

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

CRR No.3209 OF 2016
DATE OF DECISION : 18TH NOVEMBER, 2016

Vinod Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Keshav Pratap Singh, Advocate for the petitioner.
Mr. Arjun Singh Yadav, AAG, Haryana.

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A. B. CHAUDHARI, J. (ORAL)

By the present petition there is challenge to the impugned order passed by the trial Judge rejecting the contention raised by the petitioner about date of birth as 10.02.1998. The age of the petitioner by that date of birth would be 17 years 11 months and 15 days on the date of occurrence.

Heard learned counsel for the rival parties.

Learned counsel for the petitioner vehemently contended that the school leaving certificate as well as matriculation certificate, are duly proved on record and indicating the correct date of birth as 10.02.1998 and the petitioner being juvenile, could not be tried by the Sessions Court.

Learned counsel for the petitioner invited my attention to the reasons given by the trial court and submitted that the documents namely school leaving certificate as well as the matriculation certificate have been duly proved. The trial court has, for no reasons, ignored those documents. He also relied on the provisions of Section 94 of the Juvenile Justice (Care and

Protection of Children) Act, 2015 (hereinafter 'Act') and contended that in serial order, the said provision prescribes that the date of birth from school or matriculation certificate is to be preferred and in the absence thereof birth certificate by municipal corporation or a Panchayat is to be preferred. He then, relied on the Apex Court judgment referred by the trial court in its impugned order.

Per contra, learned State counsel pointed out that the evidence of Urmila RW-1 (Annexure P-3) and submitted that the Register Ex. R-2 was brought before the Court in original and photocopy was exhibited by her which shows the date of birth of the petitioner as 28.09.1995.

Learned counsel for the petitioner invited my attention to the cross-examination of this witness and contended that the witness admitted that Ex. R2 is neither signed nor attested by the medical authority and contended that, therefore Ex. R-2 does not have any evidentiary value.

The petitioner has relied on the school leaving certificate as well as the matriculation certificate which I have seen. Those documents give the date of birth as 10.02.1998. The submission about provision of Section 9 of the Act which shows serial order in which the documents of birth are to be examined, does not appeal to me as the list is not exhaustive. The submission is, therefore, rejected.

The next submission that the documents namely school certificate and matriculation certificate have been proved is well founded and I hold that those documents have been proved by the petitioner. The matter, however, does not end here. The evidence of RW-1 Urmila is quoted hereunder:

“Stated that I have brought the summoned record of
birth certificate registration of the year 1995 of police

Station Hodal. As per our record, at Sr. No.20 of page no.13, the name of child as Vinod Kumar son of Bijender Singh and Satyawati Devi whose date of birth as 28.9.1995 has been registered. The certificate issued in this regard is Ex. R1 and same is correct as per record and bears the signatures of Dr. Ajay Mam, Deputy CMO and I had initialed the same. I identify the signatures of Dr. Ajay Mam. The photocopy of extract of our register is Ex.R2 (original seen and returned).”

I also perused the cross-examination with the assistance of the counsel for the petitioner. It is not in dispute that in relation to the evidence tendered by RW-1 Urmila, no evidence in rebuttal was brought by the petitioner before the trial Court. That was all the more necessary that the document Ex. R-2 proved by her has a high probative value to find out the date of birth of the petitioner. In the instant case the record Ex. R-2 proved by Urmila is of the hospital where the birth of the petitioner took place and his name as well his parents’ name have been mentioned. The original of Ex. R-2 was brought before the Court. Thus this contemporaneous record sometime after the birth of the petitioner shows his name and his parents’ name must be placed on high pedestal than the documents relied on by the petitioner. After all, it cannot be forgotten and disputed that school leaving certificate as well as matriculation certificate came into being long after the birth of the petitioner. Therefore, in preference to the document Ex. R-2 namely the hospital birth record of the petitioner mentioning his name as well as his parents’ names, documents relied upon by the petitioner namely school leaving certificate and matriculation lose significance. This court must rely upon the evidence which has high probative

and presumptive value, particularly regarding date of birth. The judgment of Apex Court referred by counsel for the petitioner does not have application because there was no such occasion to consider the first document regarding date of birth namely with contemporaneous entry about the birth of the person concerned. The judgment is, therefore, clearly distinguishable. The law is well settled in relation to find out the correct date of birth, namely that the documents first in point of time or soon after the birth have high evidentiary and probative value.

In the result I find no merit in the petition. Hence the following order:

ORDER

- (i) CRR No.3209 of 2016 is dismissed.

18TH NOVEMBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE