

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

**CRM No.M-6436 of 2017 (O&M)
Decided on: 09.03.2017**

Wajid minor through his father

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sarfraj Hussain, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 13.02.2017 (Annexure P3) passed by the Additional Sessions Judge, Mewat whereby revision petition filed by respondent No.2 (complainant) has been allowed and order dated 11.08.2016 (Annexure P1) passed by the Principal Magistrate Juvenile Justice Board, Mewat (hereinafter to be referred to as 'the Board') declaring the petitioner a juvenile in conflict with law in FIR No.166 dated 14.08.2015 for offence under Sections 363, 366-A of the Indian Penal Code (in short 'IPC') and 6/12 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the Act') in Police Station Nagina, District Mewat, Haryana, has been set-aside.

The sole submission made by counsel for the petitioner is that the petitioner was treated as a juvenile in conflict with law on the basis of his date of birth being 05.04.2000 and accordingly the investigating agency submitted the papers before the Board. An application was filed by respondent No.2/complainant for declaring the

petitioner as major on the allegations that school certificate issued by the Primary School, Shahpur Nangli in which date of birth of the petitioner has been shown as 05.04.2000 is forged and false. It is further averred by the complainant that Wajid studied in Primary School Bisru, Block Punhana and as per record of the said school, his date of birth is 18.02.1996, therefore, he was major on the date of alleged occurrence. It is further submitted that the Board, on a detailed and meticulous consideration of evidence adduced on record, rightly accepted date of birth of the juvenile to be 05.04.2000 and therefore, he being a juvenile on the date of alleged occurrence i.e. 12.08.2015. It is argued with vehemence that the Revisional Court committed a grave error by relying upon copy of school leaving certificate Ex.AY recording date of birth as 18.02.1996 but without appreciating that in the entry made in the admission and withdrawal register against Serial No.1492, entry pertains to one Wajib son of Shakir whereas in the school leaving certificate, name of the student has been mentioned as Wajid son of Shakil. It is further submitted that evidence adduced by the petitioner by examining Sh. Ramesh Jain, Headmaster, Government Primary School, Shahpur Nangli is worthy of credence and reliance and sufficient to prove that the petitioner was admitted in the aforesaid school in the year 2007 and studied upto Class 5th in the said school as per transfer certificate Ex.R1 and his date of birth has been rightly recorded in the school records to be 05.04.2000.

I have heard counsel for the petitioner, perused the paperbook and the original records.

The Revisional Court set-aside the order passed by the

Board for the reasons recorded in para 10 of the impugned order. A relevant extract therefrom reads as follows:-

"Learned counsel for respondent No.1 contended that date of birth of his client namely Wajid s/o Sakil is 05.04.2000, as so mentioned in School Leaving Certificate Ex.R1 copy of Admission Register Ex.R2 as well as copy of Admission Form Ex.R3, proved by RW1 Ramesh Chander, Head Master, GPS Shahpur Nangli. The contention is not sustainable because as per Ex.AY i.e. copy of School Leaving Certificate issued by Government Primary School, Shahpur Nangli date of birth Wajid Hussain s/o Sakil Ahmed and Sarjina is 18.02.1996, who had attended the school from 13.05.2003 to 29.07.2005. Meaning thereby that this document was issued much prior to the issuance of Ex.R1, which pertains to the period from 05.05.2007 to 31.03.2012. It appears that respondent No.1 was got admitted in Government Primary School, Shahpur Nangli twice and two different dates of birth were supplied by his ward. In the circumstances, weightage is to be given to the information supplied earlier. Even otherwise, neither mother nor father of respondent No.1 has stepped in the witness-box to dispute that date of birth of their son Wajid is not 18.02.1996 or he had not attended Government Primary School, Shahpur Nangli from 13.05.2003 to 29.07.2005. Since, parents of respondent No.1 have not appeared to depose on oath that actual date of birth of their son Wajid is 05.04.2000, there is no reason to disbelieve documents Ex.A1, Ex.A3, Ex.DA and Ex.AY."

The applicant/respondent No.2 (complainant) in FIR No.166 dated 14.08.2015 examined Mohd. Farukh, Head Teacher, Government Primary School Bisru to prove that the petitioner got admission in 2nd class in the school at Bisru on the basis of school

leaving certificate issued by Government Primary School, Shahpur Nangli wherein date of birth of the petitioner is mentioned as 18.02.1996. The witness was cross-examined by counsel for the petitioner but no such plea was raised in his cross-examination that the petitioner had never taken admission in 2nd class in a school at Bisru. The petitioner did not examine his parent(s) to prove that school leaving certificate relied upon by the respondent/complainant was neither got issued by them nor it was submitted by them in the school at Bisru, in order to derive advantage of the alleged discrepancy in the entry at Serial No.1492 and the school leaving certificate Ex.AY.

This apart, none of the parents of the petitioner was examined either to prove that the petitioner was born in a particular year or he was admitted in Government Primary School, Shahpur Nangli in the year 2007 as against entry with regard to his admission in that school on 13.05.2003. Once the petitioner has never challenged that he was not admitted in class 2nd in a school at Bisru nor parents of the petitioner were examined to prove admission or withdrawal of the petitioner in any school whatever, I find it difficult to discard testimony of Mohd. Farukh, Head Teacher, Government Primary School, Bisru with regard to date of birth of the petitioner recorded in the Government Primary School, Shahpur Nangli incorporated in the school leaving certificate and carried into the records of Government Primary School, Bisru. The very fact that parents of the petitioner kept themselves away from the witness-box is sufficient to draw an adverse inference against the petitioner or his parents qua their stand that the petitioner was juvenile on the date of alleged commission of offence. In

this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed.

09.03.2017

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No