

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

**CRM-M-11372 of 2018(O&M)
Date of Decision: 20.03.2018**

Paras Ali

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. K.L.Saini, Advocate
for the petitioner.

LISA GILL, J(Oral).

This petition has been filed for quashing of order dated 01.02.2018, passed by the learned Additional Sessions Judge, Bhiwani, whereby the petitioner's application seeking to be declared a juvenile, has been dismissed.

Brief facts necessary for the adjudication of the case are that the petitioner is an accused in FIR No. 42 dated 20.03.2016, under Sections 363, 366 IPC. An application was moved by the petitioner for declaring him a juvenile claiming his date of birth to be 21.06.1998 while relying upon a birth certificate (Annexure P-2) issued on 27.3.2007 by the authorities at Tosham District Bhiwani on the basis of an entry in the register allegedly maintained by a Chowkidar of Village Dang Khurd, District Bhiwani. In support of the application, petitioner's father was examined as AW-1. Vinod Kumar, Computer Clerk, in the office of Civil Surgeon, Bhiwani, was examined as AW-2.

The prosecution examined Virender Singh as RW-1 and Pawan Kumar, Clerk, MRS, Senior Secondary School, Baliyali as RW-2, while claiming the date of birth of the petitioner to be 25.02.1998.

The learned trial court after considering the facts and

circumstances of the case, the evidence produced, dismissed the application filed by the petitioner seeking to be declared a juvenile.

Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner argues that the learned trial Court has grossly erred in dismissing the petitioner's application. The authenticity of the birth certificate produced by the petitioner has been unnecessarily doubted. The birth certificate in question, it is contended was duly proved on record therefore, it should have been given precedence by the learned trial Court. The said document reflects the true date of birth of the petitioner and not the school certificate Ex.RW-1/A or the mark sheet of the Secondary examination taken by the petitioner in March, 2014. Moreover the petitioner Paras Ali was known by the name of Feroze Khan as well, thus the learned trial Court has wrongly dismissed the petitioner's application. It is thus prayed that this petition be allowed, the impugned order dated 01.02.2018 be set aside and the petitioner be declared a juvenile and tried accordingly.

I have heard learned counsel for the petitioner and have gone through the file.

Before dealing with the arguments raised by learned counsel for the petitioner, it is relevant to refer to Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:-

“94. Presumption and determination of age.

1. Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

2. In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
 - i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
 - ii. the birth certificate given by a corporation or a municipal authority or a panchayat;
 - iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board 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.”

It is specifically mentioned in the said provision that for the process of determination of the age of an accused seeking to be declared a juvenile, the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned Board, if available will be considered and in the absence thereof, birth certificate given corporation or a municipal authority or a panchayat, will be taken into consideration for determination of the age.

The petitioner has not disputed the Senior Secondary School certificate produced by the prosecution, though the contention is that the date of birth mentioned therein is incorrect. It is not in dispute that the birth certificate Ex. AW-1/A pertains to one Feroze Khan and not Paras Ali (petitioner). There is nothing on record to indicate that the petitioner was also known as Feroze Khan except the bald statement of his father AW-1.

It is relevant to note that birth certificate Ex. AW-1/A has been

issued on 27.3.2017 after the registration of this case on 20.3.2017. As noted above, the school certificate and the marksheet issued by the Board of School Education Haryana (hereinafter referred to as BSEH) have not been disputed by the petitioner neither is there anything on record to indicate that any effort was made by the petitioner to ever have a correction carried out in the date of birth in the said documents. The marksheet was issued in May 2014 i.e. much prior to the incident in question and has been duly proved by RW-1 Virender Singh, Assistant BSEH Bhiwani. The argument that no proof of date of birth was available with the BSEH (while referring to the cross-examination of RW-1) is of no avail to the petitioner in the given facts and circumstances of the case. The learned trial Court in this respect rightly observed as under:-

“Admittedly, AW-1 Roshan, who is the father of the applicant, has produced the original birth certificate Mark AW1/A and according to this document, the date of birth of his son is recorded as 21.06.1998, however, a bare glance at this document further reveals that this birth certificate does not pertain to his son Paras Ali rather it is of his son namely Ferozkhan. Likewise, AW-2 computer clerk testified copy Exh.AW2/A of relevant entry of summoned record maintained in the office of Civil Surgeon, Bhiwani as well as birth certificate No. 15 dated 29.06.1998 Exh. AW2/B yet both these documents, as per summoned record, pertain to Ferozkhan who is the eldest child of AW1 Roshan and wife Darshana. Though AW1-Roshan claimed that his son Paras Ali was known as Ferozkhan and Paras Ali was school name of Ferozkhan yet, during the course of cross-examination, the witness AW1 admitted that it was correct that he had produced birth certificate Mark AW1/A which was of his son Ferozkhan and he did not have any proof to show that Paras Ali was known by the name of Ferozkhan as well as or he was baptized as Ferozkhan. Even the witness AW2, in cross-examination

admitted that in the original entry No. 15 and in birth certificate Exh.AW2/B, the name 'Paras Ali' was nowhere mentioned.

On the other hand, the witness RW-1 stated in categorical terms that as per summoned original school record pertaining to result sheet of secondary examination held in March 2014 and declared on 05.06.2014, Paras Ali son of Roshan Ali and Darshan had passed secondary examination under Roll No. 2213429830 whose date of birth was 25.02.1998. The witness RW1 tendered into evidence copy Exh. RW1/A of original record qua Paras Ali i.e., applicant present in the Court. Significantly, no suggestion was given by the defence side that after registration of formal FIR, he and the complainant family got prepared forged school certificate of Paras Ali and procured forged copy Exh.RW1/A of Paras Ali, in collusion with each other, in order to implicate him in the instant case.”

In this situation, learned trial Court has rightly dismissed the application filed by the petitioner seeking to be declared a juvenile.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or perversity in the impugned order dated 01.02.2018, which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this petition is dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

20.03.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No