

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

CRR No.2552 of 2011 (O&M)

Date of Decision: February 15, 2023

Abid

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.K. Bawa, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Rajesh Lamba, Advocate for respondent No.2.

DEEPAK GUPTA, J.(Oral)

FIR No.435 dated 01.12.2010 was registered at Police Station Punhana against the petitioner under Sections 392 and 394 IPC on the complaint of one Smt. Rashmina. Petitioner claimed himself to be juvenile on the date of alleged commission of offence. His plea was accepted by learned Sub Divisional Judicial Magistrate, Punhana, who vide order dated 15.03.2011 declared him to be juvenile. However, in the Criminal Appeal N: 97 of 2011 filed by the complainant, learned Additional Sessions Judge, Nuh vide his impugned order dated 10.09.2011 set aside the order dated 15.03.2011 of Sub Divisional Judicial Magistrate, Punhana; and held that petitioner was not a juvenile.

2. It is against the above order dated 10.09.2011 that this revision petition has been filed.

3. It is contended by learned counsel for the petitioner that during his evidence, petitioner relied upon School Leaving Certificate Ex.AW1/A, which was duly proved by the Headmaster of the Government Primary School, Akbarpur, in which date of birth of the petitioner was shown to be 10.08.1995 but the said certificate has been discarded on flimsy grounds.

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The learned Court even wrongly discarded the certificate Ex.AW2 regarding non-availability of any birth certificate of the petitioner during 1991 to 1993. To the contrary, learned Court wrongly placed reliance upon a voter list Ex.RW2/A and on the statements of RW1 and RW2 to the effect that petitioner had cast vote in the Panchayat Elections. Reliance has also been placed upon birth certificate of the brother of the petitioner Ex.R2, in which date of birth of brother Sabir Mohd is shown to be 23.01.1996, which certificate is not reliable at all, as its date of registration is mentioned as 01.01.1996 and it is clearly mentioned in the certificate itself that there are cuttings and overwriting thereon. It is contended further that the learned Additional Sessions Judge failed to follow Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act'), which provides the guidelines to determine the juvenility of a person. Legal position is also ignored to the effect that if age of the accused is proved by way of school admission register, then such certificate is admissible. Besides, voter list has no admissibility in law and so it has been wrongly relied.

With these submissions, prayer is made for setting aside the impugned order dated 10.09.2011 passed by learned Additional Sessions Judge, Nuh and to restore the order dated 15.03.2011 of learned Sub Divisional Judicial Magistrate, Punhana.

4. The respondent- State defended the impugned order.
5. Having considered submissions of both the sides and having perused the record, including the trial Court record, copy of which was called for, this Court finds merit in the petition, for the following reasons.
6. Since the alleged offence was committed on 1.12.2010, so it

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is Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules made thereunder, which shall be applicable to the case. Rule 12 of the Juvenile Justice (care and Protection of Children) Rules, 2007 (for short, 'the Rules') provides about the procedure to be followed for determining the age. The relevant part of said rule reads as under:-

“12 Procedure to be followed in determination of Age. -

(1) & (2) xxxxxxxxxxxx (not relevant)

(3) *In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -*

(a) *(i) the matriculation or equivalent certificates, if available; and in the absence whereof;*

(ii) *the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

(iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*

(b) *and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.*

And, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the

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medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) to (6) xxxxxxxxxxxx (not relevant)”

7. Perusal of the sub-rule (3) of Rule 12 would make it evident that juvenility of a person accused of an offence is to be determined firstly on the basis of matriculation or equivalent certificate, if available. If such certificate is not available, then the date of birth certificate from the school, other than a play school is to be considered. If none of these are available, then the birth certificate given by a Corporation or a Municipal authority or a Panchayat is to be taken into consideration. In absence of any of these proofs, the opinion from a duly constituted Medical Board regarding the age of delinquent can be sought and in this regard, a benefit of margin of one year can be given.

8. In the present case, admittedly, petitioner not being a matriculate, his matriculation or equivalent certificate was not available. Petitioner relied upon School Leaving Certificate Ex.AW1/A and in order to prove the same, he examined Shri Ahmad Khan, Headmaster of the Government Primary School, Akbarpur as AW1, who proved to have issued the certificate Ex.AW1/A. Perusal of this certificate reveals that it is issued on 09.12.2010, i.e. nine days after the date of registration of the FIR. However, as per the certificate, petitioner had taken admission in the School on 17.09.2003 and studied there up to 08.03.2007. As per this certificate, date of the petitioner is mentioned to be 10.08.1995. Names

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of both parents of the petitioner are mentioned in the certificate, which has been issued by a Government Primary School and not by a private school.

9. Learned Additional Sessions Judge has discarded the above certificate for the reason that no proof with regard to date of birth is attached in the school record nor any affidavit of any family member was obtained regarding the date of birth; that no verification was got done from any Sarpanch or Chowkidar about the date of birth; that there was no proof as to who had got petitioner admitted in the school; that though the admission register bear the thumb impression of the person who got the petitioner admitted but it was not clear as to who had affixed those thumb impressions and that the admission form did not have the seal of the school. I am afraid that the entire approach of the learned Additional Sessions Judge in discarding certificate Ex.AW1/A was wrong.

10. As observed above, certificate has been issued by a public servant in discharge of his official duty. It has not been disputed that parents of petitioner are illiterate. In case, they obtained certificate from the School after registration of the FIR, it does not mean that this certificate is procured or that admission record in the school has been manipulated. The school record as proved by the statement of AW1 revealed admission of the petitioner in the school on 17.09.2003 and his leaving the school on 08.03.2007 i.e. much prior to the date of commission of the offence. In the school record, date of birth is clearly mentioned to be 10.08.1995. Simply because it was not clear as to who got petitioner admitted in the school or who put the thumb impression in the admission register or that no affidavit was obtained for date of birth,

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could not be the reason to discard the certificate. A pragmatic view was required to be taken because in the rural area, when illiterate people get their wards admitted in the school, they would not bother to see as to whether any stamp of the school had been put on the admission form or not or the name of the person who affixed the thumb impression.

11. As per Section 35 of the Indian Evidence Act, the entry in the Birth Register as recorded by the public authority is admissible in evidence and even the examination of the person making such entries is not necessary as has been held by Hon'ble Supreme Court in ***Harpal Singh Vs. State, AIR 1981 SC 361.***

12. Apart from above, petitioner relied upon certificate Ex.AW2 issued by District Registrar, Birth and Death revealing that no birth record pertaining to the petitioner for the period 1991 to 1993 was available. This certificate Ex.AW2 regarding non-availability of any birth entry of petitioner during 1991 to 1993 was adduced to show that he was not born during these years because only if he was born in this period or prior thereto, he could have been proved to be major. This certificate is discarded on the ground that petitioner did not get the record searched for the year 1995, as it had been claimed that his date of birth was 10.08.1995. This certificate has again been wrongly discarded because in case entry regarding date of birth of the petitioner in 1995 or prior thereto, was available, nothing had stopped the prosecution to produce any such record in rebuttal.

13. Learned Additional Sessions Judge relied upon a certificate Ex.R2, which was produced by the prosecution. This certificate pertains to Sabir Mohd, the brother of the petitioner, in which his date of birth is

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mentioned to be 23.01.1996. It is observed that the petitioner claimed his date of birth to be 10.08.1995 and therefore, his sibling could not have been born on 23.01.1996. There can be no dispute to the fact that two siblings cannot be born within such a small gap but certificate Ex.R2 has been relied upon by the Court below by assuming its entries to be gospel truth ignoring the fact that date of registration mentioned on this birth certificate is 01.01.1996. The Court simply brushed aside this factor as a clerical mistake, ignoring that in case brother of the petitioner was born on 23.01.1996, it was not possible to pre-register the date on 01.01.1996. Not only this, a note is clearly given below the entries of the certificate Ex.R2 that there is overwriting in the date of birth, which was even torn. This circumstance was another factor to have ignored Ex.R2.

14. Learned Additional Sessions Judge also relied upon the voter list Ex.RW2/A, which mentions the petitioner as a voter and relied upon the statement of RW1 Kapoora, an elderly man of the village, who stated that the petitioner had cast vote in the election. Suffice to comment here that the voter list is not a document, which can be relied to determine the juvenility as per relevant Rule, as has been reproduced earlier.

15. On perusal of the impugned order, it appears that entire effort or approach of the learned Additional Sessions Judge was to establish that the petitioner was not a juvenile. That approach might have been taken having regard to the nature of the offence, which in fact is relevant in order to determine the juvenility of a person.

16. On account of the aforesaid discussion, it is held that School Leaving Certificate Ex.AW1/A was the most relevant document to be

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considered as per Rule 12(3)(a)(ii). The said certificate is duly admissible in evidence as per Section 35 of the Evidence Act and has been wrongly discarded by the Court below. The said certificate proves the date of birth of the petitioner to be 10.08.1995 and thus, on the date of commission of the offence, petitioner was a juvenile, being less than 18 years of age.

17. Consequently, the impugned order dated 10.09.2011 passed by learned Additional Sessions Judge, Nuh is hereby set aside; whereas the order dated 15.03.2011 passed by learned Sub Divisional Judicial Magistrate, Punhana, whereby petitioner was declared as juvenile, is hereby restored.

Disposed of.

February 15, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No