

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1199 of 2015 (O&M)

Date of decision : 27.7.2017

Vikram

.....Petitioner

vs.

Sunny @ Karan and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.S. Mamli, Advocate for the petitioner

Mr. Narender Kaajla, Advocate for respondent No.1.

Mr. Neeraj Poswal, AAG, Haryana.

...

H. S. Madaan, J.

This revision petition is directed against order dated 29.1.2015 passed by Additional Sessions Judge, Fatehabad, vide which such Court had set aside the order passed by Additional Chief Judicial Magistrate, Fatehabad, vide order dated 28.5.2014, by which it had rejected application for declaring appellant Sunny @ Karan Singh as juvenile in conflict with law and another miscellaneous application for declaring Sunny @ Karan Singh as such.

Learned Additional Sessions Judge, Fatehabad, vide impugned judgment had set aside such order passed by Additional Chief Judicial Magistrate, Fatehabad, by accepting the application and declared the applicant-appellant Sunny @ Karan as juvenile in

conflict with law, liable to be tried by the Juvenile Justice Board, as such he was ordered to be produced before Principal Magistrate, Juvenile Justice Board, Fatehabad.

Complainant feeling aggrieved by such order passed by Additional Sessions Judge, Fatehabad, has challenged the same by way of filing the present revision petition.

Inter alia, in the revision petition, it is contended that applicant- Sunny @ Karan was aged more than 18 years at the time of commission of incident, which was on 25.4.2014 and he was not juvenile at all, rather he was aged more than 24 years. The revision – petitioner had placed on record copy of birth certificate issued by Registrar, Birth and Death, Municipal Council, Fatehabad, but the same was wrongly not taken into consideration and rather the Additional Sessions Judge, Fatehabad, relied upon matriculation certificate and he fell in error in doing so. That as per birth certificate of Sunny @ Karan, his father's name is mentioned as Krishan Lal and mother's name as Bala; that date of birth is reflected as 9.10.1993 and date of registration as 26.10.1993. It is prayed that revision petition be allowed and the impugned order passed by the Additional Sessions Judge, Fatehabad, declaring Sunny @ Karan to be a juvenile be set aside.

Notice of the revision petition was given to respondent No. 1 – Sunny @ Karan, as well as, to State of Haryana. Both of them have appeared through counsel.

I have heard learned counsel for the revision-petitioner, learned counsel for respondent No.1 and as well as, learned State

counsel, besides going through the record and I find that there is no merit in the revision petition. The impugned order passed by the Additional Sessions Judge, Fatehabad, is well reasoned one, based upon proper appraisal of evidence and correct interpretation of law. He has taken into consideration the cogent and convincing evidence adduced by the applicant, both oral as well as documentary, to come to the conclusion that applicant was juvenile on the date of incident. The documentary evidence so taken into consideration was matriculation certificate Exhibit A-2, showing his date of birth as 12.6.1996, his middle class examination certificate Exhibit A-1, copy of admission and withdrawal register Exhibit A-3, character certificate Exhibit A-5, copy of admission and withdrawal register Exhibit A-6 and primary school certificate Exhibit A-7, all documents consistently showing his date of birth as 12.6.1996. Applicant had also examined Sita Ram, Principal of Senior Secondary Model School, Fatehabad, to prove the admission and withdrawal register Exhibit A-3 and matriculation certificate Exhibit A-4 showing date of birth of the appellant-applicant as 12.6.1996. In addition to that applicant had examined his mother Bala as AW-1, Sushil Kumar, Principal, Vidhya Bharti School, Fatehabad, as AW-3. As against that the respondent – complainant had examined Suresh Kumar, Computer Operator, Municipal Council Birth and Death Branch, Fatehabad, who had brought birth certificate issued by Registrar, Birth and Death, Municipal Council, Fatehabad, Exhibit R-1, could not provide much help to respondent complainant, showing his date of birth as 19.10.1993. RW-1 Suresh Kumar

Computer Operator, Municipal Council Birth and Death Branch, Fatehabad, had stated that entry was made at the instance of Kamla Devi, the midwife and entry in the register was not made on the basis of information given by family members of the child. As rightly observed by Additional Sessions Judge, no evidence has been led by the respondent to show that Exhibit R-1 belongs to the applicant and not any other person. Thus the impugned order was passed on the basis of cogent, convincing and reliable evidence both oral and documentary, brought on file by the petitioner. Whereas the respondent had failed to rebut such evidence or prove on file that actual date of birth of Sunny @ Karan was 19.10.1993 and not 12.6.1996. It being so, the Additional Sessions Judge has rightly reached at the decision that at the time of incident, applicant Sunny @ Karan was aged less than 18 years, as such juvenile.

Learned counsel for accused Sunny @ Karan has stated at the bar that Sunny @ Karan was tried by Juvenile Justice Board, Fatehabad and vide judgment dated 9.11.2011 Sunny @ Karan was acquitted of the notice of accusation served upon him by giving him benefit of doubt.

Learned counsel for the petitioner has referred to citation **Jabar Singh vs. Dinesh and another 2011 AIR (SC) (Cri) 1087**, by Hon'ble the Supreme Court of India, wherein it was observed that school documents could not be relied upon to show that accused was juvenile when the offence was committed. However, facts of the authority are quite different as in the instant case, the applicant has led oral as well as documentary evidence, including getting produced

school record to show that he was juvenile on the day of incident and he has not only relied upon the school record for that purpose.

As regards the second authority referred to by the learned counsel for the revision- petitioner *Alamelu and another vs. State Rep. By Inspector of Police 2011 AIR (SC) 715*, wherein it was observed that date of birth recorded in school certificate would not have any evidentiary value unless the person who made the entry or who gave the date of birth is examined. Again this authority is not applicable for the reasons mentioned supra.

Thus there is no merit in the revision petition. The same stands dismissed accordingly.

27.7.2017
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No