

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

**CRR No. 3692 of 2016 (O&M)
Date of decision: 08.11.2016**

Aarif

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Saleem Ahmad, Advocate
for the petitioner.

Mr. Sanjay K. Saini, DAG, Haryana
for the respondent-State.

JAISHREE THAKUR, J.

The instant petition has been filed to assail the order dated 08.09.2016 passed by learned Additional Sessions Judge, Mewat by which the application filed under Section 311 of the Code of Criminal Procedure (*for short 'Cr.P.C.*) has been dismissed.

In brief, the facts are that the petitioner had been charged under Sections 363, 366, 376-D, 342, 506, 212 and 120-B of the Indian Penal Code in case FIR No. 163 dated 10.04.2012, registered at Police Station Punhana, District Mewat. The petitioner herein was contesting the case and wanted to prove the fact that he was a juvenile having date of birth as 17.03.1995. To prove his date of birth, the petitioner examined one Mr. Pankaj Malik, who is the Incharge of Government Primary School, Akbarpur, Tehsil Punhana, on 26.07.2016. On this date, the statement of Pankaj Malik was recorded before the Additional Sessions Judge, Mewat. In

the statement, Mr. Pankaj Malik stated that as per the school record, date of birth of the accused-petitioner was recorded as 17.03.1995. The petitioner contends that while recording the statement, due to inadvertent mistake, the documents could not be exhibited and an application for recalling and exhibiting the documents was moved immediately thereafter but the same has been dismissed by the learned trial Court primarily on the ground that the petitioner wants to fill up the lacuna.

It is argued by the counsel for the petitioner that the statement of Mr. Pankaj Malik, Incharge of the Govt. Primary School, Akbarpur, Tehsil Punhana, has already been recorded wherein the date of birth of the petitioner has been mentioned as 17.03.1995 and now only a document has to be exhibited, which would substantiate the statement that has been made and no prejudice would be caused to any person in case the said evidence is allowed.

Per contra, counsel for the State submits that the matter is listed for rebuttal and the petitioner has already availed of his opportunity of leading his evidence.

I have heard learned counsel for both the parties and perused the record.

Admittedly, the statement of Mr. Pankaj Malik was recorded on 26.07.2016 and immediately thereafter an application under Section 311 Cr.P.C. was moved to recall the said witness in order to exhibit the documents i.e. the school register and the school leaving certificate. The trial Court dismissed the said application primarily holding that the

petitioner wants to fill up the lacunas in the evidence without taking note of the fact that it is only documents that have to be exhibited, in support of the date of birth of the petitioner. The statement of the witness had already been recorded wherein a categoric statement had been made that the date of birth of the petitioner was 17.03.1995 as per the school records. The case is now fixed for rebuttal and thus no prejudice would be caused in case the petitioner is allowed one opportunity to exhibit the documents.

Therefore, impugned order dated 08.09.2016 passed by learned Additional Sessions Judge, Mewat is set aside giving the petitioner one opportunity to produce evidence on the date already fixed before the trial Court.

With the aforesaid direction, the above noted petition is disposed of.

November 08, 2016
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No