

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-3315-2019(O&M)

Judgement reserved on: 27.09.2022

Date of Decision: 17.10.2022

Mukeem

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed assailing order dated 6.9.2019, whereby the application filed by the petitioner praying for declaring him a juvenile, has been dismissed by the learned Trial Court.

The brief facts of the case are that petitioner is being prosecuted in case FIR No.102 dated 9.4.2019 registered under sections 452 IPC and section 6 of POCSO Act at Police Station, Pinangwan, District Mewat, on the allegations of committing an offence under section 452 IPC and section 6 of POCSO Act against a minor. After completion of investigation the trial commenced, however, the petitioner filed an application dated 21.5.2019 praying for declaring him a juvenile. It was contended by the petitioner that as per record, his date of birth is 12.11.2003 and hence on the date of occurrence his age was 15 years 4 months and 28 days and hence being less than 18 years of age he should be tried in accordance with the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015(for short the JJ Act). Learned court below heard both the sides and finally dismissed the application vide impugned

order dated 6.9.2019. Aggrieved by the same petitioner is before this court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the date of birth of the petitioner is 12.11.2003. He had studied up to 4th class in Govt. Primary School, Marora, District Nuh in the year 2014-15. He has submitted that the Headmaster of the school had given a certificate, wherein as per school record date of birth of the petitioner has been affirmed to be 12.11.2003 and thus he was not even 16 years of age at the time of occurrence. Counsel submits that prosecution had produced the Aadhar Card of the petitioner, wherein his date of birth was wrongly recorded to be 12.8.1998. He submits that the learned court below has ignored the authenticated evidence regarding the date of birth of the petitioner but relied upon the date of birth mentioned in the Aadhar Card which was not even admissible and thus illegally dismissed the application filed by the petitioner. He submits that for ascertaining the date of birth of the juvenile the relevant provision which was to be taken into consideration is section 94 of the Act. It is submitted that the court is to ascertain the age of the child in confront with law (c-in-c) on the basis of the birth certificate from the school or birth certificate given by the Corporation or Municipal Authority. In the absence of these two options the age shall be determined by an Ossification Test. He submits that once the petitioner had submitted the certificate issued by the school authorities which was recorded on the basis of birth certificate issued by the Registrar, Deaths and Births, Bharatpur (Rajasthan), there was no occasion with the court to decline the same and accept the date of birth mentioned in the Aadhar Card produced

by the prosecution. He submits that the enquiry is also conducted by the investigating agency which is evident from the status report filed by the State and they found the birth certificate produced by the petitioner as genuine. Counsel has relied upon the judicial precedent of this court in case of *Tamanna Vs. State of Haryana and others, 2015(6) R.C.R (Criminal) 699* and submits that the birth certificate issued by the Registrar, Deaths and Births would prevail upon the matriculation certificate issued by the school. He submits that in view of the facts and circumstances of the case and the law settled, the impugned order deserves to be set aside and the petitioner be directed to be treated as a juvenile.

On the other hand learned State counsel has filed status report by way of affidavit of Usha, HPS, A.S.P., Nuh and has opposed the submissions made by counsel for petitioner. He has submitted that the petitioner is being prosecuted for a heinous offence against a minor. He submits that the occurrence in question had taken place on 8.4.2019. At the time of occurrence there was nothing to suggest that the petitioner is a juvenile, however, during the trial the petitioner clandestinely filed an application before the Trial Court claiming himself to be a juvenile on the basis of a certificate produced from the Registrar, Deaths and Births, Bharatpur (Rajasthan). He submits that the investigating agency made an inquiry regarding the same and found that on the commencement of the investigation the Aadhar Card of the petitioner was recovered, wherein his date of birth was mentioned as 12.8.1998. Obviously, as per the same, the petitioner was major on the date of occurrence and hence his trial commenced considering him to be major. The petitioner examined

the sole witness i.e. AW-1 Mohar Khan, who is father of the petitioner. State counsel submits that as per birth certificate submitted by the petitioner his date of birth was shown to be 25.12.2003, whereas in the Aadhar Card the same is 12.8.1998. The father of the petitioner failed to give any satisfactory reply to this huge difference of 5 years between both the documents and hence the view taken by the learned Trial Court in rejecting the claim of the petitioner suffers from no illegality. However, State counsel has candidly acknowledged that as per the submissions made in the status report, ASI Indraj conducted an inquiry regarding the birth certificate relied upon by the petitioner and he found the relevant entry in the birth and death register to be correct.

I have heard learned counsel for the parties at length and have gone through the record carefully.

Admittedly, the occurrence in question took place on 8.4.2019. The prosecution has relied upon the date of birth of the petitioner mentioned in Aadhar Card as 12.8.1998, whereas the petitioner has relied upon the date of birth mentioned in the birth certificate produced by him to be 25.12.2003. The petitioner examined the sole witness i.e. AW-1 Mohar Khan, who is his father and deposed that he has 9 children and the petitioner was born on 25.12.2003 and studied up to 3rd class. In his cross-examination he deposed that he did not remember the exact date of birth of any of his children except Mukeem i.e. the petitioner. He identified the photograph of his son on the Aadhar Card, wherein his date of birth has been recorded as 12.8.1998. He further deposed that the incorrect date of birth recorded in Aadhar Card was got corrected by him 10-12 days ago.

For the determination of the juvenile the relevant provision of the Act is Section 94, which reads as follows:-

“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.”

Adverting back to the case in hand, it is apparent that the

petitioner is a resident of Village Marora, District Nuh. Father of the

petitioner appeared as the sole witness and deposed that he has 9 children and out of which he specifically remembered the details of date of birth of the petitioner but not regarding the rest of his children. The date of birth certificate has also been issued by the Registrar, Deaths and Births, Bharatpur (Rajasthan).

The Hon'ble Supreme Court in plethora of judgments has settled the issue that issue of juvenility can be raised by the juvenile at any stage of the judicial proceedings meaning thereby that even if the appeal is pending after conviction before the High Court or Supreme Court the plea can be raised by the juvenile to show that at the time of the occurrence he was less than 18 years of age. The Juvenile Justice (Care and Protection of Children) Act is a beneficial legislation and hence the question of juvenility can be raised at any time even after the conviction of the juvenile. It is evident from the law settled by the Hon'ble Supreme Court that object and reasons of the Act should not be allowed to be defeated, however, the juvenile has to prove his case by leading cogent evidence that on the date of occurrence he was less than 18 years of age and thus being a juvenile should be given the benefit of the Act. An inquiry regarding the same has to be conducted meticulously before declaring the accused as a juvenile. Any laxity on the part of the investigating agency would result in defeating the objective of the Act if the accused, who is otherwise, major succeeds in getting himself declared a juvenile by manipulating the record. Hence the procedure laid down by the Act should be followed strictly. The petitioner in the present case has filed the application for declaring him a juvenile

after the commencement of the trial. The birth certificate produced by the petitioner has been issued by the Govt. of Rajasthan, whereas he is a resident of District Nuh, Haryana. The father of the petitioner could not tell the details regarding the date of birth of the rest of his 8 children. He also deposed that the corrections have been made in the Aadhar Card of the petitioner regarding his date of birth about 10-12 days ago. As per the status report, ASI Indraaj had inquired regarding the date of birth certificate relied upon by the petitioner and found the entries made to be correct. Such an inquiry made appears to be too superficial. There is nothing on record to show that the inquiry has been made regarding ascertaining the date of birth of all the other 8 siblings of the petitioner on the basis of which the Inquiry Officer could pinpoint that the entry relied upon by the petitioner belongs to him. The fact regarding the certificate having been produced from the State of Rajasthan by the petitioner, who is otherwise a resident of Haryana has also not been inquired into.

There is no gainsaying that from the reading of provisions of section 94 of the Act, it is the Committee or the Board which is to proceed with the inquiry under section 14 or section 36 for ascertaining the age of the accused, who is brought before it and appears to be juvenile. In the present case the petitioner never appeared to have raised a plea regarding his juvenility at the initial stage and thus filed an application before the Trial Court. The impugned order has been passed by the Trial Court and not by the Committee or Board as per the mandate of statutory provisions of Section 94 of the Act. The Legislature had specifically made the provision that in case any party is aggrieved by the order passed by the Committee or

the Board under section 94 the same is appealable for the redressal of their grievances under section 101 of the Act. However, the statutory provisions enacted by the Legislature have not been followed in the case in hand.

Thus, after hearing learned counsel for the parties, perusing the record and the statutory provisions of the Act, this court is of the opinion that by not adverting to the procedure established by the Act the procedure adopted in ascertaining the age of the juvenile has been vitiated. As per statutory provision of the Act, the accused should have been referred to the Juvenile Justice Board for carrying out the procedure as per statutory provision of Section 94 of the Act which has not been complied with in this case. A thorough inquiry thereafter was required to be carried out for ascertaining the genuineness of the documents relied upon by both the sides and then draw a conclusion regarding the age of the accused.

Resultantly, this court is of the considered view that the impugned order is against the mandate of the law and hence is set aside. The State is directed to produce the petitioner along with the relevant record from the Trial Court before the concerned Juvenile Justice Board for initiating a fresh inquiry in accordance with provisions of Section 94 of the J.J. Act regarding the claim of the petitioner to declare him a juvenile. The concerned Juvenile Justice Board would conclude the procedure expeditiously in accordance with law without being influenced by the conclusions drawn by the Trial Court earlier. The petition is disposed of by

remanding the petitioner before the concerned Juvenile Justice Board for a decision afresh.

Disposed of.

(RAJESH BHARDWAJ)
JUDGE

17.10.2022

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