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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 26.10.2018

+ CRL.REV. P. 59/2017

MS. X (THROUGH HER MOTHER VIJENDERA) Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prashant Manchanda and Mr. Sandeep Kaushik,
Adv.

For the Respondents : Ms. Meenakshi Dahiya, Addl. PP for the State with
SI Uday Singh.
Mr. Sunil Chaudhary, Adv. for complainant

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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26.10.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 08.12.2016 whereby the Juvenile Justice Board (JJB) has determined the age of respondent no. 2 to be below 18 years on the date of commission of the offence and he was declared a juvenile for the purposes of inquiry under the Juvenile Justice (Care and Protection of Children) Act, 2000.

2. Learned counsel for the petitioner submits that no inquiry was conducted by the JJB while returning the said finding. He submits that the Board has relied solely on the school record without there being any foundational documents made available by the school.

3. Status report has been filed by the Investigating Officer which indicates that there were two conflicting documents with regard to the age of the accused; one was birth certificate issued by the NDMC which showed the date of birth as 21.08.1997. The offence is alleged to be happened on 08.12.2016. It is stated that the birth certificate was provided by the petitioner. However, the same has been verified by the Investigating Officer from the records of the NDMC.

4. The other record referred to in this status report is the record of the school allegedly first attended which shows the date of birth as 21.07.1999.

5. Learned counsel for the petitioner points out that the school alleged to be first attended is a school in Haryana and Investigating Officer has solely placed reliance on the school Register without there being any foundational documents for the same.

6. Learned counsel for the petitioner submits that as per the information of the petitioner, said school is not the school first attended by respondent no. 2 and the school first attended is *White Leaf Public School*, from which no record has been produced.

7. In the present case, there are two conflicting documents which were sought to be relied on before the Board.

8. It is observed that the Investigating Officer has not procured any foundational document from the school alleged to be the school first attended based on which the entry is made in the school Register.

9. This Court in '*Neelam Devi Mahot Vs. State of NCT of Delhi & Anr., 2018(2) JJC 713*' relying upon the judgment of the Supreme Court in '*Babloo Pasi Vs. State of Jharkhand & Anr., (2008) 13, SCC 133*', held that an entry in the Register of the school first attended is relevant, however, said entry would not be of much evidentiary value in the absence of proof of material being produced before the Court based on which the age is recorded. The foundational documents are also to be examined by the Board, prior to returning a finding based on the entry in the register of the school.

10. As noticed above, in the present case the IO has not obtained any foundational documents based on which the entry was made in the school records and reliance was placed on the copy of the Register of the school alleged to be the school first attended. In the absence of the foundational documents, Board could not have simply relied on the school register. Further it is noticed that there is no reasoning given by the Board except for a mere reference that the certificate is being relied upon.

11. In view of the above, the impugned order is not sustainable and according the same is set aside. The matter is remitted back to the Board to re-consider the record and to return a finding on the juvenility claim of respondent no. 2, after holding proper inquiry as contemplated under the Juvenile Justice Act.

12. Parties would be at liberty to produce evidence for the purposes of determination of the age in respect of the juvenility claim.

13. Keeping in view the severity of the offence and the fact that substantial time has spent in determining the juvenility claim, the Board is directed to expedite the process and conclude the same preferably on a day-to-day basis.

14. Let the matter be listed before the Board on 02.11.2018, for issuing appropriate directions in terms of this order. Original Records be transmitted back forthwith.

15. The petition is disposed of in the above terms.

16. Order *dasti* under the signatures of the Court Master.

OCTOBER 26, 2018
‘rs’

SANJEEV SACHDEVA, J