

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-19071-2024(O&M)

Date of order: 19.04.2024

Mani Kumar

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Lather, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for quashing of impugned judgment dated 21.03.2024 (Annexure P-8) passed by Ld. Additional Sessions Judge, Ludhiana, thereby dismissing the revision petition dated 22.12.2023 (Annexure P-7) filed against impugned order dated 17.11.2023 (Annexure P-6) passed by Ld. Principal Magistrate Juvenile Justice Board, Ludhiana by which application dated 28.09.2023 (Annexure P-5) for declaring the petitioner as Juvenile, has been dismissed, in case FIR No.123 dated 05.06.2023 (Annexure P- 1) registered U/s 376 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Haibowal, District Ludhiana.

2. Learned counsel for the petitioner inter alia submits that the petitioner and his parents belong to Bihar. In connection with the

present FIR, the petitioner was arrested on 05.06.2023. The petitioner was aged 15 years 10 months at the time of his arrest. At the relevant time, parents of the petitioner did not have age proof of the petitioner. However, subsequently, parents of the petitioner found his School Leaving Certificate dated 31.03.2018 (Annexure P3) issued by the Headmaster of Government High School, Bahdarpur, Darbanga, Bihar, wherein it is mentioned that date of birth of the petitioner is 07.08.2007; and the birth certificate dated 16.09.2023 (Annexure P4) of the petitioner was also received from Municipal Corporation, Darbanga, which also proved that date of birth of the petitioner is 07.08.2007. It is contended that accordingly, from the aforesaid documents it is established beyond doubt that the petitioner was a juvenile at the time of commission of alleged offence, and therefore, the impugned order deserves to be set aside.

3. It is submitted that in passing the impugned orders the Ld. Courts below have not considered Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015 which states that if the Committee or the Board have reasonable grounds for doubting whether the person brought before it is a child or not, then the Committee or Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining birth certificate, matriculation certificate or equivalent certificate from concerned Board and in the absence thereof, birth certificate issued by Municipal Authority or by Panchayat and in the absence of birth certificate, matriculation certificate, equivalent certificate and birth certificate, age shall be determined by an ossification test. It is contended that it is not the case of the petitioner that he did not have any

documentary evidence, rather, he had no age proof at the time of declaration. Even, birth certificate as well as school leaving certificate showing his date of birth were submitted with application but the Ld. Trial Court relied upon the ossification test which is wrong. It is therefore prayed that the above said documents be considered for declaring the petitioner as juvenile for delivering justice to juvenile and the impugned orders be set aside.

4. Learned State Counsel has submitted that the prosecutrix, in her statement under Section 164 Cr.P.C., has supported the prosecution case; and even the complainant/mother of the victim has supported the prosecution case.

5. No other argument is made on behalf of the petitioner.

6. I have heard learned counsel for the petitioner and perused the case file in detail.

7. Perusal of record of the case shows that FIR No.123 dated 05.06.2023 (Annexure P- 1) was registered U/s 376 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012, at Haibowal, District Ludhiana, on the basis of statement of mother of the victim. At the time of commission of offence, the victim was stated to be 14 years of age. The petitioner was arrested on 05.06.2023 itself.

8. It has been admitted by the petitioner that at the time of his arrest, his parents did not have any documentary proof of his age.

Accordingly, father of the petitioner had voluntarily opted that age of the

petitioner be determined by conducting ossification test. In this regard, statement dated 21.07.2023 of father of the petitioner is admittedly on record. It is pursuant to this, that the Juvenile Justice Board directed that the ossification test of the petitioner be conducted; in which report dated 24.08.2023 has been received, as per which age of the petitioner is shown to be more than 20 years.

9. It is important to note that it is only thereafter, that the present application dated 28.09.2023 (Annexure P-5) has been filed by the petitioner praying that he be declared a minor and a juvenile in conflict with law on the basis of documentary age proof. In support, the petitioner's side now produced the birth certificate dated 16.09.2023 (Annexure P4), as also the School Leaving Certificate dated 13.03.2018 (Annexure P3), as per which date of birth of the petitioner is shown to be 07.08.2007. Needless to say, the said documents now produced by the petitioner do not inspire the confidence of this Court. Admittedly, the birth certificate has been obtained by the petitioner from Bihar only on 16th of September 2023, i.e., after registration of the present FIR as also after arrest of the petitioner. It is well settled that judicial approach must be realistic and based on ground realities. (Ref. **Mahesh vs. State of Rajasthan & others , (SC) : Law Finder Doc Id # 1000186**). Moreover, father of the petitioner had himself opted for the ossification test.

10. Even further, a perusal of the notarised affidavit of father of the petitioner dated 07.06.2023 (Annexure P2), shows that he has affirmed therein that date of birth of the petitioner is 07.06.2007. This is in direct contradiction of the School Leaving Certificate (Annexure P3) and the

Birth Certificate (Annexure P4), as per which date of birth of the petitioner is 07.08.2007.

11. It has also been rightly pointed out by learned Additional Sessions Judge, Ludhiana in the impugned order dated 21.03.2024, that the photograph borne on the School Leaving Certificate of the petitioner (Annexure P3) (issued on 31.03.2018) (available at page 44 of the paper book), is identical to the photograph which is borne on the subsequent affidavit of father of the petitioner dated 7.6.2023 (Annexure P2). It is but trite that the appearance of the petitioner would have undergone some change from 2018 till 2023. This immediately casts a shadow of doubt on the veracity of the documents produced by the petitioner to show his date of birth as 07.08.2007. It therefore appears that the said documents have been procured by the petitioner merely to declare him as a juvenile in conflict with law. It is reiterated that the documents sought to be relied upon by the petitioner for declaring him as a juvenile in conflict with law, do not inspire confidence of this Court. In these circumstances, petitioner cannot derive any benefit from provision of section 94 of the JJ Act. As has already been noticed here in above in the case of **Mahesh** (supra), that Judicial assessment cannot be divorced from reality.

12. It was in this view of the matter that the Id. Principal Magistrate, Juvenile Justice Court vide the first impugned order dated 17.11.2023 (Annexure P6) had opined as under:-

“2. In view of the rival contentions made before the Board and after going through material available on the record, it is opined that the applicant herein has been accused of

committing penetrative sexual assault upon the minor victim and committing rape upon her. During the preliminary stage of the hearing of the bail application, the father of the applicant had voluntarily opted for conducting ossification test of the juvenile as he could not produce any documentary age proof of the applicant at that time. In this regard his statement dt. 21.07.2023 is also on record and consequent to which the Board passed the order for ossification test of the applicant to be conducted at Civil Hospital, Ludhiana. Thereafter. vide MLC X-ray report and radiological examination report bearing No.SAN/298/CH/LDH23 dt.08.08.2023 applicant was produced before the Medical Board at CH, Ludhiana and subsequently referred to Rajindra Hospital at Patiala. The report dt. 24.08.2023 of the Medical Board constituted at Rajindra Hospital Patiala has been received and in which it is opined that according to the radiological bone test. the age of the applicant appears to be more than 20 years. Clearly a definitive finding has recorded by the Medical Board. Rajindra Hospital, Patiala finding the applicant to be an adult person. The report is a scientific document based on the radiological examination conducted by expert doctors. As against the documentary age proof led by the applicant in the shape of a Birth Certificate, the Board give preference to the ossification test report now because the Birth Certificate has been produced belatedly and it is deemed to have been prepared on 16.09.2023 (as shown on it), after the registration of the instant FIR. Moreover the guardian of the applicant had voluntarily opted for ossification test of the applicant expressing non-availability of such documents. The report has now gone adverse to him. In this regard it is gainful to rely upon Apex court judgment titled as "Ram Vijay Singh. Vs. State of Utar Pradesh Criminal Appeal No.175 of 2021 arising out of SLP[Criminall No.2898 of 2020 decided on 25.02.2021"

13. Said order dated 17.11.2023 was challenged by the petitioner before the Children Court/Sessions Court, Ludhiana by way of a criminal revision (Annexure P7). Vide the second impugned order dated 21.03.2024 (Annexure P8), the Revision Petition filed by the petitioner has also been dismissed. Relevant findings given by learned Additional Sessions Judge, Ludhiana are reproduced hereinbelow:-

“9.....A perusal of the documents now produced on record do not inspire confidence as a birth certificate Ex.A1 has been produced on record but it need mention here that this birth certificate showing the date of birth of the accused as 7.8.2007 has been registered only recently on 16.9.2023 i.e. much after the lodging of the FIR on 5.6.2023 and ossification test report dated 24.8.2023. Further the certificate issued by the Education department of Bihar has been produced on record. Here also the date of birth of the accuseed has been shown as 7.8.2007 and it was alleged to be issued on 31.3.2018. Here it need to highlight the affidavit dated 7.6.2023 sworn by the father of the accused, 2 days after the lodging of the FIR, where he had stated that his son Mani Kumar was born on 7.6.2007 and this affidavit bears the photograph of the accused Mani Kumar. The same photograph has been put on the school leaving certificate dated 31.3.2018. It need mention here that appearance of the accused would have been completely different five years ago. Thus, document Ex. A1 and school leaving certificate do not inspire confidence. It seems that all these documents have been now procured much after the lodging of the FIR and ossification test report only to escape the punishment provided for the adults. Hence, the Principal Magistrate, Juvenile Justice Board had rightly ignored the documents and relied only on the ossification test report....”.

14.

I find no error whatsoever in the reasoning given by the Courts below.
15.

In view of the above, I find no merit in the present petition and the same is accordingly **dismissed**.
16.

Pending application(s) if any also stand(s) disposed of.

19.04.2024

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No