

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Revision No. 668 of 2018(O&M)

Date of Decision: April 19 , 2018.

Deepak Paswan

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Achin Gupta, Advocate
for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab.

LISA GILL, J.

CRM No.6404 of 2018

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 132 days in filing the revision petition is condoned.

CRR No.668 of 2018(O&M)

This petition has been filed challenging order dated 12.07.2017 passed by the learned Additional Sessions Judge, Bathinda whereby the petitioner's application for declaring the petitioner a juvenile has been dismissed.

Brief facts necessary for adjudication of the case are that, FIR No.12 dated 30.01.2016 under Sections 376/363/366A IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 was registered against the petitioner. An application moved by the petitioner, at the first instance, for declaring him a juvenile was dismissed by the learned trial court on 16.02.2017 (Annexure P2) on the ground that there was no documentary evidence regarding the date of birth of the petitioner except the affidavit of his mother. The State also did not produce any document to suggest that the petitioner was not a juvenile at that time.

Thereafter, another application dated 06.06.2017 (Annexure P4) was moved by the petitioner claiming his date of birth to be 15.08.2000 on the basis of a Birth Certificate (Annexure P3) issued by the Registrar, Births & Deaths, Gram Panchayat, Raj Rarhi Purab, Tehsil Jale, District Darbhanga (Bihar). The said application was dismissed by the learned trial court vide impugned order dated 12.07.2017. Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner submits that the impugned order is totally non-speaking and reflects non-application of mind. The learned trial court has not even embarked upon an enquiry as is envisaged by the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, the '2015 Act') for determining the age of the petitioner. Reliance is placed upon a decision of this Court in **Kashmira Singh v. State of Punjab, 1998(4) RCR(Crl.) 132** to argue that a subsequent application filed by an accused to prove himself to be a juvenile cannot be rejected merely on the ground that his earlier petition has been dismissed. It is urged that dismissal of the petitioner's application in such

a perfunctory manner is entire illegal and arbitrary. It is thus prayed that this petition be allowed.

Heard learned counsel for the parties.

Impugned order dated 12.07.2017 passed by the learned trial court reads as under:-

“Arguments on the application u/s 7-A of the Juvenile Justice Act, heard and same is declined. Pws mentioned at sr. no.7,9,10,11, 12 and 13 of the list of witnesses be summoned for 25.07.2017 and sr. no.15, 16, 19 and 20 of the list of witnesses be summoned for 26.07.2017.”

It is noticed that the learned trial court has indeed not made any effort to hold an enquiry for determining the age of the petitioner. Reliance is placed by the petitioner on a birth certificate issued by the Registrar, Births & Deaths, Gram Panchayat Raj Rarhi Purab, Tehsil Jale, District Darbhanga (Bihar). At this stage, learned counsel for the State, on instructions from HC Rajpal Singh has not raised any serious allegations of the said birth certificate being forged or procured, though it is submitted that the certificate has not been proved to be genuine. Moreover, the petitioner's earlier application was dismissed by a speaking order. This Court while dealing with a somewhat similar situation in Kashmira Singh's case (supra) observed as under:-

“..... The Act being a benevolent piece of legislation intended to protect the juvenile delinquents from further deterioration and to reclaim, rehabilitate them the provisions of the said Act should be strictly complied with, and in my opinion, without allowing the technicalities to come in the way of enforcing the provisions. Therefore, when a question was raised that the petitioner was a

juvenile, there should have been a proper enquiry by giving sufficient opportunity to both sides to establish their rival contentions, which has not been done in this case by the learned Additional Sessions Judge when he decided on 24.1.1994 juvenile by merely summoning the school record and deciding himself that the petitioner was not a juvenile on the basis of that record. This is not a proper order passed after due enquiry. When once again the question was raised before the learned Additional Sessions Judge in the year 1997, the learned Additional Sessions Judge rejected the claim of the petitioner on the mere ground that it had earlier been rejected, which I have already pointed out, was not an opportunity to establish his case that he was a juvenile on the technical ground that he had not preferred a revision where the order dated 24.1.1994 itself was not passed after due enquiry.”

It is a matter of record that neither the petitioner or the prosecution have been afforded an opportunity to lead evidence in respect to the date of birth of the petitioner. Rejection of the petitioner's first application on the ground that he was unable to adduce documentary evidence cannot be taken against him keeping in view the fact that the present is a beneficial provision extended to the accused. It is further specifically explained by learned counsel for the petitioner that the petitioner was born in Bihar and it was not possible to obtain the said certificate at the relevant time. It is argued that if given an opportunity, the petitioner would be in a position to establish the genuineness of the document.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to afford an opportunity to the parties to prove the genuineness or otherwise of their claims. Consequently, order dated 12.07.2017

passed by the learned Additional Sessions Judge, Bathinda is set aside and the matter is remanded to the learned trial court to decide the petitioner's application for declaring him a juvenile afresh, after holding an enquiry as envisaged under the provisions of law while affording the petitioner as well as the prosecution opportunity to substantiate their claims.

Needless to say, there is no expression of opinion on the merits of the controversy or the genuineness or otherwise of the averments/documents. The observations are solely confined for the purpose of decision of the present petition.

Petition is disposed of accordingly.

April 19 , 2018.
'om'

(LISA GILL)
JUDGE

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