

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

(1) CRR No.516 of 2016.
Decided on:-07.10.2017.

Kuldeep alias Sarpanch.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

(2) CRR No.2240 of 2016.

Kuldeep alias Sarpanch.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. D.D. Gupta, Advocate for
Mr. Rahul Rathore, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned two criminal revision petitions as the common question regarding juvenility of the petitioner is involved in both these petitions. The revision petition i.e. **CRR No.516 of 2016** has been filed by the petitioner against order dated 04.12.2015 passed by learned Additional Sessions Judge, Hisar in case bearing FIR No.626 dated 21.11.2014 under Sections 307 and 120-B read with Section 34 IPC as well as Section 25 of the Arms Act, 1959 registered

against the petitioner at Police Station Narnaund, District Hisar, whereas the other revision petition has been filed by the petitioner against order dated 17.03.2016 passed by learned Additional Sessions Judge, Hisar in case bearing FIR No.276 dated 25.07.2014 under Sections 395 and 397 IPC registered against the petitioner at Police Station Barwala, District Hisar. In both the orders passed by learned Additional Sessions Judge, Hisar, the applications of the petitioner to declare him as a juvenile, were dismissed.

However, for convenience and clarity, facts are being discussed from ***CRR No.516 of 2016***.

Briefly stated, on the basis of statement of Jaiveer Singh son of Telu Ram, FIR No.626 dated 21.11.2014 under Sections 307 and 120-B read with Section 34 IPC as well as Section 25 of the Arms Act, 1959 was registered against the petitioner at Police Station Narnaund, District Hisar. During pendency of the trial, the petitioner had moved an application before the trial Court to declare him as a juvenile on the ground that his date of birth is 11.12.1997, whereas the alleged occurrence took place on 19.11.2014. Therefore, on the date of occurrence, the petitioner being less than 18 years of age, was required to be tried as a juvenile.

The said application was contested by the respondent-State and it was pleaded that as per the birth certificate issued from General Hospital, Jind, date of birth of the petitioner is 30.05.1996. Therefore, on the date of occurrence i.e. 19.11.2014, he being more than 18 years of age, was not a juvenile.

Learned trial Court vide order dated 04.12.2015 dismissed the application filed by the petitioner-accused for declaring him as juvenile.

It is in these circumstances, the petitioner has filed present revision petition.

Learned counsel for the petitioner-accused has argued that in order to ascertain the factum of juvenility, the procedure as laid down in Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, the Act) read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short, the Rules) is required to be contemplated, so as to assess the juvenility of an accused. Therefore, as provided under Rule 12(3)(a)(i) of the Rules, where the question concerning the juvenility of an accused is required to be considered, the age of such person is firstly to be assessed on the basis of matriculation or an equivalent certificate, if available and it is only in the absence of such certificate, the other mode is required to be adopted which is enumerated in Rule 12(3)(a)(ii)(iii) and (b) of the Rules.

He has further contended that in support of his case, the petitioner has examined Dalbir Singh, Clerk, Board of School Education, Haryana as AW1, who has deposed that the petitioner has appeared in the Secondary School Examination vide Roll No.2212060285 in September, 2012 and as per the certificate so issued by the Board, his date of birth is 11.12.1997. This witness has proved the copy of gazette result as Ex.A1. Petitioner has also examined his mother, namely, Bimla as AW2, who has deposed that petitioner Kuldeep is about 17 years of age. She has deposed that

she is illiterate and her husband was also called as Pappu, but she does not know as to whether her son i.e. petitioner Kuldeep alias Sarpanch was called as Rahul. She has further deposed that the petitioner was got admitted in school by his grandmother.

While relying upon judgment of the Apex Court in ***Ashwani Kumar Saxena Versus State of M.P. 2012(4) RCR (Criminal) 391***, learned counsel for the petitioner has argued that in order to deal with the question of determination of age of the accused for the purpose of finding out as to whether he is a juvenile or not, hyper-technical approach should not be adopted and the juvenility has to be assessed keeping in view the date of commission of offence and not the date when the offender was produced before the competent Court. Reliance has also been placed upon ***Partap Singh Versus State of Jharkhand 2005(1) RCR (Criminal) 836***.

On the other hand, learned State counsel has argued that the date of birth of the petitioner is 30.05.1996 and the same was entered in the register maintained by the Additional District Registrar (Birth & Death), Jind and, therefore, as on the date of occurrence i.e. 19.11.2014, the petitioner was not a juvenile as he was more than 18 years of age. Therefore, there is no illegality in the order dated 04.12.2015 passed by the trial Court.

Learned State counsel has relied upon the judgment of this Court in ***Tamanna Versus State of Haryana and others 2015(6) RCR (Criminal) 699*** to contend that the school record is not sufficient to establish the date of birth of a person, whereas a certified copy of birth certificate issued by the Registrar (Birth & Death) is an authenticated document and is admissible

evidence provided under Section 35 of the Indian Evidence Act. Reliance has also been placed upon ***Ravinder Singh Gorkhi Versus State of U.P. 2006(3) RCR (Criminal) 156*** to contend that entry of date of birth in school record is merely a piece of evidence and is not a conclusive proof of age in the absence of material on the basis of which the age was recorded. The admission register of a school which was maintained in regular course of business and on the basis of which further certificates are prepared, if not produced, the subsequent certificate could not be relied upon to prove the age.

I have heard learned counsel for the parties and perused the record.

Section 7-A of the Act reads as under:

“7-A – Procedure to be followed when claim of juvenility is raised before any Court. (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.”

Similarly, Rule 12 of the Rules is reproduced 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 off 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.”

Section 7-A of the Act specifically provides that the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not.

Similarly, Rule 12 of the Rules provides for a procedure to be followed in order to determine the age in every case concerning a child or a juvenile in conflict with law. It further provides that 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 (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.

In the present case, the precise argument as put forward by learned counsel for the petitioner is that in view of Rule 12(3)(a)(i) of the Rules, matriculation or equivalent certificate, if available, is the conclusive evidence so as to consider the juvenility of an accused and the birth certificate issued by the Registrar (Birth & Death) is to be considered only when there is no such evidence regarding the age.

The petitioner has relied upon the matriculation certificate issued by the Board, but its execution has not been proved as required under Section 7-A of the Act. AW1 Dalbir Singh, Clerk, Board of School Education, Haryana, who has produced the copy of matriculation certificate of the

petitioner, has just proved the attested gazette result as Ex.A1. In fact, the date of birth of the petitioner was required to be proved by leading proper evidence. The birth certificate (Ex.R1) of the petitioner has been issued by the Additional Registrar (Birth & Death), Jind. The fact that as to whether Kuldeep and Rahul are two different persons or not and the petitioner was not born on 11.12.1997 is required to be proved by leading cogent evidence.

Merely because Dalbir Singh, Clerk (AW1) has proved the gazette result Ex.A1 does not mean that he has proved the date of birth of the petitioner, as the very execution of the document i.e. matriculation certificate, which may go to the root of the controversy, has not been proved by the petitioner. The petitioner is required to prove the matriculation certificate by leading primary evidence, i.e. initially recorded date of birth of the petitioner, which may reflect his date of birth. The petitioner is required to prove the very execution of the document which may reflect the date of birth and the gazette result cannot be stated to be a document executed. Therefore, this Court finds that the impugned orders dated 04.12.2015 and 17.03.2016 are required to be re-looked into by learned Additional Sessions Judge, Hisar for which petitioner shall be required to prove his date of birth recorded as provided under Rule 12 (supra).

This Court also finds support from ***Ravinder Singh Gorkhi's case (supra)*** as it is the admission register of the school which was maintained in regular course of business and the certificate issued by the Board is based on the entry at the time of admission and once the initial

admission register is not produced, the subsequent certificate could not be relied upon the absence of initial admission register.

Even otherwise, this Court cannot brush aside the affidavit furnished by Pardeep Kumar, HPS, Deputy Superintendent of Police, Narnaund, District Hisar, which shows that besides the aforementioned two FIRs, five other cases were registered against the petitioner i.e. (i) FIR No.140 dated 01.06.2013 under Section 307 read with Section 34 IPC and Section 25 of the Arms Act, 1959 at Police Station Julana, District Jind, (ii) FIR No.172 dated 16.04.2014 under Sections 302 and 216 read with Section 34 IPC and Section 25 of the Arms Act, 1959 at Police Station Julana, District Jind, (iii) FIR No.341 dated 10.12.2014 under Sections 384 and 506 IPC at Police Station Julana, District Jind, (iv) FIR No.258 dated 26.07.2014 under Section 307 read with Section 34 IPC and Section 25 of the Arms Act, 1959 at Police Station Sadar Hansi, District Hisar and (v) FIR No.427 dated 27.12.2014 under Section 25 of the Arms Act, 1959 at Police Station Sadar Hansi, District Hisar.

Thus, without observing anything on the merits of the case, the impugned orders dated 04.12.2015 and 17.03.2016 passed by learned Additional Sessions Judge, Hisar are set aside and both the cases are remanded back to learned trial Court, where the parties shall appear on 25.01.2018. Learned trial Court is directed to decide both the applications of the petitioner afresh and to return a finding of fact as regarding the actual date of birth of the petitioner, for which the parties shall lead their respective evidence.

The present petitions are, accordingly, disposed of.

Photocopy of this order be placed on the file of other connected case.

October 07, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No