

In the High Court of Punjab and Haryana at Chandigarh

CRR No.3313 of 2015 (O&M)

Date of decision: September 14, 2017

Mandeep Sharma

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sunny Bhardwaj, Advocate for the petitioner.

Mr.Randeep Singh Khaira,Additional Advocate General, Punjab

Mr. Vivek Salathia, Advocate for the complainant

ARVIND SINGH SANGWAN,J.

Petitioner has filed this petition under Section 401 of the Code of Criminal Procedure,1973 ('Cr.P.C.' for short) challenging the order dated 16.5.2015 passed by the Additional Sessions Judge, Amritsar, whereby the appeal filed by the petitioner challenging the order dated 12.11.2013 passed by the Principal Magistrate, Juvenile Justice Board, Amritsar dismissing the claim of the petitioner to declare him a juvenile, was also dismissed.

Brief facts of the case are that the FIR No.69 dated 1.6.2011 under Sections 302/325/323 read with Section 34 of the Indian Penal Code, 1860 ('IPC for short) was registered at Police Station Cantonment Amritsar, District Amritsar against the petitioner and his father and co-accused-

Lakhwinder Kumar. As per the allegations in the FIR, four brothers, namely, Kamal Kishore, Ashok Kumar, Brij Kishore (now deceased) and one Kirpal Singh had purchased a plot, where four shops, existed and co-accused-Lakhwinder Kumar was in possession of one of such shop as a tenant and ejectment application was pending against him. On 23.5.2011, Lakhwinder Kumar and petitioner came there, abused Brij Kishore for fixing tin sheds on the property and caused injuries to Brij Kishore. Later on, the FIR was registered under Sections 326/325 read with Section 34 IPC. On 27.6.2011, the dead body of Brij Kishore was found in the bank of Canal and, thereafter, Section 302 IPC was added.

During the pendency of the case, petitioner-Mandeep Sharma, filed an application before the Juvenile Justice Board for declaring him as a juvenile. In the application, it was submitted that the date of birth of Mandeep Sharma is 8.12.1993, whereas, the prosecution alleged his date of birth as 4.11.1992. In support of his claim, petitioner produced on record a petition filed by her mother under Section 125 Cr.P.C. against his father on 11.8.993 in which, in para 5, she has stated that she was turned out of her matrimonial home when she was pregnant and gave birth to a male child in September, 1992. This child was elder brother of petitioner, namely, Sandeep Sharma. Accordingly, it was submitted that the petitioner was not born in the year 1992 and his date of birth is 8.12.1993. Petitioner submitted another document i.e. his middle standard certificate to prove his date of birth. It is also submitted in the application that the complainant had forged the birth certificate issued by the Municipal Corporation, Amritsar, and, in this regard, the mother of the petitioner had registered FIR

No.1, dated 8.1.2013 under Sections 420, 465, 467, 468, 471 and 120-B IPC.

No reply was filed by the prosecution to the application. In evidence, petitioner examined himself as AW1 and examined Clerk of Judicial record, namely, Arpana as AW1, who proved the summoned file relating to the mother of the petitioner filed under Section 125 Cr.P.C. AW2 Seema Sharma, mother of the petitioner stated that the date of birth of his son is 8.12.1993 which is reflected in his middle standard examination certificate issued by the Punjab School Education Board. She also deposed that her elder son Sandeep Sharma was born in the year 1992 and produced the matriculation certificate of his elder son Sandeep Sharma as Exhibit A2 and middle standard certificate of petitioner- Mandeep Sharma as Exhibit A3 and closed the evidence.

On the other hand, the prosecution examined RW1 Kiran Jolly, Record Keeper, Office of Municipal Corporation, Amritsar, who produced the birth certificate of Mandeep Sharma as Exhibit AA and stated that his date of birth is 4.11.1992. She also submitted an inquiry report RW1/A held by the Registrar regarding the date of birth of petitioner.

RW2 Head Constable Kulwinder Singh produced copy of the FIR No. 1, dated 8.1.2013 as Exhibit RW2/A and the cancellation report as Exhibit RW2/B and closed the evidence.

The Principal Magistrate of Juvenile Justice Board, vide its order dated 12.11.2013, dismissed the application holding that the date of birth of the petitioner is 4.11.1992.

Petitioner challenged this order before the lower appellate

Court and the appeal filed by the petitioner was also dismissed on 16.5.2015. The operative part of the judgment reads as under:-

"The arguments of the learned counsel for the appellant that as per the certificate Ex.A3 of middle class examination of the appellant, the date of birth of the appellant was 8.12.1993 and the said certificate has to be given preference. This arguments of the learned counsel for the appellant have not impressed me in view of the fact that as per Rule 12 sub rule 3 of Juvenile Justice (Care and Protection of Children) Rules, 2007, no reliance can be placed on the certificate of middle class examination."

It is submitted on behalf of the learned counsel for the petitioner that the procedure to be followed for determining the age is prescribed in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:-

"(1)In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile of 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 appearances 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."

It is submitted on behalf of the petitioner that as per rule 12 (3)(a), the matriculation or the equivalent certificate if available is to be given preference over the date of birth certificate from the school first attended and, in the absence whereof, preference is given to the birth certificate issued by the Corporation or Municipal Authority.

Learned counsel for the petitioner has submitted that both the Courts below have erred in not placing reliance on the certificate of middle class examination. Learned counsel for the petitioner has also submitted that, in fact, the petitioner could not produce his matriculation certificate as the same was misplaced and now the petitioner is ready to produce the same before the Board to prove his date of birth as 8.12.1993.

During the course of the arguments, learned counsel for the petitioner has shown original certificate issued on 2.6.2009 by the Punjab School Education Board showing the date of birth as 8.12.1993. It is also submitted on behalf of the petitioner that the co-accused-Lakhwinder Kumar, after facing the full length trial, has already been acquitted by the trial Court vide judgment dated 5.12.2013.

Learned counsel for the petitioner in support of his arguments has relied upon the judgment of the Apex Court in **Union of India vs. Saalim** 2010(15)SCC 544 to submit that the Court shall lay emphasis and reliance on School leaving Register which is one of the recognised and authentic document for the purpose of determining the age of a person.

Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in **Shah Nawaz vs. State of UP and another** 2011 (3)RCR(Criminal)884 stating that Rule 12 required that the age of juvenile be determined on the basis of Matriculation Certificate and in its absence entry of date of birth in the mark sheet is one of the valid proof .

Learned counsel has further relied upon the judgment of the Apex Court in **Jodhbir Singh vs. State of Punjab** 2013(1)RCR(Criminal) 272 wherein it is held that law gives prime importance to the date of birth certificate issued by the School first attended, the genuineness of which is not disputed.

Learned counsel further relied upon the judgment of Apex Court in **Sri Ganesh vs. State of Tamil Nadu and another** 2017(1)RCR (Criminal) 556 wherein it is held that the Court should obtain matriculation or equivalent certificate and only its absence may obtain birth certificate of school first attended.

It is, thus, submitted on behalf of the petitioner that the Courts below have wrongly ignored the middle class certificate and has also submitted that since the date of birth given in the middle class certificate is the same as in the matriculation certificate, which has been shown to the Court, during the course of arguments, petitioner may be declared as juvenile.

On the other hand, learned counsel for the complainant as well as the learned counsel for the State has submitted that the order passed by the authorities are in accordance with the procedure laid down under the Act/Rule.

Learned counsel for the complainant has relied upon judgment of this Court in **Sushil Kumar vs. State of Haryana** 2013(2) RCR(Criminal) 932 wherein, in the identical circumstances, where there was conflict between the certificate of middle standard produced by the accused and the other document produced by the prosecution, this Court has remanded the case back to the Juvenile Justice Board to conduct an inquiry and report and ordered that if found eligible, then the petitioner be tried as per the provisions of the Juvenile Justice(Care and Protection of Children) Act, 2007.

After hearing the learned counsel for the parties, I find that the impugned orders passed by the Courts below are liable to be set aside. So far as appreciation of middle standard certificate produced by the petitioner is concerned, the same should have been given preference over the birth certificate issued by the Municipal Corporation Amritsar in view of the judgment Union of India vs. Saalim (supra) and, especially, in view of the fact that the petitioner has shown the original matriculation certificate to the Court which should be considered by the Juvenile Justice Board.

In these circumstances, it would be just and expedient to allow this petition and remand the matter back to Juvenile Justice Board, Amritsar for deciding the same afresh in accordance with law.

Accordingly, this petition is allowed. The impugned orders dated 12.11.2013 and 16.5.2015 are set aside and the matter is remanded back to the Juvenile Justice Board, Amritsar. which shall make an inquiry and allow the petitioner to produce on record his matriculation certificate.

On conducting such inquiry, if the Board finds the petitioner to be juvenile,

he will be tried as per the provisions of Juvenile Justice (Care and Protection of Children) Act.

Parties are directed to appear before the Principal Magistrate, Juvenile Justice Board on 29.9.2017 and the Board is directed to complete the inquiry within two months from the date of receipt of copy of this order.

(ARVIND SINGH SANGWAN)
JUDGE

September 14, 2017

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No