

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

Criminal Revision No. 3439 of 2014 (O&M)

Date of decision : August 29, 2017

Rashid

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.S. Hooda, Advocate
for the petitioner.

Mr. Ramesh Kumar, AAG, Haryana.

Mr. Puneet Pali, Advocate for
Mr. Mohd. Salim, Advocate
for the complainant.

LISA GILL, J.

The petitioner is aggrieved of order dated 30.09.2014 passed by the learned Additional Sessions Judge, Mewat whereby the petitioner's application under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short - 'the Act') has been dismissed.

Brief facts of the case are that FIR No. 463/2013 dated 21.10.2013 under Sections 343, 363, 366, 376 (d) IPC read with Section 8 of Protection of Children from Sexual Offences Act, 2012 was registered against the petitioner and others. The petitioner moved an application under Section 49 of the Act claiming himself to be a juvenile, thus, praying that

the matter should be placed before the Juvenile Justice Board and he should be tried accordingly. The petitioner claimed his date of birth to be 10.09.1996. Therefore, it was averred that on the date of alleged occurrence i.e. 12.10.2013, the petitioner was a juvenile. In order to substantiate his averments, the petitioner placed reliance upon a copy of school Admission Register (Ex. AW1/A), school Transfer Certificate dated 07.05.2014 (Ex. AW1/B) and Admission Form (Ex. AW1/C). AW1 Sujahuddin, Headmaster of Primary School Village Ter was examined.

Prosecution contested this application while alleging that the actual date of birth of the petitioner is 27.12.1994. Reliance was placed on an entry in the register of the Chowkidar of the concerned village. The Chowkidar of the village Ter, Deen Mohd. was examined as RW2 by the prosecution.

Learned Additional Sessions Judge, Mewat considered the facts and circumstances of the case as well as the evidence brought on record and dismissed the application vide impugned order dated 30.09.2014. It was held that in the absence of the proof of material on the basis of which the entry of date of birth is mentioned in the documents produced by the accused, much reliance cannot be placed on the said documents even if it is the school leaving certificate of the petitioner.

Aggrieved therefrom the petitioner has preferred this revision petition.

It is vehemently argued that as per the settled position of law, primacy has to be afforded to the school leaving certificate issued by the school first attended by the accused rather than rely upon the entries made by the Chowkidar of the village. Furthermore, the record in question

pertains to a Government school and the documents have been duly proved by examining the Headmaster of the said school. The Headmaster had issued school leaving certificate dated 07.05.2014 (Ex. AW1/B). The genuineness of these documents, it is urged, cannot be questioned as they pertain to the records of a Government Primary School and there is no reason as to why they have not been accepted by the learned trial Court. It is argued that section 35 of the Indian Evidence Act entails that the said documents pertaining to a Government school should be accepted. A presumption of correctness and genuineness is attached to the said documents. Non examination of the parents or the person who admitted the child to school, cannot lead to an adverse inference against the petitioner.

Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in Alamelu and another versus State, represented by Inspector of Police 2011(2), SCC 385, Jodhbir Singh versus State of Punjab 2013 (1) RCR (Criminal) 272, Mohd. Ikram Hussain versus State of U.P. and others AIR 64 SC 1625, Rajindra Kumar versus Shri Chandra Narain Singh and others (1970) 2 SCC 277 and Hardeep Singh versus State of Haryana 2012 (3) RCR 363 in support of his contentions. It is, thus, prayed that this revision petition be allowed.

Learned counsel for the respondents – State as well as the complainant refute the arguments raised on behalf of the petitioner. It is submitted that the impugned order is a well reasoned order based on the evidence on record. It is, thus, prayed that the impugned order be upheld.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

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) 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.”

The petitioner claims his date of birth to be 10.09.1996. For this purpose, reliance is placed upon the school leaving certificate dated 07.05.2014 (Ex. AW1/B) (admittedly issued after the occurrence in October, 2013). As per the said school leaving certificate, the petitioner was admitted

in the school on 22.09.2001. His name is noted to be struck off the rolls since the second standard. He is stated to be on the rolls of the school from 01.04.2002 to 19.10.2002 in the said class. In the column provided for date of withdrawal of the name, date mentioned is 07.05.2014. Reliance is also placed on Ex. AW1/A i.e. the copy of the admission Register and the admission Form (Ex. AW1/C). In the said admission Form, name of the student (petitioner) is mentioned as Rashid Khan son of Hasam and Abida, his date of birth being 10.09.1996. In the column provided for the signatures of the father, Guardian or the person accompanying the child to school, it is mentioned as Jakir, relationship of said Jakir with the child is, however, not mentioned.

It is not in dispute that there is another admission Form (Ex. DX) available on record wherein the name of the student is mentioned as Rashid son of Hasam and Abida, date of birth being 10.09.1996. In this Form, the column regarding the name of the father, Guardian or the person admitting the child is vacant. None of the said two forms bear the signatures of the then Headmaster of the school.

AW1, Headmaster of the Primary School, who issued the school leaving certificate dated 07.05.2017, in his cross examination admitted that he had no knowledge as to who had prepared the documents Ex. AW1/A to Ex. AW1/C on which reliance is placed upon by the petitioner. AW1 did not recognise the signatures of the officials who had prepared the said documents neither are any particulars of such officials who were posted at the relevant time forthcoming. It is further admitted that there are two admission Forms available on the record in respect to the petitioner at serial No. 1617. None of the two Forms bear the signatures of

the then Headmaster. Still further the admission Form (Ex. DX) does not bear either signatures of the Headmaster, the petitioner's father or the guardian or the person accompanying the child at the time of admission. The other Form (Ex. AW1/C) does not bear the signatures of the Headmaster but bears the signatures of one Jakir. There is nothing on record to indicate the identity or relationship of the said Jakir with the petitioner. It is further admitted that no proof of actual date of birth of the petitioner is enclosed with the admission Form (Ex. AW1/C). No affidavit or declaration by the parent/guardian of the petitioner or any other person accompanying him is on record. Cross examination of AW1 reads as under:-

“ It is correct that I have not prepared the documents Ex. AW-1/A to Ex. AW-1/F. I do not know who prepared the above documents and also I do not recognised the signatures of the officials who prepared the above documents. It is correct that at admission form No. 1661 of Sohrab son of Nooru it bears the thumb impression of Nooru and signature of the then Headmaster but on form no. 1617 of Rashid Khan son of Hasam does not bear the signatures of Hasam and that of the then Headmaster. As per rule the single admission form is to be submitted of a single student. On the summoned record there is another admission form found of Rashid son of Hasam at the same serial no. 1617 which form also does not bear the signatures of Headmaster and the father. The photocopy of the same is Ex.DX. There is no document pertaining to the date of birth attached with the admission form Ex. AW1/C volunteered that the admission form was filled upon the information of the parents. I cannot tell who fill up the admission form Ex. AW-1/C. There is no date of age proof attached with the Ex. AW1/C voluntarily stated that the self-attested form of the parents. It is correct that there is no attestation of Hasam and the then Headmaster on Ex. AW1/C. Voluntarily stated that it is signed by Jakir. It is correct that the Ex. AW1/F does not bear the

signature of the father of the student nor of the Headmaster. It is also correct that no any proof of actual date of birth is enclosed with the admission form Ex. AW1/A. It is incorrect to suggest that I am deposing falsely.”

It is, thus, amply clear that the material on the basis on which entry of the date of birth has been made, is not proved. The Hon'ble Supreme Court in *Alamelu's* case (supra) while examining the evidentiary value of the transfer certificate issued by a Government school in respect to the victim in that particular case has observed as under:-

“ The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.”

Reference was made by the Hon'ble Supreme Court in *Alamelu's* case (supra) to its earlier judgment in *Birad Mal Singhvi vs. Anand Purohit*¹, 1988 (Supp) SCC 604, wherein it is observed that:

“ Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely,

the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted”

There is no denying the fact that primacy has to be afforded to the entry which is available at the time of admission of the child at the first school attended rather than reliance on any other document, which may be available on record. However, this primacy is qualified to the extent that the basis on which the date of birth has been entered in the records should be duly proved. Merely because the Principal of the concerned school has been examined does not automatically lead to the factum of the date of birth being proved. In the present case, it is to be noted that there are admittedly two admission Forms available on the summoned record. The parents of the petitioner have not appended their signatures on any of the said admission forms. Both of the available Forms do not carry the signatures of the then Headmaster. The Headmaster AW1 has admitted that as rule, a single admission form in respect to one student is submitted.

Learned counsel for the petitioner argues that Jakir is in fact the grandfather of the petitioner and his name finds mention in one of the admission Forms i.e. Ex. AW1/C. However, it is candidly and fairly conceded by learned counsel for the petitioner that this was never the stand of the petitioner before the learned trial Court and there is nothing on record to indicate Jakir to be the petitioner's grandfather. Admittedly the said Jakir

has not been examined, neither have the parents of the petitioner testified before the learned trial Court. There is no declaration or affidavit by either parent, guardian or the person accompanying the child at the time of admission in respect to his date of birth. The judgment of the Hon'ble Supreme Court in *Jodhbir Singh's* case (supra) does not come to the aid of the petitioner in the factual matrix of this case. Once the petitioner is unable to prove the basis on which the entries regarding his date of birth were recorded in the school records, the said documents are not of much evidentiary value to hold that the petitioner's date of birth is 10.09.1996. As the petitioner has clearly been unable to prove himself to be a juvenile on the date of occurrence, therefore, reliance or otherwise on the entry of the Chowkidar register is irrelevant.

Keeping in view the facts and circumstances and the reasons as above, I do not find any ground to interfere in the impugned order dated 30.09.2014.

Accordingly, this revision petition is dismissed.

August 29, 2017
rts

(Lisa Gill)
Judge

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