

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR-3113-2019 (O&M)

Date of Decision: April 18, 2022

Rahul

.... *Petitioner*

Versus

State of Haryana

.... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Aditya Sanghi and
Ms. Shaweta Sanghi, Advocates,
for the complainant.

Vivek Puri, J.

Rahul-petitioner has assailed the order dated 05.08.2019 passed by the Court of learned Additional Sessions Judge, Hisar and the order dated 01.06.2019 passed by the Juvenile Justice Board, Hisar vide which his age has been worked out to be above 16 years and 6 months.

The petitioner has been arraigned as an accused in the case bearing FIR No. 256, dated 02.11.2018, under Sections 147, 148, 149, 302,

307 and 323 of the Indian Penal Code (for short 'IPC') and Section 25 of the Arms Act, registered at Police Station Uklana. At the first instance, on the basis of his Aadhar Card and School Certificate, wherein the date of birth was mentioned as 27.12.2003, the petitioner was presented as a juvenile by the police authorities. During the course of proceedings, the complainant had moved an application for declaring the petitioner as an adult alleging that his age was more than 16 years at the time of occurrence. In the reply, the petitioner has asserted that his date of birth has been mentioned as 27.12.2003 in the school records and Aadhar Card.

The parties led evidence and in terms of the order dated 01.06.2019, the Juvenile Justice Board held the date of birth of the petitioner to be 22.04.2002. As the petitioner was above the age of 16 years and 6 months, at the time of occurrence, the preliminary assessment as per the provisions of Section 15 of the Juvenile Justice (Care and Protection of Children) Act (for short 'the Act') was conducted. Thereafter, as per the order dated 06.06.2019, it was observed that the

petitioner was possessing sufficient mental and physical capacity to commit the offence. He was capable of understanding the circumstances and consequences of the offence and was also well aware about the surrounding circumstances and life in general. Consequently, the Juvenile Justice Board was of the opinion that there is a need of trial of Rahul as an adult as per the provisions of Section 18(3) of the Act.

The petitioner had preferred an appeal against the order dated 01.06.2019 and the same has been dismissed in terms of the impugned order dated 05.08.2019 passed by the Court of the learned Additional Sessions Judge, Hisar. The petitioner has impugned the orders dated 01.06.2019 and 05.08.2019 by way of present revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has argued that Ex.RW4/C, RW3/B and RW3/C are the entries in the school record of BSK Jat High School, Nav Jyoti Middle School and Tagore Public School, respectively, pertaining to the petitioner for different classes. There is

consistent entry in the school record depicting the date of birth of the petitioner to be 27.12.2003. Furthermore, his date of birth as recorded in the birth certificate (Annexure P/4) is 27.12.2002, though the same was not produced and proved in the inquiry proceedings before the Juvenile Justice Board. Even otherwise, the age of the petitioner taking his date of birth to be 27.12.2003 as reflected in the school record comes to 14 years, 10 months and 05 days at the time of occurrence. The date of birth of the petitioner as per the birth certificate (Annexure P/4) has been mentioned as 27.12.2002 and his age as on the day of occurrence i.e. 01.11.2018 comes to 15 years, 10 months and 05 days. On the basis of the school record and the birth certificate, the age of the petitioner was less than 16 years at the time of occurrence and as such, he cannot be tried as an adult. Moreover, the entries in the school record have to be given precedence over the birth certificates.

On the contrary, it has been argued on behalf of the complainant that in the birth certificate (Ex.PW2/A), the date of birth of the petitioner has been mentioned as 22.04.2002 and

as such, his age on the day of occurrence comes to 16 years, 07 months and 08 days. Moreover, the father and mother of the petitioner while appearing in the witness box have given the date of birth of the petitioner to be 27.12.2003, which is even contrary to the birth certificates. The entries in the school record are not reliable. Nothing is made out as to on what basis such an entry has been recorded which is contrary to the birth certificates.

Section 94 of the Act provides as following:-

"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 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."

In view of the aforesaid provisions, the birth certificate from the school or the matriculation or equivalent certificate from the

concerned examination Board, if available, have been taken to be in a single category and carry equal weightage. The school certificate and the matriculation certificate are at par and are to be given precedence over the birth certificates. However, in the event, the entry with regard to the date of birth as reflected in the school record on the face of it appears to be incorrect, it may not be appropriate to base reliance thereupon. Although a detailed and roving inquiry may not be required to look into the genuineness and authenticity of the school record, but it cannot be a circumstance to accept the school record to be correct, if the error and mistake is apparent on record. Merely because, the school record has been given precedence, the same cannot be relied upon, in the event, it is apparent on the face of it that the date of birth as reflected therein is incorrect and does not depict the correct age.

In the school record, the date of birth of the petitioner has been reflected as 27.12.2003. However, the petitioner himself has relied upon the birth certificate (Annexure P/4) wherein his date of birth has been recorded as

27.12.2002. Learned counsel for the petitioner has sought to raise an argument that there is a clerical error with regard to the year as mentioned in the birth certificate cannot be accepted as no effort was made to get the same corrected. The date of birth as mentioned in the school record apparently appears to be incorrect and discrepant with the both certificates. In such circumstances, the same cannot be relied upon to work out the age of the petitioner. The school certificates do not appear to be authentic and reliable and as such, are liable to be ignored.

Now, the age of the petitioner has to be worked out on the basis of the birth certificates. In the instant case, two birth certificates of the petitioner are coming on record. One birth certificate (Ex.PW2/A) has been proved in the course of inquiry which depicts the date of birth of the petitioner as 22.04.2002. Even a corresponding entry has been reflected in the birth register (Ex.PW2/C), wherein also his date of birth has been mentioned as 22.04.2002. Even the birth was got registered soon after the birth on 04.06.2002. It implies that the birth of

the petitioner had taken place prior to 04.06.2002 and on that score the entry in the birth record has been reflected. The petitioner has sought to place reliance upon the birth certificate (Annexure P/4) wherein his date of birth has been mentioned as 27.12.2002. It may be mentioned here that in the birth certificate relied upon by the complainant, the father's name of the petitioner has been mentioned as Subhash, whereas in the birth certificate (Annexure P/4), the father's name has been mentioned as Om Parkash. However, while appearing in the witness box, the father of the petitioner has given his name as Om Parkash @ Subhash. The birth certificate (Annexure P/4) was not submitted and proved during the course of inquiry proceedings. No reason has been assigned as to what prevented the petitioner from submitting the same in the inquiry proceedings. Even in the reply submitted by the petitioner before the Juvenile Justice Board, there is no mention of any such birth certificate. The date of registration on the said birth certificate has been mentioned as 06.07.2007 i.e. it was registered after a lapse of period of about 4-1/2 years from the alleged

date of birth, whereas, the birth certificate relied upon by the complainant has been duly registered shortly after the birth of the petitioner. Accordingly, the same has to be given precedence and the birth certificate (Annexure P/4) as sought to be now relied upon by the petitioner is liable to be discarded. Consequently, the date of birth of the petitioner has been correctly held to be 22.04.2002 by the Courts below and the said findings do not call for any interference by this Court.

For the aforesaid reasons, the instant petition being devoid of merits is dismissed.

April 18, 2022

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(Vivek Puri)
Judge

Whether speaking/reasoned :	Yes
Whether reportable :	Yes