

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

Crl. Revision No. 3891 of 2016 (O&M)
Date of Decision: September 25, 2018

Rekha Devi

...Petitioner

Versus

Sunil and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. V.K. Sheoran, Advocate
for the petitioner.

Mr. J.S. Mehndiratta, Advocate,
for respondent No.1.

Ms. Gaganpreet Kaur, AAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner seeks to challenge order dated 06.05.2015 passed by Judicial Magistrate 1st Class, Charkhi Dadri, and order dated 06.09.2016 passed by Additional Sessions Judge, Bhiwani, in F.I.R. No. 356 dated 16.12.2014 under Sections 376/511/323/506 IPC registered at Police Station Badhra, by virtue of which respondent—Sunil has been declared to be a juvenile.

2. In brief, the facts are that a FIR came to be registered against a respondent—Sunil, during which proceedings an application was preferred for declaring respondent—Sunil as a juvenile. It was contended that on the

date of occurrence i.e 16.12.2014, the respondent—Sunil was a juvenile. In support of this argument, the father of the accused appeared as a witness and filed Matriculation Certificate of the accused which would reflect his date of birth as 15.01.1998. Whereas, the prosecution relied upon a Birth Certificate reflecting the date of birth to be 07.12.1996, while contending that the accused ought to be tried as a major.

3. The Judicial Magistrate, Ist Class, Charkhi Dadri, by impugned order dated 06.06.2015 held the accused to be a juvenile at the time of alleged occurrence which order was challenged before Additional Sessions Judge, Bhiwani, in an appeal. Reliance was placed upon Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (for short “**the 2007 Rules**”) for determination of age. The order of JMJC was upheld holding the accused respondent to be a juvenile as on the date of the occurrence. Aggrieved the instant petition has been filed.

4. Mr. V.K. Sheoran, learned counsel for the petitioner herein, contends that the record regarding the date of birth of the accused juvenile should be inquired into by conducting an inquiry. It is contended that in the instant case two certificates are available on the record showing two different date of birth and, therefore, an inquiry should be conducted. Reliance is placed upon a judgment rendered by this Court in **Criminal Revision No. 2494 of 2015 Sunita Devi Versus State of Punjab and another decided on 15.2.2016.**

5. Per contra, Mr. J.S. Mehndiratta, learned counsel appearing on behalf of the respondent No 1, submits that the age of the petitioner is to be

determined in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 and there is no infirmity in the orders so passed. Reliance in this regard is been placed upon a judgment rendered by the Supreme Court in **Ashwani Kumar Saxsena Versus State of Madhya Pradesh, reported as (2012) 9 Supreme Court Cases 750.**

6. The sole controversy with arises in this petition would be how to determine the age of juvenile in conflict with law and whether an inquiry ought to be conducted in case there are two certificates available reflecting different date of birth?

7. The juvenility has to be determined as per Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short “**the JJ Act**”) and rules framed thereunder. 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. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act 2000 is reproduced as under:-

“Section 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 order, and the sentence if any, passed by a court shall be deemed to have no effect.”

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, provides for procedure to be followed for determining the age of the person. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 is re-produced 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 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.”

8. Rule 12 of the 2007 Rules makes it clear that age is to be determined by taking into consideration documents namely the matriculation or equivalent certificates, if available; and in the absence whereof the date of birth certificate from the school (other than a play school) first attended; and in the absence where of the birth certificate given by a corporation or a municipal authority or a panchayat. The Rule further stipulates that in the absence of either of the above, a medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

9. The issue regarding Rule 12 of the 2007 Rules pertaining to ‘age determination’ of a child or a juvenile in conflict with law is no longer res integra having been settled in **Ashwani Kumar Sharma vs State of Madhya Pradesh (2012) 9 SCC 750**. The nature and scope of inquiry and how to determine age has been settled.

10. However, in the peculiar facts of the instant case, the birth certificate as issued by the Registrar (Births and Deaths) reflects the date of birth of the petitioner to be 07.12.1996, whereas the Matriculation Certificate would reflect that that he is younger by two years, with a date of birth reflected as 15.01.1998. Both these certificates are at variance with each other.

11. The Birth Certificate, as relied upon by the prosecution, reveals that the birth was registered on the 15.12.1996 while also reflecting the name of the father as Rajbir and mothers name as Gyana Devi. The registration of the birth of the respondent is two years prior to the date of birth show in the Matriculation Certificate. Interestingly, the Matriculation Certificate also reflects the same name of the father and mother namely Rajbir and as Gyana Devi.

12. A birth certificate issued by the Registrar (Births and Deaths) is an official document, which is admissible in evidence under Section 35 of the Evidence Act. It is a public document, prepared by a public servant in discharge of his official duty and presumption of correctness is attached to it. In **Bikram Ray Vs. Smt. Jema Hembram and another 2011 (1) RCR (Crl.) 584**, it has categorically been held that a birth certificate or entries made in the Birth and Death Register is admissible under Section 35 of the Evidence Act. There is a presumption of correctness attached to it and heavy onus lies on a party who disputes the presumption. Similar is the view in the judgment rendered in **Jeeta @ Jitendra Vs. State (Rajasthan) 2010 (3)**

RCR (Crl.) 608 and Harpal Singh and another Versus State of HP 1981

Cr. L. J. 1.

13. This Court in **Criminal Revision No. 779 of 2012 titled Amit @ Nanha Vs. State of Haryana decided on 27.11.2012** has held that for the purpose of ascertaining correct date of birth, preference to Birth Certificate is to be given over the Matriculation Certificate, in case it is proved to be authenticated and valid and following this judgment the same view has been taken in **Criminal Revision No. 2543 of 2014 titled Tamanna Versus State of Haryana and others decided on 2.3.2015**. A reading of both these judgments would clearly reflect that authoritative pronouncement in **Ashwani Kumar Saxena's case (supra)** has not been referred to, where the procedure for age determination as contemplated under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act read with Rule 12 of 2007 Rules has been delineated. In **Ashwani Kumar Saxena's case (supra)**, the Supreme Court has categorically held that a Court can obtain matriculate or equivalent certificate, if available and only in the absence of these certificates, the Court needs to obtain date of birth certificate from the school first attended (other than a play school) and only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the Court needs to obtain birth certificate given by the Municipal Corporation or Municipal Authority.

14. In the opinion of this Court, the judgment rendered in **Ashwani Kumar Saxena's case (supra)** cannot be relied upon, primarily on the ground that the facts of the present case are peculiar. In **Ashwani Kumar Saxena's case (supra)**, the Supreme Court examined the nature, scope and

ambit of inquiry expected of court, Juvenile Justice Board and Child Welfare Committee, while dealing with claim of juvenility under Juvenile Justice Act, 2000 and it was held as under:-

32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. In many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. “Age determination inquiry” contemplated under section 7A of the Act r/w 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.”

15. In another judgment pertaining to age determination, the Supreme Court in **Abuzar Hossain @ Gulam Hossain vs State of West Bengal** reported as **2012 (4) R.C.R (Criminal) 796** has held “As to what materials would *prima facie* satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for *prima facie*

satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12.”

16. In the present case, two certificates are available which are in direct variance with each other. The Birth Certificate which has been issued by the Registrar (Births and Deaths) is also a public document reflecting the age of the petitioner to be 7.12.1996, making him major on the date of occurrence. A fact that the birth of the petitioner was registered immediately after he born i.e. within a period of 7 days of his birth, cannot be ignored, particularly when there is nothing available on the record to show the basis on which the date of birth has been entered in the Matriculation Certificate.

17. A somewhat similar situation came up before the Supreme Court in judgment rendered in **Parag Bhati (Juvenile) through Legal Guardian—Mother—Smt. Rajni Bhati Versus State of Uttar Pradesh and another 2016 (2) R.C.R. (Criminal) 1031**. In Parag Bhati's case, a question arose about the juvenility of the accused. The Juvenile Justice Board, after considering the evidence, came to the conclusion that the date of birth as reflected in various school certificates submitted by the father is doubtful and the juvenile was referred to the Medical Board for determination of the age. The Chief Medical Officer, Meerut opined that the age of the accused/appellant was 19 years and he was ordered to be tried as a major. Aggrieved by the order, an appeal was preferred before the District Judge, which was dismissed the same as well as the revision was dismissed by the High Court. In this background, an SLP was preferred before the Supreme Court. The point for consideration before the Supreme Court was

whether an ossification test can be the last resort to prove the juvenility of the accused. While dealing with the issue, the Supreme Court held as under:-

*“16. From a reading of the aforementioned statutory provisions, it is clear that under Section 7A of the JJ Act, the court is enjoined to make an inquiry and take such evidence as may be necessary to determine the age of the person who claims to be a juvenile. However, under Rule 12, the Board is enjoined to take evidence by obtaining the matriculation certificate if available, and in its absence, the date of birth certificate from the school first attended and if it is also not available then the birth certificate given by the local body. In case any of the above certificates are not available then medical opinion can be resorted to. **However, if the Board comes to the conclusion that the date of birth mentioned in the matriculation certificate raises some doubt on the basis of material or evidence on record, it can seek medical opinion from a duly constituted medical board to determine the age of the accused person claiming juvenility.**(Emphasis supplied)*

While referring to various judgments and even the judgment rendered in **Ashwani Kumar Saxena's case (supra)**, it was further held as under:-

“26. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he

*would be entitled to the special protection under the JJ Act. **But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. .(Emphasis supplied)***

xx xx xx

*28. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. **However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain (supra), an enquiry for determination of the age of the accused is permissible which has been done in the present case.”.(Emphasis supplied)***

18. The Judicial Magistrate Ist Class and the Additional Sessions Judge, Bhiwani, have clearly not appreciated the two certificates placed before them. The birth certificate is clearly at variance with the

Matriculation Certificate issued and should not be ignored, especially when the birth was registered with the authorities with seven days. It is also a well known fact, that parents at the time of getting admission of their children do have a tendency to get a lesser age registered in order for their children to get a longer length of service or other benefits. Since *prima facie* a doubt has been created in the mind of this court regarding the correctness of date of birth recorded in the matriculation certificate, the impugned orders are set aside. The matter is remanded back to the JJB to hold an inquiry and verify the basis as to how the date of birth came to be reflected in the Matriculation certificate. In case there is still a variation, to refer the matter to the Medical Board to determine the age of the accused respondent. The needful be done within a period of three months from the receipt of certified copy of order.

19. The revision petition stands allowed on the above terms.

(JAISHREE THAKUR)
JUDGE

September 25, 2018
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Whether speaking/reasoned	Yes
Whether reportable	No