

In the High Court of Punjab and Haryana at Chandigarh

CRR-767-2018

Date of Decision: February 20, 2019

Gajab Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ankur Lal, Advocate,
for the petitioner.

Mr. M.D. Sharma, AAG, Haryana.

Mr. Rituraj Singh, Advocate,
for Mr. Gutam Dutt, Advocate
for the complainant.

Rajbir Sehrawat, J. (Oral)

Present petition has been filed challenging the order dated 03.01.2018 passed by Additional Sessions Judge Faridabad; dismissing an appeal against the order dated 24.04.2017 passed by Judicial Magistrate First Class, Faridabad, whereby the application of the petitioner for declaring him as a juvenile was rejected.

The petitioner is involved in a case arising from FIR No.78, dated 15.03.2017, under Sections 148, 149, 307, 506, 452 IPC and 25/54/59 of the Arms Act, registered at Police Station Sadar Ballabgarh, Faridabad. To avoid full rigour of criminal law, the petitioner had filed application for declaring him as a juvenile; claiming that he was less than 18 years at the time of commission of offence and hence, he should be tried by Juvenile Justice Board.

The application filed by the petitioner was adjudicated upon by Judicial Magistrate First Class, Faridabad and it was held that the date of birth of the petitioner is to be taken as 07.08.1996. Hence, as on the date of occurrence, the petitioner's age comes to be more than 18 years. Therefore, the petitioner was not juvenile.

Aggrieved against the order passed by the Court of Judicial Magistrate, the petitioner preferred an appeal before the Court of Additional Sessions Judge, Faridabad. However, the lower appellate Court also dismissed the appeal and upheld the order passed by the Judicial Magistrate. Accordingly, it was ordered that the petitioner would be taken as an adult and not a juvenile.

While so deciding, the Courts below have relied upon the date of birth of the petitioner as mentioned in the Government Primary School, Mujedi, where the petitioner was first admitted in the first class in the year 2002 and there his date of birth was recorded as 07.08.1996. While dealing with the evidence on file, the Courts below have recorded that the petitioner has claimed to be admitted in Sai Senior Secondary School, Faridabad on 24.08.2008 in first class and there his date of birth was recorded as 26.08.2003. Thereafter, the petitioner had taken admission in Gangotri Modern Senior Secondary School, Ballabgarh on the basis of School Leaving Certificate issued by Sai Senior Secondary School. However, while getting admission in Gangotri Modern Senior Secondary School, the date of birth of the petitioner was, once again, changed and it was mentioned as 23.07.1999. The petitioner had even left this school and got admission in Jai Bharat School in 10th class. On the basis of the School Leaving Certificate issued by Gangotri Modern Senior Secondary School, the date of birth

recorded in Jai Bharat School is 23.07.1999. Therefore, it is this date which has come in the Matriculation Certificate. If the age of the petitioner is counted from 23.07.1999, then he is juvenile on the date of commission of crime. However, the record, as brought on the court file, shows that the date of birth i.e. 23.07.1999, as mentioned in Gangotri Modern Senior Secondary School and Jai Bharat School, itself is based upon date of birth mentioned in Sai Senior Secondary School, where it is differently recorded as 26.08.2003.. Therefore, the Courts below have refused to believe the matriculation certificate; which carries the date of birth of the petitioner as 23.07.1999. Aggrieved against the order passed by lower appellate Court, petitioner has filed the present revision petition.

Learned counsel for the petitioner has argued that as per the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short “the Rules”), Rule 12 prescribed the procedure to be followed for determination of age, where an accused claims to be juvenile. It is submitted that as per the provisions of the Rule 12, the primacy has to be given to the matriculation certificate, if available. The other material, i.e., the date of birth certificate from the school can also be relied upon but only if matriculation certificate is not available. If school certificate is not available, only then the birth certificate issued by the Municipal Corporation or an authority is to be taken into consideration. Hence, it is submitted by the counsel that since the first certificate i.e. matriculation certificate itself is available, therefore, the other certificates are excluded, *per se*, from the consideration for the purpose of determination of age of the petitioner, and as per the date mentioned in the matriculation certificate, the petitioner is a juvenile. Hence, both the Courts below have committed a

grave illegality by not following the provisions of the above mentioned Rule, while determining the age of the petitioner. It is further submitted by the counsel for the petitioner that in another case, relying upon the same matriculation certificate, petitioner is being tried as a juvenile. This fact was duly brought to the notice of the Courts below. However, that has been brushed aside by the Courts below on the ground that the other relevant material was not available in those proceedings. In support of his argument, the learned counsel for the petitioner has relied upon judgments of Supreme Court rendered in *Siba Bisoyi vs. State of Odisha, 2017(4) R.C.R. (Criminal) 409*, *Lok Nath Pandey vs. The State of Uttar Pradesh & Another, 2017 AIR (SC) 3866*, *Ashwai Kumar Saxena vs. State of M.P., 2012(4) R.C.R. (Criminal) 391*, *Parag Bhati (Juvenile) through Legal Guardian-Mother-Smt. Rajni Bhati vs. State of Uttar Pradesh and another, 2016(2) R.C.R. (Criminal) 1031* and Division Bench judgment of this Court rendered in *Vikram Singh vs. State of Haryana, 2017(3) R.C.R. (Criminal) 301*.

On the other hand, learned counsel for the complainant submitted that the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “the Act”) has superseded the earlier provisions laid down in the Rules. A new provision has been enacted in the Act itself. According to that provision, the matriculation certificate no more enjoys the place of primacy, while determining the age of the accused. The date of birth certificate from the school and the matriculation certificate have been put at par; so far as their evidentiary value is concerned. It has been left to the Court to assess the age of the person brought before it. It is further submitted that sub-section (3) of Section 94 of the Act makes the age, as

determined by the Committee/Court/Board, as the true age of the person for the purpose of trial. It is further submitted that the date of birth of the petitioner is mentioned differently in all the schools. Even the matriculation certificate bears a date of birth of the petitioner, which is based, further, upon a date of birth certificate which was given by the third previous school. However, admission record in the said third previous school does not testify the date of birth as mentioned in the matriculation certificate. Hence, both the Courts below have rightly declined the application moved by the petitioner.

Learned State counsel has submitted that the investigating agency has produced all the relevant records before the Magistrate / Board at the time of determination of the age of the petitioner. The undisputed and initial date of birth mentioned in the Govt. School record is 07.08.1996. Hence, the same has rightly been taken by the Courts as the date of birth of the petitioner. The application of the petitioner has rightly been declined by the Courts below.

Having heard learned counsel for the parties and perusing the paper book, this Court finds no substance in the arguments raised by the learned counsel for the petitioner. Although the Juvenile Justice (Care and Protection of Children) Rules, 2007 had given a place of primacy to the matriculation certificate, over the other proofs of date of birth of the accused, however, that provision stands replaced by the Act, 2015. A new provision governs the procedure for determination of the age of the accused now. The relevant provisions of the Act, as contained in Section 94, is reproduced herein below:-

“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.”

A perusal of the provisions of the Act would show that under new provisions of law, the primacy has been given to the assessment of the Board/Court as to the age of the accused. This assessment can be done on physical appearance or even on the basis of the examination by other method like putting basic question to adjudge the age and understanding of the accused. In any case, if there is any doubt in the mind of the Court/Board, then the provision prescribes that, it is the birth certificate given by the school or the date of birth as mentioned in the matriculation certificate; which shall be taken into consideration in the first instance. If these two certificates are not available, then the further certificates, as mentioned in the Section, are to be taken into consideration. Hence, the school certificate and the matriculation certificate have been put at par; for the first consideration of the Court for adjudging the actual age of the accused. It is for the Court/Board to take a final call on the date of birth of the accused, in view of either of these documents or coupled with other attending circumstances, which might have come on the record of the case. By any means, the place of primacy conceded to the matriculation certificate in the old Rules, is no more available to it. The matriculation certificate no more enjoys that exclusive privilege. Although learned counsel for the petitioner has relied upon certain judgments of Supreme Court and one Division Bench judgment of this Court; to emphasize the primacy of Matriculation Certificate in determination of age of the accused, however this Court finds that all those judgments are distinguishable on the peculiar facts of those cases. In all those cases, the offences committed before enforcement of the Act of 2015 were involved. So the scope of Section 94 of the new Act of 2015 was not even under consideration in either of those

cases. Hence, those judgments cannot be taken as precedent for the cases involving offences committed after the enforcement of Act of 2015.

As it has come on record of this case, the petitioner was first admitted in Government Primary School in first standard on 02.08.2002. At that time, the date of birth of the petitioner was mentioned as 07.08.1996. However, name of the petitioner was struck off from that school because of his continuous absence. Thereafter, the evidence brought on record shows that, the petitioner had taken admission in Sai Senior Secondary School on 24.08.2008, again, in the first class. There the date of birth mentioned in this school; at the time of admission is 26.08.2003. This fact has even been deposed by CW4, the clerk of the school. The petitioner is stated to have studied in the school upto 8th class. Thereafter, the petitioner claims to have taken admission at Gangotri Modern Senior Secondary School in 9th class; on 10.07.2014; on the basis of school leaving certificate issued by Sai Senior Secondary School, and at the time of admission in this school, the date of birth mentioned is again changed to 23.07.1999. Counsel for the petitioner has tried to explain the disparity in date of birth recorded in Sai Senior Secondary School and Gangotri Modern Senior Secondary School by submitting that in the 8th pass certificate issued by Sai Senior Secondary School, the date of birth mentioned is 23.07.1999, therefore, the Gangotri Modern Senior Secondary School had recorded this date as the date of birth of the petitioner. However, this itself creates a doubt. The petitioner is stated to have taken admission in Sai Senior Secondary School on 24.08.2008 in the first class. Therefore, he would have passed 8th class only in the year 2016, whereas he has taken admission in 9th class in the year 2014. This itself shows the entire manipulation in the school record of Sai

Senior Secondary School, done for the purpose of getting admission in 9th class in Gangotri Modern Senior Secondary School. It is clear that the date of birth was deliberately changed by Sai Senior Secondary School and the petitioner was given 8th pass certificate with a different date of birth; against the record of that school itself, by changing the date of birth from 26.8.2003 to 27.3.1999. Needless to say that next year again; the petitioner had changed the school and took admission in Jai Bharat School, from where he has stated to have passed the matriculation. Accordingly, the date of birth mentioned in the matriculation certification of the petitioner is 23.07.1999; as was provided by Gangotri Modern Senior Secondary School. However, since the date of birth which was provided by Sai Senior Secondary School and Gangotri Modern Senior Secondary School, itself is shown to be manipulated, therefore, the matriculation certificate of the petitioner cannot be taken as a reliable proof of the date of birth of the petitioner, for the purpose of the present trial.

As is clear from the above, the Courts below have taken the record of the Government Primary School as the base record to determine the date of birth of the petitioner to be 07.08.1996. It has also come on record that after leaving Govt. School, the petitioner has given different dates of birth for getting admission in different schools in different classes; which are found to not even commensurate with his age. Hence, the Courts below have committed no illegality by giving more value to the date of birth recorded in the Government Primary School. This determination of age of the petitioner by the Courts below is perfectly in latter spirit of Section 94 of the Act of 2015. Needless to say that once the age is so determined by the Juvenile Court/Board/Committee, as prescribed under the Act, then the

same has been prescribed to be the deemed age of the accused for the purpose of trial. In the present case, the age determined by Magistrate has even been upheld by the lower appellate court. Hence, although, there is no ground to differ with the Courts below, however, even if this court had any second opinion qua date of birth of the petitioner; from the one determined by the Court below, it would not substitute its own opinion in place of the satisfaction of the Court of the first instance, which, under the statute has been made the final adjudicator of the age of the accused.

Although learned counsel for the petitioner has also submitted that in the other trial, the petitioner is being tried as a juvenile, however, nothing has come on record of this case to show that in that case his age was determined by the Board/Court by following the procedure of inquiry as prescribed under the Act. In fact, in that case, the prosecution itself had taken the petitioner as a juvenile. It is even admitted that no inquiry was held. No evidence was led in that case to find out the actual age of the petitioner. Hence, the fact that the petitioner is being tried as a juvenile in another case, cannot be taken as a relevant factor for the determination of the age of the petitioner in the present case.

In view of above, no ground for interference is made out. Accordingly, present petition is dismissed.

February 20, 2019
vkd

(Rajbir Sehrawat)
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes