

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

Crl. Revision No. 2622 of 2017 (O&M)
Date of decision: April 18, 2018

Surender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Shalender Mohan, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner seeks to impugn order dated 4.5.2017 passed by Juvenile Justice Board, Hisar, by which the petitioner has been held to be a major as on the day of occurrence with a direction that he be tried accordingly.

2. In brief, the facts are that the petitioner was arrested in FIR No 323 dated 5.8.2016 under Sections 323, 376 (1), 500 IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Sadar, Hansi. The date of the alleged incident is stated to be 5.8.2017 and taking the date of birth of the accused/petitioner to be 10.3.2000, the Magistrate held him to be a minor, being 16 years and 5 months old as on the date of the occurrence. State of Haryana filed an appeal before the Juvenile Justice Board, which was allowed holding the petitioner

to be a major and directed him to be tried as such. Aggrieved, this instant petition has been filed seeking to have the petitioner declared a minor and to be tried accordingly.

3. Mr. Shalender Mohan, learned counsel appearing on behalf of the petitioner, contends that the transfer certificate issued clearly reflects the date of birth of the petitioner to be 10.3.2000 and, therefore, he was a minor on the alleged day of the occurrence. Reliance was been placed upon judgments rendered in **Hari Ram Versus State of Rajasthan 2009 (2) RCR (Criminal) 878** and **Sheela Devi Versus State of Haryana and another Criminal Revision No. 4420 of 2014** decided on 6.1.2016, in support of his argument that the petitioner has to be treated as a minor and tried under the provision of Juvenile Justice (Care and Protection of Children) Act, 2000.

4. Per contra, Ms. Gaganpreet Kaur, learned Assistant Advocate General, Haryana, appearing on behalf of the respondent—State submits that the transfer certificate cannot be relied upon since it is not issued by a school where the petitioner was first admitted.

5. The sole question for determination is, whether the Juvenile Justice Board has erred in holding the petitioner to be a major?

6. The juvenility has to be determined as per Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the 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. 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:

“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. The issue regarding Rule 12 of the Rules of 2007 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 Saxena vs State of Madhya Pradesh (2012) 9 SCC 750**. The nature and scope of inquiry and how to determine age has been settled , wherein it has been held as:

“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with 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 needs to 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 needs to 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.”

8. A similar issue arose and came up for consideration in **Jodhbir Singh Versus State of Punjab 2012 (13) SCC 591** wherein principles laid down in **Ashwani Kumar Saxena (supra)** were applied and it was held that when law gives prime importance to date of birth certificate issued by the school first attended (other than play school), the genuineness of which is not disputed, there is no question of placing reliance on certificate issued by the village chowkidar .

9. Similarly, in **Nagendra Versus State of Uttar Pradesh 2015 (3) RCR (Criminal) 543** , the juvenility had been determined on the basis of a school leaving certificate and it was set aside since it did not fall in any of the provisions contemplated under Rule 12 of the Rules of 2007. The principles as laid down in **Ashwani Kumar Saxena’s case (supra)** have again been followed in **Parag Bhati (Juvenile and others) Vs. State of Uttar Pradesh and another (2016) 12 SCC 744**, where it was reiterated that *“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 of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the*

10. In the instant case, the Judicial Magistrate 1st Class declared the petitioner a juvenile by order dated 3.11.2016. A Transfer Certificate bearing No. 3584 dated 10.07.2013 (Ex. AW/1A) was relied upon to show the date of birth of the petitioner to be 10.3.2000. In order to prove the transfer certificate, the petitioner examined Ramphal and Bhupender Singh, Lecturers Government Senior Secondary School, Hansi, as AW1 and AW2 respectively. On the other hand, the State produced the Birth Certificate of the petitioner (Ex.RW1/A) and also examined RW1—Rajinder Kumar, Statistical Assistant from the office of Civil Surgeon, Hissar, who proved the Birth Certificate as well as the register of Birth Certificates (Ex.RW1/B). Relying upon the Transfer Certificate, the petitioner was held to be a juvenile, aged 16 years and 5 months as on the date of the alleged occurrence. In the appeal, the said Transfer Certificate was discarded and the date of birth of the petitioner was held to be 18.3.1998, as reflected in Birth Certificate. Holding the petitioner to be a major on the date of occurrence, the petitioner was directed to appear before the trial court at Hansi.

11. The law is well-settled as noticed above in **Ashwani Kumar Saxena’s case**. Rule 12 of the Rules of 2007 have to be strictly adhered to. To determine the age, a court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Thereafter, in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth

certificate given by a corporation or a municipal authority or a panchayat.

12. The Judicial Magistrate Ist Class relied upon a Transfer Certificate dated 10.07.2013 which is neither matriculation certificate or its equivalent. The Transfer Certificate is also not a certificate issued by the school first attended by the petitioner. As rightly noticed by the Juvenile Justice Board, the Transfer Certificate has been issued showing that the petitioner was admitted in the 9th standard from which class he withdrew within a period of 2 months. Therefore, it can safely be concluded that this certificate has not been obtained from the school first attended, and the same could not be relied upon to determine the age of the petitioner.

13. In the absence of a matriculation certificate or its equivalent or a certificate issued by the school which the petitioner first attended, reliance has correctly been placed upon the Birth Certificate (Ex.RW1/A), as issued by the office of the Deputy Civil Surgeon, Hissar, which exhibit stood duly proved by RW1—Rajinder Kumar, Statistical Assistant. The Birth Certificate stood further corroborated by register (Ex.RW1/B). The date of birth of the petitioner as reflected in the Birth Certificate (Ex.RW1/A) is 18.3.1998 and the document was registered on 30.3.1998 , within 12 days after the birth of the petitioner.

14. The judgments as relied upon by counsel for the petitioner are distinguishable and are not applicable to the facts of the present case and, therefore, cannot be referred to. Whereas the ratio of **Nagendra Versus State of Uttar Pradesh (supra)** would be, where the date of birth as reflected in school leaving certificate was not relied upon to hold the petitioner to be a minor, since the school leaving certificate did not find

mention in any of the provisions contemplated under Rule 12 of the Rules of 2007.

15. Therefore, finding no infirmity in the order, holding the petitioner to be a major, this petition is dismissed being devoid of merit. The trial court is directed to conclude the proceedings in accordance with law.

April 18, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No