

In the High Court of Punjab and Haryana at Chandigarh

2023:PHHC:041317

116

CRR- 756 of 2023

Date of Decision: 21.03.2023

Irshad

---Petitioner

versus

State of Haryana and another

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

The petitioner, through the instant petition, is seeking setting aside of order dated 14.03.2023 whereby Additional Sessions Judge, Nuh, has dismissed application under Section 311 Cr.P.C. of the petitioner seeking summoning of Dr. Nitin Arora as defence witness.

Learned counsel for the petitioner inter alia contends that prosecutrix in the FIR had presented herself as minor whereas she had solemnized marriage and sought protection from Rajasthan High Court wherein on the basis of ossification test, she had pleaded that she is major. The stand of the prosecutrix is self-contradictory. The petitioner has been charged alleging commission of offence

punishable under Section 4 of POCSO Act whereas in view of ossification test, prosecutrix was not minor at the time of commission of alleged offence.

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

The trial court while passing the impugned order has considered mandate of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 (in short “Juvenile Justice Act”). Section 94 of Juvenile Justice Act specifically provides that matriculation certificate or date of birth certificate shall be considered as evidence of age.

A two judge bench of the Hon'ble Supreme Court in **Rishipal Singh Solanki vs. State of Uttar Pradesh and others (2022) 8SCC 602** has dealt with question of determination of age of a juvenile at length. The Hon'ble Supreme Court has categorically held that ossification test is a secondary piece of evidence. In view of Section 94 of Juvenile Justice Act, if matriculation certificate or birth certificate is available, there is no need to rely upon ossification test unless and until certificate itself is doubtful. The birth certificate or matriculation certificate can be relied upon if provisions of Section 35 of Indian Evidence Act are complied with.

In the case in hand, the prosecution has produced certificate issued by Government School, Sakras, District Nuh and examination of Headmaster of the said school as PW1.

The petitioner has every right to challenge said certificate. The petitioner, in his defence, is free to raise all pleas

regarding genuineness of certificate as well as rely upon petition before Rajasthan High Court. This Court is sanguine of the fact that trial court before passing final order would consider all these arguments of the petitioner qua age of the prosecutrix.

Disposed of.

(JAGMOHAN BANSAL)
JUDGE

21.03.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes/No