

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

CRR-3320-2017

Date of decision:-16.8.2018

Aamir

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jamshed Ahmed, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Aazam Khan, Advocate for
Mr.Mohammad Arshad, Advocate
for respondent No.2.

H.S. MADAAN, J.

This revision petition is directed against the order dated 6.9.2017 passed by learned Additional Sessions Judge, Mewat in a case State Versus Aamir, FIR No.258 dated 18.7.2015, under Sections 148, 149, 323, 452, 307, 506, 395, 397, 440 IPC and Section 25 of Arms Act, P.S. Tauru, vide which he has set aside the order dated 22.2.2017 passed

by Additional Chief Judicial Magistrate, Mewat declaring the petitioner Aamir as juvenile in the said case.

Briefly stated, facts of the case are that complainant Azrudin son of Shahida Khan, a resident of Shikarpur, District Mewat aged about 27 years got his statement recorded with the police stating therein that on 18.7.2015 Jasrath son of Salem, Aaseem son of Jasrath along with many other persons named in the said statement while armed with guns, lathies, dandas, rods, country-made pistol, stones trespassed in their house; that Jasrath raised a lalkara that family of Shahida be taught a lesson and family be wiped out; that Jasrath fired a shot at the complainant from his gun with an intention to kill the complainant; that the bullet hit the complainant on right leg; that Aaseem also fired a shot from his rifle, which grazed passed ear of the complainant; that Aasifa daughter of Jasrath gave two iron rod blows to the complainant on his head; that Kadir gave a lathi blow to the complainant hitting him on right hand; that Mubarik gave a lathi blow to complainant hitting him on left arm; that thereafter the assailants attacked him with lathies; that the complainant raised alarm; that as a result of suffering injuries, the complainant fell down on the ground and many people gathered at the spot on hearing the noises which included Almu son of Sakur; that Jasrath fired a shot from his gun, hitting Almu on head, then all the assailants attached him with the weapons being carried by them; that thereafter, the assailants started looting the articles from the house of the complainant, which included Rs.12 ½ lakhs in cash and gold jewellery articles weighing 1 kg, silver jewellery weighing 5 kgs. and other valuable items and caused damaged

to AC, cooler, bed, washing machine, Fortuner vehicle of the complainant and motorcycle belonging to him. Then considering the injured to have died, the accused left the spot along with the looted articles while firing shots in the air giving threats. The injured were taken to the hospital, where they were admitted. Aalam was referred to some other hospital. Statement of complainant Azrudin was recorded at the hospital. After the registration of formal FIR, the investigation in the case started. The accused were arrested in this case. Accused Aamir moved an application for being declared a juvenile, which application was accepted by learned Additional Chief Judicial Magistrate, Nuh vide order dated 22.2.2017, who declared Aamir as a juvenile and directed the Ahlmad to separate the challan of Aamir and sending the same to Juvenile Justice Board for further proceedings.

Ajrudin – complainant challenged that order by way of filing an appeal, which was accepted. The order passed by the trial Court was set aside and application moved by applicant Aamir for declaring him as a juvenile was dismissed.

This order left Aamir aggrieved and he has filed the present revision, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

A perusal of the order passed by learned Additional Chief Judicial Magistrate, Nuh dated 22.2.2017 declaring Aamir as a juvenile goes to show that the following reasons were given for arriving at such

conclusion:

After hearing the submission made by counsel for applicant and Ld. APP assisted by counsel for the complainant, this Court is of the view that Section 12 of the Juvenile Justice Act procedure is mentioned for determination of age. It is mentioned that committee will consider the evidence in shape of matriculation or equivalent certificate for this purpose. In absence of that, date of birth certificate from school first attended shall be considered. Further in absence of these two certificates, the birth certificate given by corporation shall be taken into account. In our case, matriculation certificate is available on file as per which the date of birth of Aamir is 02.12.1997. This certificate has been duly certified by investigating officer. Moreover, the Head Master of the school has also proved the fact that the date of birth in the record maintained by their school is 2.12.1997. Further the plea of Ld. APP that accused has refused for ossification test is not maintainable as the ossification test can be taken on priority, if the matriculation certificate or any school leaving certificate are not available. The next plea of the counsel for complainant regarding six months gap in between age of Wasim Akram and Aamir is also not very much convincing as no evidence has been tendered, that Wasim is the real brother of Aamir. Merely age of Aamir mentioned in the ration card as nine

year, does not prove has actual date of birth. Hence, in these circumstances, the application is allowed and Aamir is declared as juvenile. Ahlmad is directed to separate the challan of Aamir and to send the same to Juvenile Justice Board for further proceedings.

Whereas, on appeal, learned Additional Sessions Judge, Mewat had set aside the order passed by learned Additional Chief Judicial Magistrate. Paras No.8 and 9 of the order passed passed by Additional Sessions Judge, Mewat are relevant, which are being reproduced as under:

8. *Rule 12 of the Juvenile Justice (Care & Protection of Children) Act, 2007, which rules were framed under Section 68(1) of the Juvenile Justice (Care & Protection of Children), Act, 2000, 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 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.

9. As per the said rule, for determination of the age, certificate of matric is to be given preference. It is only when

matriculation or school certificate is not available, then other record can be considered. In the present case, the applicant had relied upon his matriculation certificate Ex.A6 in which his date of birth is recorded as 2.12.1997. thus, the said certificate was to be taken into consideration for determination of the age of the applicant. Although, the trial Court had rightly considered this certificate Ex.A6 for determining the age of applicant, but it had lost sight of the fact as to whether this certificate is based on some material or not. The applicant himself has proved the application Ex.A8 moved by the father of applicant namely Malu for getting the applicant admitted in Vikas High School, Hasanpur, in 8th standard. On the basis of his application, the applicant was admitted in school and entry to that effect was incorporated in register Ex.A7. However, the Incharge of the said school, when appeared as AW1, had admitted that he had admitted the applicant in the said school merely on the application of father of the applicant he had not taken any age proof from him. Although, the certificate of matriculation examination carries presumption of correctness, but the said presumption is rebuttable. If the other evidence available on record is perused, it comes out that the respondent-State has rebutted the said presumption. The respondent – State had proved copy of register Ex.RW2/A of the office of CMO in which a son namely

Wasim Akram was born to Malu and Jamila (who are parents of applicant Amir also) on 9.6.1998. If date of birth of the applicant as 2.12.1997 is taken to be correct, another son Wasim Akram could not have been born to Malu and Jamila on 9.6.1998 i.e. within a period of six months. Furthermore, the ration card of Malu Ex.RW1/A and copy of register Ex.RW1/B have also been proved which show that the said ration card was got prepared by the father of applicant namely Malu on 25.2.2005 and in the said ration card, he had mentioned the age of applicant Amir as nine years. If counted from 25.2.2005 and taking age of applicant Amir as nine years on that day, he was more than 19 years of age on the date of commission of alleged offence. Although, the copy of ration card and register of CMO office in respect of birth of other child are not relevant for determining the age of applicant Amir, but these documents are sufficient to dispute the date of birth of applicant mentioned in his matriculation certificate. Thus, the presumption of correctness which was attached to matriculation certificate stands rebutted. He did not lead any other evidence showing correct date of birth. He has even refused to get his ossification test conducted. Thus, he has failed to prove that he was less than 18 years of age on the date of commission of offence. Hence, he was not proved to be juvenile at the time of commission of offence. Accordingly, the order of trial Court is liable to be set aside.

A perusal of these orders go to show that the order passed by learned Additional Sessions Judge, Mewat is very detailed one in which relevant aspects of the case have been discussed and then reasons given for arriving at the conclusion that Aamir is not proved to be a juvenile at the time of commission of offence. Therefore, the order of the trial Court was set aside.

Learned counsel for the petitioner has referred to **Jodhbir Singh Versus State of Punjab, 2013(1) RCR(Criminal) 272** by Hon'ble Supreme Court wherein while dealing with holding of inquiry to determine age with Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules framed therein, it was observed that when as per school certificate the accused juvenile on the date of commission of offence but as per certificate of Chowkidar accused was not juvenile, it was observed that law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by village Chowkidar.

In **Ashwani Kumar Saxena Versus State of M.P., 2012(4) RCR(Criminal) 391** by the Apex Court wherein it was observed that the Court is to make an inquiry under Juvenile Justice Act and not investigation as per provisions of Criminal Procedure Code to assess the age.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an

illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

In the present case, I do not find any such illegality or infirmity with the impugned judgment much less apparent on the face of it. The judgment is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned judgment.

Finding no merit in the revision petition, the same stands dismissed.

16.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No