

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

CRR-2335-2016

Date of Decision: 30.04.2018

Vijay Kumar

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Vivek Goyal, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (Oral)

This revision petition has been filed impugning the order of the trial Court (Addl. Sessions Judge, Kurukshetra), dated 12.05.2016, by which the petitioner has been held not to be a juvenile.

The reasoning given by the trial Court in the impugned order is that upon notice having been issued in the application filed by the petitioner, in reply thereto it was the case of the State that the date of birth of the applicant-accused (petitioner), Vijay Kumar, was verified from the office of the Civil Surgeon, Kurukshetra, and according to the record of that office, one Nand Lal was shown to be born to Ram Karan and Suman Devi (also not denied to be the parents of the petitioner), residents of village Chudni Jattan, with the date of birth given as 20.09.1992, i.e. 2 days prior to the date of birth claimed by the petitioner.

The mother of the petitioner is also stated to have testified before the trial Court as AW1, to the effect that the petitioner is her elder son, born

on 20.09.1992, who at the time of birth was known as Nand Lal, though at the time of admission to school his uncle gave his name as Vijay Kumar, which accordingly was entered in the school records. Thus, as per the petitioners' mother, Nand Lal and Vijay Kumar are the same person.

The trial Court has also further noticed that as per the photocopy of the marks sheet produced by the petitioner, pertaining to his Secondary School Examination, the date of birth given is 22.09.1992 (and not 20.09.1992), with him shown to be a student of the Haryana Open School, District Kurukshetra.

Thus, there being firstly a discrepancy in the name of the petitioner, with his name stated to be Vijay Kumar on the certificate (as is also contended to be the name of the accused before the trial Court), but with the inquiry conducted by the State showing one Nand Lal to be born to Ram Karan and Suman Devi, and secondly, the date of birth also being different, the application of the petitioner was dismissed, holding that he could not prove before that Court that he is actually the same person, Nand Lal, who was a juvenile on the date of commission of the crime, as has been alleged to have been committed.

The trial Court also noticed that none of the persons who had stated that the petitioner (Vijay Kumar) and Nand Lal are the same person, with his date of birth being 20.09.1992, as per "a writing" submitted to that Court, actually stepped into the witness box to testify before the Court; and no effort had been made by the parents of the petitioner to actually clarify as to what his name is.

Thus, it is seen that what the petitioner relied upon before the learned trial Court was a photocopy of his marks sheet, in which his name

was given to be Vijay Kumar.

Before this Court, learned counsel for the petitioner has also produced a certificate, contended to be the original marks sheet of the Secondary School Examination, with a photograph also shown on the said certificate (contended to be that of the petitioner), with the date of birth shown therein to be 22.09.1992.

What would first need to be considered, is the procedure to be followed in determining the age of the person claiming to be a juvenile.

The present case being one arising out of an occurrence that is alleged to have taken place in the year 2009, with the FIR also being dated 02.12.2009, it would the Juvenile Justice (Care and Protection of Children) Act, 2000, and rules framed thereunder, that would apply.

Therefore, Section 7-A of the Act of 2000, and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, are reproduced hereinunder:-

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.”

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“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 sub-rule (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.”

Thus, the Matriculation or equivalent certificate being the first

certificate to be looked at to determine the age of an accused who claims to

be a juvenile and all other certificates to be looked at only thereafter, in case of any doubt etc., even as per the ratio of the judgment of the Supreme Court, in “**Ashwani Kumar Saxena v. State of M.P.**” AIR 2013 (SC) 553, the Court would first need to follow the procedure as per the dictum of that judgment. The relevant para is as follows:

“34. “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). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year. 35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J. J. Act also draws a presumption of the age of the Juvenility on its determination.”

In the present case, in my opinion it is first to be determined as to whether the petitioner is the same person who is shown on the Secondary School Certificate as has been produced in Court today, and thereafter, whether the photocopy of the certificate stated to have been led by way of evidence by the trial Court, is a genuine certificate issued by the Haryana School Education Board, or not, and whether it is a certificate equivalent to a Matriculation certificate (of the level of a Class X examination).

Consequently, the impugned order is set aside, with the matter remitted to the learned trial Court, to call as Court witness the Secretary of the Board of School Education, Haryana, who would be required to verify on oath, the veracity of the certificate relied upon by the petitioner to be his educational qualification certificate, showing his date of birth to be 22.09.1992, with that Court to also determine that the said certificate is actually that of the petitioner, Vijay Kumar or not, and consequently, whether he is juvenile or not.

Since the impugned order has been set aside, the petitioner and the State would also be at liberty to lead evidence in support of their contentions, which would be appraised by the learned trial Court, naturally entirely on its own merits.

Disposed of.

April 30, 2018

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**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO