

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

**CRR No. 292 of 2015(O&M)
Date of Decision: 17 July,2018**

Sukhraj @ Raj

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pratham Sethi Advocate
for the petitioner.

Mr. Harkesh Kumar, AAG, Haryana.

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

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 15.01.2015, passed by the learned Additional Sessions Judge, Fatehabad, whereby the petitioner's application for declaring him a juvenile in conflict with law, has been dismissed.

Brief facts necessary for the adjudication of the case are that FIR No. 236 dated 04.10.2014, was registered against the petitioner under Sections 376-D, 506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, on the statement of the prosecutrix. Prosecutrix stated that a year prior to the lodging of the FIR, she was studying in Class-7 and one day her cycle got punctured. The present petitioner along with another boy made her sit on her motorcycle outside her school and took her to a tubewell room in the fields. She was threatened, rape committed upon her and obscene photographs taken. It is further stated that she was threatened with disclosure of the incident and the photographs to her family and villagers. The accused then

left her in the village. Thereafter, she was subjected to rape by the accused on a number of occasions. It is further stated that one day, they gave her a mobile phone and she used to talk to the petitioner on the said mobile phone. However, later, another boy namely Soni, who was also studying in their school asked her to accompany him while giving a threat of making public the obscene photographs. However, when she refused, a number of other boys also called her on the phone. They named the present petitioner and indulged in vulgar talk. When the prosecutrix remained under tension, her family members came to know that she was in possession of a cell phone. On inquiry, she revealed the entire incident to her family. It is further stated that her family also apprehends danger to their life. Action was thus prayed for.

Petitioner moved an application under Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for being declared a juvenile in conflict with law claiming his date of birth to be 02.02.1996 on the basis of a school transfer certificate-Ex.A-1. The prosecution resisted this application while contending that the date of birth of the petitioner was 10.02.1995. Reliance was placed upon an admission form for nursery at Akal Academy Ajitsar, Ratia (Haryana)-Ex.R-1, copy of the admission withdrawal register Ex.R-2 and a school certificate as Ex.R-3, issued by Akal Academy Ajitsar, Ratia (Haryana).

Learned trial Court while considering the material on record, observed that reliance by the petitioner on the school transfer certificate Ex.A-1 is of no avail to him for the reason that the basis on which his date of birth entered in the certificate is not available on record. The applicant-petitioner, it was observed did not examine any of his parents or any relative who got him admitted in the school at Musa Khera. Moreover, the said school certificate did not relate to the school first attended by him. The learned trial Court placed reliance upon the documents produced by the prosecution while observing that

the petitioner did not lead any evidence whatsoever to rebut the school certificate Ex.R-3 or the admission form Ex.R-1 and the admission withdrawal register Ex.R-2 of the Akal Academy Ajitsar, Ratia (Haryana). The petitioner's application was thus dismissed.

Hence aggrieved the present petition has been filed.

In the present petition, the petitioner apart from assailing the impugned order dated 15.01.2013, sought to place reliance on a certificate issued by the National Institute of Open Schooling (Ex.P-2) to prove that his date of birth was 02.02.1996. Annexure P-2 is the mark sheet of the petitioner in respect to his matriculation examination which he took in April 2013 through the National Institute of Open Schooling.

Learned Additional Sessions Judge-I, Fatehabad, was directed by a Coordinate Bench to conduct an inquiry as envisaged under Section 7-A of the Act regarding the authenticity and issue of date of birth certificate as incorporated in the said document vide order dated 02.03.2016 passed in this petition. Order dated 02.03.2016 reads as under:-

“Petitioner Sukhraj alias Raj son of Gurdeep Singh, resident of Village Mussa Khera, Tehsil Tohana, District Fatehabad has filed the present revision petition under Section 401 of the Code of Criminal Procedure against the order dated 15.1.2015 passed by learned Additional Sessions Judge, Fatehabad, whereby his application declaring him as juvenile was dismissed.

Learned Additional Sessions Judge, Fatehabad, while conducting inquiry and taking into consideration the Exhibits R1 and R2 has held the date of birth of the petitioner as 10.2.1995. These documents established the date of birth of the petitioner as 10.2.1995.

The petitioner has annexed a document (Annexure P-2) i.e. the certificate issued by the National Institute of Open Schooling projecting his date of birth as 2.2.1996, thus has

introduced a new document. Learned senior counsel submits that in view of Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred 'the Act') read with Rule 12(3) of the Juvenile Justice (Care & Protection of Children) Rules, 2007, the petitioner can raise the plea of juvenile on the basis of date of birth at any stage of the proceedings. Therefore, in view of document (Annexure P-2), this Court can take into consideration the date of birth of the petitioner as 2.2.1996 instead of 10.2.1995.

However, learned counsel appearing for the respondent-complainant has vehemently contested the claim of the petitioner on the premises that date of birth of the petitioner as mentioned in Annexure P-2 is based on the information submitted by the petitioner or his parents alone. Therefore, when there are sufficient documents i.e. Exhibits R-1 and R-2, the document (Annexure P-2) cannot be given any weightage and date of birth of petitioner as 10.2.1995 is fully established as per record/documents.

In order to counter the contention raised by the counsel for the petitioner, learned State counsel rather on instructions from HC Virender Singh has produced a copy of the relevant extract taken from the register of the Chowkidar showing the date of birth of the petitioner as 10.2.1995. He has submitted that this extract is having all the possible details of the petitioner including his date of birth and information was entered on the basis of report of Chowkidar in the year 1995. He submits that the entry in the register, maintained by the Chowkidar is a most reliable document for taking into consideration the date of birth of a person.

I have heard learned counsel for the parties.

Admittedly, document (Annexure P-2) was never produced before the learned Additional Sessions Judge, Fatehabad for consideration and it is for the first time this document is being introduced at this stage. Even the extract of register maintained by Chowkidar was not available before the Juvenile Board.

This Court deem it appropriate to direct the Additional Sessions Judge, Fatehabad, to conduct an inquiry as envisaged under Section 7-A of the Act about the authenticity and issue of the date of birth as incorporated in this document. Learned Additional Sessions Judge, Fatehabad shall also take into consideration the genuineness of the entry recorded in the register maintained by the Chowkidar as furnished by learned State counsel. He will submit the inquiry report before the next date of hearing.

Adjourned to 21.4.2016.

It is made clear that it is only after the receipt of report from the learned Additional Sessions Judge, this Court shall decide the present petition on merits on the basis of available material.”

It is relevant to note, at this stage that the abovesaid order dated 02.03.2016 was not challenged by the State or the complainant. Report dated 04.04.2016 was received from the learned Additional Sessions Judge-I, Fatehabad. As per the said report, certificate Ex.P-2, which records the date of birth of the petitioner as 02.02.1996 has been duly proved by AW-1-Munish Syal, Executive Assistant, National Institute of Open Schooling, Regional Centre YMC Complex, Sector-11, Chandigarh. It is further mentioned that the State was given an opportunity to lead evidence and prove the entries regarding birth of the petitioner in the register maintained by the Chowkidar of Moosa Khera. The said Chowkidar was summoned as well, but he stated that the record of the birth of the petitioner pertaining to the year 1995-96 was not in his possession and his register was maintained from the year 2000. The said Chowkidar stated that the earlier Chowkidar Pilu Ram, had expired. Thereafter, two effective opportunities were again given to the State to lead evidence in this regard, but the learned Public Prosecutor stated at bar that he was unable to lead any evidence.

At this stage, it is noticed that co-accused approached this Court

by way of CRM-M-19959 of 2017 seeking concession of bail pending trial. The said petition was dismissed on 25.10.2017. SLP(Crl.)No. 1084 of 2018 was dismissed by the Hon'ble Supreme Court while observing that the High Court is requested to decide the present revision petition as expeditiously as possible. The matter had to be adjourned on various occasions on specific requests addressed by one or the other learned counsel for the parties. The matter was ultimately heard on 21.05.2018 and orders reserved. However when the order was being dictated by this Court, it transpired that statement of AW-1-Munish Syal was not available on record and neither did learned counsel furnish the same. The matter was listed for re-hearing immediately on reopening of the Court on 02.07.2018. A copy thereof was directed to be supplied by the learned trial Court. Copy of the statement of AW-1-Munish Syal was forwarded by the learned trial Court. Decision is being pronounced thereafter.

Learned counsel for the petitioner vehemently argued that once the matriculation certificate has been successfully proved on record, the present petition ought to be allowed. It is further submitted that the learned trial Court has wrongly given preference to the date of birth given in the certificate issued by the Akal Academy Ajitsar, Ratia (Haryana), as in any case, it is not proved that the said school was the one first attended by the petitioner. Ex.R-2, itself mentions the school last attended to be Dashmesh Public School, Lamba, though class mentioned in the said certificate is Nursery. Moreover, RW-1-Birbal Singh, Messenger Boy, Akal Academy, Ajitsar (Ratia), District Fatehabad, stated that the petitioner was admitted in the said academy by one Ranjit Singh, whose relationship with the petitioner is not reflected on record. There is no further document which reveals the basis on which the date of birth of the petitioner has been entered in the said document. It is further argued that the petitioner has successfully proved the document Ex.A-1. AW-2-Anoop Singh Phagura, Incharge, Govt. Middle School, Musa Khera, Block Jakhal,

Tehsil Tohana, District Fatehabad, has proved the said document. Moreover, the petitioner's father-Gurdeep Singh, duly deposed as AW-1. He specifically stated that he produced his affidavit regarding date of birth of the petitioner at the time of the petitioner's admission at Govt. Middle School, at Musa Khera. AW-1-Gurdeep Singh, specifically stated that the petitioner was born at village Musa Khera. Therefore, it is argued that reliance upon Ex.R-1 to R-3 is clearly misplaced. Moreover, the petitioner has now, proved the detail mark sheet dated 20.01.2015 (Annexure P-2) (pertaining to the matriculation examination) reflecting his date of birth to be 02.02.1996 and the prosecution has failed to lead any evidence to rebut the same or lead any other evidence to show that date of birth of the petitioner is not 02.02.1996. It is thus prayed that this petition be allowed.

Learned counsel for the State and the complainant vehemently argues that no reliance can be placed on the document Ex.A-1, wherein the petitioner is shown to be admitted to the school on 08.04.2008 and then withdrawn from the school on 08.05.2008. Cogent evidence, it is submitted has been led in the form of Ex.R-1 to Ex.R-3 to prove that the date of birth of the petitioner is 10.02.1995. The school first attended is Akal Academy Ajitsar, Ratia. Reliance upon the detailed mark sheet dated 20.01.2015 issued by National Institute of Open Schooling, is misplaced and should not be permitted. The petitioner has not even cleared his matriculation. It is submitted that the report of the learned Additional Sessions Judge-I, Fatehabad, only talks about the genuineness of the certificate in question. However, date of birth mentioned therein cannot be taken to be the gospel truth, in the absence of any basis, upon which it has been entered. Learned counsel for the complainant submits that in case the state did not bring any evidence on record as noted by learned Additional Sessions Judge-I Fatehabad, in report dated 04.04.2016, the complainant should not be made to suffer for the same. However, it is not

denied that no objection has been filed by the complainant/State challenging the said report dated 04.04.2016. It is prayed that the present petition be dismissed and the impugned order dated 15.01.2015 be upheld.

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

At this stage, it would be relevant to refer to the provisions of law applicable in the matter. Section 12 of the 2007 Rules (since repealed by the Juvenile Justice (Care and Protection of Children) Model Rules, 2016) reads as under:-

“12. Procedure to be followed in determination of Age. --

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in subrule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

A bare perusal of the said rule makes it clear that for determination of the age of the accused, it is provided that precedence has to be given to the matriculation or equivalent certificates, if available and it is in the absence thereof that the date of birth certificate from the school first attended and thereafter the birth certificate given by a corporation, municipal authority or Panchayat, is to be considered. In the absence of either of the above, medical opinion can be sought by the Court to assess the age of the accused.

In the present case, the petitioner, at the first instance, placed reliance upon the school leaving certificate of Govt. Middle School at Musa Khara. However, before this Court reliance was placed upon the detailed mark sheet/certificate issued by the National Institute of Open Schooling in respect to the examination taken by the petitioner in April 2013. Examination of matriculation was admittedly taken by the petitioner in April 2013 i.e. a year prior to the registration of the FIR. As per report dated 04.04.2016 submitted by the learned Additional Sessions Judge-I, Fatehabad in compliance of order dated 02.03.2016 passed in this petition, the said certificate/mark sheet has been duly proved by AW-1-Munish Syal, Executive Assistant, National Institute of Open Schooling, Regional Centre YMC Complex, Sector-11, Chandigarh, as Ex.A-1.

As noted earlier, no objection has been filed to the said report submitted by the learned Additional Sessions Judge-I, Fatehabad and there is no challenge to order dated 02.03.2016, passed in this case whereby the learned Additional Sessions Judge-I, Fatehabad, was directed to conduct inquiry.

The authenticity or the genuineness of this document has not been challenged by the prosecution/complainant, though it is sought to be urged that the basis on which the date of birth has been mentioned in the said document is not available. While referring to the statement of AW-1-Munish Syal, Executive Assistant, National Institute of Open Schooling, Regional Centre

YMC Complex, Sector-11, Chandigarh, learned counsel for the complainant had argued that this witness has admitted that no verification or inquiry is conducted regarding the correctness of the date of birth of the candidate. However, it is to be noted that the petitioner had taken the matriculation examination in April 2013 much prior to the registration of the FIR and even prior to the alleged occurrence. There is no challenge to the genuineness of the document in question.

In this situation, no reliance can be placed upon documents Ex.R-1 to Ex.R-3 to infer the date of birth of the petitioner to be 10.02.2995. A perusal of the record otherwise reveals that the petitioner's father-Gurdeep Singh, had appeared before the learned trial Court as AW-1, at the initial stage and reiterated that the date of birth of the petitioner is 02.02.1996. In respect to the documents Ex.R-1 to Ex.R-3, RW-1, Birbal Singh, Messenger Boy, Akal Academy, Ajitsar (Ratia), District Fatehabad, had admitted that the petitioner was admitted by one Ranjit Singh, whose relationship with the petitioner is not forthcoming and there is no document alongwith the admission form in support of the date of birth of the petitioner.

Be that as it may, as discussed in the foregoing paras, precedence has to be given to the certificate in respect to the matriculation examination, the authenticity of which has been proved on record and is not under challenge. In this respect, reference can gainfully be made to the judgments of the Hon'ble Supreme Court in **Ashwani Kumar Saxena Vs. State of Madhya Pradesh, 2012 (4) R.C.R. (Criminal) 391** and **State of Bihar Vs. Chhotu Pandey @ Roshan Pandey, 2015(1) R.C.R (Criminal) 914.**

Keeping in view the facts and circumstances of the case, this petition is allowed. Order dated 15.01.2015, passed by the learned Additional Sessions Judge, Fatehabad, is set aside. Application filed by the petitioner for declaring him to be a juvenile is consequently allowed. Petitioner be

proceeded against accordingly.

It is clarified that none of the observations hereinabove are a reflection on the merits of the case before the learned trial Court and shall have no bearing thereon.

17 July,2018

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No