

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

**Criminal Revision No.2494 of 2015
Date of decision: 15.02.2016**

Sunita Devi

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Rajeev Dev Sharma, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab
for respondent No.1 – State.

None for respondent No.2.

Daya Chaudhary, J.

The present revision petition has been filed to challenge judgment dated 02.07.2015 passed by the Sessions Judge, Pathankot dismissing the appeal filed against order dated 18.05.2015 passed by Principal Magistrate, Juvenile Justice Board, Pathankot.

FIR No.11 dated 07.12.2015 was registered under Section 376 of Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 against respondent No.2. However, respondent No.2 was juvenile at the time of occurrence as his date of birth in the matriculation certificate was recorded as 29.01.1997. He was less than 18 years of age on the date of occurrence i.e.,

07.12.2015. Respondent No.2 was sent to Observation Home, Hoshiarpur vide order dated 18.05.2015 as he was declared juvenile under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter called as 'Rules 2007').

Aggrieved by said order dated 18.05.2015, the petitioner-complainant filed an appeal before the Sessions Judge, Pathankot and the same was dismissed on 02.07.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that both the Courts below have ignored the certificate issued by the Registrar, Births and Deaths. The date of birth mentioned in the matriculation certificate is different from the certificate issued by the Registrar, Births and Deaths. Learned counsel further submits that in case, the date of birth mentioned in the certificate issued by the Registrar, Birth and Death, is considered, then accused-respondent No.2 does not fall within the definition of Juvenile as the issue is in conflict with law. The case where the issue relating to child or juvenile is in conflict with law, then it is to be referred to the Board or Committee as the case may be as per provisions of Rule 19 of the Rules 2007. In the present case, the date of birth of respondent No.2 in the matriculation certificate is different from the birth certificate and as such, as per provisions of Rule 19 of the Rules 2007, it should have been referred to the Board or Committee. Learned counsel also submits that an application was also moved under Rule 12(3) of the Rules 2007 but the same has not

been decided so far. Learned counsel for the petitioner has also relied upon Division Bench judgment of this Court in **Ambika Kaul vs. Central Board of Secondary Education and others, 2015(3) SCT 350** in support of his contentions.

Learned counsel for respondent No.1 – State submits that the age of accused-respondent No.2 was less than 18 years at the time of occurrence and he was declared juvenile under Rule 12 of the Rules 2007. A detailed finding has been given by the Appellate Court also and no interference, therefore, is required.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the order passed by the Sessions Judge, Pathankot as well as order passed by Principal Magistrate, Juvenile Justice Board, Pathankot.

Admittedly, as per date of birth mentioned in matriculation certificate, accused-respondent No.2 was juvenile at the time of occurrence but in case, the date mentioned in the birth certificate i.e., 09.05.1996 is considered, he was major.

The issue for consideration before this Court is whether entry in the birth certificate will prevail in case, the same is in conflict with the date of birth recorded in birth certificate or matriculation certificate. No doubt, entry in birth certificate is made on the asking of parents of the child immediately after the birth. When a child is got admitted in the school, the date of birth is informed by the parents or the person, who goes to school for admission. In case, the same is

based on some document, then there is no conflict but in the present case, the date of birth recorded in the matriculation certificate is different from the birth certificate. In case, the date of birth recorded in matriculation certificate is considered, accused-respondent No.2 was minor/juvenile at the time of occurrence but in case, the date of birth mentioned in the birth certificate is considered, then accused-respondent No.2 was not minor/juvenile at the time of occurrence. If there is conflict with law, procedure is mentioned in Rule 12 of the Rules 2007, which is reproduced 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, 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.”

As per provisions of Rule 12(3) of the Rules 2007, in case, the Court is concerned and determination of age of a child or juvenile is in conflict with law, then an inquiry can be conducted by seeking evidence by obtaining the matriculation or equivalent certificate, if available. In the absence of any such document, the date of birth

certificate from school first attended or in absence thereof, the birth certificate issued by the corporation or municipal authority or the panchayat. In presence of matriculation or equivalent certificate, the Court cannot give reference to birth certificate issued by the authority.

In the present case, the date of birth is in conflict as in both the documents i.e., matriculation certificate and the certificate issued by the Registrar, Births and Deaths, the date of birth is different.

The same issue was before the Delhi High Court in **Harish Yadav Thru Shri Raj Kumar Yadav vs. State, 2011(6) RCR (Criminal) 62** as well as before this Court in **Resham Singh vs. Union of India and another, 2008(1) RCR (Criminal) 158** wherein it was held that entry in birth certificate would prevail in case of the circumstances of conflict between the date of birth recorded in birth certificate and school leaving certificate.

In the impugned order dated 02.07.2015 passed by the Sessions Judge, Pathankot, it has been held that in presence of matriculation or equivalent certificates, the Court cannot give preference to birth certificate issued by municipal authority as has been done in the present case. While recording finding it has been mentioned that in case, the matriculation certificate of the accused is available, then it has to be preferred and in the absence thereof, any other document is to be considered.

During arguments, learned counsel for the petitioner

submits that an application has been filed under Rule 12(3) of the Rules 2007 and the same has not been decided so far. Learned counsel also submits that in case, the application is decided in accordance with the provisions of the Juvenile Justice (Care and protection of Children) Act 2000 and the Rules, 2007, the petitioner would be satisfied.

In view of the provisions as mentioned in the Act as well as Rules 2007, it is apparent that an inquiry is to be conducted as per Rule 19 of the Rules 2007. The application moved by the petitioner is still pending and the same has not been decided as without taking any decision on the application and without conducting any inquiry, respondent No.2 has been declared juvenile and order declaring him juvenile has also been upheld by the Sessions Judge, Pathankot.

Accordingly, this revision petition is allowed and impugned order dated 02.07.2015 passed by the Sessions Judge, Pathankot as well as order dated 18.05.2015 passed by Principal Magistrate, Juvenile Justice Board, Pathankot are set-aside with a direction to conduct necessary inquiry as per provisions of law as mentioned above and pass necessary order after conducting proper inquiry.

15.02.2016
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(DAYA CHAUDHARY)
JUDGE