

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 3735 of 2018

DATE OF DECISION:13.12.2018

Shubham @ Suddi

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ram Bilas Gupta, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge impugned order dated 9.10.2018 passed by Additional Sessions Judge, Faridabad, whereby, the application of the petitioner for declaring him juvenile has been dismissed.

Briefly, the facts of the case as made out in the present petition are that the petitioner filed an application before Additional Sessions Judge, Faridabad on 16.4.2018 for declaring him juvenile as he was minor at the time of alleged occurrence i.e. 20.12.2017. The date of birth of the petitioner is 7.11.2000 as per certificate issued by the Principal, Manav Public School, Dabua Colony, NIT, Faridabad as well as progress report of the school. Said application was opposed by the prosecution as well as by the complainant by way of filing reply, wherein, a preliminary objection was raised that the application was not maintainable. It was contended that

the petitioner was more than 18 years of age at the time of incident and the correct documents were not relied upon. The entry with regard to date of birth in the school record was on the basis of an affidavit, which was not admissible under law. The petitioner was directed to adduce evidence and accordingly he examined his father as AW-1 and School Teacher-Ms. Deepti Sharma as AW-2 besides relying upon the documents Mark A, Mark B and EX. AW2/A to Ex. AW2/C. Ultimately the application filed by the petitioner was dismissed by learned Additional Sessions Judge, Faridabad vide order dated 9.10.2018 on the ground that in Ex. AW2/A, in the copy of admission form, the name of mother of the petitioner was mentioned as Smt. Seema wife of Satish Kumar. RW1 Devender Singh ASI was also not cross-examined about his statement qua father's name i.e. Attar Singh of AW1-Satish Kumar in affidavit Ex. AW2/B, an adverse inference was drawn against the petitioner. It was also mentioned while dismissing the application of the petitioner that the prosecution had placed on record Mark B i.e. copy of Aadhar Card of AW-1-Satish Kumar, wherein, his father's name was mentioned as Ram Singh and not Attar Singh as mentioned in the affidavit Ex. AW2/B. The affidavit of father of the petitioner was not found to be correct and accordingly the application moved by the petitioner for treating him as juvenile was rejected. It was also held that in view of forged and fabricated documents tendered by AW-1 Satish Kumar in his evidence before the Court on behalf of applicant both AW-1 as well as applicant were liable to be prosecuted and SHO, Police Station concerned was directed to register a case against them under the relevant sections after due investigation.

Learned counsel for the petitioner contends that the application

of the petitioner has wrongly been dismissed and the same is contrary to mandatory provisions of the Juvenile Justice (Care and Protection) Act, 2000 (hereinafter referred to as 'the Act'). The petitioner was juvenile at the time of alleged occurrence i.e. on 20.12.2017 being his date of birth as 7.11.2000 as per certificate issued by the Principal, Manav Public School, Dabua Colony, NIT, Faridabad as well as progress report of the school. Learned counsel further contends that the petitioner had well proved his case by examining AW-1, who is his father and AW-2-Ms. Deepti Sharma, teacher of the school. AW-2 had also brought the record of the petitioner from the school, according, to which his date of birth was 7.11.2000 and names of his father and mother were also rightly mentioned as Satish and Saroj, respectively. Those documents were prepared by the school much earlier to the date of occurrence and the same were relied upon as Mark A, Mark B and Ex. AW2/A to AW-2/C.

On perusal of impugned order, it is apparent that the affidavit of the father of the petitioner was attached with the application to prove that the petitioner was juvenile, whereas, learned counsel for the petitioner contends that father of the petitioner appeared before the trial Court and stated on oath that the petitioner is juvenile and the affidavit was not filed inadvertently. The affidavit of father of the petitioner is now annexed with this petition. A registered sale deed dated 10.5.2001 was executed in favour of grandfather of the petitioner, namely, Ram Singh and a Will was also executed by his grandfather in favour of father of the petitioner on 6.7.2012, namely, Satish S/o Sh. Ram Singh. In the Aadhar Card, name of father and grandfather was mentioned as Satish and Ram Singh. As per AW-2, affidavit which is exhibited as Ex.AW2/B, has been furnished by

AW1-Satish Kumar by mentioning date of birth of the petitioner. AW-1 in his cross-examination has stated that he had furnished his affidavit regarding date of birth in the school record. In the affidavit, father's name was mentioned as Attar Singh but AW-1 Satish Kumar has stated his father's name as Ram Singh. AW-1 Satish Kumar has admitted in his cross-examination the date of execution of affidavit given in the school at the time of admission as 28.12.2006, date of attestation by Notary as 28.12.2000 and his signatures in English. However, AW-1 had failed to tell in his cross-examination as to from where the stamp papers were purchased by his father. RW-1 has stated in his cross-examination that mother's name of the petitioner is Seema wife of Satish Kumar but he was not cross-examined qua father's name i.e. Attar Singh of AW-1 Satish Kumar. In affidavit of AW1 father's name is mentioned as Ram Singh and not Attar Singh. Accordingly by considering the documents including the affidavit being untrustworthy, the case of the petitioner was found to be doubtful as the petitioner has failed to prove his date of birth as 07.11.2000.

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter called as 'Rules 2007') is relevant for resolving the controversy in hand, which is reproduced 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 subrule(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.”

As per provisions of Rule 12 (3) of the Rules 2007, in case, the Court is concerned and determination of age of a child or juvenile is in conflict with law, then an inquiry can be conducted by seeking evidence by obtaining the matriculation and equivalent certificate, if available. In absence of any such document, the date of birth certificate from School first attended or in absence thereof, the birth certificate issued by any authority i.e. Corporation or the Municipal authority or the Panchayat. In presence of matriculation or equivalent certificate, the Court cannot give reference to birth certificate issued by the authority.

In the present case, no matriculation certificate is there and only an affidavit of father of the petitioner was there. The application filed by the petitioner for declaring him juvenile was dismissed only on the ground that two different names of the father of the petitioner were mentioned. There may be many documents to ascertain the date of birth as well as parents' names of the petitioner.

As per Sections 7-A and 49 of the Act and the procedure laid down under Rule 12(3) of the Rules, the age of juvenile can be determined to know as to whether such individual is a juvenile or not. The trial Court is empowered to conduct an inquiry under Sections 7-A and 49 of the Act after filing application for that purpose. For ready reference, Sections 7-A and 49 of the Act are extracted below:-

“7A. Procedure to be followed when claim of juvenility is raised before any court.—

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make

an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.]

Section 49 of the Act reads as under:-

49. Presumption and determination of age.—

(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have

become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

The abovesaid provisions of law make it ample clear that whenever any claim of juvenility is raised before any court, the Court is duty bound to conduct an inquiry and to take such evidence, as may be necessary, so as to determine the age. The determining factors would be the date of birth of the alleged juvenile in conflict with law and the date of commission of the offence.

As the manner of conducting the enquiry has been defined under Rule 12 of the Rules so as to determine the age of Juvenile in conflict with law, the relevant rule 12(3) of the Rules is being extracted herebelow:-

12. Procedure to be followed in determination of Age.—

(1) – (2) xx xx xx xx

(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.”

In the present case also, no material or evidence is available to show as to how the authority came to the conclusion that the petitioner was not juvenile. Even for reasons in case father of the petitioner has changed his name at any point of time advertently or inadvertently, the inquiry was required to be conducted but no such inquiry was conducted.

Hon'ble the Apex Court in the case of **Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal** 2012 (4) RCR (Criminal) 796 has held as under:-

“It is in this class of cases that the court may have to exercise its powers and discretion with a certain amount of insight into the realities of life. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school. Studies conducted by

National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6,122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his Book 'Juvenile Delinquency and Justice System', in which the author states as follows:

“One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity. Although free education is provided to Scheduled Castes and Scheduled Tribes, even then, the delinquents had a very low level of expectations and aspirations regarding their future which in turn is due to lack of encouragement and unawareness of their parents that they play truant.”

What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the

misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under [Section 7A](#) ought to be conducted. It will eventually depend on how the court evaluates

such material for a prima facie conclusion that the Court may or may not direct an enquiry. With these additions, I respectfully concur with the judgment proposed by my esteemed Brother Lodha J.”

In the present case, the petitioner should have asked the concerned Court to conduct an ossification test by way of moving proper application but neither any request was made nor any application was moved. The Court has also not applied its mind to take suo motu action to conduct inquiry as discussed above.

Accordingly, the present petition is dismissed.

However, a liberty is given to the petitioner to move an appropriate/proper application before the trial Court within a period of two weeks from the date of receipt of certified copy of this Order. In case, such application is moved by the petitioner, the trial Court is directed to consider the same in view of the discussion/observations made hereinabove and to decide the same after conducting proper inquiry and after taking into consideration the various factors especially keeping in view the ratio of judgment in case of **Abuzar Hossain @ Gulam Hossain's case (supra)**. The necessary exercise be done within a period of two months from the date of moving of an application by the petitioner.

December 13, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes