

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

207

CRR-1880-2016 (O&M)

Date of decision: 25.08.2022

Anil and another

..... Petitioners

Versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present :- Mr.R.N. Lohan, Advocate
for the petitioners

Mrs. Rajni Gupta, Addl. AG Haryana-State

Mr.Anil Dutt, Advocate
for the complainant.

ALOK JAIN, J. :

The instant revision petition has been filed against the order dated 29.03.2016 whereby the learned Additional Session Judge, Sonipat has dismissed the application seeking declaration that the petitioners are juvenile. However, during the pendency of the instant revision petition, the learned trial Court had convicted the petitioners against which an appeal bearing no. CRA-D No. 532 of 2019 is also pending before this Court.

The brief facts of the case are that an FIR No. 132 dated 01.04.2015, under Sections 302, 323, 34 IPC was registered at Police Station Rai, District Sonipat against the petitioners namely Anil and Sunil and two others.

Learned counsel for the petitioners submits that the petitioners had filed an application on 14.07.2015 for declaring them as juveniles and for conducting their separate trial to which the respondent-complainant objected to, on the premises that the petitioners never represented themselves as juvenile before the investigating agency and they have not produced any documentary evidence before the investigating team. It was denied that police gave any assurance to the petitioners for declaring them juvenile. It has been pleaded that the petitioners were not born as twins on 18.11.1997 and this fact is clear from the school certificate. Date of birth of both the petitioners was different in the school certificate. In this regard, father of the petitioners was examined as AW-1 and statement of AW-2 Parvesh Kumar, teacher of Saraswati School, Village Asawarpur, District Sonipat was duly recorded and the same have been perused.

The learned Sessions Judge, dismissed the said application vide impugned order dated 29.03.2016, by construing the statement made by the father of the petitioners and holding that the date of birth of his daughter Preeti is 30.11.1991, and relied upon the statement of the father of the petitioners that there is a gap of two years between the birth of his daughter and sons and therefore if the date of birth of his daughter Sonia is taken as 30.11.1991, then the entire evidence including certificates produced by the petitioners become doubtful.

Learned counsel for the petitioners has vehemently argued that the petitioners are twins and were born on 18.11.1997 and has placed reliance upon the secondary examination certificate of petitioner No.1-Anil (Ex.A3). It was further submitted that the affidavit submitted by the father of the petitioners at the time of admission of both the children duly records the date

of birth as 18.11.1997, however the school authorities inadvertently mentioned the date of birth of petitioner No.2-Sunil as 06.06.1998.

Learned counsel for the petitioners has also placed reliance on the secondary examination certificate of Sonia daughter of Surrender which shows that her date of birth is 05.11.1995. Learned counsel for the petitioners has further clarified that the eldest sister of the petitioners namely Preeti was born on 30.11.1991 and the learned Sessions Judge has wrongly recorded the date of birth of Sonia to be that of Preeti. The above factual aspect could not be controverted by the learned counsel for the State

Learned counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court of India in ***2011(13) SCC 751 titled as "Shah Nawaz Vs. State of U.P. and another"*** wherein it has been held that the matriculation certificate has to be given preference over the medical certificate and has contended that in the instant case, school leaving certificates (Ex.P4 & Ex.P5) deserve to be considered, which clearly demonstrate that the date of birth of petitioner No.1-Anil is 18.11.1997 and although petitioner No.2-Sunil is the twin brother of Anil but presuming his date of birth as 06.06.1998 (as recorded in the Secondary Examination Certificate), will make no difference as on the date of occurrence i.e. 01.04.2015, the petitioners were less than 18 years and hence the definition of a child as per Section 2 (k) and (l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, is to be taken a person who has not completed eighteen years of age, comes into play.

Having heard learned counsel for the parties and after going through the documents of secondary school examination coupled with the

ratio of law laid down in **2009 (13) SCC 211 titled as “Hari Ram Vs. State of Rajasthan and another”**, which held as under: -

“38. The instant case is covered by the amended provisions of Sections 2(k), 2(l), 7A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case. Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the introduction of the Juvenile Justice Rules, 2007. Even otherwise, the matter was covered by the decision of this Court in the case of Rajinder Chandra's case (supra), wherein this Court, inter alia, held that when a claim of juvenility is raised and on the evidence available two views are possible, the Court should lean in favour of holding the offender to be a juvenile in borderline cases. In any event, the statutory provisions have been altered since then and we are now required to consider the question of the claim of the appellant that his date of birth was Kartik Sudi 1, Samvat Year 2039, though no basis has been provided for the fixation of the said date itself in the light of the amended provisions. Often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which may have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12, but such an exercise is not required to be undertaken in the present case since even according to the determination of the appellant's age by the High Court the appellant was below eighteen years of age when the offence was alleged to have been committed.

39. Having regard to the views expressed hereinabove, we are unable to sustain the impugned order of the High Court in holding that the provisions of the Juvenile Justice Act, 1986,

would not be applicable to the appellant's case since he was allegedly 13 days above the age prescribed.

40. In the instant case, the appellant was arrested on 30.11.1998 when the 1986 Act was in force and under Clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect. However, as indicated hereinbefore after the decision in Pratap Singh's case (supra), Section 2(l) was amended to define a juvenile in conflict with law to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence; Section 7A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000. Section 7A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

41. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the Proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including

trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

42. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age when the Juvenile Justice Act, 2000, came into force. In view of Sections 2(k), 2(l) and 7A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile.

43. The appeal has, therefore, to be allowed on the ground that notwithstanding the definition of "juvenile" under the Juvenile Justice Act, 1986, the appellant is covered by the definition of "juvenile" in Section 2(k) and the definition of "juvenile in conflict with law" in Section 2(l) of the Juvenile Justice Act, 2000, as amended."

The Hon'ble Supreme Court of India in **2019(15) SCC 519 titled as "Chaddu @ Shailesh Vs. State of Uttar Pradesh and another"**, which held as under:

"5. Under the provisions of Rule 12 of the Rules it is the matriculation certificate or school certificate or the birth certificate given by a corporation or a municipal authority or a panchayat, in that order, which has to be relied on for determination of the date of birth of a accused claiming to be a juvenile. As the School Certificate of the accused appellant, duly verified, shows his date of birth as 1st July, 1984, following the mandate of Rule 12 of the Rules we accept the same and hold that on the date of the occurrence i.e. 11th June, 2001 the appellant was a juvenile. As the appellant is in custody for a

period longer than the maximum period for which a juvenile can be detained under the provisions of section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, we while maintaining the conviction of the accused appellant under Section 302/34 IPC direct for his immediate release from the custody unless his custody is required in connection with any other case.”

In light of the factual matrix coupled with the ratio of law laid down by the Hon’ble Supreme Court of India, we are of the considered opinion that both the petitioners (Anil & Sunil) were juvenile on the date of incident and the learned Additional Session Judge, Sonipat fell in error in passing the order dated 29.03.2016 and hence the same deserves to be set aside. Consequently, the revision petition is allowed and the petitioners are declared as juvenile on the date of alleged occurrence i.e. 01.04.2015.

However, since the learned Trial Court had already convicted the petitioners and the appeal bearing no. CRA-D No. 532 of 2019 is pending before this Court, the petitioners are at liberty to seek their remedy as permissible and in accordance with law.

The instant criminal revision petition is allowed accordingly in the above terms.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

25.08.2022
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No