

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-2736-2017 (O&M)
Date of Decision:-31.1.2019

Ranvir ... Petitioner

Versus

State of Haryana and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Ashok Singh Choudhary, Addl. Advocate General, Haryana.

Mr. Vikram Singh, Advocate for respondent No.2.

GURVINDER SINGH GILL, J.(Oral)

1. The complainant Ravnir has filed this revision petition challenging order dated 21.7.2017 passed by the Court of learned Additional Sessions Judge, Palwal, whereby respondent No.2 Pankaj @ Bander has been declared to be a juvenile holding his date of birth to be 15.7.1999 while the occurrence is stated to have taken place on 1.8.2016. In other words, as on the date of occurrence, said Pankaj @ Bander, going by the aforesaid date of birth i.e. 15.7.1999, would be 17 years and 16 days and thus a juvenile.
2. The learned counsel for the petitioner, while assailing the impugned order, has submitted that the learned trial Court has placed undue reliance upon the record pertaining to the date of birth maintained in the school admission register (Ex.CW1/A), whereas a perusal of the said record indicates that the same is not worth credence inasmuch as while the entry pertaining to Pankaj

is recorded at serial No.561 but the very next entry is recorded as serial No.561-A, whereas no other entry have been assigned any alpha numeric serial number.

3. The learned counsel for the petitioner has submitted that in fact when the impugned order was passed, the complainant could not lay his hands on the matriculation certificate of Pankaj @ Bander, which he has now been able to procure and as per which the correct date of birth of Pankaj @ Bander is 15.7.1998. The learned counsel, in this context, has drawn the attention of this Court to Annexure P-5, which is a copy of matriculation certificate issued by the Board of School Education, Haryana, Bhiwani, wherein the date of birth of Pankaj is recorded as 15.7.1998. It has thus been submitted that in view of the doubt created as regards the entries in the school admission register, on account of a solitary entry being 'alpha numeric', which is very next to the entry recorded in respect of Pankaj, no reliance can be placed upon the same and the date of birth should be taken to be the one, which is recorded in the matriculation certificate. The learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of Hon'ble the Supreme Court reported as 2016(2) R.C.R. (Criminal) titled as Parag Bhati (Juvenile) thrgh. Legal Guardian-Mother-Smt. Rajni Bhati Versus State of Uttar Pradesh and Anr., wherein in somewhat identical circumstances, it has been held that wherever there is a doubt as regards the age of the accused and two views are possible, the accused is not entitled to protection of Juvenile Justice Act.
4. Opposing the petition, the learned counsel for respondent No.2 Pankaj @ Bander has submitted that as per provisions of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 the birth entry as recorded in the

school record would have the same sanctity as a matriculation certificate and that since the matriculation certificate was never produced before the trial Court, therefore, no ground is made out for setting aside the impugned order.

5. The learned State counsel has submitted that pursuant to directions issued by this Court as regards verification of the matriculation certificate of respondent No.2 Pankaj @ Bander, the verification of matriculation certificate of respondent No.2 Pankaj @ Bander had been got conducted and the matriculation certificate of respondent No.2 Pankaj @ Bander indicating his date of birth to be 15.7.1998 had been verified to be correct.
6. I have considered rival submissions addressed before this Court. Before proceeding further, it would be apposite to refer to the relevant provisions of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:-

“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.
7. Upon perusal of the record maintained in school i.e. school admission register, which is annexed as Ex.CW1/A, which has been relied upon by the trial Court, this Court finds that all the entries recorded therein bear serial number in 'numeric form' and the relevant entry pertaining to respondent No.2 Pankaj @ Bander bears serial No.561, which is at the bottom of the page. However, the next page, the very first entry recorded therein has been assigned the serial number as 'alpha numeric' i.e. 561-A, whereas the subsequent entries also bear a numeric serial number. Such like solitary entry, which is 'alpha numeric' and that too which is recorded immediately next to the entry pertaining to respondent No.2 Pankaj @ Bander certainly creates a serious doubt as regards the authenticity of the aforesaid admission record.

8. As against the aforesaid record, there is the matriculation certificate of respondent No.2 Pankaj @ Bander issued by Board of School Education, Haryana, Bhiwani, which has been got verified by the State counsel and is reported to be a genuine certificate indicating his date of birth as 15.7.1998. This Court would tend to place reliance upon the same, more particularly in light of ratio of Parag Bhati's case (supra). In the cited case i.e. in Parag Bhati's case (supra), wherein also there was a controversy as regards the date of birth and a certificate as per the school record had been produced indicating the date of birth as 13.9.1995 and there were other certificates also issued by other schools indicating the different date of birth i.e. 17.9.1994 and 13.9.1996, Hon'ble the Supreme Court held that wherever there is any ambiguity as regards the date of birth, the benefits of the benevolent legislation can not be availed. The relevant extract from the cited judgment reads as follows:-

“

27. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to be age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.
28. 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, 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 (supra), an enquiry for determination of the age of the accused is permissible which has been done in the present case.

.....”

9. In view of the ratio of the above cited judgment and bearing in mind the fact that there are serious doubts as regards the genuineness of the school admission record, which has been relied upon by the trial Court and also the fact that the matriculation certificate of the accused Pankaj @ Bander shows that he is not a juvenile, the impugned order cannot sustain and the same is hereby set aside. While relying upon matriculation certificate of respondent No.2 Pankaj @ Bander, it is held that the date of birth of respondent No.2/accused Pankaj @ Bander is 15.7.1998. In other words, as on the date of occurrence i.e. on 1.8.2016, respondent No.2 Pankaj @ Bander was more than 18 years and thus not a juvenile. The record/judicial file pertaining to respondent No.2 Pankaj @ Bander, which is presently pending before the Juvenile Justice Board, Palwal be transferred to the Court of learned Additional Sessions Judge, Palwal, where the trial of co-accused is pending and respondent No.2 Pankaj @ Bander be tried alongwith his co-accused.
10. Since the occurrence pertains to the year 2016, the trial Court is directed to take necessary steps for expediting the trial.
11. The revision petition stands accepted in above mentioned terms.

31.1.2019

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No