

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

**CRR No.942 of 2016 (O&M)
Date of Decision: July 03, 2018**

Jagjit Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Gandhi, Advocate
for the petitioner.

Mr.Ramandeep Sandhu, Sr. DAG, Punjab
for the respondent-State.

Mr.P.B.S.Goraya, Advocate
for the complainant.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Jagjit Singh against respondent State of Punjab, challenging the impugned order dated 14.12.2015 passed by learned Addl. Sessions Judge, Tarn Taran, vide which application filed by Dial Singh, father of the petitioner, for declaring the petitioner as juvenile, has been dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

First of all, I find that as per the record, on 12.08.2011, Dial

Singh, father of one of the accused Jagjit Singh, present petitioner, moved an application for getting his son declared as juvenile because he was born on 01.01.1994, whereas the occurrence took place on 31.01.2011 and son of the applicant had not completed 18 years of age at the time of occurrence. Therefore, it was prayed that accused Jagjit Singh be declared as juvenile.

Learned trial Court, after recording the evidence and after hearing the parties etc., dismissed the application. As per the impugned order, a direction was given by the trial Court on 12.10.2011 to the Jail Superintendent, to get the Ossification Test of the accused as per law. Then, Ossification Test was got conducted and the doctor opined that proxim radiological bone age of accused Jagjit Singh is more than 19 years. After this development, the present petitioner did not press the application and the trial was proceeded further. When the prosecution evidence was closed, then again that application was pressed by the father of the petitioner. Learned trial Court did not believe the statement of mother of accused Jagjit Singh as she stated in chief-examination that she gave birth to Jagjit Singh in the month of January 1994, but in cross-examination, she failed to tell regarding birth of other children and even failed to tell as to when her elder daughter was married. So, the trial Court held that this witness is telling only regarding the birth of present accused but failed to tell regarding birth of other children and even failed to tell that in which month, year, her elder daughter was married.

The perusal of the impugned order shows that findings have been given while appreciating the evidence in right perspective. In no way, these findings can be held as perverse or against the evidence or law.

As regarding statement of AW-1 Manpreet Kaur, she has

produced the certificate of 5th class issued by the Board showing the date of birth of petitioner as 01.01.1994 but no other document/record has been produced to corroborate the date of birth. There is no evidence on record to show, which was the school of the present petitioner, where he was admitted for first time.

The procedure for determining the age has been laid down in Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, which is 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 off 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.”

As per the above Rule, the Court, for determining the age of a person for the purpose of declaring juvenile, is to rely upon the matriculation certificate or equivalent but in the present case, neither there is matriculation certificate nor any other equivalent certificate to matriculation has been produced or available. Similarly, certificate regarding date of birth, from the first attended school is also not available

nor produced nor there is any evidence on the record to show in which school, the petitioner was admitted for the first time. The Birth Certificate from Municipal Authority or Panchayat is also not available on the record. In the absence of these documents, as per rules, medical opinion is to be relied upon. As per the medical opinion i.e. Ossification Test, petitioner Jagjit Singh was found to be more than 19 years and was not found to be minor at the time of occurrence.

In view of the above discussion, I find that the impugned order dated 14.12.2015 passed by learned Addl. Sessions Judge, Tarn Taran is correct, as per law and does not require any interference from this Court.

Resultantly, finding no merit in the present petition, the same is dismissed.

July 03, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No