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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-2875-2015 (O&M)

Date of Decision: 05.12.2023

Ranjit Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vicky Sharma, Advocate, for
Mr. K.S. Dhaliwal, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Rakesh Nehra, Sr. Advocate with
Mr. Ankit Yadav, Advocate for respondent No.2.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 401 of Code of Criminal Procedure, 1973 (for short, '*Cr.P.C.*') for setting aside impugned order dated 19.03.2014 passed by Principal Magistrate, Juvenile Justice Board, Jind (for short "the JJB"), whereby respondent No.2 was declared as juvenile in FIR No.53 dated 08.02.2014, registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, '*the IPC*'), at Police Station, Safidon; further challenge is to the judgment dated 08.06.2015 passed by learned Addl. Sessions Judge, Jind, whereby an appeal preferred by the petitioner was dismissed.

2 Learned counsel for the petitioner submits that impugned orders have been passed in gross violation of Section 7-A of the Juvenile Justice (Care

and Protection of Children) Act, 2000 (for short 'Act') read with Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007 (for short 'Rules of 2007'); hence not legally sustainable.

2.1 Further submits that JJB while passing the impugned order has solely relied upon the photocopy of matriculation certificate of respondent No.2; but no verification report regarding its authenticity was obtained from the quarter concerned.

2.2 Also submitted that in view of the documents produced by petitioner, both the Courts below ought to have ordered ossification test of respondent No.2 to determine his actual age on the date of alleged occurrence.

3 Learned State Counsel on instructions submits that as on today, almost entire prosecution evidence is over. He also submits that background check as well as date of birth of respondent No.2 was duly verified by ASI Harpal Singh on the basis of his matriculation certificate; thus, there is proper compliance of Rule 12 (*ibid*). Further submitted that alleged occurrence had taken place on 07.02.2014 and two co-accused, namely, Mandeep & Pradeep have already been convicted and sentenced by learned trial Court vide judgment & order dated 24.09.2015 & 25.09.2015, respectively; however, the proceedings against respondent No.2 are unnecessarily being delayed on account of interim granted on 10.08.2015.

4 Learned Senior counsel for respondent No. 2 while opposing the petition submits that the JJB as well as learned Appellate Court have passed the impugned orders after due application of mind; hence no interference is required under Section 401 Cr.P.C.

5 Heard both sides and perused paper-book.

6 Before proceeding further, it would be relevant to recapitulate the relevant part of order dated 19.03.2014 passed by the JJB and which reads as under:

“Reply filed by ASI Harpal Singh through learned APP stating that the birth certificate as filed by on 11.3.2014 has been found to be genuine. Learned APP present in the Court has not sought any further opportunity in view of the birth certificate produced on record by applicant. A perusal shows that the incident is alleged to have happened on 7.2.2014. A perusal of the birth certificate as placed on record by the applicant and as verified by ASI Harpal Singh would show the date of birth to be 15.9.1998, as per which, applicant Sagar comes to be less than 16 years of age on the date of alleged occurrence. There being a document available in terms of Sub Rule 3 (a) (i) of Rule 12 of Juvenile Justice (Care and Protection of Children), Rules, 2007 inquiry stands concluded. Applicant Sagar is declared as juvenile.”

A perusal of aforesaid order indicates that birth certificate of respondent No.2 was found to be genuine and according to which his date of birth is recorded as 15.09.1998. Since occurrence is alleged to have taken place on 07.02.2014; thus, the JJB found that respondent No.2 was of less than 16 years on the date of alleged occurrence.

7. The aforesaid order was challenged by the petitioner in an appeal before learned Additional Sessions Judge, but the same was dismissed vide impugned order dated 08.06.2015, while agreeing with the view taken by the JJB, in the following manner:-

“11. According to the procedure established in sub rule 3 of rule 12, it is the matriculation or equivalent certificate which has to be given a priority for determining the age of a person and in the absence thereof second priority has been given to the date of birth certificate from the school first attended and if the same is also not available only then priority has to be given to birth certificate issued by a corporation or a municipal authority or a panchayat and if all three documents mentioned above are not available then the medical opinion will be sought from duly constituted medical board which will declare the age of a juvenile or child. From the impugned order it has revealed that learned Illaka Magistrate while examining the claim of the

juvenility has given preference to secondary school examination certificate coupled with school leaving certificate filed by ASI Harpal Singh on 11.3.2014 which was found to be genuine and it has been specifically mentioned in the order itself that learned APP present in the court did not seek any further opportunity against the birth certificate produced on the record file by the applicant. No doubt, by way of filing the instant appeal as well as application dated 23.9.2014 the appellant has contended that in the voter list, Adhar card and PAN card the date of birth of the juvenile has been mentioned as 19 years, 15.9.1994 and 15.9.1991 respectively but all the three documents are contrary to each other as these documents have no similarity in respect of date of birth. Moreover, these documents do not find mention in the list enumerated in sub rule 3 of rule 12, therefore, if these documents are allowed to be produced even then these are not helpful to the appellant for disproving the juvenility. So far as assertion of the appellant that birth certificate was not proved by any school official is concerned the same is also devoid of any merit because the trial/inquiry of this case has already been commenced and out of total 17 witnesses, 13 witnesses have already been examined and PW12 has been examined for proving the school certificates of juvenile.

12. Keeping in view of my above discussion, this court has reached on a conclusion, fortified with the ratio of law held by Hon'ble Supreme Court of India in case law authorities titled as Ashwani Kumar Sexna vs. State of M. P. 2012(4) RCR (Criminal) 391 and Jarnail Singh vs. State of Haryana, 2013(3) RCR (Criminal) 644 that learned counsel for the appellant has not been successful to point out as to what type of irregularity or illegality has been committed by learned Illaka Magistrate for deciding the claim of juvenility. Hence, finding no merit, instant application under Section 391 Cr.P.C. as well as appeal are hereby dismissed. Impugned order dated 19.3.2014 passed by learned Illaka Magistrate is upheld and affirmed. Parties are directed to appear before learned trial court on the date already fixed. Lower court record alongwith copy of this judgment be sent back and the appeal file be consigned to the record room after due compliance.”

8 Also noteworthy that as per Rule 12 (*supra*), the matriculation certificate is having a precedence over other proof(s) of age to determine the point in issue and for reference, the relevant part of the same is extracted as under:-

“12. Procedure to be followed in determination of Age.— (1) *In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee re-*

ferred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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 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.”

From perusal of sub-rule (3) (*ibid*), it is clearly discernible that for determination of the age of child/juvenile in conflict with law, the first and foremost document to be relied upon by the Court would be matriculation or equivalent certificate. It is also discernible from the aforesaid sub-rule that in

the absence of matriculation certificate, the date of birth certificate from the school (first attended) and in absence whereof; the birth certificate given by a corporation or a Municipal authority or Panchayat is to be relied upon and only in the absence of aforesaid three documents, medical opinion can be sought from a Medical board for this purpose.

9 The Hon'ble Supreme Court in **Vinod Katara versus State of Uttar Pradesh, 2022 SCC OnLine SC 1204**, while dealing with Rule 12 in para No.45 & 46 held as under:-

*“45. What is discernible from the dictum laid in **Ashwani Kumar Saxena** (supra) is that, in deciding whether an accused is juvenile or not, a hyper technical approach should not be adopted. While appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases. The inquiry contemplated is not a roving inquiry. The Court can accept as evidence something more than an affidavit i.e. documents, certificates etc. as evidence in proof of age. A mere opinion by a person to the accused looking one or two years older than the age claimed by him (as the opinion of the head master in the present case) or the fact that the accused told his age to be more than what he alleges in the case while being arrested by the police officer would not hold much water. It is the documentary evidence placed on record that plays a major role in determining the age of a juvenile in conflict of law. And, it is only in the cases where the documents or certificates placed on record by the accused in support of his claim juvenility are found to be fabricated or manipulated, that the Court, the Juvenile Justice Board or the Committee need to go for medical test for age determination.*

46. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language “in the absence whereof”. This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended, can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained.”

Ultimately, in para 58 of the judgment, the Hon'ble Supreme Court while discussing about the point of ossification test, observed as under:

*“58. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual characteristics such as the growth rate of bones and skeletal structures can effect the accuracy of this method. This Court has observed in **Ram Suresh Singh v. Prabhat Singh**, (2009) 6 SCC 681: (2010) 2 SCC (Cri) 1194, and **Jyoti Prakash Rai v. State of Bihar**, (2008) 15 SCC 223: (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test irrespective of whether the ossification test of multiple joints is conducted. The courts in India have accepted the fact that after the age of thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt.”*

10 As discussed above, under Rule 12 (*supra*), matriculation certificate has been given a precedence for determination of the age of a child and/or juvenile in conflict with law and in the absence thereof, reliance can be placed on the other certificate(s).

11 In the present case, matriculation certificate of respondent No.2, showing his date of birth as 15.09.1998 is very much available on record and authenticity of the same was duly verified by ASI Harpal Singh. The petitioner is not able to show any material from record to the effect that matriculation certificate of respondent No.2 is fake or fabricated. In such a scenario, this Court is in fully agreement with the conclusion recorded by the JJB as well as learned ASJ to the effect that on the date of occurrence i.e. 07.02.2014, respondent No.2 was less than 16 years of age.

12 In view of the above, there is no justification to interfere with the impugned order and judgment dated 19.03.2014 & 08.06.2015, respectively.

13 Hence, there is no option, except to dispose off the petition.

14 Ordered accordingly.

15 Needless to say that above observations may not be construed as an expression of opinion on the merits of controversy, in any manner.

16 Pending application(s), if any, shall also stand disposed off.

05.12.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

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