

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

CRR-4-2021 (O&M)

Reserved on: May 31, 2022

Date of Decision: June 02, 2022

Suman

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Sanpreet Sandhu, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

Ms.Ishita Jain, Advocate
for respondent No.2.

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RAJESH BHARDWAJ, J.

The petitioner, i.e. the prosecutrix (hereinafter to be called as the 'victim') of this case has approached this Court impugning the order dated 25.09.2020 passed by ACJM Jagadhri vide which respondent No.2/accused has been declared juvenile on the basis of allegedly fake documents. She has further impugned the order dated 20.11.2020 passed by learned Additional Sessions Judge, Yamuna Nagar, vide which the appeal filed by the victim was declined being not maintainable.

It has been contended by learned counsel for the victim that both the Courts below have fallen in error in drawing the conclusion as the same is against the law and the facts on record and, thus, both orders deserve to be set aside.

Adumbrated facts of the case are that the victim lodged the FIR alleging therein that they had a shop in Amar Vihar Colony, Jagadhri. A boy named Amit Kumar used to come to their shop for purchasing the necessary items. In the absence of her father, he used to ask her to perform marriage with him but she used to refuse the same. Thereafter on 30.12.2019 at 6.00 p.m. when her father was not at the shop, he came to her and took her with him by alluring her with a promise to marry. In the night, he took her in the hotel room in Saharanpur and committed bad act with her against her will in the hotel room. On her resistance, he threatened to kill her. In the morning, she informed her father about the incident happened to her. Her parents came to Saharanpur to take her alongwith them.

The FIR was lodged to take the legal action against the culprit Amit Kumar. Investigation commenced and respondent No.2/accused was arrested on 31.12.2019 and sent to judicial custody. He filed an application praying for declaring him juvenile. Learned ACJM Jagadhari, after hearing the parties and considering the facts on record, accepted the application filed by respondent No.2 and declared him as juvenile vide impugned order dated 25.09.2020. Aggrieved by the said order, the victim filed an appeal under Section 101 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (for brevity, 'the JJ Act') in the Court of Additional Sessions Judge, Yamunanagar, who after hearing the victim and the respondents, dismissed the same vide its impugned order dated 20.11.2020. Aggrieved by both these orders, the victim is before this Court by way of this revision petition.

Learned counsel for the victim has vehemently contended that the Courts below have not appreciated the facts on record judiciously and hence fallen in error in declaring respondent No.2/accused as juvenile. He

submits that the occurrence in question took place in the intervening night of 30/31.12.2019 and respondent No.2/accused was arrested on 31.12.2019. Thereafter father of accused, namely, Kareshan Lal filed an affidavit in the Court of learned ACJM, Jagadhari specifically attaching the school leaving certificate of the accused as Annexure-A and birth certificate as Annexure-B. He pleaded that date of birth of his son, i.e. respondent No.2/ accused is 16.04.2005. He has submitted that the school leaving certificate produced by father of the accused in the Court of learned ACJM was procured subsequent to the occurrence and on the basis of the same, the date of birth of the accused was manipulated as 16.04.2005. He submits that learned ACJM without noticing the mischief played by respondent No.2/accused, accepted the forged and fabricated documents procured by him and thus, fallen in error in declaring him as juvenile. He submits that learned ACJM, Jagadhari, has failed to appreciate that respondent No.2/accused filed a petition for grant of regular bail before this Court vide CRM-M-22263-2020, however the same was dismissed as withdrawn vide order dated 14.08.2020. Learned counsel for the victim contends that the relevant provisions of the JJ Act, i.e. Section 94, reads as under:-

“Section 94: Presumption and determination of age:(1) Where it is obvious to the Committee or the Board, based on the appearance of the person brought 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.”

It is submitted that as per the procedure and the law settled where it appears to the competent authority that the person, as per Section 94 of the JJ Act, 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 of JJ Act, as the case may be, without waiting for further confirmation. Counsel for the victim contends that as respondent No.2/accused was above 18 years at the time of commission of offence, the production of the school leaving certificate, which was obtained after the

commission of the offence, is not free from doubts. However, issue has not been decided by the Juvenile Justice Board which consists of a Principal Judicial Magistrate and two other members and the same has been decided by Additional Chief Judicial Magistrate, Jagadhari, which is totally in violation of the spirit of JJ Act. He further submits that the learned appellate Court has declined the appeal filed by the victim primarily on the ground of maintainability. It has been observed that appeal under Section 101 of JJ Act is maintainable against the order of the Committee or the Board, however, the impugned order was passed neither by the Committee nor by the Board and thus, the appeal was held to be not maintainable under Section 101 of the JJ Act. In support of his contention, learned counsel for the victim has also relied upon Amjad (Juvenile) through his father and natural guardian Niyaj Mohd. Vs State of Haryana and another 2019(1) RCR (Criminal) 172, Amritpal Singh @ Nikku vs State of Punjab 2020(4) RCR (Criminal) 854, Ashwani Kumar Saxena vs State of M.P. 2012(4) RCR (Criminal) 391, Sri Ganesh vs state of Tamil Nadu and anr 2017(1)R.C.R.(Criminal) 556, and Raju vs State of Haryana 2019(2) R.C.R.(Criminal) 189.

However, counsel for respondent No.2-accused has opposed the submissions made by counsel for the victim. She has vehemently contended that the submissions made by learned counsel for the victim are without any merit. She has contended that though the school leaving certificate has been issued by the authority after the occurrence in question, however, the Investigating Agencies have duly enquired into the same and found no illegality in the same. She has submitted that in the facts and circumstances,

there is no violation of Section 94 of the JJ Act. She has submitted that as **per Section 94 of the JJ Act**, ossification test is to be carried out only in the absence certificate from school or birth certificate issued by corporation or municipal authority or panchayat. However, the school leaving certificate of delinquent child was available hence there was no need to carry out ossification test of the child. She has submitted that the impugned orders suffer from no illegality and respondent No.2/accused has rightly been held as juvenile.

On the other hand, learned State counsel while relying upon the status report has submitted that the enquiry was carried out on the certificate produced and as per the status report in school leaving certificate, the date of birth of the delinquent child was found to be 16.04.2005 whereas as per the Block Development Office, Nakur, District Saharanpur, in the family register of the family of Kareshan Pal, his date of birth is 04.02.2002.

Heard.

Apparently, the occurrence in question had taken place in the intervening night of 30/31.12.2019. Respondent No.2/accused was arrested on 31.12.2019. Thereafter, an application was filed before the learned ACJM for declaring respondent No.2/accused as juvenile. In support of the same, father of the petitioner produced an affidavit and the school leaving certificate. The school leaving certificate produced before the Court was obtained during pendency of the case and after the occurrence has taken place. Though it has been discussed by learned ACJM, Jagadhari, regarding the enquiry conducted by the Investigating Agency on the certificate produced in support of the juvenility containing date of birth of respondent

No.2/accused as 16.04.2005, but issuance of the same after the occurrence has taken place is an admitted fact. It has been mentioned in the status report filed by State by way of an affidavit of Parmod Kumar, DSP, Yamuna Nagar, dated 16.03.2022, that in the enquiry conducted by ASI Jasmer Singh, it was found that in the school leaving certificate, dated 28.01.2020, of Amit Kumar s/o Kareshan Pal, the date of birth of respondent No.2/accused was 16.04.2005, however, as per the record maintained with the office of Block Development Office, Nakur, District Saharanpur, in the family register of the family of Kareshan Pal, his date of birth was earlier mentioned as 04.02.2002, which was later on changed as 16.04.2005 on the application, dated 27.01.2020 filed by Kareshan Pal, father of respondent No.2/accused Amit Kumar. It is most relevant to note that the issue of juvenility, as per the mandate of the JJ Act, is to be decided by the Juvenile Justice Board. Respondent No.2/accused, as contended, was not a juvenile on the basis of date of birth mentioned in aadhar card. The date of birth of respondent No.2/accused is 09.01.1996 as per aadhar card. However, as per the school leaving certificate produced subsequent to the occurrence, the same was said to be 16.04.2005. As the issue of juvenility has been decided by learned ACJM and not by the Juvenile Justice Board, the same is in violation of the mandate of JJ Act. The jurisdiction of the appellate Court under Section 101 of the JJ Act is to hear the appeal against the order passed by the Committee or Board and hence the appeal was held to be not maintainable.

In view of the arguments raised by the counsel for the parties and the statutory provisions of the JJ Act, and the law relied upon, this Court

finds that in the peculiar facts and circumstances of the case, the issue of

juvenility has been decided by the ACJM and not by the JJ Board. Resultantly, the impugned order passed by learned ACJM, Jagadhari, is not sustainable in the eyes of law. The appeal filed by the victim could not be entertained on merits by the appellate Court the same being held to be not maintainable in view of the statutory provisions of Section 101 of the JJ Act. By virtue of passing of both these orders, the very purpose and motive of enacting the statutory provisions in the JJ Act has been defeated being in violation of the mandate of the law. The same has resulted in causing prejudice to the victim as the issue of juvenility has not been decided as per the mandate of the Act.

Resultantly, both the impugned orders are set aside. Respondent No.2/accused be produced before the Juvenile Justice Board/Committee on 06.07.2022.

The parties are directed to appear before the Juvenile Justice Board, for deciding the issue of juvenility of respondent No.2/accused in accordance with law.

Nothing observed herein would be deemed to have been expressed any opinion on the merits of the case.

Registry is directed to convey the order to the concerned Court.

June 02, 2022
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(RAJESH BHARDWAJ)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No