

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-16375 of 2016

.....

Date of decision:6.11.2017

Yash Pal

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rajat Malhotra, Advocate for the petitioner.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab
for the respondent-State.

Mr. Raju Arora, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for setting aside the order dated 4.5.2016 (Annexure-P.1) passed by learned Additional Sessions Judge, Ludhiana, which is against the settled law and also militates against the facts on record.

Notice of motion was issued in this case.

Ms. Simranjeet Kaur, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Raju Arora, learned Advocate has appeared for respondent No.2 and contested this petition.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

It has been admitted by the parties that respondent No.3-Niku Singh has already died, therefore, this petition has become infructuous qua him. This petition is dismissed as having become infructuous qua respondent No.3-Niku Singh.

From the record, I find that the challan was presented against Joginder Verma alias Kalia and Niku Singh in FIR No.214 dated 27.11.2005 registered for the offences under Sections 302 and 404 IPC at Police Station Division No.6, Ludhiana. During the trial, both the accused moved application claiming themselves to be juvenile. Since, the application to determine the age of the accused can be moved at any stage, therefore, it was entertained by the trial Court for holding inquiry. In the application filed under Section 7-A of the Juvenile Justice Act (hereinafter referred to as 'the Act') for determining the age of Joginder Verma was also moved. Accordingly, inquiry was initiated and during inquiry JW-2 Basant Lal brother of the accused Joginder Verma appeared and suffered his statement to the effect that he is real brother of accused Joginder Verma, now aged about 24-25 years. He produced the original school leaving/transfer certificate for providing the age of his brother Joginder Verma and proved the copy of the same Ex.JW.2/A and said that as per this certificate date of birth of his brother Joginder Verma is 18.5.1991 and he was aged only 14 years at the time of occurrence in the year 2005.

On the other hand, learned Additional Public Prosecutor argued before the trial Court that this certificate produced by Basant Lal is fake and in order to prove that it is fake certificate, prosecution got verified this

certificate by sending HC Satwinder Singh to the concerned school authorities. However, HC Satwinder Singh after getting the certificate verified submitted report in the Court and to prove the report, he was also examined as RW-1. In his statement, he said, that the school certificates of Joginder Verma and Niku were marked to him for verification on 10.3.2016 and he went to District Gonda where he met District Education Officer, who informed that there is no record of Register No.874 mentioned in Ex.PY available with them, but he did not give anything in writing to him. Then, he again went to Village Bhawanipur, Distt. Gonda, where he met Ex-Sarpanch Atal Bihari Pandey, who stated that Joginder Verma is known to him and he had left the village long back in search of work and after that he did not come back. He further said that there is no record of his birth in the village record. He recorded his statement Ex.PY/1. He further said that he met brother of Joginder Vema namely, Basant Vema and inquired from him about the certificate and school, who categorically stated that no such school exists. Even despite of his best efforts, he could not locate the school mentioned in Ex.PY. Meaning thereby, there exists no such school, which has issued school leaving certificate, as such it is fake and forged.

The learned Additional Public Prosecutor also argued before the trial Court that for the last 10 years accused Joginder Verma never claimed that he was juvenile and was 14 years of age at the time of occurrence.

The learned Additional Sessions Judge, Ludhiana vide order dated 4.5.2016 accepted the application of Joginder Verma and directed the

jail authorities to take him to Civil Hospital, Ludhiana, where Civil Surgeon would constitute the Board of doctors, to carry the ossification test at the cost of State to determine the age of Joginder Verma and submit the report to the Court. Aggrieved from this order, the present petition has been filed.

A perusal of the record shows that the school leaving certificate has been relied upon by the accused No.2-Joginder Verma. Therefore, he is to prove the same as per law by summoning the record of the school. He has not produced any such record to prove that certificate.

On the other hand, HC Satwinder Singh was deputed to determine and verify the fact regarding the certificate relied upon by the accused. The District Education Officer told him that there is no record of Register No.874 in his office. Further the witness has gone to the Village of the accused and met Ex-Sarpanch and brother of Joginder Verma and he stated that no such school exists and he could not trace any school. The findings of the learned trial Court are against the evidence. If no such school has been traced out by HC Satwinder Singh, how his statement can be disbelieved. The school leaving certificate has been relied upon by Joginder Verma. He is to prove the same by bringing the record of the school etc. to prove the school leaving certificate about his date of birth.

From the record, it is clear that the certificate relied upon by the accused is not proved by the accused-Joginder Verma and further it has been rebutted by the prosecution by producing HC Satwinder Singh that it is fake as no such school is existing. When the base of the accused i.e. school leaving certificate is found fake and forged, there is no question of ordering

[5]

ossification test to determine the age. The accused has relied upon specifically on the school leaving certificate qua his date of birth, but that has been found fake. Therefore, ossification test cannot be ordered in these circumstances. It could have been ordered if there would not have been any documentary proof regarding the date of birth. But in the present case accused Joginder Verma is relying upon a specific document and he has failed to prove the fact that he is a juvenile. Therefore, he has failed to satisfy the Court *prima facie* that he was a juvenile at the time of occurrence. The Hon'ble Supreme Court in Abuzar Hossain alias Gulam Hossain v. State of West Bengal, 2012(4) R.C.R. (Criminal) 796 held as under:-

“Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the Court at the threshold whenever raised.”

Keeping in view the above law laid down by the Hon'ble Supreme Court and from the above discussion, I find that the impugned order passed by the learned trial Court is not as per law and the same is set aside qua Joginder Verma-accused.

Therefore, finding merit in this petition, the same is allowed.

November 6, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No