

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

Criminal Misc. No. M- 36198 of 2017 (O&M)

Date of decision : February 06, 2018

Rinki

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Parminder Singh, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed for setting aside order dated 24.08.2017 passed by the learned Additional Sessions Judge, Panipat whereby order dated 13.02.2017 passed by the learned Judicial Magistrate First Class, Panipat has been set aside and respondents No. 2 and 3, the accused in FIR No. 70 dated 09.04.2016 under Sections 148, 149, 341, 354D, 365, 511, 506 IPC registered at Police Station Israna, District Panipat have been declared juvenile.

Brief facts necessary for adjudication of the case are that FIR No. 70 dated 09.04.2016 under Sections 148, 149, 341, 354D, 365, 511, 506 IPC was registered against respondents No. 2 and 3. An application (Annexure P-2) was moved by the said respondents for declaring them juvenile in conflict with law. Respondent No. 2 claimed his date of birth to be 08.08.1998 and respondent No. 3 claimed his date of birth to be 22.05.1998 on the basis of gazette sheets of

Secondary examination conducted by the Board of School Education Haryana Secondary Examination (BSEH). Rajender Singh, Superintendent, BSEH was examined as AW1 to prove the said documents. AW1 tendered Ex.AW1/A i.e. the gazette sheet of Secondary Examination conducted in September, 2013 wherein date of birth of respondent No. 2 – Jitender is mentioned as 08.08.1998 and the date of birth of respondent No. 3 – Harender is mentioned as 22.05.1998. AW2 father of respondent No. 3 – Harender and AW3 father of respondent No. 2 – Jitender also deposed in this respect. Mark sheets of both the respondents (Exs. AW1/D and AW1/B respectively) were proved.

Prosecution relied upon a birth certificate (Ex.RW2/A) issued by the Additional District Registrar, Birth and Death, Panipat in respect to respondent – Jitender mentioning his date of birth to be 02.09.1996 and Ex. RW2/B in respect to respondent – Harender mentioning his date of birth to be 21.05.1996. Learned trial Court held that reliance ought to be placed on the birth certificate instead of matriculation certificate, while observing that the birth certificate is a more reliable document than the secondary examination certificate as a birth certificate is issued at the time of birth and cannot be procured. Therefore, the application filed by respondents No. 2 and 3 to be tried as juvenile was dismissed.

An appeal was preferred by respondents No. 2 and 3, which was allowed by the learned Additional Sessions Judge, Panipat vide impugned order dated 24.08.2017. Learned Additional Sessions Judge

observed that specific provisions of law i.e. Sections 9 and 94 of the Act, have been ignored by the learned trial Court and precedence has wrongly been given to the birth certificate issued by Municipal authorities. Therefore, order dated 13.02.2017 passed by the learned Judicial Magistrate First Class, Panipat was set aside and respondents No. 2 and 3 were declared juvenile.

Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner argues that the learned appellate Court has upset the finding of the learned trial Court in a routine manner without adverting to the facts and circumstances of the case. Impugned order dated 24.08.2017, it is submitted, is totally non-speaking and laconic. It is further submitted that a shadow of doubt is cast on the date of birth of respondents No. 2 and 3 mentioned in the mark sheets/gazette, therefore, the same cannot be relied upon to prove the age of the accused persons. It is contended that AW2 Samunder Singh – father of respondent No. 3 - Harender @ Chhota and AW 3 Ranbir Singh – father of respondent No. 2 – Jitender have not specifically denied the entries regarding the birth of said respondents in the municipal records. Learned counsel for the petitioner submits that there is no basis for the entries regarding the date of birth in the said mark sheets/gazette notifications, therefore, no reliance be placed on the same. It is, thus, prayed that impugned order dated 24.08.2017 passed by the learned Additional Sessions Judge, Panipat be set aside and order dated 13.02.2017 passed by the learned Judicial Magistrate

First Class, Panipat be upheld.

I have heard learned counsel for the petitioner and have gone through the file as well as photocopy of the record which was requisitioned.

At this stage, it is relevant to refer to the specific provision of law dealing with the question of determination of age of an accused/juvenile. Section 94 of Juvenile Justice (Care and protection of Children) Act, 2015 ('the new Act' – for short) 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** (emphasis added);
- (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.”

A perusal of the photocopy of the record reveals that the birth certificates relied upon by the prosecution were issued on 13.05.2016. The matriculation certificates and the mark sheets relied upon by the respondents were issued on 15.01.2014/01.12.2014. There is nothing on record to reflect that the said certificates, relied upon by the accused have been procured at a later stage after registration of the FIR on 09.04.2016. It is not the case of the petitioner that the said mark sheets/certificates are forged or fraudulent.

The statutory provisions are clear. It is specifically provided that the process of determination of the age of the accused shall undertaken by seeking evidence by obtaining the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination Board, if available. It is only in the absence thereof that birth certificate issued by a municipal corporation or authority would be looked into. Moreover, as mentioned earlier, there is no challenge to the genuineness or authenticity of the mark

sheets/gazette issued by the BSEH. Argument of learned counsel for the petitioner that the birth certificate is a better piece of evidence to be relied upon while referring to the cross examination of AW1 that the entry of the birth is as per the information of the school authorities, is not acceptable in the facts and circumstances of the case. Reference in this regard can be made gainfully to the decision to the Hon'ble Supreme Court in **Ashwani Kumar Saxena versus State of M.P. 2012 (9) SCC 750.** While dealing with the earlier similar provision of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007, the Hon'ble Supreme Court observed as under:-

"Age determination inquiry" contemplated under section 7A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents)."

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or perversity in the impugned order dated 24.08.2017 passed by the learned Additional Sessions Judge, Panipat,

which calls for interference by this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

February 06, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No