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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-339-2017 [O&M]

Date of Decision:- September 26, 2017

Shiv Ram

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Anshuman Dalal, Advocate,
for the petitioner.

Mr. Satish Saini, DAG, Haryana

SHEKHER DHAWAN, J.

CRM-3119-2017

For the reasons mentioned in the application, delay of 43 days in filing the present revision petition is condoned.

CRM stands disposed of.

Main Revision Petition

Present revision petition under Section 401 of Code of Criminal Procedure [for short, "the Code"] is directed against the order dated 21.09.2016 passed by learned Additional Sessions Judge, Rohtak, whereby application filed by the petitioner for declaring him as Juvenile in conflict with law, was dismissed.

2 Facts relevant for the purpose of decision of this revision petition; that present petitioner, Shiv Kumar son of Munna Lal is confined

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in District Jail, Rohtak, was arrayed as an accused along with two others in case bearing FIR No. 368 dated 16.10.2015 registered under Sections 302 read with Section 34 IPC, at Police Station Shivaji Colony, District Rohtak for causing murder of Rajender. After presentation of report under Section 173 of the Code, an application was moved by the present petitioner for declaring him as Juvenile in conflict with law, which was dismissed vide impugned order dated 21.09.2016.

3. Learned counsel for the petitioner contended that the Court below has completely ignored the main facts and proposition of law laid down as per the provisions of Section 7A and 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as **“the Act”**) and procedure laid down under Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2000 (hereinafter referred to as **“the Rules”**) and as per above rules, the precedence is to be given to birth certificate and in case of non-availability of birth certificate, reliance is to be placed upon the date of birth certificate from the school (other than a play school) first attended. The certificate, Annexure P/2 (Mark-A) was produced before the Court below and as per the said certificate, the date of birth of the present petitioner, Shiv Kumar is 22.11.1997 and the date of commission of offence is 16.10.2015, that way, the petitioner was of the age of 17 years 10 months 24 days, i.e. Less than 18 years on the date of alleged occurrence and the Court below completely ignored this fact while passing the impugned order. Learned trial Judge has placed reliance upon the record of some Anganwari worker and statements made by officials, though, no such enquiry was required to be held when there was

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availability of the certificate, Annexure P/2. Such an enquiry could be conducted if the conditions as laid down in Rule 12(3) of the Rules are not complied with or either of the documents as discussed in Rule 12(3)(a) (i) to (iii). But as the certificate, Annexure P/2 was available, such an enquiry was not required and if conducted, such material cannot over-ride the certificate produced by the petitioner and statement made by father of the petitioner, namely, Munna Lal in this regard as AW-1. On this point, reliance was placed on the judgment of Hon`ble Supreme Court in **Ashwani Kumar Saxena Vs. State of M.P., 2012(4) R.C.R. (Criminal) 391**, wherein it was observed by Hon`ble Apex Court that for determining the age of Juvenile in conflict with law, the Court is to make an enquiry under the Act and not investigation as per provisions of the Code to ascertain the age. Medical opinion could be sought only when Matriculation or equivalent certificate, date of birth certificate from the school first attended or the birth certificate given by a Corporation or a Municipal authority or a Panchayat or Municipal is not available. On the same point, reliance was also placed upon the judgment from Apex Court in **Jodhbir Singh Vs. State of Punjab, 2013(1) R.C.R. (Criminal) 272**.

4. While arguing on these points, learned counsel for the respondent contended that learned trial Judge has considered all these aspects while passing the impugned order, because in this case, no document was produced as laid down under Rule 12(3)(a)(i) to (iii) of the Rules. Copy of the certificate, Annexure P/2 (Mark A) cannot be considered to be a certificate issued by the School authorities inasmuch as the same has not been proved on record. The petitioner had led

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evidence by way of statement of his father, Munna Lal who appeared as AW-1 and produced the certificate, but no official from the School concerned was examined alongwith record to prove the said certificate. Mere production of photocopy of the school leaving certificate (Mark A) cannot be held to be a document as provided under Rule 12(3)(a)(i) to (iii) of the Rules. Since it was a case of non-production of either of the documents as envisaged under Rule 12(3)(a)(i) to (iii), learned trial Judge had rightly conducted the enquiry and placed reliance upon record of Angwanwadi worker, establishing the correct facts that in fact, Munna Lal father of the petitioner was having three sons. Out of them, two, namely Babu Ram and Shiv Ram, are alive. Babu Ram was born on 9.1.1993, the second son Shiv Ram was born in the year 1994, but he died after one and a half years. Thereafter, the third son was born on 22.11.1997. More so, the version of the petitioner is not believable as the school leaving certificate, Annexure P/2 indicates that the date of birth of Shiv Kumar is 22.11.1997 and he was admitted in the school on 22.7.2008, i.e., at the age of 11 years and thereafter he left the school after completing 6th class. As such, learned trial Judge has rightly held the enquiry which is based on the correct facts and material and evidence available before the Court. The present revision petition is without any merit and the same be dismissed.

5. Having considered the facts and material available on the file and after going through the relevant provisions of law as envisaged under Sections 7A and 49 of the Act and the procedure laid down under Rule 12(3) of the Rules as also the view taken by Hon`ble Supreme Court in

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Ashwani Kumar Saxena and Jodhbir Singh's cases (supra), this Court is of the considered view that the procedure laid down under the Act so as to determine the age of an individual, whether he is a Juvenile or not, learned trial Judge was empowered to conduct the enquiry under Section 7A and Section 49 of the Act and after filing of application for that purpose, he had actually conducted the enquiry. For ready reference, Sections 7A and 49 of the Act are extracted below:-

“7A. 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 recognised 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 a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.]

Section 49 of the Act reads as under:-

49. Presumption and determination of age.—

(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

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(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

6. The above provisions of law make it ample clear that whenever any claim of juvenility is raised before any Court, the Court is duty bound to conduct an enquiry and to take such evidence, as may be necessary, so as to determine the age. The determining factors would be the date of birth of the alleged Juvenile in conflict with law and date of commission of offence. Similarly, in the present case, application was moved before learned Additional Sessions Judge, Rohtak and after seeking reply from the respondent, the Court recorded evidence and for that purpose, recorded statements of Munna Lal, father of the petitioner as AW-1, who produced School Leaving Certificate, Mark A, which has been placed on record as Annexure P/2 with this revision petition and from respondent side, Head Constable Amit from Police Station, Shivaji Colony, Rohtak was examined as RW-1, who in turn had recorded the statement of Bhanumati, Anganwari Worker and obtained record of family of Munna Lal as Ex. RW-1/A. The said witness had also recorded statement of Munna Lal, father of the applicant as Ex. RW-1/C. RW-1 had separately prepared report on the basis of above material and as per the said report, Ex. RW-1/D, Shiv Kumar present petitioner was born in 1994. RW-1 had also conducted enquiry from Primary Health Centre, Gajipur, Uttarpradesh and

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as per report Ex. RW-1/F, they had no record regarding date of birth of Shiv Kumar son of Munna Lal.

7. As the manner of conducting the enquiry has been defined under Rule 12 of the Rules so as to determine the age of Juvenile in conflict with law, the relevant rule 12(3) of the Rules is being extracted herebelow:-

12. Procedure to be followed in determination of Age.—

(1) – (2) xx xx xx xx

(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.”

8. The above rule indicates that Matriculation or equivalent

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certificate, if available, would be sufficient to determine the age of Juvenile and if the same is not available, date of birth certificate from the school first attended was to be looked into. The real controversy in the present case is – whether such a certificate was ever produced before the learned Additional Sessions Judge during the course of enquiry or not. The reply to this question is certainly – No. The petitioner claimed his juvenility by moving an application by producing the certificate, Annexure P/2 only, which was not proved as per law by examining some record from the School or by examining Principal or any other official from the said school. Mere production of photocopy of such a certificate does not mean that the document has been proved and the Court should believe that.

9. Similar controversy was before Hon`ble Supreme Court in **Ashwani Kumar Saxena's case (supra)** but in the said case, the school certificate was produced by the Principal of the school alongwith Admission Register. That is not the case before this Court. Similar were the facts in **Jodhbir Singh's case (supra)** and in that case, Headmaster of Government High School, Nausherha Cheema, Tarn Taran had certified the genuineness of the document on the basis of the record maintained in the said school. However, in the present case, there is absolutely no material or evidence so as to come to the conclusion that certificate (Mark-A), Annexure P/2 was actually issued by the school first attended by Shiv Kumar or the same certificate was correct according to the record. In the given set of facts, learned trial Judge had rightly proceeded with the enquiry as laid down under the provisions of the Act and the Rules and during enquiry found that Munna Lal was having three sons and out of

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them, one son had already died and the date of birth of the present petition was not 22.11.1997 and as such, passed the impugned order dated 21.09.2016. Therefore, the facts contained in the judgments cited by learned counsel for the petitioner are distinguishable and are of no help to the petitioner.

10. There is no illegality or perversity in the impugned order dated 21.09.2016 warranting interference by this Court by invoking revisional jurisdiction. The present revision petition stands dismissed.

September 26, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes/No
Yes/No