

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

Criminal Revision No.281 of 2017(O&M)

Date of Decision: May 15 , 2018.

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..... PETITIONER (s)

Versus

Union Territory, Chandigarh and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harish Chhabra, Advocate
for the petitioner.

Mr. A.K.Lamdharia, APP, U.T.

LISA GILL, J.

CRM No.2586 of 2017

For the reasons mentioned in the application as well as the arguments addressed, it is considered just and expedient to decide the case of the applicant/petitioner on merits rather than dismiss it on technical consideration of delay in filing the revision petition.

Accordingly, this application is allowed and delay of 19 days in filing the revision petition is condoned.

CRR No.281 of 2017(O&M)

This petition was initially filed challenging orders dated 04.10.2016 and 07.10.2016 as well as order dated 10.01.2017 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh whereby the

petitioner's application for conducting ossification test of the prosecutrix was dismissed. The petitioner withdrew the prayer for setting aside order dated 10.01.2017 with liberty to file a separate petition qua the said order. The same is duly noted by this Court on 30.01.2017. The present petition thus survives qua challenge to orders dated 14.10.2016 and 07.10.2016 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh. The petitioner's application under Sections 6, 7 and 7A of the Juvenile Justice (Care and Protection of Children) Act, 2007 (for short, the 'J.J. Act') read with rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short, the '2007 Rules') was dismissed vide impugned order dated 07.10.2016 after receipt of report of his ossification test directed to be conducted vide impugned order dated 04.10.2016 passed by the learned trial court. Petitioner has challenged both the said orders dated 04.10.2016 and 07.10.2016.

Brief facts necessary for the adjudication of this case are that, FIR No.431 dated 15.10.2014 under Sections 363/366/376/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 was registered raising allegations of commission of rape by the petitioner. The petitioner initially moved an application for being declared a juvenile. The same was however dismissed as withdrawn on 31.08.2015. No specific reason for withdrawal of the said application is forthcoming. Another application dated 29.09.2016 (Annexure P2) was moved by the petitioner under Sections 6, 7 and 7A of the J.J.Act read with rule 12 of the 2007 Rules for declaring him a juvenile on the basis of a School Transfer Certificate, claiming his date of birth to be 24.04.1998.

The said application was resisted by the State while taking a stand that the petitioner at the time of his arrest disclosed himself to be 20 years old and

at the time of medical examination he disclosed his age as 19 years before the concerned doctor. No document regarding the date of birth of the petitioner was presented during investigation. Moreover, the prosecution relied upon Ex.R1 to R4 i.e., the Voter's List and Ration Card to submit that the petitioner was major at the time of the incident in question. As per the Ration Card issued in the year 2005, age of the petitioner is mentioned as 12 years and as per the Voter's List issued in January 2014, his age is mentioned to be 22 years.

The learned trial court vide impugned order dated 04.10.2016 dismissed the petitioner's application while observing that the document submitted by the petitioner-applicant and the State are at great variance, therefore, for the just decision of the case and the issue in hand, it was necessary to seek medical opinion by an ossification test. Accordingly, ossification test of the petitioner was directed vide impugned order dated 04.10.2016.

As per ossification report, bone age of the petitioner was above 20 years and his dental age was above 18 years. Accordingly, the petitioner's application for declaring him a juvenile was dismissed. The matter was adjourned by the learned trial court for defence evidence and arguments. Aggrieved therefrom, the present revision petition has been filed.

Learned counsel for the petitioner vehemently argues that the learned trial court has completely misdirected itself in directing ossification test of the petitioner without considering the School Transfer Certificate. While referring to rule 12 of the 2007 Rules, it is submitted that it was incumbent upon the trial court to have relied upon the said School Transfer Certificate. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in Ashwani

Kumar Saxena v. State of M.P., Criminal Appeal No.1403 of 2012 (Special Leave

Petition (Crl.) No.7271 of 2011) decided on 13.09.2012, to submit that the said school transfer certificate is conclusive proof of the age of the petitioner. Moreover the learned trial court, it is contended, is under a mandate to conduct an inquiry and not investigation. It is further submitted that even as per ossification test, dental age of the petitioner is stated to be 18 years in October 2016 therefore, benefit of doubt should be afforded to the petitioner and he be tried as a juvenile.

Learned counsel for the petitioner urges that in defence evidence led by the petitioner before the learned trial court subsequent to the decision of the petitioner's application, Principal of the M.G.Public School, Town Shamli, U.P., namely, Ram Pal Singh has been examined as DW3 who produced the original record pertaining to the admission of student Mohit son of Vedpal and Smt. Rajkali. The learned trial court, it is contended, has grossly erred in firstly, directing ossification test of the petitioner in wake of specific documentary evidence and thereafter, in rejecting his application for declaring him juvenile in view of the school transfer certificate. It is thus prayed that this petition be allowed and the petitioner be declared a juvenile and tried accordingly.

Learned counsel for the State vehemently opposed this petition while submitting that the application moved by the petitioner is a clear attempt to delay the proceedings. There is nothing on record indicating the reasons for withdrawal of his first application for declaring him a juvenile on 31.08.2015. Moreover, the petitioner did not even mention that such an application had been earlier filed and withdrawn by him. Furthermore, there is specific evidence on record to show that the petitioner was major at the time of the incident in October 2014. As per the Ration Card pressed into service by the prosecution, he is duly mentioned to be 12 years old in the year 2005. His date of birth is further corroborated by the Voter's

List issued in January 2014 where the petitioner's age is mentioned to be 22 years. It is contended that the petitioner has not challenged the veracity of the said documents. The learned trial court while not relying upon any of the documents rightly directed the ossification test of the petitioner. As per the said ossification test report, the petitioner was definitely major at the time of the incident. Contention on behalf of the petitioner that even as per the ossification test the petitioner should be treated as a juvenile while affording him a benefit of doubt, is misconceived as bone age of the petitioner was found to be over twenty (2) years. Dental age being over eighteen (18) years only corroborates the prosecution case. It is further submitted that the stage at which the application has been moved reflects on the lack of bonafides of the petitioner. The entire prosecution evidence had been led and the case was at the stage of defence when this application was moved. Moreover, it is submitted that defence evidence is also complete, but the matter has not been finally concluded as passing of final order has been stayed by this Court. It is thus prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

It is not in dispute that an application earlier moved by the petitioner for declaring him a juvenile was withdrawn by him on 31.08.2015. Second application has been moved without making a mention of the earlier application. Be that as it may, it is noticed that no objection was raised thereto by the State subject to inquiry/evidence as is noted in order dated 29.09.2016 passed by the learned trial court (Annexure P3). Objection raised by learned counsel for the State regarding the stage at which the application has been moved is not tenable keeping in view the settled position that an application for being treated a juvenile

can be moved by an accused at any stage -even at the appellate stage.

It is pertinent to note that the learned trial court indeed directed ossification test of the petitioner without affording any opportunity to the petitioner to lead evidence regarding the school transfer certificate relied upon. The matter may ordinarily have been remanded back to the trial court on this count alone, but it is brought to the notice of this Court that during the pendency of this petition Ram Pal Singh, Principal of the M.G. Public School, Town Shamli (UP) i.e., the school issuing the said certificate, has been examined as DW3 by the petitioner in defence. Therefore no useful purpose would be served by remanding the matter to the learned trial court for the said purpose. It is considered just and expedient to decide the matter on merits.

Certified copy of the testimony of DW3 recorded on 30.11.2016, produced before this Court, is taken on record subject to just exceptions. The same reads as under:-

“I have brought the original summoned record of admission pertaining to the admission of student Mohit s/o Sh. Vedpal and Smt. Rajkali. As per the record, the name of student who was admitted in our school was Mohit. The attested copy of the admission form of Mohit in our school is Ex.DW3/A (original record seen and returned). It is observed by the Court that the photograph of the student is not affixed in admission form.

Xxx by Sh. Manu Kukkar, SPP for the State Xxx

No other nick name of the student is mentioned in the record brought by me today in the Court. The photograph of the student is not affixed on the admission form.”

Section 12 of the 2007 Rules (since repealed by the Juvenile Justice (Care and Protection of Children) Model Rules, 2016) 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 subrule (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.”

It is noticed that date of issuance of the abovesaid School Transfer Certificate does not find mention in the said document. It is not evident from the record that the said School Transfer Certificate relied upon by the petitioner has been issued by the school first attended by the petitioner. As per the said school transfer certificate, date of admission of the petitioner in the school is 01.07.2007 and he continued to study in the said school till 30.06.2009. It is further mentioned that he left the school after having successfully completed Class V

indicating that the petitioner joined the school in Class III or IV. Furthermore, basis on which the date of birth has been entered by the school in the said certificate is not available. Moreover, authenticity of the Ration Card or the Voter's List is not challenged by the petitioner. It is simply contended that age of the petitioner mentioned in the said documents relied upon by the prosecution is incorrect.

It has been held by the Hon'ble Supreme Court in its decision in **Abuzar Hossain @ Gulam Hossain v. State of West Bengal, (2012) 10 SCC 489** that credibility of acceptability of the documents like the school leaving certificate or the voters' list etc. would depend upon the facts and circumstances of each case.

Keeping in view the entire facts and circumstances of the case and the subsequent leading of the evidence by the petitioner in respect to the school transfer certificate as well, I do not find any ground whatsoever to interfere in the impugned orders dated 04.10.2016 and 07.10.2016 as well as order dated 10.01.2017 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh. The evidence on record does not indicate the petitioner to be a juvenile at the time of the occurrence.

For the reasons as above, the present revision petition is dismissed.

May 15, 2018.
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(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No