

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

CRL. REVISION No.1435 OF 2017
DATE OF DECISION : 28th SEPTEMBER, 2017

Balwan Singh

.... Petitioner

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Vaibhav Narang, Advocate for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Sumeet Sheokand, Advocate for

Mr. R.S. Tacoria, Advocate for the complainant.

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A. B. CHAUDHARI, J. (ORAL)

Rule.

Heard forthwith with the consent of counsel for the rival party.

By the present petition, petitioner-complainant has put to challenge order dated 06.04.2017 declining to summon respondent No.2- Rohit Kumar son of Randhir Singh, resident of Village Mandheri, PS Ismailabad, Tehsil Shahabad(M), District Kurukshetra, as additional accused in exercise of power under Section 319 Cr.P.C. in criminal case out of FIR No.13 dated 21.01.2016 registered under Sections 323, 324, 326, 307 & 506 IPC read with Section 34 IPC.

This Court had issued notice for final disposal pursuant to which there is appearance made by the contesting respondent No.2 through Mr. Sumeet Sheokant, Advocate. He submits that the additional

proposed accused Rohit was minor on the date of incident and therefore, he is juvenile. In support of his submission he has tendered in record the photocopy of the birth certificate as well as Adhar Card which shows his date of birth as 10.03.2001 as against the date of incident namely 21.01.2016. Prima facie, therefore, if the same date of birth is considered as against the date of incident i.e. 21.01.2016, the counsel for the respondent No.2 may be right in his submissions. But then it is an admitted fact that respondent No.2 never raised such plea before the trial Court or even during investigation as contended by learned counsel for the petitioner. Therefore this Court cannot hold that respondent No.2-Rohit is juvenile, without any enquiry being made by the trial Court or competent Court whether the respondent No.2 is juvenile or not. The objection raised by learned counsel for the petitioner that the issue was never raised by respondent No.2 in the investigation about his minority and it is being first time in the High Court may be appealing but then there is duty on the Court to follow the provisions of Juvenile Justice Act.

In that view of the matter, the proper course would be to send the matter back to the trial Court. In the result, I make the following order:

ORDER

- (i) CRL. REVISION No.1435 OF 2017 is partly allowed.
- (ii) Impugned order is set aside.
- (iii) The trial Court shall take up the matter again on the issue of 319 Cr.P.C. without being influenced by its earlier order, on merits.

- (iv) The trial Court shall first find out as to the claim made by respondent No.2 about the fact that respondent No.2 is juvenile and thereafter proceed in accordance with law.
- (v) Parties to appear before the trial Court on 24.10.2017 and thereafter the trial Court shall hear the parties and take the decision.
- (vi) The points raised herein are kept open.

28th SEPTEMBER, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>