

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

CRR No.11895 of 2018.
Decided on:- March 01, 2019.

Parveen.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Anshumaan Dalal, Advocate
for the petitioner.

Ms. Mahima Yashpal, Assistant Advocate General, Haryana.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present criminal revision against the judgment dated 03.12.2018 passed by learned Additional Sessions Judge, Rohtak, whereby his appeal filed against the order dated 06.10.2018 passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak, was dismissed.

Briefly stated, FIR No.177 dated 02.06.2017 under Sections 363, 366-A and 328 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 was registered against the petitioner at Police Station Kalanaur, District Rohtak. While the trial was pending before the Juvenile Justice Board, Rohtak, the complainant filed an application so as to determine the age of the petitioner. As per the allegations made in the said application,

the petitioner has been declared minor on the basis of fabricated and bogus school certificate as his date of birth has not been verified by the Registrar (Births and Deaths), Health Department, Rohtak. The complainant further alleged that the date of birth of the petitioner is 14.08.1998, which is based on the record of the Registrar (Births and Deaths), Health Department, Rohtak.

In fact, the petitioner through his father Dayanand has claimed his date of birth as 21.07.2000, which is based on the service record of his father.

Learned counsel for the petitioner has restricted his argument that the appeal against the order dated 06.10.2018 passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak has wrongly been dismissed by learned Additional Sessions Judge, Rohtak vide impugned judgment dated 03.12.2018 by not appreciating the provisions of Section 101(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, the Juvenile Justice Act). In fact, under this provision, against the order dated 06.10.2018 passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak, appeal is maintainable.

He has further argued that since the order dated 06.10.2018 has been passed by learned Principal Magistrate, Juvenile Justice Board, Rohtak and not by the Child Welfare Committee constituted under Section 27 of the Juvenile Justice Act, as defined in Section 2 (22) of the Juvenile Justice Act, the remedy lies with the petitioner to file an appeal before the Court of Session, as the order dated 06.10.2018 has not been passed by the Child

Welfare Committee, rather the same has been passed by the Principal Magistrate, Juvenile Justice Board.

On the other hand, learned State counsel does not dispute the aforesaid proposition of law and fairly states that the order dated 06.10.2018 has been passed by the Principal Magistrate, Juvenile Justice Board and not by the Child Welfare Committee.

I have heard learned counsel for the parties.

The relevant provision of Section 101(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, reads as under:

“(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.”

Having heard learned counsel for the parties and considering the provision of law as reproduced above, this Court finds that since the order dated 06.10.2018 is passed by learned Principal Magistrate, Juvenile Justice Board, Rohak and not by the Child Welfare Committee, the remedy available to the petitioner is to file an appeal against the said order and not the revision petition. Section 101(3) of the Juvenile Justice Act clearly provides that an appeal shall not lie from any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

Accordingly, the case is remanded back to learned Additional Sessions Judge, Rohtak to pass a fresh order in the appeal on merits, as the order dated 06.10.2018 has not been passed by the Child Welfare Committee, rather, it has been passed by the Principal Magistrate, Juvenile Justice Board.

Disposed of.

March 01, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No