

\$~24

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 21.02.2019

+ CRL.REV.P. 587/2018 & CRL.M.A. 12589/2018

PRADEEP @ PIDDI

..... Petitioner

versus

GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. G. C. Sharma, Advocate.

For the Respondent : Ms. Meenakshi Dahiya, Addl. PP for the State with
SI Govind Puri, PS Uttam Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 19.03.2018, whereby the Trial Court has rejected the application of the petitioner claiming juvenility.
2. The Trial Court noticed that there was no record of the school available and accordingly ossification test was conducted. The Medical Board opined the age of the petitioner as between 20-22 years.
3. Noticing the record of the Medical Board the Trial Court rejected the application raising the claim of juvenility and held the petitioner to be major i.e. 18 years of age on the date of alleged commission of offence.

4. Subject offence was alleged to have been committed on 05.04.2016. The ossification test was conducted on 27.05.2016.

5. Learned APP for the State submits that the records have been obtained from the school first attended, which show the date of birth of the petitioner as 07.02.1997, on which the age of the petitioner could be determined as above 18 years.

6. Learned counsel for the petitioner *per contra* submits that since the record of the school is not based on any foundational documents, the same cannot be relied on, as the date of birth was recorded merely on the basis of an affidavit.

7. The school record shows the age of petitioner to be more than 18 years on the date of the offence. Even if one were to ignore the record of the school, then as no other document prescribed under the Juvenile Justice (Care & Protection of Children) Act, 2015, is available, one would have to resort to the ossification test.

8. Rule 12(3) of Juvenile Justice (Care & Protection of Children) Rules, 2007 reads as under:-

“(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.”

9. The documents, which could be taken as evidence for determining the age in the order of their preference are (i) the matriculation or equivalent certificates 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.

10. Sub Rule (b) further prescribes that in the absence of either of the above, the medical opinion could be sought from a duly constituted medical

board, which would declare the age of the juvenile or child. In case exact assessment of age cannot be done, the Committee for reasons to be recorded may give benefit to the child by construing his age on lower side within the margin of one year.

11. In the present case, the ossification test which was held on 27.05.2016, opined the age of the petitioner as 20-22 years applying Rule 12(3)(b) and giving benefit of one year to the petitioner, the age on the date of the test would be taken on the lower side would be 19 years i.e. (20-1).

12. Subject offence was alleged to have been committed on 05.04.2016 and the test was conducted on 27.05.2016 i.e. after 1 ½ months of the offence. Even if this period of 1 ½ months is ignored, the petitioner would still be above 18 years of age on the date of the offence.

13. In view of the above I find no infirmity in the view taken by the Trial Court in assessing the petitioner as a major i.e. above 18 years of age on the date of alleged commission of the offence. Accordingly, there is no merit in the petition. The petition is dismissed.

14. Order *dasti* under signatures of the Court Master.

FEBRUARY 21, 2019
Pallavi

SANJEEV SACHDEVA, J