

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.1392 of 2016 (O&M)

Date of decision: 08.04.2016

Vicky @ Vikram

.....Petitioner

versus

State of Haryana

.....Respondent

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Vivek Khatri, Advocate for the petitioner

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh, J.**

Impunged in the present revision is the order dated 18.3.2016, passed by the learned Additional Sessions Judge, Hisar, vide which, the application filed by the petitioner for declaring him juvenile offender in conflict with law has been dismissed.

Brief facts of the case are that the present petitioner is facing the trial for the offences under Section 302, 201 read with Section 34 IPC registered at Police Station Sadar Hansi. During the hearing before learned Additional Sessions Judge, Hisar, petitioner Vikram @ Vicky moved an application (Annexure P4) for declaring him juvenile and sending his case to Juvenile Justice Board Hisar. It was stated in the application that the date of birth of the applicant Vikram as per secondary examination (matriculation certificate)

issued by the Board of Secondary Education, Haryana is 2.10.1996. The date of the alleged crime is 16.4.2013. Therefore, the petitioner was only 16 years and 6 months of age at the time of alleged commission of crime. It was further stated that the petitioner had moved an application under Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000 on 23.7.2013, which was dismissed by Shri Y.S.Rathore, the then learned Additional Sessions Judge, Hisar, vide order dated 4.10.2013. It was stated that application was moved by the mother of the petitioner, who was rustic lady and could not produce the certificate. The application was decided only on the basis of the School leaving certificate produced by his mother. Now, the School certificate of Higher Secondary has been traced by the mother of the petitioner. Hence, the application. Learned Additional Sessions Judge, Hisar vide the impugned order dismissed the application.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has stated that under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (in short, 'the Act'), the matriculation certificate has got primacy over the other record of date of birth. Therefore, the matriculation certificate should have been relied upon by the lower Court to determine the age of the petitioner. Section 12(3) of the Act provides as under:-

***“12. Procedure to be followed in determination of Age.— .....***

*(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.”*

The lower Court has considered the statement made by

Savitri mother of the petitioner, who stated that the petitioner Vikram

was admitted in Tagore High School, Satrod and he passed 8<sup>th</sup> Class from the said School. Vikram also passed matriculation from Haryana Open School in the year 2013. She admitted that date of birth dated 5.5.1994 was wrongly recorded by the School authorities. She could not tell the date of her marriage but later stated that she was married in the year 1984, whereas *Muklaw* took place in the year 1991.

Learned counsel for the respondent also relied upon the statement of Shiv Charan Headmaster (RW2), who brought the record of admission of Vikram petitioner and stated that Vikram was admitted in school on 25.8.2000 in the first class. Application filed by Roshan Lal father of the petitioner is Ex.R1. In the said record, the date of birth of the petitioner is recorded as 5.5.1994.

I am of the view that the matriculation certificate was obtained from Board of School Education Haryana on June 22, 2013, whereas the present crime took place on 16.4.2013. Therefore, the said certificate has to be viewed with suspicion to see whether the date of birth was correctly mentioned or was procured. The petitioner relied upon transfer certificate issued by the Tagore High School on 9.7.2012 when the petitioner was allegedly studying in 9<sup>th</sup> Class, where date of birth is mentioned as 2.10.1996. In the matriculation certificate also date of birth 2.10.1996 is mentioned. Petitioner has also produced a birth certificate (Annexure P3), which shows that his date of birth is recorded as 2.10.1996. However, surprisingly date of registration is 27.11.2013 i.e. after the commission of the present crime.

No record of admission of Tagore High School is produced

to show as to on what basis, the date of birth i.e. 2.10.1996 was entered in the record by the Tagore School. The possibility of transfer certificate from private school being procured is also there.

Learned counsel for the petitioner has relied upon the judgments in Ashwani Kumar Saxena v. State of M.P., 2012(4) RCR (Criminal) 391, Hari Ram v. State of Rajasthan and another, 2009(2) RCR (Criminal) 878, Satbir Singh alias Nanha v. State of Haryana, 2012(2) RCR (Criminal) 595, Lakhbir Singh v. State of Punjab, 2011(2) RCR (Criminal) 622, Abdul Qayoom Gani v. State of Punjab, 2012(2) RCR (Criminal) 910 and Tamanna v. State of Haryana and others, 2015(6) RCR (Criminal) 699.

I am of the view that when it is found that in the matriculation certificate, mis-representation regarding date of birth has been made to obtain certain benefits and it is contrary to the other record, the same can be safely ignored and the certificate mentioned in first class is to be relied upon.

I am of the view that the said record produced by applicant is liable to be ignored as procured one. Normally, a child is admitted in the school around the age of 5 or 6 years. The petitioner was admitted in Government Primary School on 25.8.2000. His date of birth mentioned in the said record prepared on 25.8.2010 is 5.5.1994. It matches the date at which the child is admitted in the first class i.e. age of around six years. If the date of birth is taken to be 2.10.1996 that would mean that the petitioner was admitted in the Government Primary School at the age of less than four years which is otherwise not possible. It appears that as the petitioner grew up, an attempt

was made to change the date of birth to show him younger, to get certain benefits at appropriate stage. Therefore, I am of the view that even though the matriculation certificate is first to be looked into, but when the matriculation certificate is found to be obtained by misrepresentation, same is liable to be ignored. Once, the said certificate is ignored, the certificate from the school first attended is to be relied upon. In this way, I am of the view that the lower Court has rightly relied upon the school certificate first attended after ignoring the other record. It comes out that previously also, the mother of the petitioner had filed an application relying upon the record of the school first attended and the same was dismissed. Now, the second unsuccessful attempt has been made. I do not find any illegality or infirmity in the impugned order.

Hence, the present revision is dismissed.

**08.04.2016**  
*gk*

**(Kuldip Singh)**  
**Judge**