

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

CRR No.2854 of 2016.
Decided on:-12.08.2016.

Rohit.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Parveen K. Kataria, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition against order dated 11.7.2016 passed by learned Additional Sessions Judge, Gurgaon whereby the application declaring him as juvenile, was declined in a case FIR No.1115 dated 24.8.2015 under Section 342 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station City Gurgaon against the petitioner.

The petitioner has claimed that his date of birth is 20.10.1998 whereas the occurrence had taken place on 24.8.2015. Therefore, he was below 17 years of age at the time of alleged occurrence and is entitled to be declared as a juvenile in view of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act') read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short, 2007 Rules).

Learned counsel for the petitioner has argued that the petitioner has produced various documents in support of his application including the certificate dated 25.4.2016 (Annexure P-1) issued by the Headmaster, Shri Shiv Parvati Vidya Niketan Primary/Medium School, Ghursar Nath, District Pratapgarh (U.P.) wherein as per the admission register, his date of birth is 20.10.1998. Similarly, in the school leaving certificate dated 10.7.2015 (Annexure P-2), the same date of birth finds mention. Father of the petitioner has also submitted an affidavit dated 6.7.2009 showing date of birth of the petitioner as 20.10.1998. Statement of SI Mool Chand as RW1, Police Station City Gurgaon has also been relied upon wherein the said witness has stated that he had directed HC Balwan to visit school of Rohit i.e. Shri Shiv Parvati Vidya Niketan Primary/Medium School, Ghursar Nath, District Pratapgarh (U.P.) regarding verification of the date of birth of the petitioner and the Headmaster has issued a certificate showing date of birth of the petitioner as 20.10.1998.

Learned counsel for the petitioner has further argued that the petitioner's father had appeared as a witness during the proceedings and has proved the date of birth of the petitioner as per school leaving record as 20.10.998. Therefore, date of birth of the petitioner is required to be taken as 20.10.1998 and in case this date of birth is taken into consideration, the petitioner was a juvenile on the date of alleged occurrence and was protected as per the provisions of the Act. As per provisions of Section 7-A of the Act, the Court is required to make an inquiry and not an investigation or a trial and the same has to be done as per the procedure mentioned in the Act and not under the Code of Criminal Procedure, 1973. As per Section 7-

A of the Act, the Court can accept the affidavit as prima-facie proof of the age. He has relied upon the judgment bearing ***Criminal Appeal No.1403 of 2012*** titled as ***Ashwani Kumar Saxena Versus State of M.P.*** decided on 13.9.2012 wherein the Hon'ble Supreme Court has observed that many of the criminal courts are not properly appraised of the scope of enquiry contemplated under those statutory provisions and accordingly, it has been directed that the case of the petitioner (in that case) is required to be examined in the nature of inquiry contemplated under Section 7-A of the Act read with Rule 12 of 2007 Rules.

It has further been argued that order dated 11.7.2016 passed by the Court below runs contrary to the judgment passed in ***Ashwani Kumar Saxena's case (supra)*** as well as provisions of Section 7-A of the Act read with Rule 12 of 2007 Rules. Section 7-A of the Act obliges the Court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the Act. The procedure to be followed under the Act is to conduct an inquiry as laid down in the statute itself i.e. Rule 12 of 2007 rules, but that has not been adhered to by learned Court below.

I have heard learned counsel for the petitioner.

Section 7-A of the Act reads as under:

“7-A – 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 recognized 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 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.”

Similarly, Rule 12 of 2007 Rules 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) 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 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.”

Section 7-A of the Act specifically provides that 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.

Similarly, Rule 12 of 2007 rules provides for a procedure to be followed in order to determine the age in every case concerning a child or a juvenile in conflict with law. It is further provided that 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 (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.

The petitioner has relied upon the certificate dated 25.4.2016 (Annexure P-1) issued by the Headmaster, Shri Shiv Parvati Vidya Niketan Primary/Medium School, Ghursar Nath, District Pratapgarh (U.P.). The certificate (Annexure P-1) so attached is not covered with Rule 12(i) and (ii) as the same is neither a matriculation certificate nor it has been issued by a school first attended by the petitioner. Further more, in support of the aforesaid certificate, the Headmaster of the said school has not been examined. Section 7-A of the Act read with Rule 12 of 2007 Rules empowers the Court to seek evidence. During this process, the Court can obtain a matriculation or its equivalent certificate, if available. It is only in the absence of any such certificate, the Court is required to take a certificate issued by a school first attended (other than a play school). Similarly, it is only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the Court is required to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). When the aforesaid documents are not available, the necessity of obtaining a medical opinion arises.

In the present case, the petitioner intends to rely upon the certificate (Annexure P-1) (Ex.R1 before the trial Court). He has examined Head Constable Balwant Singh as RW2, but he is not competent to prove the document/affidavit furnished by Navrang Bahadur Singh, father of the petitioner. Even otherwise, the trial Court has further observed that the accused, when he appeared before the trial Court, appears to be major and well-grown and well-built person. His physical appearance before the trial

Court cannot be outrightly ignored more particularly when the Headmaster, who has issued the certificate (Annexure P-1) has not been examined by the petitioner to support his case.

In view of the above, this Court does not find any illegality, irregularity or perversity in the impugned order dated 11.7.2016 passed by learned Additional Sessions Judge, Gurgaon. Therefore, affirming the same, the present revision petition, being devoid of any merit, is dismissed.

August 12, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No