

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9205-2016 (O&M)

Date of decision: 05.08.2019

Jit Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Sachin Hooda, Advocate for
Mr. Ravinder Malik, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 19.01.2016 (Annexure P-3) passed by the Judicial Magistrate 1st Class, declaring respondent No.2 Sonu @ Paramjit as juvenile, in FIR No.353 dated 03.10.2015 under Sections 302/149 of the Indian Penal Code (for short 'IPC'), registered at Police Station Shivaji Colony, District Rohtak as well as the order dated 01.03.2016 (Annexure P-5) passed by the revisional Court, vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that the aforesaid FIR was registered on the statement of one Jit Singh with the allegations that on 03.10.2015, he had gone to his son's house at Rohtak. His grandson Kapil was a student of 12th Class and had gone to the market on a scooter. The complainant was present in the street near the house of one Ram Kishan, when he saw his grandson Kapil coming on Activa. In the meantime, two motorcycles, on which 4-5 young persons were riding, stopped his grandson and with the help of scissor, they had started giving injuries to his grandson Kapil, on his chest, shoulder and wrist. When Kapil raised voice to save him, the complainant rushed there and on seeing him, the motorcyclists ran away. The complainant brought his grandson to PGIMS, Rohtak, where he was declared brought dead.

On presentation of challan before the trial Court, an application dated 29.10.2015 was moved on behalf of one Lokesh @ @ Gogi to declare him juvenile. The trial Court recorded the statement of his father Mahabir Sharma as AW1, who tendered the matriculation certificate Ex.A1, issued by Central Board of Secondary Education, showing his date of birth as 21.06.1999. The trial Court, while relying upon Ex.A1, declared Lokesh @ Gogi as juvenile. Simultaneously, another application dated 04.11.2015 moved by respondent No.2-accused Sonu @ Paramjit and in support thereof, he examined his father PW1 Jai Narayan, who produced his matriculation certificate Ex.PW1/A, issued by Haryana Board of Secondary Education, showing his date of birth as 26.01.1998, PW2, a Teacher of Jat High School, stated that as per school record, date of birth of Sonu is 26.01.1998 and he

exhibited admission form and affidavit as Ex.PW2/A and Ex.PW2/B and relying upon the same, the trial Court also declared respondent No.2-accused Sonu a juvenile, as per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'Rules, 2007').

The petitioner filed a revision petition before the Court of Sessions challenging the order dated 19.01.2016, declaring respondent No.2 Sonu as juvenile. The revisional Court, vide impugned order dated 01.03.2016, dismissed the revision petition. The operative part of the order dated 01.03.2016 passed by the revisional Court reads as under: -

*“.... The contention of learned counsel for the revisionist is that in this case there is no basis to give date of birth to the school authority by the respondent Sonu and the birth certificate of respondent Sonu shows his date of birth as 21.04.1997, so he is not juvenile in conflict with law and the impugned order dated 19.1.2016 is liable to be set aside, is not tenable as in this case the respondent Sonu has relied on his matriculation certificate as a proof of his age and has also examined his father Jai Narayan to prove his date of birth and the affidavit on the basis of which his date of birth was given by his uncle Ajit Singh, who had special means of knowledge regarding date of birth of Sonu. In the case titled as **Birad Mai Singhvi Vs. Anand Purohit, AIR 1988 SC**, it has been held that date of birth in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The Court*

observed as under: -

“The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made in the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

In this case also, since Ajit Singh being the real uncle of respondent Sonu and special means of knowledge regarding date of birth of Sonu, his affidavit cannot be disbelieved particularly when the birth certificate produced by revisionist pertains to Paramjeet Singh and not to Sonu.

*In the case titled as **Rajinder Chandra Vs. State of Chhattisgarh**, 2002 (2) Recent Criminal Reports 586, the Hon'ble Apex Court has held that the Court dealing with the question of determining the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical*

approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile, and if two views may be possible on the said evidence, the Court should lean in favour of holding the accused to be juvenile. In the instant case also, in view of the aforesaid discussion the respondent Sonu has proved his date of birth as 26.1.1998 and the counsel for the respondent has failed to connect the birth certificate with the respondent Sonu showing his date of birth as 21.4.1997.

*There is no dispute regarding proposition of law as held in the case titled **Sanjay Gupta & ors. Versus State of Uttar Pradesh & ors., 2014 (3) Law Herald (SC) 2234, Surender Versus State of Haryana, 2011 (2) RCR (Criminal) 903 and Pawan Versus State of Haryana, 2009 (1) RCR (Criminal) 419.** However, these authorities are of no help to the revisionist as the same have been given in a different set of facts and are not applicable to the fact of the instant case.*

No other point has been urged before this Court.

In view of the above discussion, the learned Judicial Magistrate First Class, has appreciated the matter in right perspective and recorded the cogent grounds in this respect. Therefore, no interference is warranted in the impugned order. Such impugned order, containing valid reasons, cannot possible be interfered with by this Court, in exercise of revisional

jurisdiction of this Court, unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the revisionist, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case. So, the revision petition stands dismissed...”

The petitioner-complainant has challenged the orders passed by the Courts below, declaring respondent No.2 Sonu @ Paramjit as juvenile.

In response to notice of motion, reply by way of affidavit of Deputy Superintendent of Police, Rohtak dated 27.07.2016 and additional reply dated 31.10.2018 filed by Deputy Superintendent of Police, Law & Order, Rohtak are on record, however, no reply has been filed on behalf of respondent No.2, though this case is pending since 2016 and the proceedings before the trial Court were stayed by this Court vide order dated 30.05.2018.

Learned senior counsel for the petitioner has argued that the matriculation certificate of respondent No.2 Sonu @ Paramjit does not correctly reflect his date of birth, as in the affidavit of DSP, Rohtak, it has come that date of birth of respondent No.2 was recorded as 23.04.1997 in the school, where he has taken admission in Class III at the first instance and studied upto 03.06.2005. It is further argued that in such circumstances, in the subsequent certificate, changing the date of birth of respondent No.2 from 23.04.1997 to 26.01.1998 is suspicious and not explained by respondent No.2, while leading his evidence before the trial Court. Even in the subsequent affidavit of DSP, Law & Order, Rohtak dated 31.10.2018, it is

stated as under: -

“... After institution of the petition, the Investigating Officer of the case has visited the Principal, Govt. Girls Senior Secondary School, Bohar, Rohtak to verify the facts about Sonu S/o Jai Narain, R/o of VPO Bohar who stated that Sonu had admitted in Govt. Girls Primary School in the year 2004. As per the admission and withdrawal register of school Sonu S/o Jai Narain has got the admission in 3rd Class in the said school on 16.07.2004 and his date of birth has been mentioned as 23.04.1997. As per the record of school, Sonu S/o Jai Narain R/o Bohar Distt. Rohtak is not liable to be declared juvenile as he was major on the date of commission of crime i.e. 03.10.2015. The copy of the relevant page of admission and withdrawal register duly attested by the Principal, Govt. Girls Senior Secondary School, Bohar have already been annexed with the reply previously filed in the Hon’ble Court.”

Learned senior counsel has further argued that subsequent to grant of bail by the Juvenile Justice Board in the aforesaid FIR, respondent No.2 failed to surrender before the trial Court on the next date of hearing and was later on involved in number of cases, detail of which is given as under: -

- “1. FIR No.56 dated 29.07.2017 under Sections 25/54/59 of Arms Act, Police Station Janak Puri, Delhi.*
- 2. FIR No.216/2017 under Sections 302/307/186/353/120-B/34 IPC and Sections 25/27/54/59 of Arms Act, Police*

Station Miyanwali, Delhi.

3. *FIR No.567 dated 12.10.2016 under Sections 148/149/302/307 IPC and Sections 25/54/59 of Arms Act, Police Station Sampla, Rohtak.”*

It is next argued on behalf of the petitioner that it is own case of the prosecution that respondent No.2 cannot be declared as juvenile, as his date of birth as 23.04.1997. Learned senior counsel has relied upon the birth certificate issued by the Registrar, Birth & Death, Rohtak under Section 17 of the Birth and Death Registration Act, 1969 to submit that date of birth of respondent No.2 Sonu @ Paramjit is 21.04.1997 and therefore, the Courts below have not adopted the correct procedure in ascertaining the correct date of birth of respondent No.2, while declaring him as juvenile. Learned senior counsel has also relied upon a judgment in **Criminal Appeal No.1081 of 2019 (arising out of SLP (Crl.) No.156 of 2019)** titled as **Sanjeev Kumar Gupta Vs. State of Uttar Pradesh and another, decided on 25.07.2019**, wherein the Hon’ble Supreme Court has held as under: -

*“The decision in **Ashwani Kumar Saxena** (supra) was rendered on 13 September 2012. Soon thereafter, a three judge Bench of this Court considered the provisions of Section 7 A and Rule 12 in **Abuzar Hossain alias Gulam Hossain** (supra). Justice RM Lodha (as the learned Chief Justice then was), speaking for himself and Justice Anil R Dave observed:*

“39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial

burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon

such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.”

*The above decision in **Abuzar Hossain alias Gulam Hossain** (supra) was rendered on 10 October 2012. Though the earlier decision in **Ashwani Kumar Saxena** (supra) was not cited before the Court, it appears from the above extract that the three judge Bench observed that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down. Concurring with the judgment of Justice RM Lodha, Justice TS Thakur (as the learned Chief Justice then was) observed that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former the Court simply records a prima facie conclusion while in the latter a declaration is made on the basis of evidence. Hence the approach at the stage of directing the inquiry has to be more liberal:*

“48. 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 the 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 7-A 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.”

*Both these judgments have since been considered by a two judge Bench of this Court in **Prag Bhati** (supra), where it was observed:*

“36. It is settled position of law that if the matriculation

or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain[Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

The Act of 2015 came into force on 15 January 2016. Section 111 repeals the earlier Act of 2000 but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the determination of age, is in the following terms:

“94. Presumption and determination of age.- (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the

Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board 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.”

Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a) (i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

Ms Jaiswal submitted that Section 94 deals with a matter of procedure. Hence, it was urged that though the incident in the present case is alleged to have taken place on 18 August 2015 and the application claiming the benefit of juvenility was

submitted on 9 December 2015, the application should be governed by the provisions of Section 94 and not by Section 12(3) of the Rules of 2007. For the purpose of the present case, we have proceeded to analyse the facts on the basis of the provisions of Rule 12(3) of the Rules of 2007 (as was urged on behalf of the second respondent). We have, as will be analysed hereafter, come to the conclusion that even on that basis, the second respondent was not a juvenile on the date of the incident. In other words, whether the case is approached from the stand point of Rule 12(3) of the Rules of 2007 or Section 94(2) of the 2015 Act does not ultimately make any difference to the conclusion.”

Learned senior counsel has thus argued that the approach of the Courts below in relying upon the matriculation certificate is incorrect, as the same cannot be given precedence over the certificate issued by the school first attended by respondent No.2 or the birth certificate issued by Registrar, Birth and Death, Rohtak.

In reply, learned State counsel has not disputed the contentions raised by learned senior counsel for the petitioner and rather has supported the same in view of the affidavits dated 27.07.2016 and 31.10.2018, both filed by DSP, Rohtak and DSP, Law & Order, Rohtak respectively, wherein it is stated that date of birth of respondent No.2 is 23.04.1997, as shown in the school, first attended by him and there is no proof as to how the date of birth changed subsequently as 26.01.1998 in the matriculation certificate. Learned

State counsel has submitted that in fact respondent No.2 is involved in number of heinous crimes, for which four FIRs under the Arms Act and under Sections 302/307 IPC were registered in Delhi as well as at Police Station Sampla, District Rohtak, as noticed above.

Learned counsel for respondent No.2 has however argued that in terms of Rule 12 of the Rules, 2007, both the Courts below have rightly given precedence to the entries made in the matriculation certificate of respondent No.2, wherein his date of birth is given as 26.01.1998 and prays for dismissal of the present petition.

After hearing learned counsel for the parties, I find merit in the present petition.

The Courts below have neither taken into consideration the birth certificate of respondent No.2 showing his date of birth as 21.04.1997 nor have taken into consideration the certificate issued by the school, where respondent No.2 first attended and studied upto Class III, showing his date of birth as 23.04.1997; the two dates co-relate each other with minor variation and nothing has come on record as to how subsequently the date of birth of respondent No.2 in the subsequent school record was changed to 26.01.1998.

In view of judgment of the Hon'ble Supreme Court in **Sanjeev Kumar Gupta's** case (supra), this petition is allowed and the order dated 19.01.2016 (Annexure P-3) passed by the Judicial Magistrate 1st Class, declaring respondent No.2 as juvenile as well as the order dated 01.03.2016 (Annexure P-5) passed by the revisional Court, dismissing the revision petition filed by the petitioner, are set aside. The matter is remanded back to

the trial Court to decide the case regarding juvenility of respondent No.2 afresh, after affording an opportunity of hearing to both the parties, to lead their respective evidence.

The parties are directed to appear before the trial Court on 26.08.2019.

Since this petition is pending from 2016 and proceedings before the trial Court were stayed by this Court vide order dated 30.05.2018, the trial Court is directed to pass the order afresh within a period of six months from the date of receipt of certified copy of this order.

With the aforesaid observations and directions, present petition stands disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

05.08.2019
vishnu

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