.PW2/C. The petitioner cannot wriggle out of the said entry made in the school records in contrast to the opinion given by the radiologist, which is only advisory in nature. No evidence was produced to show that the date mentioned in the document produced by the complainant was incorrect.

The petitioner cannot derive any help from the case referred because the facts therein are distinguishable. There is no illegality in the order. The revision petition is dismissed.

The trial Court would now expedite the trial by giving short adjournments.

September 01, 2016

Whether Reasoned/Speaking

Whether Reportable

(ANITA CHAUDHRY)
JUDGE

Yes/No

Yes/No