

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-3120-2019 (O&M)

Date of Decision: 24.08.2022

Kawal Kishore

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sarbjit Singh, Advocate for the petitioner

Mr. Shubham Kaushik, AAG Punjab

Ms. GK Mann, Sr.Advocate with

Mr. Gursewak Singh, Advocate for respondent No.2

Sandeep Moudgil, J. (Oral)

This criminal revision petition is directed against the judgment dated 09.09.2019 passed by the Additional Sessions Judge, Amritsar (for short, the Appellate Court) as well as the order dated 05.12.2017 passed by the Principal Magistrate, Juvenile Justice Board, Amritsar (for short, the Board) whereby the petitioner's claim to be juvenile has been dismissed.

Briefly stated, the facts of the case are that respondent no.2 Mandeep Sharma was an accused, along with other accused, in FIR No.69 dated 01.06.2011 under Sections 302/323/325/34 IPC registered at Police Station Cantonment, Amritsar and during the pendency of bail application, he claimed to be juvenile but his claim was disallowed by the Juvenile Justice Board, Amritsar vide order dated 12.11.2013. The said order was assailed in appeal and the appellate court dismissed the appeal vide order dated 16.05.2015. The respondent No.2 Mandeep Sharma approached this Court and this Court vide order dated 14.09.2017 set aside both the above orders

and remanded the matter back to the Juvenile Justice Board with a direction to the Board to conduct an inquiry into the claim of juvenility of the respondent after allowing the applicant to produce on record his matriculation certificate. The Board vide order 05.12.2017 has returned a finding that the respondent Mandeep has duly proved the matriculation certificate on record and the same is to be given precedence over the date of birth issued by MC Amritsar. Accordingly, the accused Mandeep Sharma was declared as juvenile being less than 18 years of age at the time of commission of offence. The said order was challenged in appeal by the petitioner Kawal Kishore, who is the brother of the complainant in the abovesaid FIR. However, the appeal has been dismissed vide order dated 09.09.2019 upholding the order of the Board. The aggrieved petitioner has approached this Court by way of present criminal revision petition.

The first contention of the petitioner is that the then Principal Magistrate, Juvenile Justice Board, Amritsar had dismissed the application of respondent Mandeep Sharma for declaring him juvenile vide order dated 12.11.2013 which order was also upheld in appeal vide order dated 14.09.2017 but the Principal Magistrate Juvenile Justice Board, Amritsar has ignored the said findings and has taken a wrong view of the matter while declaring the respondent as juvenile was rightly rejected by the learned appellate court by holding that since the matter was remanded back for fresh consideration in view the provisions of Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, it was on account of such directions of this Court that the matter was taken up for hearing afresh and after appreciating the material on file, the Principal Magistrate, Juvenile Justice

Board, Amritsar, while giving preference to the 10th standard school certificate of the respondent over the certificate issued by the Municipal Corporation Amritsar that he has been declared juvenile.

Secondly, the contention of the petitioner that the Principal Magistrate, Juvenile Justice Board, Amritsar has otherwise not appreciated the evidence and material on file which has resulted into the passing of impugned order under appeal also did not find favour with the appellate court. The appellate court held as follows:-

“...it reveals that the order of preference of documents to be considered is very much given in rule 12 Juvenile Justice (Care and Protection of Children) Rules, 2007 itself. In such order of preference, the first document to be taken into consideration is the matriculation or equivalent certificate and in absence of such certificates, the date of birth certificate from the school (other than a play school) first attended and in absence of even this certificate, the date of birth certificate given by the Corporation, Municipal Authority or Panchayat is to be taken into consideration. In this case, it is a proved fact that in order to prove the date of birth of respondent, his matriculation certificate is proved through the statement of AW1 Satwinder Singh Senior Assistant Examination Branch-II, Punjab School Education Board Mohali as Exhibit C2. Such document Exhibit C2 stands first in the order of preference of documents in view of rule 12 as such, the Principal Magistrate, Juvenile Justice Board has rightly taken into consideration the matriculation certificate Exhibit C2 while giving it preference over the date of birth entry of the respondent as entered in the Municipal Corporation records proved by RW1. To controvert such matriculation certificate of the respondent, the appellant has placed reliance on the date of birth entry of the respondent as recorded in the

Municipal Corporation register. Kiran Jolly RW1 has proved on record the said birth entry as Exhibit RW1/A wherein the date of birth of respondent Mandeep Sharma is mentioned as 04.11.1992 whereas, in the matriculation certificate Exhibit C2, the date of birth of respondent Mandeep Sharma is mentioned as 08.12.1993. It is the grudge of the appellant that the respondent has not been able to prove the source of such entry of his date of birth in the matriculation certificate Exhibit C2 but, such grudge of the appellant is not well founded in view of the fact that the date of birth of Sandeep Sharma i.e. the elder brother of the respondent is also proved to be recorded in his matriculation certificate Exhibit C4 as 12.09.1992. There is no material on file to controvert such birth entry of the elder brother of the respondent. In this view of the matter even if the date of birth of respondent as 04.11.1992 recorded in the Municipal Corporation records Exhibit RW1/A relied upon by the appellant is considered for the sake of arguments, it is not possible to conclude that respondent Mandeep Sharma was born only after two months of the birth of his elder brother Sandeep Sharma. Moreover, keeping in view the order of preference of documents to be considered for proving the date of birth, such entry of municipal records can only be considered in the absence of a matriculation or equivalent certificate which is not so in this case. It further reveals that even the date of birth proved by the appellant as Exhibit RW1/A was put to challenge by the respondent on account of its being a forged entry and after said allegations were prima facie proved to be genuine, an FIR No.01 of 2013 under section 420, 465, 467, 468, 471 IPC of Police Station Kotwali, Amritsar was also registered against the appellant in that regard.”

In this view of the matter, I do not find any error either on law or on facts in the order passed by the courts below while concluding that the

date of birth of respondent No.2 is proved to be 08.12.1993 and on the day of alleged occurrence i.e. on 23.05.2011 he was a juvenile.

The revision petition is accordingly dismissed.

24.08.2022
V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No