

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

**Criminal Revision No.2387 of 2017
Date of Decision:-12.07.2017**

Yashoda

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present:- Mr. Rahul Garg, Advocate
for the petitioner.

HARI PAL VERMA J.

The petitioner has filed the present revision petition against the order dated 11.5.2017 passed by the Principal Magistrate, Juvenile Justice Board, Panchkula, whereby the application filed by the complainant-petitioner under Section 173(8) Cr.P.C. seeking direction to the prosecution for further fair investigation was dismissed.

The complainant has pleaded that the child-in-conflict with law be tried separately as he was not a juvenile on the date of occurrence on 27.10.2015 as his date of birth as per the record of Haryana School Education Board, Bhiwani is 16.8.1997. Therefore, he was more than 18 years at the time of incident. The said application was opposed by the child-in-conflict with law. It has been pleaded that Nikhil was minor at the time of alleged incident and he has already tendered his school certificate to the police. Considering the material as available on record, learned Juvenile Justice Board has held that Section 94 of the Juvenile Justice (Care

& Protection of Children) Act, 2015 provides that if the proceedings against a child are made before the Board, then the Board has to observe the age of child and shall proceed without awaiting for further confirmation of age. Besides the school leaving certificate, the child-in-conflict with law has appeared to be under 18 years of age on the basis of physical appearance. Accordingly, the application filed by the complainant under Section 173(8) Cr.P.C. was dismissed.

Learned counsel for the petitioner has argued that on 27.10.2015 when brother of the petitioner namely Raj was going for his job on his motor-cycle, his motor-cycle got stuck in the sand bag, and one bag had fallen down. But he being in a hurry his brother went to his office. The neighbours standing in the house i.e. Meena wife of Mahe Pal, resident of Rajeev Cooner Colony, Sector 17, Panchkula started abusing with dirty words along with her two sons namely Awdesh and Nikhil. Though the petitioner had stated that she will straighten the bag and as soon as she started doing it, she was caught hold by her hair and was smashed against the ground. She was slapped and kicked by Awdesh and Nikhil.

Not satisfied with the investigation done by the local police, the petitioner gave a request letter to the police, on which FIR was registered. However, when no action was taken, the petitioner made a request to the C.M. window. Throughout the investigation as well as the trial, the petitioner has asserted that the police has not conducted investigation properly in her case as it wanted to favour the respondent-accused Nikhil. As on the date of incident, Nikhil was aged 18 years and 3

months old. After passing of the order dated 11.5.2017, the petitioner moved another application dated 09.6.2017 seeking direction to the prosecution to submit status report on the basis of fresh evidence of date of birth of the accused and for sending the same for trial to the Chief Judicial Magistrate, Panchkula. As on the basis of fresh evidence, accused Nikhil was not a juvenile as on the date of incident i.e. 27.10.2015.

I have heard learned counsel for the petitioner.

Section 94 of the Juvenile Justice (Care & Protection of Children) Act, 2015 provides that when proceedings against a child are made before the Board, then the Board has to observe the age of the child and to proceed without awaiting for further confirmation of age. In the case in hand, besides the school leaving certificate of the child-in-conflict with law i.e. Nikhil, on his physical appearance before the Board, the Board noticed that he appears to be less than 18 years of age.

Thus, on the basis of the school leaving certificate and on physical appearance, the Board was convinced that Nikhil is less than 18 years of age and is therefore a Juvenile.

In view of the above, this Court does not find any illegality in the order dated 11.5.2017 passed by the Principal Magistrate, Juvenile Justice Board, Panchkula, and therefore, the revision is hereby dismissed.

July 12, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No