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

**CRR-905-2024 (O&M)
Date of decision: 30.07.2024**

Hemant

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

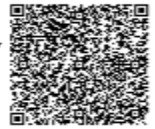
Present: Mr. Sahil Chowdhary, Advocate for
Mr. Shiv Kumar, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

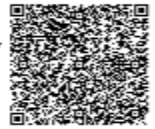
1. The present criminal revision petition has been preferred against the impugned orders dated 06.01.2024 and 04.04.2024 passed by learned Additional Sessions Judge, Fast Track Court, Faridabad, whereby the application filed by the petitioner for declaring him as juvenile in the case stemming from FIR No.258 dated 03.10.2021 under Sections 363, 366A, 376, 506 and 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Chhainsa, Faridabad, has been dismissed.

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2. The facts, in brief, are that during pendency of the trial, the petitioner filed an application i.e. CRM-295-2021 dated 01.12.2021 to declare him a juvenile on the basis of his 5th standard school certificate (Annexure P-2). The certificate belonged to one Hamender son of Yugraj. However, on 11.05.2022, the said application was dismissed as withdrawn. Thereafter, the petitioner again filed an application on 06.05.2023 for declaring the petitioner as juvenile along with two other applications dated 19.07.2023 and 25.07.2023 for summoning of witnesses and for assessment of their diet money respectively. Accordingly, the petitioner adduced the relevant documents, including the 5th standard certificate (Annexure P-7), in which name of the petitioner was mentioned as Hemant Singh son of Raghuraj, while the remaining particulars were exactly the same, as the certificate that was filed at the first instance i.e. Annexure P-2. Thus, on the ground that a forged certificate was produced since all the particulars were identical except the names of the petitioner and his father, the copy of the impugned order was sent to the concerned SHO to verify as to how these two certificates were issued by the school and to take appropriate legal action. Subsequently, on not finding merit in the explanation put forth by Principal of the school, learned trial Court directed that an FIR be registered against Principal of the school as well as the mother of the petitioner, while dismissing the application filed by the petitioner.

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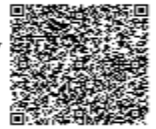


3. Learned counsel for the petitioner, *inter alia*, contends that the mother of the petitioner is illiterate and she submitted the previous certificate without verifying correctness of the particulars. After rectifying the errors, fresh certificate, in which correct particulars of the petitioner and his father, was filed. Even if the authenticity of 5th standard certificate was in question, the petitioner produced and proved on record other equally pertinent documents, which are as follows:

- Janam Patri as Ex. P-6,
- Study Certificate of Upkar Modern High Court, Mahua, Bharatpur as Ex. P-8,
- Primary Education Certificate issued by Anjali Shiksha Sansthan, Ludhawai as Ex. P-9,
- Aadhar Card as Ex. P-10,
- Admission Form submitted in Upkar Modern High School, Mahua, Bharatpur as Ex. P-11,
- Scholar Register/Entry Register as Ex. P-12,
- Study Certificate issued by Upkar Modern High School, Mahua, Bharatpur as Ex. P-13,
- Student admission register as Ex. P-14,
- Transfer Certificate issued by Upkar Modern High School, Mahua, Bharatpur as Ex. P-15 and
- Primary Education Certificate issued by Anjali Shiksha Sansthan, Ludhawai as Ex. P-16,

4. The aforementioned documents ought not to have been overlooked by learned trial Court. The learned trial Court passed the impugned orders in a perfunctory manner and ignored the documents proved on record without any justifiable reason. Further, as per the report submitted by the SHO on 17.05.2023, the date of birth of the petitioner is mentioned as

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02.03.2004, further corroborating the fact that the petitioner was a juvenile at the date of the occurrence i.e. 02.10.2021. Lastly, learned counsel submits that once the earlier application was withdrawn, all the documents annexed with the said application were also withdrawn and therefore, learned trial Court fell in grave error by relying on the same and dismissing the application.

5. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, this Court finds substance in the arguments advanced by him. There is no dispute that juvenility is to be determined on the date of commission of offence. The Juvenile Justice Act, 1986 was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'JJ Act, 2000') came into force on 01.04.2000, whereby the distinction regarding age to claim juvenility between a boy and a girl as 18 years and 16 years respectively, was removed and the age of juvenility was raised from 16 years to 18 years to make it coterminous for both. Section 7-A of JJ Act, 2000 contemplates that whenever a claim of juvenility is raised before any court, the Court shall make an inquiry and take such evidence as may be necessary. In terms of the provisions of this Act, the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'Rules of 2007') were framed. Rule 12 of the Rules of 2007 contemplates a procedure to be followed for determination of age. The JJ Act, 2000 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act, 2015').

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Section 9(2) of the JJ Act, 2015 is the analogous provision to Section 7-A of JJ Act, 2000. The procedure for determining the age is now part of Section 94 of the JJ Act, 2015, which was earlier part of Rule 12 of the Rules of 2007.

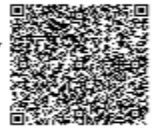
6. In regard to the nature of the inquiry to be conducted by the court in determining the age under Section 7A of the JJ Act, 2000 and Rule 12 of Rules of 2007, the Hon'ble Supreme Court in ***Ashwani Kumar Saxena Vs. State of Mahya Pradesh, (2012) 9 SCC 750*** speaking through Justice K.S.P.

Radhakrishnan has held as follows:-

“25. Section 7-A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board, committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an “inquiry” and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7 A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions “court shall make an inquiry”, “take such evidence as may be necessary” and “but not an affidavit”. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7-A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression “prima facie” and “on the basis of physical appearance” or “documents, if available”. Rule 12(3) uses the expression “by seeking evidence by obtaining”. These expressions in our view re-emphasise the fact that what is contemplated in Section 7-A and Rule 12 is only an inquiry.

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Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word “inquiry” has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Criminal Procedure Code, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. *Let us now examine the meaning of the words “inquiry”, “enquiry”, “investigation” and “trial” as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. “Inquiry” as defined in Section 2(g) CrPC reads as follows:*

2.(g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;”

The word “enquiry” is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

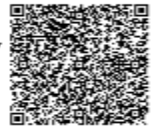
“Investigation” as defined in Section 2(h) CrPC reads as follows:

2.(h) ‘investigation’ includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

The expression “trial” has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions “inquiry” or “investigation” as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. *The expression “trial” has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the court/the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry*

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under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid down under Rule 12 and not following the procedure laid down under the Code.

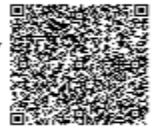
29. *The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Penal Code, 1860 or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.*

30. *Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in Section 7A read with Rule 12.*

31. *We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12(3) (a)(i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.*

32. *“Age determination inquiry” contemplated under Section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and, in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first*

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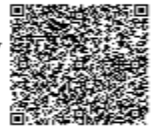
attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. *Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the juvenility on its determination*

34. *Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination”.*

7. A three Judge Bench of the Hon’ble Supreme Court in **Narayan**

Chetanram Chaudhary Vs. State of Maharashtra, 2023 SCC OnLine SC



340, affirmed the ratio laid down in *Ashwani Kumar Saxena*'s case (*supra*) and made the following observations:

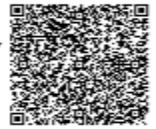
“The case of Ashwani Kumar Saxena (supra) has been referred to in several judgments of this Court and the ratio thereof still holds good. Though that was a judgment delivered under the 2000 Act, the procedure for determining juvenility in the 2015 Act remains broadly the same and hence this authority shall remain valid for an inquiry under the 2015 Act.”

8. Reverting to the facts of the present case, the defects in the disputed certificate were cured by the Principal after proper verification of the school records and upon relying on the admission form dated 04.08.2009, guardian affidavit dated 04.08.2009, and other relevant documents. As per the testimony of the Principal, the discrepancy in the earlier certificate was a result of sheer inadvertence, which was later set right. As such, the learned trial Court should have extended the benefit of the doubt to the Principal.

9. Moreover, there were other equally relevant documents which were brought on record by the petitioner to prove the juvenility of the petitioner. Even if the learned trial Court did decide to question the veracity of the certificate and not rely on the same, no explanation has been put forth by the learned Court below as to why the other documents could not have been relied upon.

10. As an upshot of the above discussion, this Court is of the considered opinion that the petitioner has successfully managed to establish his juvenility and as such, he is liable to be tried as a child-in-conflict with

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law, in accordance with the provisions of JJ Act, 2015. Accordingly the present petition is allowed and the impugned orders dated 06.01.2024 and 04.04.2024 are set aside.

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned Court below shall proceed without being prejudiced by observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

30.07.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No