

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

Criminal Revision No.4220 of 2014

Date of Decision: January 06, 2016

Sheela Devi

...Petitioner

Versus

State of Haryana & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

1. Whether Reporters of Local papers may be allowed to see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present: Mr.Shalender Mohan, Advocate,
for the petitioner.

Mr.Pawan Gaur, Deputy Advocate
General, Haryana, for respondent No.1.

Mr.Rahul Vats, Advocate,
for respondent No.2.

Naresh Kumar Sanghi, J.(Oral)

The present criminal revision petition has been filed by Sheela Devi, mother of the prosecutrix whose name has been concealed, challenging the order dated 12.12.2014 passed by learned Additional Sessions Judge-cum-Special Court for Heinous Crime against Women, Hisar, whereby the application of Manoj Kumar (respondent No.2) for declaring him as juvenile in conflict with law and sending his case before learned Principal Magistrate, Juvenile Justice Board, Hisar, for

inquiry/trial was accepted.

Learned counsel for the petitioner/informant/complainant submitted that Shailak Ram, Computer Statistical of the office of Civil Surgeon (Birth and Death) Rural Branch, Rohtak, had appeared as RW-1 before learned Court below and on the basis of birth record register of village Pehrawar, Tehsil and District Rohtak, deposed that date of birth of Manoj Kumar was 01.08.1995 and the same was entered on 15.08.1995. He also tendered the copy of birth certificate Ex.R-1. He further submitted that Darshna Devi (RW-2), Head Teacher, Government Primary School, Pehrawar, on the basis of admission and withdrawal register of the school, deposed that date of birth of Manoj Kumar was 10.02.1995. During her deposition, she tendered the copy of extract of admission withdrawal register as Ex.R-2 and copy of admission form Ex. R-3 and as such, it was well proved on record that Manoj Kumar was more than 18 years of age on 07.08.2013, the date of commission of offence. He further submitted that in comparison to the birth certificate issued by the office of the Registrar, Births and Deaths, the matriculation certificate cannot be given preference.

Learned counsel for the State has also supported the stand of learned counsel for the petitioner.

Mr.Rahul Vats, Advocate representing Manoj Kumar (respondent No.2) vehemently opposed the submissions of learned counsel for the petitioner and that of learned counsel for the State and submitted that in support of his application to declare the petitioner as juvenile in conflict with law, Hari Parkash (AW-1) father of petitioner, stepped into the witness box and deposed that the date of birth of Manoj Kumar was 10.10.1997. He tendered the secondary examination certificate (Mark A) of Manoj Kumar. He further deposed that on the date of incident of commission of alleged rape, Manoj Kumar was minor. Dharam Pal (AW-2) Assistant of Board of School Education, Bhiwani, on the basis of the original record fortified the fact that certificate (Mark A) of Manoj Kumar son of Hari Parkash was issued by the Haryana School Education Board. He further deposed that as per the original record, the date of birth of Manoj Kumar was 10.10.1997. The witness Dharampal (AW-2) also tendered copy of detailed marks sheet (Ex.AW2/A) and as such, Manoj Kumar was less than 18 years of age, a juvenile in conflict with law. Mr.Vats, learned counsel for respondent No.2 has read out Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is 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 of 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."

He has also referred to **Jodhbir Singh vs. State of Punjab, 2013(1)RCR (Criminal) 272 (SC)**, wherein Hon'ble the Supreme Court found that on the date of commission of offence as per school certificate, the accused was juvenile, but as per certificate of *Chowkidar* he was not a juvenile. While giving preference to the school certificate the accused was declared a juvenile. Similarly in **Hari Ram vs. State of Rajasthan & Anr., 2009(2) RCR (Criminal) 878** Hon'ble the Supreme Court while discussing the whole aspect on the subject held that a hyper-technical approach should not be adopted while determining the question whether accused was juvenile or not. It was further held that if two views may be possible on evidence, the Court should lean in favour of holding the accused to be a juvenile in borderline cases. While referring to Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, it was held that preference should be given to the matriculation or equivalent certificates, if available; and in the absence of the same, date of birth certificate from the school first attended; and

in the absence whereof, the birth certificate given by a corporation or a municipal authority or a Panchayat. Similar were the propositions in the judgments delivered by Hon'ble the Supreme Court in the matters of **State of Bihar vs. Chhotu Pandey @ Roshan Pandey**, 2015(1) RCR (Criminal) 914; **Subodh Nath & another vs. State of Tripura**, 2013(4) SCC 122 and **Ashwani Kumar Saxena vs. State of M.P.**, 2013 AIR (SC) 553.

During course of arguments, it was specifically asked from learned counsel representing the petitioner that in which year Manoj Kumar had appeared in secondary examination then after referring to Mark A annexed with the present paper book he fairly conceded that in the year 2012 Manoj Kumar (respondent No.2) had appeared and cleared the examination i.e much earlier to 07.08.2013, the date of incident of alleged rape. It was highly improbable for the respondent juvenile in conflict with law to anticipate that after one year of passing out the secondary examination he would be involved in a rape case and he would take a defence of juvenility.

Learned Additional Sessions Judge-cum-Special Court for Heinous Crime against Women, Hisar, has accorded cogent reasons while declaring Manoj Kumar (respondent No.2) as juvenile in conflict with law and as such, this Court while

exercising the revisional jurisdiction would not opt to set aside the same. Resultantly, the present petition fails and is hereby dismissed.

January 06, 2016
seema

(Naresh Kumar Sanghi)
Judge

