

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210.

CRR No.2890 of 2016 (O&M)

Reserved on:19.04.2024

Pronounced on:26.04.2024

Bittu Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Oberoi, Advocate and
Ms. Amolpreet Kaur, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab and
Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J.

1. The present criminal revision petition has been preferred against the impugned order dated 13.05.2016 passed by the learned Additional Sessions Judge, Ludhiana whereby the application filed by the petitioner under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) for conducting the enquiry regarding age of the petitioner and thereafter referring the case to the Juvenile Justice Board, Ludhiana in FIR No.18 dated 29.01.2014 registered under Sections 376, 506 IPC at Police Station Division Laddowal, Ludhiana, has been dismissed.

2. In brief, the facts are that the FIR (supra) was registered on the complaint made by the prosecutrix that the petitioner was studying with her in the Government High School, Kakra, PS Bhawani, District Sangrur in 10th class when they started liking each other. In the year 2012, the petitioner took her in some house at Bhawanigarh where he made physical relations with her and prepared a video on the basis of which he blackmailed her to make

physical relations with him and also demanded money from her. On 30.03.2013 when husband of the prosecutrix was out of the house, petitioner came to her house and raped her. Again on 30.11.2013, petitioner again came to her house and threatened her that he would upload her video on internet and asked money from her. When the prosecutrix did not agree, he had beaten her up. She disclosed everything to her husband. On 21.12.2013, she gave birth to a male child and the accused uploaded her video in the area of Bhawanigarh, Kutbawal, pursuant to which FIR (supra) was registered on 29.01.2014.

5. Learned counsel appearing for the petitioner had contended that date of birth of the petitioner is 08.04.1995 and the incident as alleged in the FIR (supra) had occurred in the year 2012 and on 30.03.2013 and therefore, at the time of alleged occurrence, the petitioner had not completed 18 years and thus, was juvenile at the relevant point of time, as he completed 18 years on 08.04.2013. It was further contended that the Court below gravely erred in holding that the offence was committed by the petitioner in continuance from the year 2012 to 29.01.2014 and since he attained majority on 08.04.2013, therefore, provisions of Section 7-A of the JJ Act cannot be attracted. It was also contended that provisions of Section 7-A of the JJ Act can be invoked at any stage including the stage after the final disposal of the petition and the juvenility can be determined by the age on the date of commission of offence. As per statement of prosecutrix in the FIR as well as in the Court as PW-1, there is no allegation of rape after 30.03.2013 and in the absence of any CD, no offence under Section 67 of the Information and Technology Act is made out. In support of his arguments, he relied upon the judgments of the Hon'ble Supreme Court rendered in *Pawan Kumar Gupta Vs. State of NCT of Delhi*

(2020) 2 SCC 803; Satya Rao Vs. State of Uttar Pradesh (2020) 10 SCC 555 and *Erati Laxman Vs. State of A.P. (2009) 3 SCC 337*.

6. Per contra, learned State counsel supported the impugned order passed by the learned Additional Sessions Judge, Ludhiana by contending that the offence committed by the petitioner was in continuance from the year 2012 to 29.01.2014, as the CD prepared by the petitioner was uploaded by him on the internet after he attained the majority and therefore, his application under Section 7-A of the JJ Act has been rightly rejected by the Court below.

7. I have heard learned counsel for the parties and after perusing the record of the case find no merit in the arguments raised by the counsel appearing for the petitioner. There is no dispute with respect to date of birth of the petitioner as 08.04.1995 and he attained the majority on 08.04.2013. As per version of the prosecutrix in the FIR (supra) and statement made by her in the Court as PW-1, petitioner lastly committed rape upon on 30.03.2013 i.e. before attaining the age of majority. However, he uploaded the obscene video of the prosecutrix after he attained majority on 08.04.2013, as the prosecutrix lodged the FIR on 29.01.2014 against the petitioner after release of her obscene video on the internet.

8. There is no dispute to the case laws referred by the petitioner 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 came into force on 01.04.2000 whereby the distinction regarding age to claim juvenility between the boy and 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 equal for both boy and girl. 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 and Rule 12 thereof, the Hon'ble Supreme Court in *Ashwani Kumar Saxena v. 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. 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 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 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”.

9. In the case at hand, the petitioner after the incidents of alleged rape committed upon the prosecutrix in the year 2012 and on 30.03.2013, after attaining the majority on 08.04.2013, went to the house of the prosecutrix on

30.11.2013 and threatened her to upload her obscene video on the internet and also demanded money from her. The relevant part of statement given by the prosecutrix on the basis of which the FIR (supra) has been registered is extracted as under:-

“On 30.11.2013 when my husband had gone somewhere, Bittu Singh s/o Bakshish Singh came to my house at Kutbewal Araian and told me that he will upload my indecent video on internet and will defame me and demanded money from me. I refused and he gave beatings to me. I told everything to my husband. On 21.12.2013, I gave birth to a male child....The SMS which Bittu had sent me on my mobile, photostat transcript of some of those messages are given to you..”

10. In view of the above, it is crystal clear that the incident of 30.11.2013 had happened after attaining majority by the petitioner on 08.04.2013 and therefore, the Court below has rightly dismissed the application filed by the petitioner under Section 7-A of the JJ Act vide impugned order dated 13.05.2016. This Court finds no infirmity or illegality in the impugned order and consequently, the same is upheld. The instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

April 26, 2024
Pankaj*

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