

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

CRR No.1625 of 2018 (O&M)
Date of Decision: May 18, 2018

Sajjan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Arora, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

CRM-18276-2018

1. Annexures P8 and P9 are taken on record, subject to all just exceptions.
2. Application stands disposed of.

CRR-1625-2018

1. The instant criminal revision has been filed seeking to challenge the order dated 02.02.2018 passed by learned Juvenile Board, Hisar and order dated 23.04.2018 passed by learned Additional Sessions Judge, Hisar in FIR No.85 dated 11.02.2001, under Sections 363, 366 and 376 of the Indian Penal Code, registered at Police Station City Hisar.
2. The petitioner herein has been litigating for several years to establish that he was a juvenile on the date of the occurrence and therefore should be given the benefit under the provisions of Juvenile Justice (Care

and Protection of Children) Amendment Act, 2006.

3. The facts of the case as stated are that, the petitioner faced trial in the aforesaid FIR and ultimately, the court of learned Additional Sessions Judge, Hisar vide its judgment dated 09.04.2002 convicted the petitioner for the offences under Sections 363, 366, 376 of Indian Penal Code whereas, his co-accused Krishan was convicted only under Sections 363, 366 of Indian Penal Code. Aggrieved against the said judgment, the petitioner herein preferred an appeal bearing CRA-824-SB-2002 before this High Court and during the pendency of the said appeal, an application was preferred stating the petitioner was a juvenile on the date of commission of offence. By an order dated 01.03.2011 (Annexure P-8), the High Court directed the Juvenile Justice Board, Hisar ('JJB' for short) to find out whether the petitioner was less than 18 years of age on the date of occurrence and therefore would be entitled to benefit under the provisions of Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Before the 'JJB' the petitioner examined Partap Singh, Principal Nav Bharat Senior Secondary School, Tibba, Danasher, Hisar as AW1 from where the petitioner passed his 5th Class examination, who deposed that the date of birth of the petitioner to be 26.01.1985. The petitioner also examined Ajit Singh, Clerk of the office of Block Education Officer, Hisar, who also deposed that as per register, date of birth of the petitioner is 26.01.1985. Thereafter, on 03.10.2013, the 'JJB', while determining the age of the petitioner, observed that evidence produced by the petitioner was not sufficient to do so , and therefore directed an ossification test of the petitioner to be conducted from the General Hospital, Hisar . The petitioner

being aggrieved against the order dated 03.10.2013 passed by 'JJB' filed a revision petition which was dismissed on 17.11.2014 and thereafter a Criminal Miscellaneous Petition (CRM-M-42682-2014) before this High Court seeking quashing of aforesaid orders dated 03.10.2013 and 17.11.2014. This petition too came to be dismissed on 04.09.2015 (Annexure P-9). As there was no radiologist available at Civil Hospital, Hisar, the matter was referred to the Maharaja Aggarsain Medical College and Hospital, Agroha for conducting the ossification test of the petitioner. A Medical Board was constituted on 03.11.2015, by the Medical Superintendent of Maharaja Aggarsain Medical College and Hospital, on 09.11.2015 and the ossification test of was conducted. As per report dated 09.11.2015 (Annexure P4), age of the petitioner was determined as 22 to 40 years as on that date. Thereafter, the 'JJB' took the view that the ossification test report is not a conclusive proof of age as the age had stretched and as such, by an order dated 08.04.2016 (Annexure P-5) it was ordered that the ossification test of the petitioner be conducted by PGIMS Rohtak. It is thereafter, the petitioner appeared before the Medical Board of PGIMS Rohtak on 29.04.2016 and the Medical Board furnished its report dated 29.04.2016 before the 'JJB' .

4. By an order dated 02.02.2018 (Annexure P-2), the 'JJB' Hisar, held that the ossification test report cannot be overlooked and it was held that at the time of occurrence, the petitioner was of 22 to 25 years of age. Aggrieved against the said order, the petitioner filed an appeal before the Sessions Judge, Hisar, which too was dismissed on 23.04.2018 (Annexure P1) by learned Additional Sessions Judge, Hisar. Hence, the instant criminal

revision seeking to challenge the orders dated 02.02.2018 and 23.04.2018.

5. Mr. Ashok Arora, learned counsel appearing on behalf of the petitioner argues that the courts below have wrongly observed that there is no direct birth proof and have also ignored the school certificate. Learned counsel for the petitioner relied upon the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act 2006 to contend that the school record produced and proved by the petitioner/accused and duly corroborated by the record of Block Education Officer, Hisar cannot be ignored. It is also contended that in the present case, since the school certificate is available on the record, therefore, there is no need of medical evidence or ossification report. It is also argued that as per the school record produced and proved by the petitioner, his date of birth is 26.01.1985 and as such, at the time of alleged occurrence on 09.02.2001, the petitioner was 16 years old, and therefore, entitled to benefits under the **Juvenile Justice (Care and Protection of Children) Act 2006**. It is submitted that there was no reason to ignore the report of Maharaja Aggarsain Medical College and Hospital Ahroha, which would establish that the petitioner was a minor and rely upon the report of PGIMS Rohtak. In support of his arguments, learned counsel for the petitioner relied upon judgments rendered in **Sri Ganesh vs. State of Tamil Nadu and another, 2017(1) RCR (Criminal) 556, Kulai Ibrahim @ Ibrahim vs. State rep. By the Inspector of Police, 2014(3) RCR (Criminal) 550, Upendra Pradhan vs State of Orissa, 2015(2) RCR (Criminal) 907, Shah Nawaz vs. State of U.P. and another, 2011(3) RCR (Criminal) 884, Ashwani Kumar Saxena vs. State of M.P., 2012(4) RCR (Criminal) 391,**

Hari Ram vs. State of Rajasthan and another, 2009(2) RCR (Criminal) 878, Jarnail Singh vs. State of Haryana, 2013(3) RCR (Criminal) 644, Kamlendra Singh @ Pappu Singh vs. State of M.P., 2013(2) RCR (Criminal) 426, Sheela Devi vs. State of Haryana and another, 2016(2) RCR (Criminal) 154.

6. I have heard learned counsel for the petitioner, apart from perusing the pleadings and the case laws cited.

7. In Criminal Appeal No. 824-SB of 2002 disposed of on 01.03.2011 (Annexure P-8) during the course of arguments, *learned counsel appearing on behalf of the appellant (petitioner herein) did not assail the conviction of the appellant, however, has argued that at the time when the charge was framed, the appellant gave his age as 19 years and also produced his mark sheet of 5th Class as Ex.DX showing his date of birth as 26.01.1985, therefore, on the day of occurrence, he was about 16 years and 14 days and therefore, he was to be treated as a juvenile.* Under these circumstances, the matter was remanded to the Juvenile Justice Board Hisar to determine the age of the petitioner, and in case it would be found that the appellant was less than 18 of years of age on the date of occurrence, he would be dealt with the provisions of Juvenile Justice (Care and Protection of Children) Act 2006, otherwise the appellant would undergo the sentence, so awarded by the trial court.

8. The petitioner herein has already agitated the matter unsuccessfully, regarding the fact that his birth certificates and 5th Class, School Examination certificate had been ignored. He accepted the order passed by the High Court in CRM-M-42682-2014 wherein an ossification

test was directed. Moreover he accepted the decision of 'JJB' asking for a fresh ossification test, while ignoring the report of Maharaja Aggarsain Medical College and Hospital, Ahroha and now challenges the order of the 'JJB' holding him to be a major (which is based on the medical report of the medical Board of PGI Rohtak) on the date of the occurrence. It was the petitioner himself, who sought permission to get his ossification test conducted from any other government hospital and it was under these circumstances, on 08.04.2016, the Board ordered that the ossification test of the petitioner be conducted at PGIMS Rohtak by the Board/panel of at least three senior doctors. It is thereafter, the impugned orders dated 02.02.2018 and 23.04.2018 came to be passed.

9. In its impugned order dated 02.02.2018, the 'JJB' Hisar, has observed that Ex. PX (attested abstract of the register for examination result for the year 1995-96 of 5th standard) would reveal that date of birth of the petitioner is 26.01.1985, which is duly corroborated by the affidavit (Ex.PY) submitted by the father of the petitioner. However, the 'JJB' found that Ex. PX did not mention the admission number against the name of the petitioner at serial No.142 and AW1 Pratap Singh claimed that the petitioner was enrolled as a private student in the school. The Board further observed that the manner in which the document is maintained, renders his document highly suspicious and doubtful. If one peruses the register, the discrepancy in the admission numbers assigned to the students comes out as the same is not in a chronological manner. The 'JJB' noticed that from serial No.128 to 151, no admission numbers have been mentioned and AW1 Pratap Singh and AW2 Ajit Singh, have not produced any record to

corroborate the document that no admission number was assigned to the students, who were admitted as private students in the school and thus, came to the conclusion that Ex. PX is not a reliable document as the same did not hold the genuineness of the document prepared in the normal course of business. The 'JJB' further observed that AW3, father of the petitioner namely Lal Chand, besides his affidavit Ex.PY, could not produce any documentary evidence regarding the age of the petitioner and even could not tell the date of his marriage. Under these circumstances, the Board held that ossification test report cannot be overlooked, in which it has come out that age of the petitioner was 20-25 years. The Appellate Court has affirmed the findings.

10. Both the courts below have rightly rejected the evidence led by the petitioner during the course of enquiry before the Juvenile Justice Board, Hisar which is highly suspicious and cannot be relied upon. Even otherwise any argument raised about the authenticity of the birth certificate and school certificates cannot be looked into, since the same has attained finality in CRM-M- 42682 of 2014. The contention as raised by the counsel for the petitioner that there is an ossification test report which is in his favour and he should be given the benefit of the same cannot be sustained, especially in view of the fact that he accepted the order of the 'JJB' rejecting the ossification done at Agarsen Hospital and without any challenge thereto appeared before the second Medical Board. In any case, the report of the Agarsen Hospital cannot be relied upon as the variation of the age is from 22 to 40.

11. The case laws relied upon by learned counsel for the petitioner

is distinguishable and not relevant to the facts in hand. Cases pertain to a situation where no documentary evidence is produced and in the absence of such evidence it is held that there is no illegality in looking at the medical opinion. The burden of proof is on the petitioner and he has not been able to establish that he was a minor on the date of the occurrence as claimed. Section 103 of the Indian Evidence Act, 1872 specifies '*The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*'

12. In view of the foregoing discussion, the instant criminal revision is hereby dismissed.

13. Intimation be sent to the concerned court in this regard with the direction to proceed against the petitioner to further undergo the remainder of the sentenced imposed upon him.

May 18, 2018

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No