

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

130

CRR-814-2020 (O&M)

Date of Decision: 29.09.2022

Ravi & another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Rahul Vats, Advocate, for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioners assail order dated 11.12.2019 (Annexure P-1), vide which separate applications filed on behalf of the petitioners praying therein that they be declared as 'juvenile' have been dismissed.
2. Two separate applications had been moved on behalf of both the petitioners, who stand involved in FIR No.800 dated 10.08.2018 registered at Police Station Chandni Bagh, Panipat, under Sections 302/34 IPC and Section 25/54/59 of the Arms Act, before the Court of Additional Sessions Judge, Panipat praying therein that they be declared as juvenile as per the birth certificates issued by the competent authority i.e. ADO, Panchayati Raj Vibhag, Badayun, Uttar Pradesh. While petitioner – Ravi claimed his date of birth to be 01.01.2003, petitioner – Neeraj claimed his date of birth to be 17.07.2005. The trial Court considered the applications, but did not rely upon the said birth certificates while observing that the said certificates had been prepared

pursuant to a recent registration and that while in the birth certificate Ex.P1 pertaining to petitioner – Ravi, the date for registration is mentioned as 05.02.2019, in the birth certificate Ex.P2 pertaining to petitioner – Neeraj, the date for registration is mentioned as 01.04.2019. In other words, the births of both the petitioners have been registered after the occurrence had taken place, which took place in the year 2018. The aforesaid fact would certainly make these documents suspect. Consequently, the trial Court while discarding the birth certificates had directed that the ages of the accused/petitioners be determined by a Medical Board.

3. Pursuant to the said direction, both the petitioners were medically examined so as to assess their ages. The reports in respect of both the petitioners i.e. Ravi and Neeraj are annexed as Annexures P-4 & P-5 respectively and as per which the ages of both the petitioners have been opined to be ‘between 20 and 21 years’.
4. The trial Court upon perusing the said reports of ossification test held that both the petitioners are major and consequently, dismissed the applications filed on their behalf, wherein they sought to be declared as juvenile.
5. Learned counsel for the petitioners has submitted that the trial Court fell in error in discarding the birth certificates relied upon by the petitioners and that the proper procedure to be followed for determination of age is provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The relevant Rule 12 reads as follows:

“12. Procedure to be followed in determination of age:

- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee

referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

- (2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
- (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.”

6. Learned counsel has submitted that since the date of birth certificates ranks much higher than the report regarding age on the basis of medical

examination, the ages of the petitioners as assessed by the trial Court cannot be said to be correct ages and that the date of birth certificates ought to have been duly considered.

7. Opposing the petition, learned State counsel has submitted that since the petitioners apparently had submitted forged and maneuvered certificates depicting incorrect ages, the trial Court has rightly discarded the same and in these circumstances, the only option available with the trial Court to depend upon the ossification test report.
8. This Court has considered rival submissions.
9. Certainly, the date of birth certificates, as produced by the petitioners, are not free from suspicion inasmuch as they got their date of birth registered with the authorities concerned only after registration of the present FIR. It is not safe to rely upon birth certificates produced by the petitioners, as the births have been registered with authorities only after lodging of FIR.
10. Still further, as per the birth certificates, both the petitioners were born at their respective houses. Therefore, in terms of Section 8(1)(a) and 10(1)(i) of the Registration of Births and Deaths Act, 1969, birth had to be reported to the Registrar by the head of the household or by the nearest relative of the head present in the house or by the oldest adult male person present. In case birth is reported within 30 days, it shall be registered on payment of such late fee as may be prescribed. There are other conditions for registration of birth after 30 days as well. The relevant provisions of the Act read as under:

“8. Persons required to register births and deaths - (1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars

required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16-

- (a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e), the head of the house or, in case more than one household live in the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

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10. Duty of certain persons to notify births and deaths and to certify cause of death - (1) It shall be the duty of -

- (i) the midwife or any other medical or health attendant at a birth or death,
 - (ii) the keeper or the owner of a place set apart for the disposal of dead bodies or any person required by a local authority to be present at such place, or
 - (iii) any other person whom the State Government may specify in this behalf by his designation
- to notify every birth or death or both at which he or she attended or was present, or which occurred in such areas as may be prescribed, to the Registrar within such time and in such manner as may be prescribed.”

11. Therefore, in the absence of any other convincing document, the trial Court was perfectly justified in ascertaining the ages of both the petitioners on the basis of ossification test. Since in the ossification test, the ages have been opined to be ‘between 20 and 21 years’, therefore, even if a margin of error of 2 years is extended in favour of accused, the ages of both the petitioners would work out to be 18 years or more. Needless to say, the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility, which

is not reliable or dubious in nature, the accused cannot be treated to be juvenile. As such, this Court does not find any infirmity in the impugned order and the same is upheld.

12. The revision petition is sans merit and is hereby dismissed.

29.09.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**