

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

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**CRR-4791-2016 (O&M)
Date of decision:28.09.2018**

Amjad (Juvenile) through his father and natural guardian Niyaj Mohd.

...Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr.B.S.Saroha, Advocate for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

Mr. Sanjeev Kumar Panwar, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant petition, petitioner has sought for setting aside order/judgement dated 07.12.2016 passed by Additional Sessions Judge, Mewat, vide which order/judgment passed on 13.06.2016 was set aside whereby petitioner was declared as Juvenile.

2. Petitioner is alleged to have involved in an incident occurred on 01.09.2014 for which petitioner was subjected to whether is he juvenile or not. In this regard JMIC on 16.11.2015 declared that petitioner is juvenile. Thereafter in appeal Sessions Court remanded the matter on 28.04.2016 for holding fresh inquiry. Pursuant to the Sessions Court order, JMIC further held inquiry and determined that petitioner is a juvenile on 13.06.2016 which was the subject matter before Sessions Court. Sessions Court reversed the order of JMIC dated 13.06.2016 while holding that petitioner is

not a juvenile with reference to Ex. RW1/A to Ex.RW1/M read with the

statement of one Mohammad Sadik-RW1 to the extent that petitioner's date of birth is 03.02.1994. Thus, petitioner presented this petition.

3. Learned counsel for the petitioner submitted that Sessions Court taken note of matriculation certificate of the petitioner (Annexure P-4) where the date of birth of the petitioner has been entered as 04.05.1998. It was also submitted that Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 for short "Rules, 2007" provides for procedure to be followed in determination of age. First document is required to be taken into consideration is matriculation or equivalent certificate if available in the absence of date of birth certificate etc. Whereas in the present petition petitioner is qualified matriculation. Therefore, date of birth mentioned in the matriculation certificate is required to be taken into consideration and not any other document. If one go by the date of birth mentioned in the matriculation certificate date of birth of the petitioner is 04.05.1998. Thus, sessions court has erred in holding that the petitioner date of birth is 03.02.1994 while ignoring the matriculation certificate read with Rule 12 of 2007 Rules.

4. Per contra learned counsel for the respondent submitted that there is contradictory date of birth as well as affidavit of the petitioner to the extent of furnishing date of birth as 03.02.1994 and so also 04.05.1998. In such circumstances, date of birth with reference to School record is required to be taken into consideration. Thus sessions court has not erred in holding that petitioner is not a juvenile with reference to the date of birth as 03.02.1994.

5. Heard learned counsel for the parties.

6. Question for consideration in the present petition is whether

petitioner is juvenile or not with reference to Rule 12 of Rules, 2007. Rule 12 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 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.

7. For determination of age of a person under the Rules, 2007 there are 3 options. First option is matriculation or equivalent certificate, in the absence thereof secondary evidence would be date of birth certificate from the school (other than a play school) first attended. Further in the absence of date of birth certificate from the school (other than the play school) first attended in the absence whereof the birth certificate issued by the Corporation or Municipal Authority or a Panchayat. In the present case undisputedly petitioner is holder of matriculation certificate wherein date of birth has been mentioned as 04.05.1998 and it is required to be taken into consideration in order of preference. Therefore, Rule 12(3)(a)(i) is relating to matriculation or equivalent certificate if available. As is evident from Annexure P-4 petitioner has the matriculation certificate read with date of birth as 04.05.1998. Thus factual aspects have not been taken into consideration by the Sessions court while considering the appeal while ignoring Rule 12 of Rules, 2007 cited (supra). What has been taken into consideration is certain documents relating to school records read with the statement of one Mohammad Sadik. Primary evidence required to be taken into consideration for the purpose of determining of age of a juvenile like matriculation or equivalent certificate.

8. In view of these facts and circumstances, Sessions court's order dated 07.12.2016 is hereby set aside and order of Judicial Magistrate Ist Class, dated 13.06.2016 declaring petitioner as juvenile is upheld.

9. Petition stands allowed.

28.09.2018

pooja saini

Whether speaking/reasons

Whether Reportable:

(P.B.BAJANTHRI)

JUDGE

Yes/No

Yes/No