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

**CRR-3365-2014 (O&M)
DECIDED ON: 10th OCTOBER, 2022**

IMRAT PAL

PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

None for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

The instant revision petition has been filed against the order dated 29.08.2014 passed by learned Additional Sessions Judge, Kaithal whereby, an application filed by respondent No.2 for declaring him as Juvenile, is allowed.

Brief facts of the case are that on 25.04.2014 at about 10.30 P.M., respondent No.2 along-with Abhimanyu, Sonu and Kuldeep, trespassed the bara of the petitioner and gave beatings to his son namely Anurag. The petitioner tried to escape his son from their clutches, however, could not succeed and ultimately, all the accused persons killed his son by strangulation. Accordingly, an FIR No. 52, dated 26.04.2014, under Sections 147, 149, 452 and 302 IPC was registered at Police Station

Kalayat, District Kaithal. After completion of investigation, challan under Sections 452, 302 and 34 IPC stands presented against all the accused-persons including respondent No.2.

Before, learned trial Court, respondent No.2 denied himself to be Juvenile and his application in this regard has been allowed and said order declaring respondent No.2 as Juvenile is assailed in the present revision petition, by the complainant.

Learned counsel for the petitioner submits that the trial Court has failed to examine the Birth Certificate i.e. Ex.R-1, which is quite relevant for ascertaining the age of respondent No.2. As per Ex.R-1, the date of birth of respondent No.2 is recorded as 01.04.1995, meaning thereby, he was major at the time of commission of offence. It is asserted that the trial Court while declaring respondent No.2 as Juvenile, has erred in putting much reliance upon the Certificate of Secondary School Examination i.e. Ex.AW-1/A and the said certificate in fact, belongs to Bhupinder Singh whose date of birth is recorded as 15.08.1997.

It is further asserted that the trial Court has gravely erred in observing that Sita Ram-respondent No.2 and Bhupinder Singh are one and the same person. Assertion is that Sita Ram and Bhupinder Singh are different persons and Bhupinder Singh is another son of Shyam Singh and the said fact has been duly corroborated from the Ration Card Ex.R-2, wherein, Sita Ram and Bhupinder Singh have been shown as two different persons and sons of Shyam Singh.

Counsel for the petitioner further contends that the trial Court has failed to appreciate that the petitioner has specifically named respondent No.2 in FIR, who caused injuries to the son of the petitioner

and played an active role in the commission of crime.

Learned State counsel submits that during the course of investigation, a separate inquiry was also conducted by the investigating agency, wherein, it was found that respondent No.2-Sita Ram and Bhupinder Singh is one and the same person. He further submits that as per the birth certificate of respondent No.2, his date of birth is 01.04.1995, meaning thereby, he was major, at the time of commission of offence.

Heard learned counsel for the parties and the record has been perused with their assistance.

In the case in hand, though the investigating agency has identified Sita Ram @ Bhupinder Singh as one and the same person and if Sita Ram @ Bhupinder Singh is one and the same person, in that eventuality, as per Secondary Examination Certificate issued by the Board of School Education Haryana, the date of birth of the respondent No.2 Sita Ram @ Bhupinder Singh is 15.08.1997 and on the alleged date of occurrence, i.e., on 25.04.2014, he was less than 18 years old.

As far as the contention of learned counsel for the petitioner with regard to the fact that Sita Ram and Bhupinder Singh are two different persons, is concerned, the matter was duly investigated by the investigating agency and it was found that both names are of one and the same person.

In the present case, the competent authority issued the Birth Certificate under Section 17 of the Births and Deaths Registration Act, 1969. The date of birth as recorded in the said certificate is 07.04.1995, whereas, Rule 12 (3) of the Juvenile Justice (Care and Protection of Children), Rules, 2007 reads as under:-

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;*

Therefore, Rule 12 clearly suggests that when there are three documents regarding date of birth, i.e., Matriculation Certificate, School Certificate and birth certificate, the first preference should be given to the matriculation certificate and in its absence the second preference would go to the school certificate and lastly to the birth certificate.

In this matter, two dates of birth of respondent No.2 have come on record, first one dated 01.04.1995 is supported by the entries made at the time of birth of respondent No.2 in the register of Births and Deaths of Village Batta, District Kaithal, which were duly proved on record and second on 15.08.1997 recorded in the Secondary School Examination. Reliance has been placed upon the observations of the Apex Court rendered in the case of **Hari Ram Vs. State of Rajasthan and another; 2009(13) SCC 211.**

Clause (i) of Sub-Section 2 of Section 94 Juvenile Justice Act, 2015 is relevant in this case, which reads as under:-

“(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;”*

Although it is difficult to state as to what document would be sufficient to raise a presumption of juvenility/age but the documents referred to in Rule 12 shall definitely be sufficient for the prima facie satisfaction of the Court about the age necessitating a further enquiry as contemplated under Rule 7. The credibility of documents like school leaving certificate or board certificate would depend on the facts and circumstances of each case. Even documents like school leaving certificate, Mark sheet, medical report etc. could be treated to be sufficient for directing an enquiry and verification of the age if such documents inspire the confidence of the court. Whenever a plea of juvenility is raised the court should always be guided by the objective of the Juvenile Justice Act and be alive to the position that the beneficent provisions must not be defeated by a hyper-technical approach which would disentitle persons to get the benefit of the legislation.

In view of the above, this Court is of the considered opinion that if two views are possible, the court should lean in favour of taking a beneficial approach. In the case in hand though there are two dates of birth but the date of birth i.e. 15.08.1997 mentioned in the Secondary Examination Certificate coupled with the statement of father of respondent No.2 is given priority over the date of birth i.e. 15.08.1997 mentioned in Ex.R-1, meaning thereby, respondent No.2 was juvenile on the date of alleged commission of occurrence i.e. 25.04.2014.

petition fails being devoid of any merits and accordingly the impugned order dated 29.08.2014 passed by learned Additional Sessions Judge, Kaithal is upheld.

Dismissed.

**SANDEEP MOUDGIL
JUDGE**

10th OCTOBER, 2022.

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