

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

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**CRR-4461-2015 (O&M)
Date of Decision : 15.01.2019**

Sahil (Minor)

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM:HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Aman Pal, Advocate for the petitioner.

Mr. Vivek Saini, DAG, Haryana.

A.B. CHAUDHARI.(ORAL)

This revision petition has been filed under Section 401/397 Cr.P.C. read with Section 401 Cr.P.C. for setting aside the judgment/order dated 13.10.2015, passed by Additional Sessions Judge, Sonipat.

Rule heard forthwith with the consent of learned counsel for the rival parties.

The trial court/Sessions Judge over ruled the claim of the revision-petitioner that he was juvenile by recording the finding that birth certificate issued by Sub-Registrar, Birth and Death would take precedence over the matriculation certificate and school leaving certificate. In sessions trial No. 1122 of 2014 the present revision-petitioner filed an application for declaring him juvenile on the ground that on the date of occurrence he was

16 years, 6 months and 10 days and therefore was liable to be declared as juvenile. In support of his case, *inter alia* he filed matriculation certificate, school leaving certificate which are Ex. A1, A2 and A4 indicating the date of birth as 13.12.1997. On the contrary the prosecution totally relied on Ex. R1 indicating the date of birth as 30.06.1996.

The trial court recorded a finding on the basis of some judgments of this court that it was the birth certificate which was required to be given precedence over all other certificates even for the purposes of holding inquiry in accordance with Rule 12(3) of Juvenile Justice (Care and Protection of Children) Act, 2007 (for short 'Rules, 2007'). Trial court thus followed two judgments of this court for arriving at the said conclusion i.e. to give precedence to birth certificate in order of preference. Finally, accused having been treated as adult, was tried with other accused persons who were held guilty and sentence to undergo RI for life. The present criminal revision remained pending in this court which was filed during the trial before the Sessions Court. It is undisputed that there is duty on the part of the revisional court to decide the revision on merits even after decision of sessions trial. In that view of the matter, we are obliged to decide revision petition filed by the present petitioner-Sahil.

Learned counsel for the petitioner relied on Section 7-A read with Rule 12(3) of the Rules, 2007 and made a submission relying on the decision of the Apex Court in the case titled as ***Ashwani Kumar Saxena versus State of M.P.*** reported in 2013 AIR (SC) 553. Learned counsel for the petitioner had submitted that said decision of the Apex Court was followed by the Apex Court on number of occasions. The said decision was also cited before the learned trial court. We find from the impugned order passed by the trial court that without giving any reason as to why he did not

follow the said Supreme Court judgment, he simply mentioned it as a citation and nothing more. We think he had breached the judicial discipline and in particular with reference to the judgment of the Supreme Court.

Apart from the above, we quote Rule 12, sub-Rule 3 of Rules, 2007 which is directly concerned.

"12.(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.

It is clear from the above Sub-Rule 3 of Rule 12 of Rules, 2007 that the legislature has thought it fit to place matriculation or equivalent certificates at Serial no. (i) with further stipulation namely that if the same is not available i.e. in the absence thereof, the date of birth certificate in the school leaving certificate shall be relied upon and even in the absence of school leaving certificate, birth certificate should be relied upon. There is no reason for us or for the trial court to change the said order indicated by the parliament and place Birth certificate at serial No. (i) and matriculation or equivalent certificates at serial No.(iii) in the said Rule. This is none of the job of court to change the preference adopted by the parliament. Not only that, the Apex court in **Ashwani Kumar Saxena's** case cited *supra* stated in paras 34 to 37 which we quote hereunder:-

"34. Age determination inquiry" contemplated under section 7A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for

reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. xxx xxx xxx xxxx

36. xxx xxx xxx xxxx

37. *We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted."*

We also accept the submissions made by learned counsel for the petitioner that this judgment still holds good. The same appears to be correct because the preference indicated in Sub-Rule 3 Rule 12 of Rules, 2007 itself is accordingly, indicated in the Rule.

We, therefore, find that Sessions Judge went completely wrong in changing preference indicated by the Parliament. He should not have done so. The court will have to go by the letters of law. We as a sequel find that impugned order will have to be quashed and set aside by holding that the appellant-Sahil son of Anil was juvenile on the date of commission of offence and accordingly, we declare so. In the result we pass the following order:-

ORDER

(i) Criminal Revision No. 4461 of 2015 is allowed.

(ii) The impugned order dated 13.10.2015, rejecting the application in case No. SC-1122 of 2014 filed by petitioner-Sahil (minor) for declaring him juvenile is quashed and set aside. It is hereby declared that petitioner-Sahil (minor) was a juvenile on the date of commission of the offence.

(iii) The impugned order of sentence made by Additional Sessions Judge, Sonapat, in SC 1122 of 2014, sentencing petitioner-Sahil (minor) for life imprisonment for the offence of murder is set aside only qua petitioner-Sahil (minor), he having undergone the sentence of more than 3 years.

(iv) Petitioner-Sahil (minor) shall be released forthwith, if not required in any other case.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

15.01.2019
pooja saini

Whether speaking/reasoned? **Yes**

Whether reportable? **Yes**