

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

Sr. No.221-A

**CRR-1106-2017 (O&M)**  
**Date of decision : 06.09.2018**

Amit @ Miti

..... Petitioner

**VERSUS**

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Sajjan Singh, Advocate, for the petitioner.

Mr. Satish Saini, DAG, Haryana.

Mr. Anshuman Dalal, Advocate, for the complainant.

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**SUDHIR MITTAL, J. (Oral)**

FIR No.67 dated 28.04.2016, was registered at Police Station Lakhan Majra, District Rohtak, under Sections 302, 34, 449 and 120-B IPC and Section 25 of the Arms Act, 1959 (any other section later on added). The same was registered on the statement of one Krishan Chhabra son of Sant Lal Chhabra. He has stated that he won the election for the post of Sarpanch and on account of jealousy, the petitioner, namely, Amit @ Miti and one Ravi son of Dhari came to his house with pistols in their hands and the petitioner shot the elder brother of the complainant on the right side of the chest resulting in his death.

The petitioner, claiming himself to be a juvenile, moved an application for a declaration to this effect, which was rejected by the trial Court vide order dated 07.02.2017. This order is under challenge in the present revision petition.

Learned counsel for the petitioner submits that Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as 'the Act') provides that in case of a doubt regarding the age of

a person brought before it, the Juvenile Justice Board can determine his age on the basis of evidence, for which purpose, the Matriculation or equivalent certificate from the concerned Board has to take primacy. In the absence of any such certificate, the date of birth certificate from a Corporation or a Municipal Authority or the Panchayat, can be taken recourse to and if neither of these is available, an ossification test is to be conducted. Apart from this, the statute does not provide for any other method for determination of the age. The trial Court has gone beyond the statutory provisions while passing the impugned order. It has relied upon probabilities and possibilities and the same is not permissible in law. He relies upon a judgment of the Supreme Court in **‘Shah Nawaj Vs. State of U.P. and Anr. (2011) 9, SCR 859’**.

Learned State counsel as well as counsel for the complainant submit that the evidence on record indicates that the father of the petitioner died on 23.10.1995. The petitioner has not denied his paternity. As per the Matriculation certificate, the date of birth of the petitioner is 08.09.1998. If the father of the petitioner has died on 23.10.1995, the petitioner could not have been born on 08.09.1998. His date of birth could have been July, 1996 at the latest. The trial Court has thus, adopted a reasonable method and the impugned order is just and legal.

The date of the incident in the present case is 28.04.2016. As per the prosecution, the date of birth of the petitioner cannot be earlier to July 1996, whereas, according to the petitioner, his date of birth is 08.09.1998. In case the date of birth is taken as July 1996, the petitioner is a major on the date of the incident, however, in case the date of birth is taken

as 08.09.1998, he would be five months less than eighteen years as on the date of the incident. I have also been informed that pursuant to the impugned order, the petitioner is being tried as a major and now, the prosecution is nearing completion.

In view of the above, I deem it appropriate to place reliance upon Section 15 of the Act, which is follows:-

**“Section 15. Preliminary assessment into heinous offences by Board.**

1. In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

2. Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.”

A perusal of the aforementioned provision leaves no manner of doubt that in case of a heinous offence having been committed by a person, who is above the age of sixteen years and if, in the assessment of the Board, he possesses the mental and physical capacity to commit the

offence complained of and also possesses the ability to understand the consequences thereof, he may be tried by a Children's Court as defined in the Act.

The matter pertains to the year 2016 and the trial is nearing completion. Therefore, I am not inclined to decide the question raised in the present revision petition. While exercising revisional jurisdiction, by virtue of Section 8 (2) of the Act, the High Court can exercise the power conferred on the Juvenile Justice Board under the Act. Thus, I am entitled to exercise the jurisdiction vested in a Juvenile Justice Board, even in exercise of revisional jurisdiction under the Act. Section 15 of the Act empowers me to direct the trial of a person, who is over sixteen years of age and is able to understand the consequences of his action, by a 'Children's Court' as defined in Section 2 (20) of the Act. Undisputedly, the petitioner was just five months short of eighteen years' of age as on the date of the incident, even if, his date of birth is taken as 08.09.1998. It is a well-known fact that in today's world, the growth of children is very fast as compared to earlier times. Children attain maturity much faster than they used to do earlier. In fact, around the world, children are competing with adults in professional sports tournaments. Thus, it would be reasonable to assume that the petitioner understood the consequences of his action on the date of incident and was capable of and also possessed the mental and physical capacity to commit the offence of murder.

In view of the above, I direct the trial of the petitioner as an adult. Section 18 (3) envisages the trial of such a person by a 'Children's Court'. Thus, it is directed that the trial be transferred to the concerned

Court, which has been designated as a ‘Children’s Court’ and proceed further from the present stage i.e. the stage at which the trial is transferred. In case no Court has been designated as a ‘Children’s Court’, the trial shall continue in the Court of the learned Addl. Sessions Judge, Rohtak.

The revision petition stands accordingly disposed of.

(SUDHIR MITTAL)  
JUDGE

06.09.2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No