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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 220/2014

STATE		 Petitioner
	Through	:Ms. Alpana Pandey, APP for the State
	versus	
MOHD ABID		 Respondent
	Through	None

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **12.07.2016**

Petitioner has filed present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('the Code', for short) against the order dated 30th August, 2013 passed by the Additional Sessions Judge (Central) Delhi whereby Mohd. Abid has been held to be a juvenile with the directions that he be tried by the Juvenile Justice Board.

Trial court has returned the above finding after holding a proper inquiry wherein statements of witnesses have been recorded. Additional Sessions Judge has relied on the statement of CW1 Shri Rashid Ahmed Khan, Headmaster of Nusrat-Ul-Islam School, Farash Khana, Delhi, where respondent had studied upto 5th standard, inasmuch as his statement was duly corroborated from the documentary evidence produced by him.

CW1 produced the admission register wherein date of birth of respondent was recorded as 9th December, 1995 . CW1 deposed that as per the register, on 20th November, 1999 vide entry at Sl. No. 15839 Mohd. Abid S/o Mohd. Sualeheen R/o 771, Phatak Karoli, Farash Khana (respondent) was admitted in K.G. and his date of birth was recorded as 9th December, 1995 against the said entry. Relevant page of the said entry was proved as Ex. CW1/A. Result chart of 5th standard of the respondent containing roll no. 684 was also produced, which was exhibited as Ex. PW1/B. CW1 has categorically stated that documents submitted at the time of admission are generally destroyed after 10 years. Mother of the respondent was examined as CW2. However, she is an illiterate lady and not much reliance can be put on her statement. She failed to give the date, month and year of birth.

The entry made in the school register where respondent first studied, has been relied by the learned Additional Sessions Judge to hold that date of birth of the respondent was 9th December, 1995, therefore, he was a juvenile as on the date of commission of offence, that is, 1st June, 2013. I do not find any error, irregularity or illegality in the impugned order which is in conformity with the Rule 12 (3)(a)(ii) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ('the Rules', for short) which 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, 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 7-A, 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.”

In this case, matriculation or equivalent certificate was not available. It is the admission register of the school, which was available and in fact was summoned and produced by the Headmaster, inasmuch as entries therein were duly proved by him. This is the school, which respondent had first attended and register was being maintained in usual course and can be relied for determining the age of a person. This register will partake the status of the birth certificate issued by the school. Evidence was led by the school which is an independent authority, not related to the respondent. There is nothing on record to doubt the register, maintained and produced by the school. In my

view, in the face of admission register, no medical examination was required to determine the age, as envisaged under Rule 12(d) of the Rules. Accordingly, I do not find any force in the contentions of learned APP that trial court should have taken medical evidence for determining the age of the respondent. Learned APP has placed reliance on Om Prakash vs. State of Rajasthan & Anr. AIR 2012 Supreme Court 1608. I have perused the judgment but find the same to be in the context of different facts. In the said case, school record was found to be ambiguous, accordingly, medical evidence was preferred and taken as conclusive proof regarding age.

For the foregoing reasons, revision petition is dismissed.

A.K. PATHAK, J.

JULY 12, 2016/rb