

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

CRR No. 2695 of 2015 (O&M)

Date of Decision: 07.04.2016

Inderjit Singh

..Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vivek Goyal, Advocate,
for the petitioner.

Mr. Vivek Saini, DAG, Haryana.

Mr. Saurabh Sharma, Advocate,
for respondent No.2.

TEJINDER SINGH DHINDSA. J

The instant revision petition is directed against the order dated 14.07.2015 passed by the learned Additional Sessions Judge, Kurukshetra in terms of which Kulwinder Singh/respondent No.2 has been declared a juvenile.

Briefly noticed, FIR No.212 dated 01.11.2014 under Section 302/34 IPC was lodged at Police Station Ladwa at the instance of the present petitioner with regard to murder of his son, namely, Saravjit Singh. The date of the alleged occurrence was stated to be of 01.11.2014. Investigation having been conducted, a report under Section 173 Cr.P.C. was submitted implicating respondent No.2 herein i.e. Kulwinder Singh as also his accomplice Gurpej Singh. The case having been committed to the Court of Sessions, charges were framed against both Kulwinder Singh/respondent No.2 herein and Gurpej Singh for commission of

offence punishable under Section 302 IPC and wherein they pleaded not guilty and claimed trial. At this stage, an application was moved on behalf of Kulwinder Singh/respondent No.2 claiming that his date of birth was 12.02.1997 whereas the alleged offence was stated to have been committed on 01.11.2014 and as such he be declared a juvenile as his age at the relevant date was below 18 years.

It is such application that has been accepted by passing of the impugned order.

Learned counsel appearing for the petitioner while assailing the order dated 14.07.2015 has argued that false evidence has been fabricated by respondent No.2 to claim benefit of juvenility. It is submitted that the birth certificate produced is not relevant as entry in the relevant record was made during the investigation of the case and after the arrest of respondent No.2. Further argued that the school record upon which reliance had been placed i.e. Ex.A-4 was also not believable as the same would show that respondent No.2 had taken admission in school in July 2006 and had left the school in the year 2009 after passing 5th class and the mere fact that five classes were passed in a time span of three years would render such record doubtful. Counsel has also argued that the Court while passing the impugned order dated 14.07.2015 declaring respondent No.2 to be a juvenile has erred in ignoring the voter Identity Card and Pan Card which would reflect the date of birth of respondent No.2 to be 12.03.1995 instead of 12.02.1997 and which in turn would show that respondent No.2 was more than 18 years as on 01.11.2014 i.e. date of commission of the offence.

Per contra, counsel appearing for respondent No.2 would submit that the impugned order has been passed by following the mandate of the relevant provisions under the Juvenile Justice (Care & Protection of Children) Act, 2000 (herein after to be referred as 2000 Act) and Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 (herein after to be referred as 2007 Rules).

Counsel for the parties have been heard at length and case paper book has been perused.

To appreciate the rival contentions raised by counsel for the parties, it would be appropriate to refer to the relevant statutory provisions. Section 7A of the 2000 Act and Rule 12 of the 2007 Rules read as follows:-

“7A. Procedure to be followed when claim of juvenility is raised before any court.-

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub- section (1), it

shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

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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 subrule (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 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.”

In the light of Section 7A of the 2000 Act and Rule 12 of 2007 Rules, the trial Court was obligated to seek evidence by obtaining (a) (i) the matriculation or equivalent certificate, if, it was 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 Municipal Authority or a Panchayat; (b) and in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion was to be sought from a duly constituted Medical Board which would then declare the age of the juvenile.

The afore reproduced provisions of the 2000 Act and 2007 Rules came up for consideration before the Hon'ble Supreme Court in ***Ashwani Kumar Saxena Vs. State of M.P., 2012 (4) R.C.R. (Criminal), 391*** and it was observed as follows:-

“32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7 A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7 A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.”

Adverting back to the facts of the present case, it may be noticed that respondent No.2 had placed reliance upon Birth Certificate Ex.A-5 showing his date of birth to be 12.02.1997 and such entry having been made on the basis of a Parivar register Ex.A-1. Extract of the Parivar register was also placed on record as Ex.A-6. However, the Court below has not formed a view only on the basis of such documents by observing that the entry in the birth certificate was made on 21.01.2015 i.e. when respondent No.2 already stood implicated by the police and also observing that the person who had made the entry in the Parivar register i.e. the village watchman had not been examined. However, what has prevailed with the Court while passing the impugned order is the transfer certificate of Shree Ram Children Academy, Gangoh, Saharanpur where respondent No.2 had attended his primary classes i.e. Ex.A-4, the document at Ex.A-1 which reflected that the primary classes were cleared by respondent No.2 from Shree Ram Children Academy, Gangoh, Saharanpur and that he had taken admission in Ram Krishan Mehta Inter College in 6th and 7th class. Such documents were proved by respondent No.2 in accordance with law upon examination of AW-1 and the entries in such documents related to

the time period of the years 2009-10 and 2011 i.e. much prior to the date of commission of offence and as per such documents the date of birth of respondent No.2 is recorded as 12.02.1997.

In the considered view of this Court, the impugned order has been passed by following the mandate and procedure under Section 7A of the 2000 Act and Rule 12 of the 2007 Rules.

In ***Arnit Das Vs. State of Bihar, 2000 (3) R.C.R. (Criminal) 17***, the Apex Court had held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be a juvenile.

It is also well settled that the High Court in exercise of its revisional jurisdiction would not upset the findings of the trial Court unless such findings are found to be perverse.

The impugned order dated 14.07.2015 passed by the learned Additional Sessions Judge, Kurukshetra holding respondent No.2 to be a juvenile has been passed after due appreciation of evidence adduced on record and is based on cogent and valid reasoning. The same does not called for any interference.

For the reasons recorded above, petition is dismissed.

07.04.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**