

253 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-795-2021

Date of Decision: 20th April, 2022

Vikas

Petitioner

Versus

State of Haryana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Kumar, Advocate for
Mr. Vikarm Singh, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

Mr. S.N. Saini, Advocate for respondent No.2.

AVNEESH JHINGAN, J (Oral):

This criminal revision is filed aggrieved of impugned order dated 20.7.2021 whereby the Additional Sessions Judge, Panipat had declared Vishal s/o Ram Mehar as juvenile.

Brief facts of the case are that FIR was got registered at the instance of Vikas. It was alleged that on 26.10.2020, the complainant along with his cousin brother and brother saw that Jai Narayan alias Goli, Vishal and 3-4 other boys were beating Ankit-brother of the complainant. Vishal gave a knife blow and two other boys inflicted injuries with leg blows, fists and belts.

During the pendency of the proceedings an application was filed for declaring Vishal as juvenile. Reliance was placed upon birth certificate, Aadhaar Card and Ration Card to establish that Vishal was

below eighteen years on the date of incident.

Learned counsel for the petitioner submits that Aadhaar Card and Ration Card are not proof of date of birth. He argues that birth certificate was procured after filing of the challan. The contention is that birth certificate was issued after sixteen years. Reliance is placed upon Section 13 of The Registration of Births and Deaths Act, 1969 (for short 'the RBD Act') and Rule 9 of Haryana Registration of Births and Deaths Rules, 2002 (for short 'the Rules'). He further submits that while passing the impugned order, Section 94 of **Juvenile Justice (Care and Protection of Children) Act, 2015** (for short 'the Act') was not considered.

Learned counsel for the respondent No.2 submits that birth certificate mentions the same date of birth, as is on the Aadhar Card. To buttress the contention, submission is that in Ration Card, Vishal was shown 3 ½ years in the year 2008 which is in consonance with the date of birth mentioned in birth certificate. The argument is that date of birth certificate cannot be ignored merely on the ground that it was procured later.

Section 13 of the RBD Act, Rule 9 of the Rules and Section 94 of the Act are reproduced below :-

Section 13 of RBD Act :-

“13. Delayed registration of births and deaths.—(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence

shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action.”

The Rule 9 of the Rules:-

“9. Authority or delayed registration and fee payable therefor. (Section 13) – (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the Registrar after thirty days, but within one year of its occurrence, shall be registered only with the written permission of the District Registrar in this behalf and on payment of a late fee of rupees five and on production of an affidavit made before a First Class Magistrate, Notary Public or Oath Commissioner.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of first Class and on payment of a late fee of rupees ten, and on production of an affidavit made before a First Class Magistrate, Notary Public or Oath Commissioner:

Provided that for this purpose the application shall be made to the District Registrar through the Registrar of the area. The District Registrar shall forward the application unless it is rejected by him as

being frivolous, to the Magistrate concerned for enquiry and order.”

Section 94 of the Act :-

“94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, 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) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

As per Section 94 (1) of the Act, the Committee or the Board is empowered to determine the age of the child on the basis of his appearance and thereafter to proceed with the inquiry without waiting for further confirmation of age.

Sub-Section (2) thereof lays down the procedure to be followed in case there being a doubt regarding the age of the child and the evidence to be obtained. Clauses (i) to (ii) provide the evidence to be considered for determination of the age.

Clause (i) provides date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination Board, as evidence.

In absence of documents mentioned in Clause (i), as per Clause (ii) in that case birth certificate given by the Corporation, Municipal Authority or Panchayat.

Clause (iii) deals with situation where documents under Clauses (i) and (ii) are not available, then, age is to be determined by Ossification Test or any other latest medical test available for determination of the age.

From the reading of the Section 94 of the Act, it is clear that date of birth certificate from the school or matriculation or equivalent certificate would be given priority as age of proof and in their absence, the birth certificate given by the Corporation or Municipal Authority or Panchayat. Only in cases where the certificates mentioned in Clauses (i) and (ii) of Section 94(2) are not available the age shall be determined by Ossification Test or any other medical test.

In the case in hand no certificate mentioned in Section 94(2) (i) of the Act was produced.

The pin pointed issue is as to whether the birth certificate procured after presentation of challan and 16 years after the birth of Vishal can be relied upon as compliance of Section 94(2) (ii) of the Act.

Section 13(1) of the RBD Act provides that in case of information is provided to the Registrar after expiry of the specified period but within 30 days of the occurrence of the birth or death, the same shall be registered on payment of late fee.

Sub-section (2) deals with the situation where the information of birth or death is given after 30 days but within one year, in such a case, the information is to be registered on compliance of three conditions. Firstly, the written permission of the prescribed authority, secondly, payment of prescribed fee and lastly, production of affidavit made before the Notary Public or the authorized officer.

Sub-section (3) deals with the cases where birth or death is not informed within one year of its occurrence. In such cases, the information is to be registered only on the order made by the Magistrate, First Class verifying the correctness of birth or death and on payment of prescribed fee.

Rule 9 of the Rules provides the procedure for registration of birth or death under Section 13 of the Act.

It is not the case of the respondent No.2 that the birth certificate relied upon for declaring Vishal as juvenile was issued as per the procedure prescribed under the RBD Act and the Rules.

As per Section 13(3) of RBD Act, Magistrate had to pass an

order on an application after verifying the correctness of date of birth or death. No such order was passed for issuance of the birth certificate produced for declaring Vishal as juvenile.

In other words, the correctness of date of birth was not verified by the Magistrate. The legislative intent under Section 13 (3) of the RBD Act is clear, authorising the Judicial Magistrate to verify the correctness of the birth and death if not registered within one year of its occurrence. The rationale behind Section 13(3) being that with the delay of more than one year the dispute and discrepancies may occur in respect of date of birth.

In view of the above discussion, the birth certificate produced cannot be held to be compliance of Section 94 (2) (ii) of the Act, the conclusion being that the age will have to be determined as per Clause (iii) of Section 94 (2).

The impugned order is set aside, the matter is remanded back to the Court concerned to decide afresh in accordance with provision of the Act.

The revision is disposed of.

[AVNEESH JHINGAN]
JUDGE

20th April, 2022
anuradha

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No