

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

CRR-508-2022(O&M)

Reserved on :17.03.2022

Pronounced on :21.04.2022

Ravi alias Rabbu son of Radhey Shyam

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Aditya Sanghi and
Mr. Sandeep Vashisht, Advocates,
for the petitioner.**

VINOD S. BHARDWAJ, J.

The instant revision petition has been filed for setting aside the order dated 26.10.2018 passed by Additional Sessions Judge, Narnaul, whereby the application submitted by the petitioner for declaring him as a juvenile on the date of occurrence had been dismissed in the case arising out of FIR No.658 dated 30.12.2014 under Sections 148, 149, 323, 302, 307, 216 IPC and Section 25/54/59 of the Arms Act, registered at Police Station Mahendergarh, District Mahendergarh.

The facts of the case in brief are that a criminal case was registered on the statement of complainant-Ajit son of Hanuman wherein he had alleged that he along with Kukku son of Nihal Singh and one Vikas son

of Suman Kumar were standing at Kurahvata turn at around 04.00 pm on a motorcycle when the accused persons along with the petitioner came along with *guliya* and *dandas* in their hands. The accused caused injuries on the head and body of the complainant with their respective weapons and also fired a shot on the eye of Kukku which was stated to have been stained with blood. The assailants thereafter ran away from the spot along with their motorcycles and scooty upon people being attracted to the spot. On the basis of statement of the complainant, the aforesaid FIR for the commission of offences including Section 307 IPC was registered against the assailants including the petitioner. During investigation, Kukku succumbed to the injuries sustained by him in the incident and the offence under Section 302 IPC was added later on. The investigation was completed and a final report was filed on conclusion of the investigation against the petitioner even though material pertaining to juvenility of co-accused Naval and Hemant was collected by the investigating agency during the investigation. A separate juvenile challan was to be submitted against the accused Naval and Hemant Kumar who were claimed to be juvenile as on the date of commission of offence.

After the submission of the final report, the case was committed and charge framed. The petitioner did not raise any plea of juvenility. Evidence commenced and it was thereafter that the petitioner submitted an application dated 31.08.2017(Annexure P-10) before the Court of Additional Sessions Judge, Narnaul for determining the claim of his juvenility at the time of commission of offence. It was claimed by the petitioner that the incident in question had taken place on 30.12.2014 and that he was born on 03.09.1998 at Sri Ganganagar, Rajasthan. Hence, he was minor at the time

of the incident in question. The said application has, however, been dismissed by the Additional Sessions Judge, Narnaul vide order dated 26.10.2018. The present revision petition has been preferred against the said order after a further delay of more than 2½ years of the passing of the said order.

Learned counsel appearing on behalf of the petitioner has vehemently argued that the documents issued by the authorities at Sri Ganganagar clearly established that date of birth of the petitioner is 03.09.1998 and that he was thus a minor as on the date of commission of offence on 30.12.2014. He has further relied upon the affidavit sworn by his mother in support of his date of birth. It is also claimed that father of the petitioner has appeared in the witness box and has reiterated the date of birth of the petitioner in his deposition i.e. 03.09.1998. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Manoj @ Monu @ Vishal Chaudhary Versus State of Haryana and another**, 2022 AIR (Supreme Court) 1060, to contend that the birth certificate issued by a Municipal Authority or Panchayat is a relevant document to prove juvenility of an accused in preference to the school leaving record. He has argued that reliance of the prosecution on the school certificate showing his date of birth as 03.09.1994 is thus liable to be disregarded on appraisal/consideration thereof against the birth certificate issued by the authorities in Sri Ganganagar, Rajasthan. He has thus vehemently argued that the application of the petitioner for declaring him juvenile has been dismissed wrongly and in disregard to the law laid down by the Court and the said order thus deserves to be set aside.

I have heard learned counsel for the petitioner and have gone

through the impugned order as well as the documents appended along with the instant petition.

It is evident from a perusal of the said order that the reliance of the petitioner is on the documents i.e. certificate(Ex.D1) issued by Registrar, Deaths & Births, Sri Ganganagar, Rajasthan; application for obtaining the said certificate as Ex.D2; the application form for registering the date of birth of the applicant-accused as Ex.D3 and the affidavit of Smt. Manju Devi i.e. mother of the petitioner furnished to Tehsildar/Executive Magistrate, Sri Ganganagar, Rajasthan as Ex. D4. In addition thereto, reliance was also placed on the deposition of Radhe Shyam/father of the petitioner.

Perusal of the deposition of Radhey Shyam, while appearing as a witness in support of the application clearly establishes that the said witness claims to be running a barber shop in Sri Ganganagar, Rajasthan and claims to have worked there from 1992 to 2003. He submits that even though his son was born in March 1998, but he does not know his date of birth. It is also acknowledged by him that an application for declaring the petitioner as a juvenile had been filed earlier in the Court in the year 2015 and that he was not aware whether the same was dismissed or withdrawn. It is claimed by him that he has three daughters and thereafter his son Rahul was born. The petitioner-Ravi @ Rabbu was born after Rahul. He has acknowledged that his daughters had studied upto 3rd/4th grade and that petitioner-Ravi @ Rabbu also studied in class 3rd at LRK Middle School, Mahendergarh but thereafter also denied that the petitioner-Ravi @ Rabbu ever studied in Mahendergarh. It is found undisputed that father of the petitioner had gone to Sri Ganganagar in the year 1992 and that his family and children were residing at Mahendergarh and that he used to visit

Mahendergarh once in 2-3 months. The relevant extract of the deposition of Radhey Shyam is reproduced as under:-

“I went to Ganga Nagar in year 1992. I cannot tell the house number. Ward number of the house where I stayed during that year. My shop was situated in the Housing Board. My children were residing at Mahendergarh and I used to visit to them in once of 2-3 months. My parents were residing besides my children for their look after at Mahendergarh. I do not know that when present case was registered against my son. I did not inform with regard to date of birth my son Ravi @ Rabbu either in the Office of Death of Birth at Mahendergarh or in the Police Station or to the Chowkidar or in the Municipal Committee. I did not get registered the date of birth of my other children. I returned from Ganga Nagar to Mahendergarh in year 2003 and thereafter I did not go back there. I did not visit at Ganga Nagar for any cause except once I visited to Dharurera for the sake of marriage of my brother-in-law namely Babu Lal. It is incorrect to suggest that date of birth of my son Ravi @ Rabbu is 03.09.1994 and he had studied at LRK Middle School, Mahendergarh in the Class 3 and in order to save him from legal punishment and I am deliberately denying/concealing his date of birth.”

It is also evident from the birth certificate appended along with the petition as Annexure P-4 that the application for registration of the birth certificate was submitted on 04.05.2015 i.e. merely five months after the commission of offence and registration of the FIR. Further, even the information for registration of date of birth at Sri Ganganagar was submitted in the month of May 2015 along with an affidavit of Manju Devi, mother of the petitioner.

The case of the petitioner does not seem probable and fails to inspire confidence. It is noticed that it is the case of the father of the

petitioner himself that he was staying at Sri Ganganagar during the period from 1992 to 2003 and used to visit Mahendergarh once in 2-3 months. He has also admitted that the children were residing at Mahendergarh and they did not stay at Sri Ganganagar. Further, no explanation has been tendered as to why father of the petitioner preferred to remain silent to get the date of birth registered for a period of nearly 17 years since birth of the petitioner, as per claim of father of the petitioner himself. The application in question was itself submitted in the year 2015. Further, the witness namely Mukesh Chalana, UDC in Municipal Council, Sri Ganga Nagar, Rajasthan has appeared as PW2 and submitted that the original record had not been brought by him and the entry in question had been made only on the basis of an affidavit(Ex.D4) purportedly furnished by the mother of the petitioner. It is also submitted that neither the affidavit(Ex.D4) nor the application(Ex.D2) were prepared in his presence and that the affidavit(Ex.D4) does not bear any identification report. It is also noticed that the space meant for informant in the application form was also vacant. It also stands established that the date of birth of the petitioner/applicant was registered on 04.05.2015 and birth certificate was issued on 05.05.2015. It is thus evident that as per own case of the petitioner entry as regards registration of the date of birth was incorporated after a lapse of 17 years and even the affidavit(Ex.D4) (which is foundation of the certificate) lacks identification. The witness who appeared on behalf of the Municipal Council, Sri Ganga Nagar, Rajasthan was also not the person who made an entry in the register and further accepted that the affidavit(Ex.D4) is only the material on the basis whereof the entry has been made. Even the said affidavit is suspicious because of lack of identification by any competent person. Besides, Manju Devi who

was author of the said affidavit has also not stepped into the witness box to support the same. The original register was not produced to verify the condition of the same or to ascertain the genuineness of the entry.

Even though there would be no dispute with respect to the proposition of law laid down by the Hon'ble Apex Court and relied upon by learned counsel appearing on behalf of the petitioner that a birth certificate issued by the Corporation or Municipal Authority has to be given eminence. However, it would be inherent in such an order that such certificate should not be shrouded by suspicious circumstances and is duly proved. However, facts of the instant case render issuance of the certificate by the authorities suspicious and unreliable in the light of circumstances noticed above. The delay in registration and issuance of birth certificate and that too after the petitioner was already nominated as an accused in the FIR leaves enough room for doubting the credibility of the witness and the documents submitted by them. The supporting evidence and the witnesses who were required to prove due issuance of the documents pertaining to the registration certificate have not been examined. The original record of the register of Births has also not been produced before the Court. Hence, the entry in the record of Municipal Council cannot be accepted as genuine, valid, legal and a primary and proved document.

Per contra, the entry in the school certificate which reflects the date of birth of the petitioner as 03.09.1994 is a more contemporaneous evidence and is corroborated by the circumstances including the admission of the father of the petitioner himself that the children used to stay at Mahendergarh.

In addition thereto, it is also evident from perusal of the

evidence of father of the petitioner that even earlier an application seeking declaration of the petitioner as juvenile was also filed, but the same was either dismissed or was withdrawn. There is also no reference by the petitioner to the said order and no valid reason has been given as to why the petitioner did not prefer to raise a challenge to the said order. The challenge to the impugned order has also been raised after a delay of more than 2½ years.

All the facts have been duly taken into consideration by the Additional Sessions Judge, Narnaul. There is no undisputed, reliable and uncontroverted evidence that would prove and establish the date of birth of the petitioner as 03.09.1998. In the absence of any such convincing and undisputed evidence and the evidence led by the petitioner being suspicious, unreliable and having not been proved by cogent, convincing and reliable evidence, I find no illegality or infirmity in the impugned order dated 26.10.2018 passed by Additional Sessions Judge, Narnaul.

The instant revision petition is accordingly dismissed, being devoid of merit.

April 21, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No