

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

CRR No.4363 of 2015

Date of Decision : October 22, 2016

Davinder Singh

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. J.S.Sekhon, Assistant Advocate General, Punjab,
for respondent No.1.

Mr. H.S.Saggu, Advocate,
for respondent No.2.

SUDIP AHLUWALIA J.

This revision petition is directed against the order passed by the Principal Magistrate, Juvenile Justice Board, SAS Nagar (Mohali) on 21.10.2015 in connection with case-FIR No.83 dated 12.04.2012 registered at Police Station Lalru under Sections 307, 325, 323, 447, 148 and 149 of the Indian Penal Code.

The background of the matter is that the petitioner had earlier been granted bail on the premise that he was a juvenile at the time of the alleged occurrence of the year 2011. Subsequently, however, the complainant disputed the petitioner's claim of being a juvenile.

It transpires that this Court in an earlier order passed on 27.02.2015 granted liberty to the complainant to move an appropriate

application before the Ld. Principal Magistrate for deciding the question of the petitioner being a juvenile.

It now transpires that the Matriculation Certificate of the petitioner, which in the order of precedence is normally the first document to be relied upon, is non-existent as the petitioner never passed the Matriculation examination. The next document in the order of precedence happens to be the Date of Birth Certificate from the school first attended. In this regard, the petitioner was claimed to be a minor on the basis of his Provisional School Leaving Certificate in which his date of birth was mentioned as 21.05.1994. But once in the previous proceedings when this Court granted liberty to the complainant to move an application for determination on the question whether the petitioner was, in fact, a juvenile or not, it impliedly discarded any substantive value attached to the aforesaid School Leaving Certificate, since in any case, the same did not bear the date of its issuance.

Thereafter, the petitioner was referred for examination by the Medical Board in view of the alleged non-availability/unreliability of documents regarding his age as otherwise specified in Rule 10(3)(a) of the Punjab Juvenile Justice (Care of Protection of Children) Rules, 2014. The medical opinion, then received placed the petitioner in the age slab of 20 plus minus 1 year at the time of his examination in 2015. Thereby, his logical age at the time of the alleged occurrence would come to around 16 years. The Ld. Principal Magistrate, however, did not accept the medical opinion in view of the other contradiction pertaining to the age of the petitioner's younger sister, who was shown to have been born on 07.12.1996 in her Matriculation

Examination Certificate, but her original Birth Registration Certificate was of the year 1993. As his younger sister's Matriculation Examination Certificate had been prepared after the alleged occurrence, so, the Ld. Principal Magistrate in his discretion decided not to place reliance upon the same and held that it was biologically not possible that the petitioner could have been born before the originally registered date of birth of his younger sister, i.e., 07.12.1993.

In the given circumstances, there would not appear to be any manifest perversity or impropriety in the impugned order passed by the Ld. Principal Magistrate. Nevertheless, in the opinion of this Court, the Ld. Magistrate could have explored other available avenues to first have recourse to the documentary evidence regarding the petitioner's date of birth, dating back to a time before the alleged occurrence of the year 2011. While the petitioner is stated to be a non-matriculate, it is still undeniable, that he had certainly attended school since his Provisional School Leaving Certificate was itself led into evidence on his behalf. Therefore, the Ld. Principal Magistrate could have verified the matter by calling for the original records on the basis of which his Provisional School Leaving Certificate was prepared.

In the given circumstances, therefore, the impugned order is set aside and the matter is remanded back to the Ld. Principal Magistrate with directions (i) to call for the original records/register from the Office of the Block Elementary Education Officer, Derabassi and, (ii) to ascertain the basis on which the petitioner's Date of Birth Certificate (Annexure P-1) was issued.

If the petitioner's actual date of birth is established from those records, then after the Ld. Principal Magistrate satisfies himself that the same

were not prepared after the date of occurrence, he shall pass a reasoned order deciding the question of petitioner's juvenility at the relevant time.

However, in case even if those records are not forthcoming then a fresh medical test shall be ordered by a new authorized Medical Board comprising of Doctors, who were not part of the previous examination.

The Ld. Principal Magistrate shall, thereafter, decide the matter finally, in accordance with law, preferably within a period of six weeks from the date of communication of the order.

It is further directed that pending final decision by the Ld. Principal Magistrate, the on-going trial in the concerned Court of Sessions shall continue, but the Ld. Trial Court shall not proceed to pass its final judgment till the decision of the Ld. Principal Magistrate becomes available.

Revision petition, thus, stands disposed of.

(SUDIP AHLUWALIA)
JUDGE

22.10.2016
adhikari

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No