

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

**CRR No.804 of 2015 (O&M)
Date of Decision: October 24, 2017**

Surjit Singh

...Petitioner

VERSUS

Bikramjit Singh alias Goga and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Binderjit Singh, Advocate
for the petitioner.

Mr.P.S.Sekhon, Advocate
for respondent No.1.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Surjit Singh against respondents Bikramjit Singh alias Goga and State of Punjab, challenging the impugned order dated 19.12.2014 passed by learned Sessions Judge, Faridkot, vide which the application under Section 7, 14 read with Section 49 of the Juvenile Justice (Care & Protection of Children) Act, 2000 (for brevity 'Juvenile Justice Act') filed by the accused-respondent was allowed.

Notice of motion was issued. Learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that challan was presented in case FIR No.101 dated 16.06.2008 under Sections 326, 324 and 34 IPC against present accused-respondent No.1 and other co-accused. Learned Chief Judicial Magistrate, Faridkot, vide judgment of conviction and order of sentence dated 20.07.2012, convicted and sentenced the accused-respondent along with co-accused to undergo rigorous imprisonment for a period of three years and to pay fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 326/34 IPC and further to undergo rigorous imprisonment for a period of one year and to pay fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 324/34 IPC. Aggrieved from the above-said judgment of conviction and order of sentence, an appeal was filed by the accused-respondent and other co-accused. During the pendency of the appeal, an application under Section 7, 14 read with Section 49 of the Juvenile Justice Act was filed by the accused-respondent Bikramjit Singh alias Goga for declaring him a juvenile and segregating his case from other accused and to send the same to the Principal Magistrate, Juvenile Justice Board.

It is stated in the application that occurrence in question had taken place on 16.06.2008. The date of birth of the applicant-Bikramjit Singh alias Goga is 01.03.1991 as per certificate issued by Secretary, Punjab School Education Board for matriculation class as well as the birth certificate issued by Gram Panchayat, Block Gidderbaha, District Sri Muktsar Sahib. It is further stated that as per the certificate on the record, the applicant, at the time of alleged occurrence, was 17 years 3 months and

In the reply, prosecution refuted the claim of the applicant and averred that applicant had caused injuries on the person of the complainant on 16.06.2008. It is denied that applicant is a juvenile and his date of birth is 01.03.1991. It is stated that in fact, the certificate issued by Secretary, Punjab School Education Board for matriculation examination as well as birth certificate issued by Gram Panchayat are not authentic and valid documents to show exact date of birth. Even, birth certificate issued by Panchayat Secretary shows that same was prepared in connivance with the parents of the applicant as the said certificate was prepared on 26.06.2008, therefore, the certificates are false and fake documents. It is further stated that exact date of birth of the applicant is 08.03.1990 and as such, he was above 18 years of age, at the time of occurrence in question.

In the enquiry, Bikramjit Singh alias Goga stepped into witness box as AW-1 and stated his date of birth as 01.03.1991 and proved on record birth certificate Ex.AW1/A. He also proved copy of matriculation examination certificate, Aadhaar Card, driving licence, ration card and Voter's identity card and relied upon Rule 12 of the Juvenile Justice Act. On the basis of these documents, the application was allowed by learned Sessions Judge, Faridkot, vide impugned order dated 19.12.2014.

It is in the impugned order dated 19.12.2014 that birth certificate Ex.AW1/A has been issued at a later stage and even Aadhaar Card has been issued in the year 2013 and likewise, driving licence has been issued on 03.08.2013, which means that these documents have been prepared after the occurrence. Therefore, much reliance cannot be placed on these documents. Further, from the record, I find that the Court below

mainly relied upon the matriculation certificate Ex.AW1/C, which had been

issued on 09.06.2006 i.e. much prior to the occurrence in question and the Court also held that matriculation certificate, as per the rules, is to be given priority to all other documents. Learned Sessions Judge, Faridkot held that no doubt another birth certificate Ex.RA has also been brought on record by the prosecution, wherein date of birth of Bikramjit Singh alias Goga is mentioned as 08.03.1990, but it was discarded by holding that it has been issued on 11.11.2013. No other reason or ground has been given for discarding the birth certificate Ex.RA.

At the time of arguments, learned counsel for the petitioner argued that learned Sessions Judge, Faridkot has misread and misappreciated the oral as well as documentary evidence. The main documents have been prepared later on. He next argued that birth certificate Ex.RA has been issued by the competent authority in which the date of birth of Bikramjit Singh alias Goga has been recorded as 08.03.1990. The occurrence, which is not disputed, has taken place on 16.06.2008 and at that time, Bikramjit Singh alias Goga was about 18 years 3 months and 8 days and he was not juvenile. He further argued that learned Sessions Judge, Faridkot has wrongly relied upon Ex.AW1/A, in which the date of birth is 01.03.1991. Learned counsel for the petitioner further contended that minute and careful perusal of this document reveals that this document cannot be termed as a genuine and authentic document. This document has been got prepared cleverly and clandestinely in consultation with some legal brain. This entry of date of birth was got entered on 26.06.2008 whereas the occurrence took place on 16.06.2008.

I agree with the submissions of learned counsel for the petitioner. This certificate Ex.AW1/A has been prepared after the

occurrence showing date of birth as 01.03.1991, therefore, much reliance cannot be placed on this certificate. The parents of Bikramjit Singh alias Goga have not been examined in this case,. Now, the only dispute is whether as per Rules, matriculation certificate is to be considered in priority to the birth certificate or not.

Learned counsel for the respondent cited judgment passed by the Hon'ble Supreme Court in ***Shah Nawaz vs. State of U.P. and another, 2011(3) RCR (Criminal) 884***, in which, it is held that Rule 12 requires that age of juvenile be determined on basis of matriculation certificate. It is further held that in the absence of matriculation certificate, entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The school leaving certificate is also a valid proof in determining the age of the accused person. It is further held in the above-cited judgment that under Rule 12, medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or Municipality is not available.

I have gone through the above-cited judgment, in which the Hon'ble Supreme Court held that when matriculation certificate is there and other certificates regarding date of birth are also there, then medical opinion should not be sought.

On the other hand, learned counsel for the petitioner cited judgment passed by this Court in ***Tamanna vs. State of Haryana and others, 2015(6) RCR (Criminal) 699***, wherein the fact was decided as to whether the sequence of the evidence mentioned in Rule 11 of Rules 2009

determining age of an accused or it is the birth certificate which has to be given priority in view of admissibility of the same as per Section 35 of the Indian Evidence Act and it is held that when a birth certificate issued by Registrar of Births and Deaths is produced and proved in contrast to a matriculation certificate which is based merely on the school entries, the preference can be given to birth certificate which is a document prepared on the basis of a register maintained in ordinary course of business by public servant in the discharge of his official duty. It is further held that a school record is not sufficient enough to establish the date of birth of a person. It is also held that the certified copy of entry of date of birth in register of Births and Deaths is authenticated and admissible evidence under Section 35 of the Evidence Act. This Court, in the above-cited judgment, further held as under:-

*“7. In another judgment passed by this Court in **Criminal Revision No.779 of 2012 titled Amit @ Nanha Vs. State of Haryana, decided on 27.11.2012**, it has been held that the birth certificate is to be given preference over the matriculation certificate in case it is proved to be authentic and valid. It has been held as follow:*

*“I have also gone through the judgment in **Hari Ram Vs. State of Rajasthan and another, AIR 2011 SC (Criminal) 2053**, wherein Rule 12 of the Rules mentioned hereinabove was considered. Even the said judgment does not lay down that evidence under Rule 12 (3) (a) (i) is more authenticated than evidence available under Rule 12 (3) (a) (ii) or that evidence available under Rule 12 (3) (a) (ii) is more authenticated than the evidence available under Rule 12 (3) (a) (iii). The evidence produced in each case is to be appreciated on individual merits to the satisfaction of the Court. It will not be out of place to observe here that the date of birth as recorded in the School records has not been considered to be conclusive evidence as per few of the judgments laid down by Supreme Court. Reference can be made to the following judgments wherein the Apex Court on different occasions has held that the school record is not generally accurate and it is improper for Court to base conclusion regarding date of birth of a person on the same:-*

1. ***AIR 1965 SC 282, Brij Mohan Vs. Priya Brat Narain Sinha***
2. ***1989 (1) RCR 307 Brij Mohan Vs. State.***
3. ***1991 CAR 127 (SC) Daya Chand Vs. Saheb Singh and another.***
4. ***1983 (2) RCR 432 Gulab Singh Vs. State of Punjab.***
5. ***1983 (2) RCR 545.***
6. ***1974 CLR (Short Notes 6) Jai Narain Vs. State of Haryana.***

*It is not out of place to refer to the judgments in **Bhagwan Dass Singh Vs. Harchand Singh, 1990 CrL L.J. 2671, Bhoop Ram Vs. State of U.P. 1989 (1) RCR (CrL.) 573**, wherein the School registers and School certificates have been held to be relevant. The objective of reference to the abovesaid judgments is only to express an opinion that the school record cannot be said to be an authenticated and certain evidence, to establish the age of a person, in preference to the established birth certificate of a particular person. In view of the above discussion, I am of the considered opinion that the sequence of evidence under Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules 2007, the evidence regarding date of birth from the school first attended and the matriculation or equivalent certificate cannot be said to be a superior evidence than birth certificate issued by Corporation or Municipal authority or Panchayat, in age determination inquiry by a Court, Board or committee. The evidence specified in any of the clauses under Rule 12 (3) a (i), a (ii) or a (iii) or in the absence whereof clause (b), shall be the conclusive proof of the age as regards the age of juvenile in conflict with law. The evidence regarding the age of a person as per the school record is not authenticated proof and it cannot be said to be a superior form of evidence than the evidence of birth certificate given by Corporation or Municipal Authority or Panchayat or the Matriculation or equivalent certificate.*

In view of the above discussion, I do not find any infirmity in the order passed by the Court below in relying upon the birth certificate issued by the Corporation. Dismissed."

Learned counsel for the petitioner also relied upon the judgment passed by this Court in ***Surender vs. State of Haryana, 2011(2)***

RCR (Criminal) 903 and judgment passed by the Hon'ble Delhi High Court

in ***Harish Yadav Thru Shri Raj Kumar Yadav vs. State, 2011(6) RCR***

(Criminal) 62, in which also, it is held that record available with CMO is the authentic record of birth. No reason for the trial court either to go by appearance or to go by school leaving certificate or mark-sheet where different dates of birth were given. Learned counsel for the petitioner also placed reliance upon the judgment passed by this Court in **Resham Singh vs. Union of India and another, 2008(1) RCR (Criminal) 158**, in which it is held that a register of Births and Deaths is a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto.

Further, learned counsel for the petitioner cited judgment passed in **AIR 1933 Lahore 601 titled as Mohammad Hassan vs. Safdar Mirza and others**, in which it is held that evidence as to age in birth register cannot be rebutted by entry in records of educational institutions.

Keeping in view the above discussion, I find that the birth certificate issued by the competent authority is admissible evidence as this certificate has been issued from the record maintained by a public servant in discharge of official duties and this birth certificate cannot be rebutted by the entries in the school certificate. There is no evidence on the record to show that how the entry in the school record has come showing date of birth as 01.03.1991.

Therefore, finding merit in the present revision petition, the same is allowed. The impugned order dated 19.12.2014 passed by learned Sessions Judge, Faridkot, is set aside.

October 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No