

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

CRM-M-650-2018(O&M)
Date of Decision:19.02.2018

Mohd. Akil KhanPetitioner
Vs.
State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sanjay Verma, Advocate for the petitioner.
Mr.Ashok S. Chaudhary, Addl. A.G. Haryana.
Mr.Sanjay Jain, Advocate for the complainant.

LISA GILL J. (ORAL)

The petitioner is aggrieved of order dated 30.11.2017 (Annexure P-3) passed by learned Additional Sessions Judge, Gurugram whereby the application moved by the petitioner for declaring him as juvenile was dismissed.

Brief facts necessary for the adjudication of the case are that FIR No. 21 dated 20.05.2017 under Sections 363, 366A, 120B 212, 109, 328 IPC, Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 of Scheduled Castes /Scheduled Tribes, at Police Station City Sohana was registered against the petitioner. While moving an application for declaring him as juvenile, it was contended that as per school record, the date of birth of the petitioner is 31.07.2000. Therefore, on the date of the alleged offence which took place on 20.05.2017, he was 16 years and 11 months old. The learned trial Court vide impugned order dated 30.11.2017, however dismissed the application filed by the petitioner for declaring him a juvenile while observing that no proper document regarding proof of age of the petitioner has been brought on record and the certificates Annexure A-1 and A-2 cannot be taken as a conclusive evidence to determine his age.

Aggrieved therefrom, the present petition has been filed. Learned counsel for the petitioner argues that the impugned order dated 30.11.2017 has been passed in violation of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as “the Act”). It is further pointed out that the documents (*Ex. A1 and A2*) i.e. School Leaving Certificates attached as Annexures P-1 and P-2 with this petition were duly verified by RW-1, SI Tara Chand. The school authority had verified that the said certificates are as per record. It is vehemently argued that the learned trial Court in this view of the matter has wrongly observed that as evidence regarding date of birth recorded by the Local Chowkidar of the Village has not been presented it works to the detriment of the petitioner. It is, thus, prayed that this petition may be allowed.

Learned counsel for the complainant as well as the State have opposed this petition, but are unable to deny that the said documents (*Ex.A1 and A2*) attached as Annexures P-1 and P-2 with this petition were indeed verified by RW-1 SI Tara Chand.

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

Section 94 of the Act 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 either (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 15 days from the 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.

Doubtlessly, if the date of birth of the petitioner as per school leaving certificate is available which is duly proved on record, due credence has to be given to the same for arriving at a conclusion regarding the age of the accused. However, in the present case, the documents sought to be relied upon by the petitioner have only been verified by RW-1 SI Tara Chand, but not proved in accordance with law by any official of the school i.e. Govt. Primary School, Kiranki Khedi, Village Silani.

Keeping in view of the facts and circumstances of the case, it is considered just and expedient to set aside the impugned order dated 30.11.2017 passed by learned Additional Sessions Judge, Gurugram and remand the matter before the learned trial Court for a decision afresh on the application filed by the petitioner in accordance with law after allowing an opportunity to the petitioner for leading evidence in respect to the school leaving certificates relied upon. It is directed that the said application be decided expeditiously preferably within a period of two months from receipt of certified copy of this order.

It is clarified that there is no expression of opinion on the merits of the case or the genuineness of the averments made or the documents relied on in the present petition and needless to say the same shall be subject to the scrutiny of the learned trial Court.

(LISA GILL)
JUDGE

19.02.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No