

Sr. No.205

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

CRM-M-9674-2015

Date of decision:01.07.2019

Lakhbir Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

Mr. Munish Dev Sharma, AAG, Haryana.

Mr. Manish Soni, Advocate
for respondents No.2 and 3.

Rajbir Sehrawat, J(Oral)

This petition is challenging the Order dated 05.03.2015 passed by Additional Sessions Judge, Gurugram(Annexure P-5), whereby the revision petition filed by the present petitioner was dismissed and the Order dated 22.08.2014(Annexure P-3) passed by the Judicial Magistrate, Ist Class, Gurugram was upheld and the status of respondents No.2 and 3 as juvenile was confirmed.

As per the facts mentioned in the petition on 05.07.2007 at about 3:20 pm Mukesh and Dharambir went to the house of complainant. They were under the influence of liquor and hence, they started abusing the complainant and family members. Quarrel had taken place and in that; the above-said persons were joined by the other co-accused including respondents No.2 and 3. During this scuffle, they caused injuries to the mother and wife of the complainant. On the basis of the statement made by

the petitioner/complainant the FIR No. 245, dated 05.07.2007 under Sections 148/149/452/323/325/506/34 IPC was registered at Police Station Manesar. When the matter reached the stage of trial then respondents No.2 and 3 filed an application for determination of their case claiming that they were juveniles. The Judicial Magistrate Ist Class, Gurugram adjudged the matter and held respondents No.2 and 3 as juveniles. Feeling aggrieved against the Order passed by the Trial Court, the petitioner preferred revision petition before the Additional Sessions Judge, Gurugram and submitted that as per the information received under Right to Information Act(hereinafter referred to as 'RTI Act'), respondent No.2 Dinesh Kumar is not a juvenile because his date of birth, as recorded in the school record; is 20.03.1988 which is contrary to his date of birth mentioned in Matriculation Certificate. Accordingly, it was pleaded that the Trial Court had committed an error of law in declaring respondents No.2 and 3 as juveniles. However, that revision petition was also dismissed by the Revisional Court. Challenging the Order passed by both the Courts below, the present petition has been filed under Section 482 Cr.P.C.

While arguing the case, it is submitted by learned counsel for the petitioner that the information received by the petitioner under RTI Act is an extract of the record of the government school. As per this record, date of birth of respondent No.2 is 20.03.1988. Therefore, as per this date, the petitioner was major on the date of occurrence. Hence, he can not be granted any benefit of being a juvenile; in the trial or qua the punishment. However, the age of respondent No.3 is not seriously disputed even by learned counsel for the petitioner.

On the other hand, learned counsel for respondents No.2 and 3

has submitted that since the petitioner has already availed the remedy of revision, therefore, the present petition is nothing but second revision filed in the garb of a petition under Section 482 Cr.P.C. It is further submitted that otherwise also, there is no manifest illegality or perversity in the Order passed by the Courts below. Still further it is submitted that as per the Rules, the Matriculation Certificate enjoys the place of primacy in the matter of determination of age of a juvenile. Since the date of occurrence in the case is prior to coming into force of the New Act, therefore, the case shall be governed by Rule 12 of The Juvenile Justice (Care and Protection of Children) Rule 2007 which were framed under the Old Act. It is also submitted that the Police have also verified the record from the Board of School Education, Haryana Bhiwani, which has granted Matriculation Certificate to respondent No.2 and as per that record also the respondent No.2 has been found to be a juvenile. It is further submitted that respondent No.3 is undisputedly juvenile and this fact is not being seriously disputed even by the respondents. Hence, it is prayed that present petition be dismissed.

Learned State Counsel submits that pursuant to the directions issued by this Court vide Order dated 04.07.2017, the Police have verified the correctness of the Matriculation Certificate of respondent No.2, and found that this Certificate is genuine and the date of birth i.e. 27.01.1990; mentioned in the same; is recorded on the basis of official records of the Board.

Having heard the learned counsel for the parties and perusing the record, this Court finds no substance in the argument of the learned counsel for the petitioner. It deserves to be noted in this regard that the date

of occurrence in the case is 05.07.2007. Therefore, the matter would be governed by Rule 12 of The Juvenile Justice(Care and Protection of Children) Rule 2007 qua the determination of age of the accused. As per the said rule, the precedence is to be given to the Matriculation Certificate. The same has been duly verified by the Police authorities and a report has already been submitted to this Court. As per the report, as well as the Matriculation Certificate, respondent No.2 is rightly found to be juvenile. So far as respondent No.3 is concerned, his status, as a juvenile, is not even being disputed by either of the counsel for the parties. Hence, this Court does not find any illegality, irregularity or perversity in the Orders passed by the Courts below.

Otherwise also, learned counsel for respondent No.2 has rightly pointed out that the present petition is not maintainable because the petitioner has already availed the remedy of revision before the Court below. Second revision petition at the behest of the same party is prohibited by Cr.P.C. Hence, the petitioner could not have filed this petition by disguising the same as petition under Section 482 Cr.P.C. This proposition of law has already been dealt by this Court in **CRM-M-30350-2018** titled as ***Sudesh and others versus State of Haryana and another*** decided on 02.08.2018, in which following observation were made:-

“So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of

justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into 'legality' and 'propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see 'legality' and 'propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on 'legality' or 'propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the

trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below.”

As mentioned above, much less to speak of any process of law; alien to the process of the Court being adopted by the Courts, this Court does not find even any irregularity or illegality in the Orders passed by the Courts below. Therefore, present petition deserves to be dismissed as not maintainable as well.

In view of the above, finding no merit in the petition, the same is dismissed.

1st July, 2019

Shivani Kaushik/hemlata

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*