

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

**CRR No.4092 of 2016 (O&M)
Decided on: 16.11.2021**

Bittoo

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikas Chaudhary, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Sunil Kumar Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the impugned order dated 18.10.2016 passed by the Sessions Judge, Palwal, vide which the order dated 08.09.2016 passed by the Judicial Magistrate Ist Class, Palwal, was set-aside and while allowing the appeal, the respondent No.2/accused Bobby was declared a juvenile.

This revision petition is pending since 2016 and on 07.11.2016, the Co-ordinate Bench has stayed the operation of the impugned order dated 18.10.2016, resultantly, the trial was also stayed.

The Hon'ble Supreme Court vide order dated 08.09.2021 in **SLP (Criminal) No.2079 of 2020** titled as "*Bittoo vs Bobby and another*", has directed this Court to dispose of the main petition as early as possible but not later than 31.12.2021 and therefore, this case was taken up in the Urgent List.

Brief facts of the case are that the brother of the

complainant/petitioner Bittoo had an altercation with the accused over a cricket match about 1½ years ago, prior to the date of occurrence, which was settled in Panchayat but on account of keeping a grudge, the accused Bobby in a premeditated manner fired 03 shots on the deceased Rahul @ Monti, who later on, died.

Initially, 03 persons were named in the FIR i.e. the respondent No.2/accused – Bobby, his father Narvir and uncle Bhambal @ Jagbir, however later on, both of them i.e. Narvir and Bhambal, were discharged by the police during the investigation.

When the case was pending investigation before the Illaqa Magistrate/Judicial Magistrate Ist Class, Palwal, an application was moved by the respondent/accused – Bobby to declare him a juvenile claiming that on the date of occurrence i.e. 17.06.2016, he was 17 years and 14 days old and his date of birth was 03.06.1999 as per the Matriculation Certificate.

The Illaqa Magistrate vide order dated 08.09.2016, after holding an enquiry and allowing the parties to lead their oral as well as documentary evidence, dismissed the application. The operative part of the said order, reads as under:-

“9. I have heard the arguments learned counsel for the parties and have gone through the record very carefully.

10. The main point under controversy in the present application is with regard to the date of birth of accused/applicant Bobby who was alleged to be using an another name as Harish Pal. The applicant/accused is relying upon the matriculation certificate Ex.AW-1/B, wherein the date of birth of the accused/applicant is shown

as 03.06.1999. On the contrary the respondents have relied upon the school certificates Ex.RW-3/A to Ex.RW-3/E which shoss the date of birth of accused/applicant as 20.08.2000. Another, record of date of birth of the accused was placed on file by the respondents by examining the Aaganwadi worker Darshan Devi as RW-1 and Sushil Devi as RW-2 who proved the records Ex.RW-1/A, Ex.RW-2/A and Ex.RW-2/B as per which the date of birth of accused Bobby @ Harish Pal is 03.04.1997. It is important to note that the applicants got examined Shri Ajay Singh, Science Teacher as AW-1 who stated that passed 10th class from their school and his date of birth is 03.06.1999. The accused Bobby studied at J.C.B. Public School in 9th standard wherein his date of birth was mentioned as 03.06.1999 (Ex.AW-1/C). Whereas, it has also come on record that the accused Bobby was studying at Jyoti Public School, from Ist standard to 5th standard and 6th to 8th standard in the same school wherein his date of birth is mentioned as 20.08.2000. However, Anoop Singh Head Mastr, Baba Udasnath Public School, while being examined as RW-4 specifically mentioned as Bobby studies in their school from Ist standard to 5th standard and 6th to 8th standard as per document Ex.RW-4/A and RW-4/B. The admission form Ex.RW-4/C was duly signed by the mother of Bobby namely Sunita. As per the record, the date of birth of Bobby Tewatia son of Narveer and Sunita Devi was 03.06.1999. Under these circumstances, it is clear that the accused/applicant has tried to deceive the court to believe that his date of birth as per matriculation certificate is 03.06.1999. Whereas, it is humanly impossible that a child would study in two different schools simultaneously at same time. As it is apparent on record that the applicant/accused Bobby was studying in Ist standard to 5th standard and 6th standard to 8th standard in two different

schools i.e. Jyoti Public School and Baba Udasnath Public School at the same time. The record maintained by the Aaganwadi workers while proved by RW-1 and RW-2 has also specifically shown that the date of birth of accused Bobby @ Harish Pal is 13.04.1997 which was found out after a due survey carried out by the public authorities.

11. The Hon'ble Apex Court has held in Parag Bhati vs State of Uttar Pradesh and another 2016(2) RCR (Criminal) that where an accused commits a grave and heinous offence (murder in this case) in a well planned manner which reflected his maturity of mind. If two views with respect to the age of the accused is possible then he would not be entitle to the protection of juvenile act, further, it was held that

26. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the JJ Act. But when an accused commits a grave and heinous offence and, thereafter, attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

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 possibilities of two views in regard to the 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.”

12. In view of the aforesaid discussion, it is prima facie clear that applicant/accused is seeking benefit of juvenility on the basis of forged certificates and, therefore, the present application stands dismissed and it is ordered that a complaint against the applicant/accused for relying upon forged and fabricated document being initiated and the complaint in this regard be sent forthwith to the concerned S.H.O. to take necessary action”

Thereafter, the accused/respondent No.2 preferred an appeal before the Court of Sessions and vide impugned order dated 18.10.2016, the same was allowed by passing the following order:-

“7. Feeling aggrieved, the present appeal has been filed by the applicant-accused-appellant.

8. I have heard the learned counsel for the appellant-applicant/accused and learned Public Prosecutor for the respondent-State assisted by learned counsel for the complainant and have also perused the record carefully.

9. It is submitted in the grounds of appeal and it is argued by the learned counsel for the appellant-applicant that the impugned order dated 8.9.2016 is liable to be set

aside as the same is full of surmises and conjectures. The appellant had produced ample evidence on record to show that he was born on 3.6.1999. It was the duty of the learned lower court to place reliance upon the matriculation certificate which proved his date of birth and in the presence of this certificate, no other evidence was required to be looked into. However, the learned lower court did not consider the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short" Act, 2015") in a proper manner and wrongly appreciated the evidence produced on record by the respondentState which could not be looked into. It is, therefore, urged that the impugned order is unsustainable in the eyes of law and has caused prejudice to the appellant-applicant. Therefore, it was urged that the impugned order was liable to be set aside, the appeal deserved to be accepted and the appellant-applicant deserved to be declared a juvenile/child in conflict with law.

10. On the other hand, learned Public Prosecutor for the respondent-assisted by the learned counsel for the complainant that the evidence produced on record by the appellant-applicant was not credit worthy. The entries as made in the record of schools as shown to be attended by the appellant-applicant were not authentic. He was proved to be studying in two different schools at the same point of time. The entries with regard to his date of birth in both these schools were different. The appellant-applicant was accused of committing a heinous crime. In the absence of any authentic evidence, he could not be stated to be a juvenile. Therefore, he argued that there was no merit in the appeal and asserted that it was liable to be dismissed. To fortify his argument, learned counsel for the respondent-State placed reliance upon authorities cited as

Abuzar Hossain alias Gulam Hossain Vs. State of West Bengal (2012) 10 SCC 489, Parag Bhati Vs. State of U.P. 2016 (2) RCR (Criminal) 231 and Om parkash Versus State of Rajasthan (2012) 5 Supreme Court Cases 201.

11. Section 9 of the Act, 2015 prescribes procedure to be followed when claim of juvenility of an accused is raised before any court. According to this section, whenever a claim of juvenility is raised before a court or a court itself is of the opinion that the person appearing as accused before it was a child/juvenile on the date of commission of offence, the said court shall make an inquiry and take such evidence as may be necessary (but not an affidavit) to determine the age of such person and shall record a finding on the matter. Then as per Section 94 of the Act, 2015, when there are reasonable grounds for doubt regarding the juvenility of a person, then the process of age determination can be undertaken 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) & (ii) above, the age shall be determined by an ossification test or any other latest medical age determination test.

It is clear from this provision that first preference has to be given to the date of birth certificate issued from the school or to the matriculation or equivalent certificate from the concerned examination board, if available and only in the absence thereof, the birth certificate issued by a municipal committee/authority has to be considered. In Hari Ram Versus State of Rajasthan and another's case

(supra), it was observed that for determination of question whether accused was juvenile or not, a hyper technical approach should not be adopted. In Shah Nawaz Versus State of U.P. and another's case (supra), it was observed by the Hon'ble Apex Court that for the purpose of determination of age of a juvenile in conflict with law, the matriculation certificate and school leaving certificate were required to be given preference to the medical opinion and only in the absence of such certificates, medical opinion was to be sought. It had been submitted by the learned counsel for the appellant-applicant that since the appellant-applicant had produced the matriculation certificate as well as other certificates on record from the schools wherein he had studied and which showed that he had been born on 3.6.1999, therefore, preference was to be given to the school certificates as well as his matriculation certificate and he deserved to be declared a juvenile.

12. The only question to be determined before this court is whether the appellant-applicant was a juvenile as on the date of occurrence i.e. on 17.6.2016. The appellant-applicant produced on record Ex.AW-1/B which is copy of his matriculation/secondary examination certificate showing his date of birth as 3.6.1999. This document was proved by AW-1 Ajay Singh, a teacher of GVP Public School village Alawalpur who deposed on the basis of record that the appellant-applicant had been admitted in the above school in 10th class on the basis of a school leaving certificate issued by the JCB Modern Senior Secondary School. He also produced on record Ex.AW-1/C which is copy of certificate issued by the JCB Modern Senior Secondary School and in which also the date of birth of the appellant-applicant is recorded as 3.6.1999. The mother of the appellant-applicant also submitted that

he was born on 3.6.1999. Therefore, this document which is to be given preference prima facie proves the appellant-applicant to be below the age of 18 years as on the date of occurrence, but the respondent-State to the contrary has produced some other evidence in the form of statements of RW-1 and RW-2, Anganwari workers. RW-1 deposed on the basis of record prepared by her in April, 2014 that the appellant-applicant was 17 years old at that time. In my opinion, no credence can be given to the testimony of this witness and the document produced by her because for the purpose of determination of age within the purview of Act, 2015, such like entry cannot be considered. Similarly, the statement of RW-2 who stated that as per the register maintained by her, the appellant-applicant who was also known by the name of Harishpal had been born on 13.4.1997. This entry was claimed to have been made by her in the capacity of an Anganwari worker. Such like document also does not fall within the purview of provisions of Act, 2015 for the purpose of determination of a person accused of any offence and hence, the document produced by her also cannot be given any credence. Further, as per the statement of RW-3 Jeet Ram, the appellant-applicant studied in Jyoti Public School, Alawalpur from class one to class 8th. Whereas RW4 Anoop Singh, Head Master of Baba Udasnath Public School produced evidence to show that the appellant-applicant had studied in that school from class first to class 5th. As per the record produced by RW-3, the date of birth of the appellant-applicant was recorded as 20.8.2000 in the record of Jyoti Public School, whereas as per the record produced by RW4 Anoop Singh, his date of birth was recorded in the Baba Udasnath Public School as 3.6.1999. From the documents so produced, the appellant-applicant is shown to have studied in two different schools

at the same point of time and different dates of birth have been mentioned in the record of these schools for which no explanation came forward on behalf of the appellant-accused, but at the same time, it may be mentioned that while considering either of these entries to be true, still the appellant-applicant cannot be stated to have become 18 years old as on the date of occurrence. The respondent-State failed to bring any such contrary evidence on record which could be considered within the purview of the provisions of Act, 2015 for the purpose of holding that the appellant-accused had not been born on either of the above mentioned dates as mentioned in the record of his two different schools. As per the provisions of section 94 of the Act, 2015, the preference has to be given to the date of birth certificate from the school or the matriculation certificate. Both of these prima facie prove the appellant-applicant to be below the age of 18 years. The ratio of law as laid down in Parag Bhati's case (supra) is undoubtedly that the benefits of the principles of benevolent legislation attached to the Act, 2015 are to 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 and in case of commission of grave and serious offence, he cannot be allowed to take plea of juvenility when there is possibility of two views with regard to his age, but in the present case, the facts and circumstances suggest that he was below the age of 18 years as on 17.6.2016. Therefore, in my opinion, the learned lower court was not required to adopt any hyper-technical approach and had to make assessment as to the age of the appellant-applicant as per provisions of section 94 of the Act, 2015 which provides for giving first preference to the date of birth from the school or the matriculation certificate. Therefore, in my opinion, the learned lower court committed an error in

declining the prayer made by the appellant-applicant and dismissing his application for declaring him as a juvenile and in view of the foregoing discussion, it is held that he prima facie appeared to be juvenile and hence deserved to be declared as such. With these observations, the findings given by the learned lower court are set aside and it is held that the application filed by the appellant-applicant deserved to be allowed. The same is accordingly allowed.

13. No other point has been urged or survived for consideration before me.

14. As a sequel to my above discussion, the appeal succeeds and is hereby allowed with no order as to costs. A copy of this judgment be also tagged with the main challan report which is also pending in this court and is fixed for today and appeal file be consigned to records, after due compliance.”

Assailing finding of the Lower Appellate Court, learned counsel for the petitioner has referred to Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as 'the Act').

Section 9 (1) and (2) of the Act, reads as under:-

9. Procedure to be followed by a Magistrate who has not been empowered under this Act.

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other

than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

Counsel for the petitioner has argued that the trial Court has adopted a right procedure as per the provisions of Section 9 of the Act as being a Magistrate, not empowered to exercise the power of the Board, under Sub-section (2) has taken the evidence to determine the age of respondent No.2 and has recorded a finding that he was not a child.

Counsel for the petitioner has, then referred to Section 94 of the Act to submit that post amendment in the Act which came in existence on 15.01.2016, it is provided that the Committee of the Board will determine the age by obtaining the date of birth certificate from the school or Matriculation Certificate.

Counsel for the petitioner has also submitted that before amendment, it was the Matriculation Certificate, which was to be given

weightage over and above any other evidence but post amendment, the date of birth Certificate is kept at par on the Matriculation Certificate or equivalent Certificate from the concerned Examination Board, if available.

Counsel for the petitioner has further submitted that since the order was not passed by a Committee or the Board, the trial Court has rightly decided the same exercising the powers under Section 9(2) of the Act and this fact is not appreciated by the Lower Appellate Court.

Counsel for the petitioner has then, referred to the reply filed by the State Ex.P-1 and Ex.P-2, according to which, during the investigation, it was found that respondent No.2 – Bobby @ Harish Pal are one and same person. It is also submitted that as per the statement of Ajay Singh, a Teacher in G.V.P. Public School, Palwal, who appeared as AW-1, Bobby Tewatia son of Narveer and mother Sunita Devi passed his 10th standard in the year 2015 from their school and his date of birth was 03.06.1999 as per the admission register Ex.AW-1/A and 10th class marksheet Ex.AW-1/B and School Leaving Certificate Ex.AW-1/C, vide which the record of J.C.B. Modern Senior Secondary School, depicted the date of birth as 03.09.1999.

Emphasis is laid on the cross-examination of AW-1 that it was admitted by him that at the time of giving admission to the accused, no record of date of birth was taken and only on the basis of the previous School Leaving Certificate, the same was entered. It is further submitted that as per the prosecution evidence, an Anganwadi worker namely Darshan Devi, appeared as RW-1 and proved that as per the Certificate/Vaccination Register, the age of Bobby @ Harish was 17

years and that of his younger brother Sunny was of 15 years. It is further submitted that in this register, Ex.RW-1/A, it is noticed that the age was declared by the parents of the children in the month of April, 2014. RW-2, Sushila Devi also proved the Anganwadi record, showing date of birth of accused as 13.04.1997 and that of his younger brother Sunny as 01.03.2000 vide Ex.RW-2/B. RW-3 – Jeet Ram, Clerk of Jyoti Public School proved admission form RW-3/A vide which Bobby son of Narveer and Sunita got admission on 11.04.2005, showing the date of birth as 20.08.2000 and the same was reflected in the 5th standard certificate Ex.RW-3/C. This date of birth was also reflected in the entry of admission and withdrawal register Ex.RW-3/D and RW-3/E.

Counsel for the petitioner has also argued that RW-4 – Anoop Singh, Headmaster, Baba Udasnath Public School, Palwal, stated that at Serial No.69 at Withdrawal Register Ex.RW-4/A, Bobby Tewatia was admitted to the school with date of birth as 03.06.1999. He cleared 5th standard from their school and studied till 8th standard as per Ex.RW-4/B. This witness also stated in the cross-examination that no affidavit or Birth Certificate was procured from the parents of Bobby, at the time of admission.

Counsel for the petitioner has, thus, argued that the trial Court has rightly held that the accused has tried to create evidence to show that his date of birth is 03.06.1999 whereas his date of birth is 03.04.1997 and he was above 18 years of age, on the date of occurrence i.e. 17.06.2016, which is after the amendment of the Act.

Counsel for the petitioner has next argued that the Lower Appellate Court has given weightage to the Matriculation Certificate,

over and above the other documents, which was the requirement of Section 94, prior to the amendment and now after the amendment, the other documents which were produced by the prosecution have been ignored without assigning any reason.

Counsel for the petitioner has relied upon the judgment ***“Sanjeev Kumar Gupta vs State of Uttar Pradesh and another”***, 2019(3) RCR (Criminal) 918, wherein the Hon'ble Supreme while assessing the entire evidence has declared a person not to be juvenile. It was held by the Hon'ble Supreme Court that in the said case, the High Court has reversed the finding of the Sessions Judge, purely on the basis of Matriculation Certificate, which cannot be accepted as authentic or credible once the other evidence is on record.

Counsel for the petitioner has next referred to the judgment passed by the Hon'ble Supreme Court in ***“Parag Bhati (Juvenile) through Legal Guardian Mother Smt. Rajni Bhati vs State of Uttar Pradesh and another”***, 2016(2) RCR (Criminal) 1031, to submit that where an accused has committed grave and heinous offence (murder) in a well planned manner, which reflect his maturity of mind, while deciding the plea of juvenility, if 02 views in regard to the age were possible, then the accused will not be entitled to protection of Juvenile Act.

Counsel for the petitioner has thus, submitted that in the instant case also, in a premeditated manner, the respondent No.2/accused with a motive has fired 03 shots on the deceased in order to commit the offence of murder which show that respondent No.2/accused has maturity of mind to understand what offence he has

committed.

Similar view has been taken by the Hon'ble Supreme Court in ***“Mukarrabh vs State of U.P.”*, 2017(1) RCR (Criminal) 103.**

Some other judgments of the Co-ordinate Benches are also relied upon by counsel for the petitioner, which are not reproduced for the sake of brevity as in all the judgments, it is held that the Court should not rely upon the School Certificate solely while ignoring the other cogent and convincing evidence like date of birth record in the register of chowkidar.

Counsel for the petitioner has also relied upon the order dated 01.08.2016 vide which the case was remanded back to the Principal Magistrate, Juvenile Justice Board to conduct afresh enquiry after collecting the evidence from the office of the concerned Civil Surgeon, Registrar of Birth and Death, Chowkidar of the village as well as of getting the Ossification test of the accused conducted from the Board of Doctors.

In reply, counsel for the State as well as counsel for respondent No.2 have, however, submitted that the Lower Appellate Court has rightly held the petitioner to be a juvenile in conflict with law as his date of birth was proved to be 03.06.1999.

Counsel for respondent No.2 has relied upon 02 judgments of the Hon'ble Supreme Court ***“Hari Ram vs State of Rajasthan”*, 2009(2) RCR (Criminal) 878.**

The judgment of the Hon'ble Supreme Court in Hari Ram's case (supra) is prior to amendment and the said judgment is based on the old provision of law and the case was remanded back to the Board

as there was no Matriculation Certificate.

Similar view was taken by this Court in ***“Harpreet vs State of Haryana”***, 2010 (10) RCR (Criminal) 362.

Counsel for respondent No.2 has then, referred to Rule 12(3) of the 2007 Rules which provided that the age determination enquiry shall be conducted by the Court or by the Board or by a Committee, however, it is not disputed that after the amendment, Rule 12 stands modified as per 2016 Model Rules.

After hearing the counsel for the parties, this Court find that the following points need to be considered:-

1. Whether evidence like public document from the Anganwadi record maintain in ordinary course can be given precedent over the Matriculation Certificate when the entry in the date of birth in the school record is only on the basis of input given by the parents and not supported by an affidavit or birth certificate?

2. Whether benefit of benevolent legislation can be given in heinous crimes where the crime is committed not in a heat of movement but in a premeditated manner?

3. Whether a public document under Section 35 of the Indian Evidence Act, can be over-looked while following the procedure under Section 94 of the J.J. Act?

After hearing the counsel for the parties, I find merit in the present revision petition and the following observations are made on the points:-

1. It has been held by the Hon'ble Supreme Court in Sanjay Kumar Gupta's case (supra) that the date of birth recorded in the Matriculation Certificate without any

underlying document cannot be accepted as an authentic or credible proof of date of birth.

In the instant case, the prosecution has led evidence to the contrary by way of the birth record maintained by Aanganwadi.

2. *In the light of the judgment of the Hon'ble Supreme Court in Parag Bhati's case (supra) and Mukarrabh's case (supra), the benefit of legislation ordinarily is to be given to a person, who has committed a heinous crime and thereafter, is taking shelter of the benevolent act like Juvenile Justice Act, especially when the evidence lead by said person is shaky.*

3. *The Lower Appellate Court while allowing the appeal has not looked into the procedure under Section 94 of the J.J. Act as the document like record of the Aanganwadi or birth entry in the register of Chowkidar is to be given preference over the Matriculation Certificate where there is no document to support the same.*

In the instant case, the relevant prosecution witness, who has proved the school record has admitted that no evidence like the affidavit of the parents or any other birth certificate record was taken while admitting the petitioner in the school and the birth entry was entered only on the declaration made by the petitioner in the admission form and therefore, the Lower Appellate

Court has not followed the proper procedure.

Even otherwise, considering the fact that no proper enquiry was conducted under the provisions of the Act as the impugned order was passed by the Illaqa Magistrate and not by the Juvenile Justice Board or the Committee as defined under Section 9 of the Act, therefore, while setting-aside both the judgments passed by the Courts below, ***the matter is remitted back to the Juvenile Justice Board, Palwal***, to redecide the issue regarding the determination of date of birth of the petitioner. The entire evidence which has already been led by both the parties along with the original file wherein the evidence has been led will be placed before the Juvenile Justice Board and will be read in evidence in order to avoid any repetition. However, the Board will give 02 effective opportunities to both the parties to lead any further evidence, if so required and redecide the same.

Considering the fact that the operation of the impugned order passed by the Lower Appellate Court was stayed by this Court on 07.11.2016 and the FIR also pertains to the year 2016, which resulted into staying the trial, the Board is directed to expeditiously decide the case within a period of 03 months from the date of this order.

Both the parties are directed to appear before the Board on 01.12.2021 at 10:00 AM.

Disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

16.11.2021

yakub

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No