

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 663/2014

STATE (GOVT OF NCT OF DELHI) Petitioner
Through :Ms. Neelam Sharma, APP with SI
Ashish Tyagi, P.S. Nihal Vihar

versus

JASVINDER SINGH Respondent
Through :Mr. Ashok Chhaparia, Adv. with
respondent in person.

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

ORDER
% **02.08.2016**

1. Respondent was arrested in the FIR No. 32/2013 under Sections 302/201/34 IPC registered at Police Station Nihal Vihar, Delhi. After investigation, charge-sheet was filed in the court of Metropolitan Magistrate, Delhi. Date of offence is 3rd February, 2013 while respondent was arrested on 4th February, 2013. Respondent gave his age to the Investigating Officer (I.O.) as 19 years. However, before the trial court respondent claimed himself to be less than 18 years of age, as on the date of offence, that is, 3rd February, 2013. He claimed himself to be a juvenile.
2. Trial court inquired from the parents of respondent as to whether any document, as provided under in Rule 12 of the Juvenile Justice(Care and

Protection of Children) Rules, 2007 (“the Rules”, for short), was available with them to which they answered in negative. Accordingly, trial court ordered for determination of the age of respondent through medical examination. Medical Board was constituted by DDU Hospital, which examined the respondent, inasmuch as gave its report (Ex. P-1), according to which respondent was between 22 to 25 years. At that stage, respondent filed an application annexing therewith a birth certificate issued by the Municipal Corporation of Delhi to support his claim of juvenility. As per the birth certificate, date of birth of respondent was 13th December, 1995 and he was about 17 years old, as on the date of commission of offence. Record Clerk Shri Rajesh Kumar was called from the office of Municipal Corporation of Delhi, who produced birth Register pertaining to the year 1995. Photocopy of relevant entry in the register was taken on record by the trial court as Ex. CW1/8. Statement of Ms. Renu Mann, Sub-Registrar (Birth & Death) was also recorded.

3. Other witnesses, including the parents, grandmother, aunt and mediator to the marriage of parents of respondent, were also examined. Trial court scrutinized the material collected during the enquiry and concluded that Ex. CW1/A was a suspicious document. Though entry was

recorded in the register pertaining to the year 1995 but name of the respondent was substituted subsequently, on an application dated 22nd April, 2013 filed by the mother of respondent. Trial court has noticed that Ms. Renu Mann, the Sub-Register though deposed that she had recorded the name of respondent vide entry no. 11069 on 22nd April, 2013 on the basis of application filed by Ms. Raj (mother of respondent), but had not appended her signature below the entry nor affixed the stamp. Trial court concluded that in absence of any document, as provided in rule 12 of the Rules, report of the medical board was the conclusive proof of age of respondent and after giving benefit of one year on lower side, the age of respondent is to be taken 21 as on the date of commission of offence.

4. Respondent preferred a Criminal Revision No. 12/2014 before the District & Sessions Judge (West), Delhi, who meticulously scrutinized the evidence adduced during the inquiry and held that respondent was a juvenile, as on the date of commission of offence. For the reasons recorded in the judgment dated 29th May, 2014 revisional court has held that the date of birth, as recorded in the municipal certificate, was the conclusive proof of age of respondent. Revisional court has accepted the municipal record to be genuine. It has been observed as under:-

“On a consideration of the entire available record and rival submissions addressed on behalf of either side, and also taking into account the verdict of the Hon’ble Supreme Court in the case Ashwani Kumar Saxena vs. State of Madhya Pradesh, VII (2012) SLT 230, which categorically lays down that the Court, the Juvenile Justice Board or a Committee functioning under the Juvenile Justice Act is not expected to conduct such a roving enquiry and to go behind those certificates or the date of birth certificate from the school first attended or the birth certificate given by a Corporation or a Municipal Authority to examine the correctness of those documents, kept during the normal course of business, but that only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the Justice Juvenile Board or the Committee need to go for medical report for age determination, taking the totality of the circumstances of the case into account, which brings forth undisputedly in as much as, it has not been refuted on behalf of the State that the applicant/petitioner, the accused Jasvinder Singh is younger to his sister Gurmeet Kaur, whose date of birth as per her school certificate is 13.09.1994, and even if the applicant/accused, who is younger to Gurmeet Kaur was born precisely nine months after the birth of Gurmeet Kaur, even then, his date of birth would ordinarily to be before 12.06.1995 in the normal course of human nature and even from the said date i.e. 12.06.1995 till the date of the alleged commission of the offence i.e. 03.02.2013, the applicant/accused would be aged 17 years 7 months and 1 days on the date of the alleged commission of the offence and would be less than 18 years of age.

Taking the said course of normal human nature into account thus and the factum that the registration of the birth of the child by the parents of the petitioners has been made on 15.12.1995 with the Municipal Authorities, coupled with the factum that the State has not refuted that the applicant/accused is the second child of the parents of the petitioner, though the learned trial court has observed that as per Ex.CW1/A, there is mention of three children of the parents of the accused, the testimonies of the parents of the accused is categorical to the effect that they had only two children and it is unlikely that the parents would conceal the factum of birth of their own offspring. In the circumstances thus taking into account that the date of birth of the accused has been got registered on 15.12.1995, it is held that there is no reason to disbelieve the Municipal certificate showing the date of birth of the accused as being 13.12.1995 and thus, in terms of Rule 12 sub-clause 3 sub-clause (a) sub-clause (iii) of the Juvenile Justice (Care and Protection of Children) Rules 2007 read with sub-clause (b) thereof, it is held that the date of birth of the accused Jasvinder Singh @ Sunny, s/o Shri Sarabjeet Singh is 13.12.1995 and that he was a juvenile on the date of the alleged commission of the offence. The impugned order dated 10.10.2013 of the learned trial court in FIR No.32/13 PS Nihal Vihar is thus set aside.

The revision petition CR No.12/14 is disposed of accordingly. The file be consigned to the Record Room.”

5. That is how petitioner is before this Court by way of present petition under Section 397 Cr.P.C. read with Section 482 Cr.P.C. It is contended

that revisional court has erred in accepting the birth certificate of respondent, despite various lacunae and opinion of the medical board, has been wrongly discarded. I have perused the trial court record and do not find any illegality or irregularity in the impugned order, which is strictly in accordance with the evidence adduced and the law governing the field. Marriage of the parents of respondent was solemnized on 6th February, 1993. This stands proved from the statements of parents of respondent and other witnesses examined, including an independent witness, that is Ms. Surender Kaur, who have deposed that parents of respondent were married on 6th February, 1993 in the Gurudwara. It has also not been disputed by the petitioner that sister of the respondent is elder to him. She was born on 13th September, 1994, as per the school certificate. Respondent is the second child; therefore, he could have born only after June, 1995, that is, after nine months. For this reason also, entry in the register cannot be doubted more so when it was made in the year 1995. Register pertains to the year 1995 and names of the parents of respondent finds mentioned therein. It has also come on record that DDU Hospital record was destroyed. After child's birth, if information is sent from the hospital and child's birth is recorded, the name of the child may not be there as '*namkaran*' ceremony takes much after

the child's birth. As per Rule 12, the medical report can only be considered in absence of the documents as envisaged in Rule 12(a)(i) to (iii) of the Rules. In this case, respondent has produced a proved document as referred in Rule 12(a)(iii) of the Rules, thus medical opinion has rightly been not considered.

6. For the foregoing reasons, revision petition is dismissed.

A.K. PATHAK, J.

AUGUST 02, 2016

rb