

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

CRM-M No.8713 of 2016 (O&M)

Date of decision: 27.02.2017

Komal

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Jindal, Advocate
for the petitioner.

Mr. Pawan Garg, AAG, Haryana.

Mr. K.D.S. Hooda, Advocate
for respondent No.2.

REKHA MITTAL J.

CRM No.4469 of 2017

Heard.

Allowed as prayed for.

Reply by way of affidavit on behalf of the respondent
along with Annexures R2/1 and R2/3 is taken on record.

Disposed of accordingly.

CRM-M No.8713 of 2016 (O&M)

The present petition directs challenge against orders dated 06.10.2015 passed by the Additional Chief Judicial Magistrate, Rohtak whereby respondent No.2 has been declared a juvenile in conflict with law and dated 04.02.2016 by the Sessions Judge, Rohtak affirming the order passed by the Court below by dismissing the revision petition preferred by the victim (minor) through her mother.

The brief backdrop of this case is that on application dated

13.07.2015 submitted to the SHO Police Station Civil Lines, Rohtak, a case under Section 376 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') was registered against respondent No.2. On completion of investigation, charge-sheet under Section 173 Cr.P.C. was filed for offence punishable under Section 376 IPC and 4 of POCSO Act.

An application was filed by the accused before the Additional Chief Judicial Magistrate, Rohtak to declare him a juvenile on the plea that he was born on 20.08.1997, as such, he was below 18 years of age on the date of commission of alleged offence. To support his claim, he placed on record copy of secondary examination certificate issued by the Board of School Education, Haryana wherein his date of birth was recorded as 20.08.1997. Further, he examined Anita his mother to support his plea that the applicant/accused was born on 20.08.1997.

On the basis of evidence adduced before the Additional Chief Judicial Magistrate, Rohtak, respondent No.2 was declared juvenile in conflict with law and it was directed that his case be sent to the Principal Magistrate, Juvenile Justice Board, Rohtak and the accused was directed to appear there on 20.10.2015 with further direction that till then he be sent to Observation Home, Hisar.

The order passed by the Magistrate became subject-matter of revision before the Court of Sessions and before the Revisional Court, the petitioner sought to rely upon birth certificate (Annexure P3) purported to be issued under the signatures of Additional District

Registrar Birth and Death of District Rohtak in terms of Section 17 of the Birth and Death Registration Rules 1969 (in short 'the 1969 Rules'). The Revisional Court bestowed its thoughtful consideration to the provisions of Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 (in short 'the Rules') and various judgments referred to in para 9, relied upon secondary examination certificate (Ex.PW1/A) issued by the Board of School Education, Haryana recording date of birth of the accused as 20.08.1997, thus, affirmed the order passed by the Magistrate. However, in para 13 of the order, the Court expressed its personal opinion that date of birth of a person recorded in birth certificate should be given precedence over the date of birth recorded in matriculation certificate but to achieve that purpose rules are required to be amended.

Counsel for the petitioner has submitted that respondent No.2 did not examine any witness in order to prove secondary examination certificate (Ex.PW1/A) when otherwise the said certificate is not admissible in evidence under Section 35 of the Indian Evidence Act. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India ***“Jabar Singh vs Dinesh and another”***, **2010(2) RCR (Criminal) 309**.

Another submission made by counsel is that date of birth recorded in the birth certificate on the basis of entry made in discharge of official duty by a public servant should get precedence over an entry in the school record which becomes basis for recording date of birth in a matriculation certificate or an equivalent certificate more particularly in the circumstances that it has not been proved on record as to on

whose instance, date of birth of the accused was recorded in the school records. It is vehemently argued that the orders passed by the Courts below may be set-aside and the matter be remitted to the Additional Chief Judicial Magistrate, Rohtak for deciding the application filed by the accused afresh after providing an opportunity to the petitioner to examine a witness from the concerned office to prove the certificate (Annexure P3) and relevant entries in the record maintained by the said office.

Counsel for respondent No.2 has supported the impugned order with the submissions that keeping in view the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules of 2007 framed in exercise of the powers drawn from the Act, date of birth recorded in the matriculation or equivalent certificates is to be considered at the first instance and the Court can rely upon the birth certificate given by a Corporation, Municipal Authority or Panchayat only if the certificates mentioned in Clause (a) (i) and (ii) of Sub-Rule (3) of Rule 12 are not available. In addition, it has been argued that in the birth certificate sought to be relied upon by the petitioner, name of the person has been mentioned as Bijender not Sachin when otherwise, there is no material on record to show that Sachin was ever known as Bijender. Anita, mother of Sachin appeared in the Court and was cross-examined. It was never suggested to the witness that Sachin was ever known as Bijender or Sachin was born on 13.04.1996.

I have heard counsel for the parties and perused the paperbook.

Hon'ble the Supreme Court of India in ***“Jarnail Singh vs***

State of Haryana”, 2013(3) RCR (Criminal) 644 has adverted to the scheme provided for in Rule 12 of the Rules. A relevant extract from para 20 of the judgment reads as follows:-

“The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

Similarly, in ***“Ashwani Kumar Saxena vs State of M.P.”***,

2012(4) RCR (Criminal) 391, Hon'ble the Supreme Court has recorded

that the procedure to be followed under the J. J. Act, in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the Court exercising powers under Section 7A of the Act. “Age determination inquiry” contemplated under Section 7A of the Act read with Rule 12 of 2007 Rules enables the Court to seek evidence and in that process, the Court can obtain a matriculation or equivalent certificates, if available. Only in the absence of matriculation or equivalent certificates, the Court need to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth from the school first attended, the Court need to obtain the birth certificate given by a corporation or a municipal authority or a panchayat.

Taking into consideration enunciation of law laid down in the aforesaid judgments, it is difficult to accept contention of the petitioner that reliance placed upon the certificate Ex.PW1/A for disposing of age determination enquiry is either misplaced or the said document cannot form the basis for deciding whether the accused was a juvenile at the time of occurrence or otherwise. In this view of the matter, contention of the petitioner that birth certificate Annexure P3 should attract primacy over secondary examination certificate is devoid of merit and deserves to be rejected.

The second submission made by counsel for the petitioner

with regard to document Ex.PW1/A being not admissible in evidence by relying upon *Jabar Singh's case (supra)* is not meritorious as in *Ashwani Kumar Saxena's case (supra)* Hon'ble the Supreme Court has expressed its reservation on the view expressed by the Bench in *Jabar Singh's case (supra)*. This apart, during the course of enquiry conducted by the Additional Chief Judicial Magistrate, no challenge was laid against the certificate Ex.PW1/A and till date, no such contention has been raised by the petitioner that the said document is the result of forgery or fabrication.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

27.02.2017
yakub

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