

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRR-1255-2019

Date of Decision: October 28, 2022

Vikas

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Naveen Dahiya, Advocate,
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

Mr. Anil Kumar Sharma, Advocate,
for the complainant.

Vivek Puri, J.

The petitioner has assailed the order dated 02.05.2019 passed by the Court of learned Additional Sessions Judge, Sonipat, vide which the application for conducting the Ossification Test of the prosecutrix moved by the petitioner, has been dismissed.

The petitioner has been arraigned as an accused in the case bearing FIR No. 415, dated 22.07.2018, under Sections 328, 341, 363, 366-A, 376, 452 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, registered at Police Station Sadar Sonipat. During the course of trial, the petitioner had moved an

application for conducting ossification test of the prosecutrix on the allegations that the prosecutrix was aged more than 18 years at the time of the occurrence.

Learned counsel for the petitioner contends that the prosecutrix was in relationship with the petitioner and had written a number of letters, besides making calls and there are also photographs of the prosecutrix and the petitioner. The FIR has been lodged by the father of the prosecutrix only with an intention to safeguard his image in the society. At the time of medico-legal examination of the prosecutrix, Dr. Bhawna had advised X-ray dental opinion and age verification. Furthermore, the birth report and the birth certificate placed on record by the petitioner depict the date of birth of the prosecutrix to be 01.09.2000. The investigating agency never got the ossification test of the prosecutrix conducted as advised by the medical officer.

The application has been resisted by the learned State counsel and the learned counsel for the complainant. It has been argued that the ossification test cannot be termed to be best and sure test for age verification. Although, the medical officer had advised for such examination, but at that point of time, the relevant documents depicting the date of birth and age of the prosecutrix were not available to the medical officer. The prosecution has proved on record the copy of the Aadhaar

Card and the school record pertaining to the prosecutrix wherein the date of birth of the prosecutrix has been specified as 02.08.2001. Moreover, in the birth report and the birth certificate sought to be relied upon by the petitioner, the name of the prosecutrix has not been specified and even the name of the mother of the female child and the name of the mother of the prosecutrix are different. Consequently, it cannot be concluded that the birth report and the birth certificate sought to be relied upon by the petitioner pertain to the prosecutrix. There is sufficient and reliable evidence with regard to the date of birth and the age of the prosecutrix and no justified ground is made out to subject the prosecutrix to ossification test for determination of her born age.

It may be mentioned here that the collection of evidence is within the domain and province of the investigating agency. At the time of medico legal examination of the prosecutrix, no document depicting the date of birth of the prosecutrix was made available to the medical officer. Merely because the medical officer had advised for ossification test, it cannot be termed to be circumstance to mandatorily conduct such a test, in the event, there is sufficient and reliable evidence to indicate the date of birth and age of the prosecutrix. The documents pertaining to the birth as sought to be relied upon by the petitioner are yet to

be proved in the trial Court. It is for the trial Court to look into as to whether the same pertain to the prosecutrix or not. Even otherwise the date of birth of the female child has been mentioned as 01.09.2000 in such document and even on the basis thereof, the prosecutrix was aged less than 18 years at the time of occurrence.

It shall not be out of place to mention here that during the course of her deposition in the trial Court, the prosecutrix as specified her age to be 17 years. It is also emerging in her cross-examination that her actual date of birth was 02.08.2001. Even the father of the prosecutrix has deposed with regard to the date of birth of the prosecutrix to be 02.08.2001. The prosecution has also proved in the trial Court the copy of the aadhaar card and the school record of the prosecutrix wherein her date of birth has been mentioned as 02.08.2001.

It is pertinent to note that even the learned trial Court in the impugned order has observed that in the event, the ossification test of the prosecutrix during the course of investigation by the investigating officer was not got conducted, this fact would also be considered at the time of determination of the age of the prosecutrix at the relevant stage. However, as per the version of the prosecution, there is sufficient and reliable material to establish the date of birth and age of the prosecutrix and there is no need for

ossification test of the prosecutrix. The effect of not getting the ossification test conducted, if any, in the absence of any reliable evidence to conclude the age and date of birth of the prosecutrix is an aspect which is to be looked into by the trial Court at the appropriate stage of the trial. It may not be appropriate to subject the prosecutrix to ossification test in each and every case particularly when there is sufficient and reliable evidence to depict the date of birth and age of the prosecutrix.

Keeping in view the entire circumstances appearing in the record, no justified ground is made out to interference the well reasoned order passed by the learned trial Court vide which the application for ossification test has been dismissed.

In view of the aforesaid reasons, finding no merit in the petition, same is dismissed.

October 28, 2022

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(Vivek Puri)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes