

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2713 of 2017 (O&M)
Date of decision: 06.07.2018.

Davinder Singh alias Kaku

...Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. K.P. Singh, Advocate for the petitioner.

Mr. Harpreet Multani, AAG, Punjab.

Mr. H.S. Saggu, Advocate for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

CRM-24890 of 2017

For the reasons mentioned in the application, the same is allowed. Delay of 88 days in filing the revision is condoned.

CRR No.2713 of 2017

Through this revision petition under Section 401 of Cr.P.C challenge has been laid to the order dated 08.02.2017 passed by the Principal Magistrate, Juvenile Justice Board, Mohali (hereinafter referred to as the Board), whereby petitioner has been declared major, attaining age of more than 18 years at the time of alleged offence.

Pursuant to the previous order dated 31.05.2018, affidavit of Sh. Paramjit Singh, Sub Divisional Magistrate, Dera Bassi, District SAS Nagar, has been filed. According to the same, both the Chowkidars of paternal and

maternal villages of the petitioner have expired. On thorough checking of the relevant birth and death register maintained by them, no entry of the birth of the petitioner was found therein. Enquiry in this regard was also conducted by SDM, Derabassi.

In a nutshell, the petitioner was booked and tried in case FIR No.83 dated 04.07.2011 registered under Sections 307,325,341,447,506,148 read with Section 149 IPC at Police Station Lalru, District SAS Nagar, Mohali by the Sessions Court. At the time of adducing defence evidence, the petitioner claimed himself to be a juvenile. Therefore, declaring him juvenile, his case was referred back to the Board.

On contest from the complainant, the petitioner was declared major and case was, therefore, referred back to the Sessions Court.

Subsequently, petitioner moved another application before the Board for declaring him juvenile which was dismissed vide order dated 21.10.2015 of the Board.

The petitioner challenged the said order dated 21.10.2015 of the Board by way of CRR No.4363 of 2015. The same was accepted by this Court vide order dated 22.10.2016. Resultantly, order dated 21.10.2015 declaring the petitioner as a major by the Board was set aside and the case was referred back to the Board with the direction to ascertain the basis on which the date of birth certificate of the petitioner was issued.

Consequently, both the petitioner as well as respondent appeared before the Board, who after recording their respective evidence and due deliberations on 08.02.2017 reiterated its stand that the petitioner was a major on the date of the alleged incident. It is this order that the petitioner has laid challenge by way of this revision petition.

Learned counsel for the petitioner contends that in the first ossification test of the petitioner, which was got conducted by the Board pursuant to the orders of this Court, the age of the petitioner was declared as 19-21 years and in the other one in between 21-25 years. From both the above respective ossification tests, it is evident that on the date of incident, the petitioner was minor. In view of settled proposition of law, in case, lesser age of the petitioner is taken into consideration, he is liable to be declared as a juvenile. In the matriculation certificate of Manpreet Kaur, younger sister of the petitioner, her date of birth was mentioned as 07.12.1996. Therefore, her date of birth as 07.12.1993 has wrongly and illegally been considered by the Board.

On the other hand, learned counsel for the State and respondent No.2, opposing the above contention of learned counsel for the petitioner, contends that the date of birth of younger sister of the petitioner mentioned in the matriculation certificate is incorrect being a subsequent event inasmuch as the same was issued after the date of occurrence. Therefore, the Board has rightly ignored the same. Considering the date of birth of sister of the petitioner, which was got recorded by Registrar (Births and Deaths), within a week of her birth in the year 1993, is a more authentic document. The Board has rightly discarded the date of birth of the petitioner as 21.05.1994, declared by the Block Elementary Education Officer, Derabassi, as the same was not based on any authentic proof, rather was mentioned on the basis of affidavit of the father of the petitioner.

Having given thoughtful consideration to the submission made by counsel for both the sides, this court finds that the instant petition is completely devoid of any merit. The Board has rightly declared the petitioner

as major in the absence of any authentic document of his date of birth. The petitioner wants to take advantage of his being a juvenile on the basis of evidence which is liable to be discarded being, contrary to the birth certificate of his younger sister, issued by Registrar (Births and Deaths), Derabassi, wherein her date of birth is shown as 07.12.1993. The above document is authentic one against which no rebuttal evidence has been led by the petitioner, except her matriculation certificate showing her date of birth as 07.12.1996. There is a gap of three years in between the date of birth of the petitioner mentioned in her date of birth certificate and the matriculation certificate.

In these peculiar circumstances, it was incumbent upon the petitioner to explain or clarify as to how the said difference of age was coming. The fact cannot be lost sight of that sometimes at the time of admission of a child in school, his date of birth in the rural area is got mentioned by approximation. In the instant case, if the birth certificate of younger sister of the petitioner would have been produced at the time of admission in the school, in that eventuality, the school authority must have shown her exact date of birth as 07.12.1993 instead of 07.12.1996. Therefore, it can safely be said that the date of birth of younger sister of the petitioner mentioned in the matriculation certificate has rightly been ignored by the Board relying upon the date of birth entered by the Registrar (Births and Deaths), Derabassi.

That apart, pursuant to the directions of this Court, the SDM, Derabassi checked the entire birth and death record of the parental and maternal villages of the petitioner and found no entry qua the date of birth of the petitioner. Therefore, the certificate (Annexure P1) issued by Block

Elementary Education Officer, Derabassi, showing the date of birth of the petitioner as 21.05.1994 without any corroborative evidence, based on no cogent and convincing evidence has to be ignored and has rightly been discarded by the Board.

The petitioner is, admittedly, elder to his sister Manpreet Kaur, who had born in 1993. Therefore, his date of birth as 21.05.1994 is patently a false, illegally claimed by him to take benefit of his juvenility at the time of final adjudication of the trial.

Ossification test is not a perfect proof ascertaining the age of a person. They always show the age of a person by approximation. Therefore, the approximate age mentioned in both the ossification reports is liable to be ignored, in view of definite proof regarding the birth of the petitioner, being elder to her sister.

The petitioner has not come forward and has not brought on record his actual date of birth intentionally or deliberately. The date of birth relied upon by the petitioner is based on approximation without any cogent and convincing evidence. The facts and circumstances of **Ashwani Kumar Saxena Vs. State of M.P., 2012 (4) RCR (Criminal) 391** relied upon by the petitioner are not identical to the one in the present case, inasmuch as in the said case, the petitioner had brought on record 8th standard certificate, whereas in the instant case, the petitioner has not brought on record such certificate, rather had submitted a certificate issued by the Block Elementary Education Officer, Derabassi, only certifying the date of birth of the petitioner. The same cannot be equated with the certificate or detailed mark sheet issued by a Board or School. Therefore, the benefit of the said authority cannot be extended to the petitioner from any angle in view of the authentic

proof of the date of birth of the younger sister of the petitioner brought on record.

In view of above discussion, the revision is dismissed. The trial Court is directed to proceed with the trial in accordance with law treating the petitioner as major.

(RAMENDRA JAIN)
JUDGE

July 06, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No