

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

**Criminal Revision No. 2968 of 2014(O&M)**

**Date of Decision: December 22 , 2017.**

Aman ..... PETITIONER (s)

**Versus**

State of Haryana ..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Bikram Chaudhary, Advocate  
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

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**LISA GILL, J.**

This revision petition has been filed for setting order dated 9.9.2014 passed by the learned Additional Sessions Judge, Faridabad whereby application filed by the petitioner for declaring him a juvenile has been rejected.

Brief facts of the case are that, FIR No.215 dated 03.05.2014 was initially registered under Sections 363/366A IPC against the petitioner on a statement of the father of the prosecutrix/victim alleging that his daughter has been enticed away by the petitioner. The victim in this case who was aged about 15 years was recovered on 10.05.2014. Her medical examination was conducted and the offence punishable under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') was added. Final report under Section 173 Cr.P.C. was presented against

the petitioner for the offences punishable under Sections 363/366/376/342 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

During the pendency of trial, the petitioner moved an application dated 05.08.2014 (Annexure P1) for declaring him a juvenile and consequently, directing the trial to be carried out before the Juvenile Justice Board. It was claimed that the petitioner was less than 18 years of age on the date of the alleged occurrence. His date of birth is stated to be 16.11.1998 on the basis of a birth certificate Mark-1 (Annexure P2 with this petition) issued by the Sub Registrar, Births and Deaths, Municipal Corporation, NIT Faridabad. The petitioner examined Yogesh, a clerk of the Municipal Corporation, NIT Faridabad as well as his own father as AW1 and AW2, respectively in support of his claim. Their statements are attached as Annexures P3 and P4 with this petition.

The prosecution in order to rebut the said claim, examined Mrs. Beena, Head Mistress, Government Middle School, village Sarurpur, District Faridabad as RW1. The date of birth of the petitioner is claimed by the prosecution to be 20.10.1994 on the basis of the admission form and withdrawal register of the school. The Admission and Withdrawal Register (Ex.R1) of the school and the Admission Form (Ex.R2) alleged to be filled by the petitioner's father were produced. Statement of RW1 Mrs. Beena, Head Mistress is attached as Annexure P5 with this petition. Copies of the Admission and Withdrawal Register and the Admission Form are annexed as Annexures P6 and P7, respectively, with this petition.

The learned Additional Sessions Judge, Faridabad on considering the facts and circumstances as well as evidence led by the parties rejected the

application of the petitioner vide impugned order dated 09.09.2014. Aggrieved therefrom, the present revision petition has been filed.

Learned counsel for the petitioner vehemently argues that the impugned order is liable to be set aside being contrary to the evidence on record. It is submitted that a birth certificate is per se admissible in view of Section 35 of the Evidence Act. Therefore, rejection of this evidence is a grave illegality committed by the learned Additional Sessions Judge, Faridabad. It is further submitted that basis on which the entries in the school admission and withdrawal register or the admission form were effected, has not been proved. Therefore, reliance on the said School Leaving Certificate or the Admission and Withdrawal register is unjustified and per se illegal.

Learned counsel for the petitioner further argues that prosecution witness RW1 i.e., Mrs. Beena, Head Mistress, Government Middle School, Village Saarurpur in her cross-examination has admitted that no affidavit or other documentary evidence regarding the date of birth of the petitioner was taken at the time of his admission. She has also admitted that there is a cutting in the name of the petitioner on the document, Ex.R2, which was not filled in her presence.

It is thus urged that the said school leaving certificate has been wrongly given precedence over the birth certificate produced by the petitioner. The petitioner was in fact a juvenile being under 18 years of age at the time of the occurrence i.e., 03.05.2014. Learned counsel for the petitioner relies upon judgments of Hon'ble the Supreme Court in Alamelu and another v. State Rep. by Inspector of Police, 2011(2) SCC 385, Abuzar Hossain @ Gulam Hossain v.

State of West Bengal, 2011(2) RCR 903 and Ravinder Singh Gorkhi v. State of U.P., 2006 Cri.L.J.2791(1). It is thus prayed that this petition be allowed and impugned order dated 09.09.2014 be set aside, consequently treating the petitioner a juvenile, it be directed that the matter be tried before the Juvenile Justice Board.

Learned counsel for the State, on the other hand, refutes the averments/arguments addressed on behalf of the petitioner while submitting that there is no illegality or perversity in the impugned order which calls for interference by this Court. Date of birth of the petitioner, in fact, is 20.10.1994 whereas, the petitioner is wrongly trying to project the same to be 16.11.1998. Moreover, the genuineness of the School Leaving Certificate and the Admission Form is not disputed, therefore there is no question of placing any reliance upon the Birth Certificate issued by the Municipal Corporation, Faridabad. Learned counsel for the State has relied upon a judgment of the Hon'ble Supreme Court in Jodhbir Singh v. State of Punjab, 2013(1) RCR(Criminal) 272. He prays for dismissal of this petition.

I have heard learned counsel for the parties and have gone through the file as well as the photocopy of the available record.

As per the prosecution case, date of birth of the petitioner is 20.11.1994 whereas, the petitioner alleges his date of birth to be 16.11.1998. Reliance is placed by the petitioner on the birth certificate issued by the Municipal Corporation, Faridabad to substantiate his case.

At this stage, it is necessary to refer to Section 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (since repealed by the Juvenile Justice (Care and Protection of Children) Model Rules, 2016) which

reads as under:-

**“12. Procedure to be followed in determination of Age. --**

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of

one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

It is thus clear that for determining the age of the petitioner, the court is to first look into the Matriculation or equivalent Certificate and in the absence thereof, birth certificate from the school first attended. It is in the absence of the two above that the birth certificate issued by a corporation or municipal authority would be looked into. In the present case, genuineness of

the school leaving certificate/admission form is not in dispute. This is so for the reason that the petitioner's father AW2 specifically admitted that all his children including the petitioner studied at the Government School at village Sarurpur where he used to reside. The other three siblings of the petitioner are admittedly married. Cross-examination of AW2 Daya Chand, father of the petitioner, reads as under:-

“I was married on 14.4.1984. My eldest son David was studied upto 4<sup>th</sup> or 5<sup>th</sup> class in Govt. School, Sarurpur. I am residing in village Sarurpur. All the children studied in Govt. School village Sarurpur where I used to reside. Aman studied up to 5<sup>th</sup> class in Govt. School, Sarurpur. My mother got admitted Aman in the school. I do not know when Aman left Govt. School. Before this incident, Aman was unemployed but he got employment in Jharsainteli, Sector 59. All my children we born in my village at my house. It is wrong to suggest that the date of birth of Aman is 24.10.1994 as per record of School. I do not know when the certificate Mark-1 was obtained. Voluntarily stated that the certificate Mark-1 was received by maternal grandfather of Aman. I received the certificate Mark-1 before 20 days ago. It is correct that my village headed by Sarpanch, Numberdar and Chowkidar. It is correct that some parents entered the names of their children in the register of Chowkidar. Aman was born in village Saran the house of maternal grandfather. I did not got any entry in the chowkidar register. There was no house no., gali/mohalla of the house of my in-laws My three children namely David, Laxmi and Amit married. It is wrong to suggest that I deposing falsely to save my son from the legal punishment.”

RW1 Mrs. Beena, Head Mistress, Government Middle School, Village Sarurpur has specifically deposed that as per the school record, date of birth of the petitioner is 20.11.1994. The admission form, duly filled by the

petitioner's father, mentioning his date of birth as above was proved. Statement of RW1 Mrs. Beena to the effect that no affidavit or other documentary evidence qua date of birth of the petitioner was taken at the time of admission is of no avail to the petitioner, for the simple reason that admission of the petitioner in the Government Middle School, village Sarurpur is not disputed or denied. The petitioner's father has categorically admitted that all of his children including the petitioner studied at the said school. Therefore, it is not open to the petitioner to take a contradictory stand at this stage to submit that the basis for the entry of the date of birth is not available therefore, the said document has no evidentiary value and thus cannot be relied upon for determining his date of birth.

Testimony of AW1 Yogesh, a Clerk from the Municipal Corporation, NIT Faridabad specifically needs to be referred to. In his cross-examination AW1 Yogesh admitted that all entries in the register of Births and Deaths are certified by the competent officer. However, the register which was produced by him before the trial court was not certified by any officer alongwith the necessary seal. There is no signature of any officer even at the closing of the register in question. In the column for the signatures of the Registrar/Sub Registrar as well as in the column of the Special Remarks, signature of no official is present. Neither is there a signature of any official against the entry of the petitioner's name. It is further stated by the said witness AW1, that the name of the child is not mentioned at a number of entries in this register. In the said register no signature of any officer is appended, neither is there any entry in the column for Special Remarks. AW1 Yogesh, did not furnish any authority letter from the Municipal Corporation, Faridabad authorizing him to give evidence in this case. It is admitted that the birth certificate (Mark 1) was not issued or

signed by him or in his presence, neither has he identified the official/authority issuing the said certificate. Moreover, the petitioner's father AW2 expressed ignorance about the date of receipt of the Birth Certificate (Mark-1) while stating that it was received by the maternal grand father of the petitioner. AW2 stated that he himself received the said certificate about 20 days ago. The learned trial court has thus committed no illegality while passing the impugned order dated 09.09.2014.

The judgments relied upon by learned counsel for the petitioner are not applicable in the factual matrix of the present case. It is not in dispute that in case the basis on which the entries of the date of birth have been recorded is not available, the said certificate would not have much evidentiary value. However in the present case, the genuineness of the admission and withdrawal register (Ex.R1) of the school and the admission form (Ex.R2) has not been disputed. The petitioner's father has, in fact, admitted that his son i.e., the petitioner received education at the said school at village Sarurpur. It is clearly stated by the petitioner's father that his son, the petitioner was admitted in the said school by his mother. Even if it is assumed for the sake of arguments (though it is not a plea raised or argument addressed on behalf of the petitioner) that the petitioner's grandmother did not give the exact date of birth, the discrepancy in the date of birth cannot be so great i.e., of four years and one month. The prosecution claims the petitioner's date of birth to be 20.10.1994 and not 16.11.1998 as claimed by the petitioner. All the other siblings of the petitioner admittedly studied in the same school at Sarurpur. This fact is specifically admitted by the petitioner's father. Therefore the arguments raised by learned counsel for the

petitioner being untenable are rejected.

Keeping in view the facts and circumstances of the case, I do not find any illegality, infirmity or perversity in the impugned order, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

December 22 , 2017.  
'om'

( LISA GILL )  
JUDGE

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