

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-101-2018

Date of decision: 01.11.2018

Kavita

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. RS Hooda, Advocate for the petitioner.

Mr. Vikramjit Singh, Addl. A.G., Haryana.

Mr. BS Tewatia, Advocate for respondent No. 2.

RAMENDRA JAIN, J. (ORAL)

Service complete.

Power of attorney filed on behalf of respondent No. 2 is taken on record. Office to tag the same at the appropriate place.

Petitioner-complainant-Kavita, being victim, on account of murder of her husband, namely; Gabbar, has filed the instant revision assailing the impugned order dated 20.12.2017, whereby application filed by respondent No. 2-Baldev, for declaring him as juvenile and sending his case to the Court of Principal Magistrate, Juvenile Justice Board, Palwal was allowed.

Briefly, respondent No. 2-Baldev is facing trial, in case FIR

No. 295 dated 05.06.2016 registered under Sections 148, 149 and 302 IPC

and Section 25 of the Arms Act, Police Station Hodal, District Palwal. During trial, he moved an application to declare him as a juvenile claiming his date of birth as 20.07.1998, which after hearing both the sides was allowed by the trial Court. Consequently, the trial Court, vide impugned order dated 20.12.2017, referred the case to Juvenile Justice Board, Palwal, for further proceedings.

Learned counsel for the petitioner *inter alia* contends that the trial Court wrongly relying upon the alleged date of birth of respondent No. 2 as 20.07.1998, without corroboration by any cogent and convincing documentary proof and ignoring his date of birth as 25.03.1998, entered into his birth certificate by Anganwari Worker, namely; Kishori, at the relevant time, has illegally allowed the application of respondent No. 2, on the cryptic ground that the Anganwari worker, namely, CW-2 Satwati, who had produced the birth certificate was not the author of the same. The birth certificate has more evidentiary value than the school leaving certificate which has been relied upon by the trial Court, for referring the case of respondent No. 2 to Juvenile Justice Board.

On the other hand, learned counsel for respondent No. 2 vehemently opposing the submissions of learned counsel for the petitioner contends that the trial Court has legally ignored the alleged birth certificate of Anganwari, as it did not relate to respondent No. 2-Baldev, rather pertains to some distinct person, namely; Mahesh.

Having given anxious consideration to the rival submissions of both the sides, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

Perusal of the impugned order declaring respondent No. 2-

Baldev, as juvenile shows that the date of birth of respondent No. 2 as 20.07.1998, was entered into the admission register and also in school leaving certificate, on the basis of admission form not supported by any birth certificate. The relevant portion of the trial Court is reproduced hereunder:-

“.....No birth certificate or age proof was submitted at the time of admission.”

Therefore, no authenticity is attached to the date of birth of respondent No. 2 as 20.07.1998, recorded in the school record.

Contrary to it, more authenticity is attached to the date of birth of respondent No. 2 as 25.03.1998, found mention in the Anganwari record issued by Anganwari Centre, which is being run by the Government. The date of birth of respondent No. 2 was entered into by Anganwari Worker, namely; Smt. Kishori, but she could not appear before the trial Court to prove the same as she had left the job.

Since, no suspicious circumstances have been brought on record qua date of birth of respondent No. 2 as 25.03.1998, entered into by Anganwari Worker, therefore, the trial Court ought to have accepted the same by ignoring the date of birth of respondent No. 2 in the school record.

That apart, when two date of birth of respondent No. 2 had come on record, it was required to go deep into the merits of the case to extract as to which of the date of birth of respondent No. 2 was genuine.

As far as the mentioning of name of respondent No. 2 as Mahesh, in the Anganwari record while entering his date of birth as 25.03.1998 is concerned, it is well proved on the the record that it was wrongly recorded, inasmuch, as father's name of respondent No. 2 is

Ghanshyam and that of his mother is Smt. Vidya. Respondent No. 2 or his aforesaid parents did not lead any evidence that they had another child named as Mahesh. Respondent No. 2 has another brother, namely; Kishan, who is elder to him.

Father of respondent No. 2, namely; Ghanshyam, appeared as CW-5 and testified that he was married to Vidya in the year 1975. Two sons, namely; Kishan and Baldev and five daughters were born out of their wedlock. His first child Rajwati had born on 21.07.1977, second child Satwati on 01.01.1980, third child Raman on 15.04.1986, fourth child Hemlata, on 01.04.1989, fifth child Kishan on 10.04.1992, sixth child Savita on 01.1.1995 and his seventh child Baldev on 20.07.1998. Respondent No. 2 was the youngest of all. Births of his children were entered into the register of Chowkidar. However, he did not produce the alleged date of birth of respondent No. 2 got entered by him in the register of Chowkidar of the village for the reasons best known to him which requires to draw an adverse inference against respondent No. 2 that he did not adopt any such exercise deliberately and intentionally, knowing well that date of birth entered into by Chowkidar in his register would not favour him rather would favour the complainant.

Respondent No. 2 and his father also made a futile exercise to show that there was one more person of his name, Ghanshyam in the village, but could not succeed as name of the wife of said person was not Vidya and the said Ghanshyam was of different caste and residing at Delhi.

Since, the date of birth of respondent No. 2 as 25.03.1998 entered into by Anagwari worker namely; Smt. Kishori, has more evidentiary value than his date of birth in school record as 20.07.1998,

without any basis and supporting authentic documentary or evidence, therefore, the same has to be prevailed .

In view of discussion made above, the instant revision is allowed and the impugned order dated 20.12.2017 of the trial Court is set aside. The date of birth of respondent No. 2 is taken as 25.03.1998 and pursuant thereto, he is treated as major at the time of occurrence. The trial Court is directed to proceed against him, in accordance with law.

November 01, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No