



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

CRR-3471-2017

Date of decision: 15.10.2024

Vinod Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Jagjit Singh Gill, Advocate for the petitioner.

Mr. P.K. Aggarwal, DAG, Haryana.

None for respondent No.2.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioner/complainant against the judgment/order dated 14.09.2017 passed by the Court of learned Sessions Judge, Sirsa, vide which the judgment/order dated 06.06.2017 passed by Principal Magistrate, Juvenile Justice Board, Sirsa (in short 'JJB') whereby the application filed by the prosecution for sending the case of respondent No.2 having FIR No.70 dated 01.02.2016, under Sections 302, 201, 364, 120-B IPC, Police Station City Sirsa to the Children's Court in terms of the Juvenile Justice (Care and Protection of Children) Act 2015 (in short 'the Act 2015'), was dismissed, has been upheld.

2. The brief facts of the case are that aforesaid FIR was registered against the accused persons including respondent No.2, who was less than 18 years of age, at the time of alleged occurrence which took place on



31.01.2016. The prosecution moved an application as per the provisions of Act of 2015 which came into force on 15.01.2016, with prayer to transfer the trial to the Children's Court, as per the provisions of Section 18 of the Act of 2015. The application was contested by the juvenile offender. Both the parties were given opportunity to lead the evidence.

3. On behalf of juvenile, his father Lilu Ram appeared as AW-1 and he stated that his son was born on 18.04.2000 and that the birth of child was also registered in the office of Municipal Committee, Sirsa and the birth certificate issued by Municipal Committee is Ex.AW-1/A. He further stated that he is also having three daughters and their births were also registered in the office of Municipal Committee and the concerned birth certificates are Ex.AW-1/B, Ex.AW-1/C and Ex.AW-1/D. AW-2 Munish Kumar official of Municipal Committee, Sirsa produced the summoned record regarding birth of a male child born to Lilu Ram and Santosh on 18.04.2000. He proved the concerned birth certificate Ex.AW-1/A.

3. On the other hand, the State counsel examined RW-1 Satish Kumar, Head Teacher, GPS No.4, Sirsa who produced the record regarding admission of juvenile in aforesaid school on 01.04.2005. He proved the relevant record Ex.R-1 and Ex.R-2, as per which, the date of birth of juvenile was recorded as 28.12.1999. RW-2 Om Parkash, Assistant in Board of School Education, Haryana produced the record i.e. result sheet of secondary examination Ex.RW-2/A. As per said record, juvenile son of Lilu Ram and Santosh appeared in matriculation examination of aforesaid Board.

4. After hearing the counsel for the parties, the application was dismissed by JJB vide order dated 06.06.2017.



5. Being aggrieved, the State and petitioner/complainant Vinod Kumar filed separate appeals. Both the said appeals were dismissed by the Appellate Court of Sessions Judge, Sirsa vide order dated 14.09.2017.

6. The present petition has been filed by petitioner/complainant being aggrieved by the order dated 06.06.2017 passed by JJB and order dated 14.09.2017 passed by the Appellate Court.

7. In response to notice of motion, both the respondents appeared through their counsel. However, subsequently, there was no representation on behalf of respondent No.2 i.e. juvenile offender.

8. In every case involving a juvenile offender, committing a heinous crime, the JJB must determine whether child has reached age of 16 years.

Rule 10(a)(1) of the Juvenile Justice (Care and Protection of Children) Model Rules 2016 (in short 'Rules of 2016'), provides that the JJB shall in the first instance determine whether the child is of 16 years of age or above, if not, it shall proceed as per provisions of Section 14 of the Act of 2015.

9. In the instant case, JJB while relying on the birth certificate Ex.AW-1/A issued by Municipal Council, Sirsa came to the conclusion that the juvenile was born on 18.04.2000, vide order dated 06.06.2017. The said birth certificate was proved by AW-2 an official of Municipal Council, Sirsa. The finding given by JJB was also upheld by the Appellate Court of learned Sessions Judge, Sirsa vide its order dated 14.09.2017. While arriving at the aforesaid conclusion, the Courts below ignored the record Ex.RW-2/A i.e. result sheet of secondary examination (private) September-2015



conducted by Board of School Education Haryana, Bhiwani. The said record was produced and proved by RW-2 Om Parkash, Assistant, Haryana Board of School Education, Bhiwani. As per said record Ex.RW-2/A, date of birth of juvenile was recorded as 28.12.1999 in aforesaid result sheet of 10th class Board examination conducted by School Education Board, Haryana. Further, RW-1 Satish Kumar, Head Teacher, GPS No.4, Sirsa produced the admission record of juvenile offender who was admitted in the said school on 01.04.2005 and witness proved relevant record Ex.R-1 and Ex.R-2, as per which the date of birth of offender juvenile was recorded as 28.12.1999.

10. It is pertinent to note that in date of birth certificate Ex.AW-1/A, the name of the child is not given. However, the parentage is given and it is mentioned that the said certificate is relating to male child who was born on 18.04.2000 to Lilu Ram and Santosh in the area of Sirsa. On the other hand, the name of the student and his parentage is recorded in result sheet of the 10th class Ex.RW-2/A and school record Ex.R-1 and Ex.R-2 and the said particulars completely match with the particulars of the juvenile offender.

11. Rule 94 of the Act of 2015 provides as follows:-

“94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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



*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”*

12. The Hon’ble Supreme Court in Criminal Appeal No.1898-2023 titled as ***P.Yuvaprakash Vs. State Represented by Inspector of Police***, decided on 18.07.2023, has held that Section 94(2) of the Act of 2015 indicates that the date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination Board has to be firstly preferred in the absence of which, the birth certificate issued by Corporation or Municipal Authority or Panchayat and it is only thereafter, in the absence of these such documents, the age is to be determined through an ossification test.

13. From the perusal of the aforesaid statutory provision coupled with the settled position of law, it is apparent that birth certificate from the school or the matriculation or equivalent certificate from the concerned Board is to be given preference over the birth certificate issued by Municipal Committee or a Municipal Authority.

14. After going through the impugned order, it transpires that while passing the said orders, both the Courts below mis-took Ex.RW-2/A as mere record regarding allotment of roll numbers. Admittedly, RW-2/A is proved by the official of the concerned education Board who produced the summoned record. RW-2 stated in his deposition that as per said record, juvenile son of Lilu Ram appeared in 10th class examination and he proved result sheet of secondary examination September 2015. So, it cannot be said that Ex.RW-2/A is just a record regarding allotment of roll number to the students. As per Ex.RW-2/A parentage of juvenile was recorded as Lilu Ram and Santosh Devi and his date of birth as 28.12.1999 and he appeared in the examination in District Sirsa. Further, record regarding admission of the juvenile in GPS No.4, Sirsa was produced by RW-1 an official of the said school and the said record is Ex.R-1 and Ex.R-2. Even, as per the said record maintained by the school, the date of birth of juvenile was recorded as



28.12.1999 and his father's name was recorded as Lilu Ram and he was got admitted by his mother Santosh.

15. This Court is of the view that the aforesaid record Ex.R-1, Ex.R-2 and Ex.RW-2/A fulfill the requirements of provision of Section 94(2)(i) of the Act of 2015. It being so, the said record has to be preferred over the birth certificate of juvenile Ex.AW-1/A which is not bearing the name of the juvenile. Thus, a prosecution has established on record that the date of birth of the juvenile offender is 28.12.1999. The incident in question took place on 31.01.2016. So, at the time of occurrence juvenile offender was more than 16 years of age. He is accused in a murder case, it being a heinous offence, the case is covered under the provisions of Sections 15 to 18 of the Act of 2015.

16. This Court has already assessed the age of the juvenile offender who is alleged to have committed a heinous offence. Thus, there is statutory requirement to make a preliminary assessment as to the mental and physical capacity of the child to understand the consequences of the offence. The legislature has clarified in Rule 10A(3) of the Rules of 2016 that JJB may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances while conducting a preliminary assessment.

17. From the perusal of the record, it appears that JJB took assistance of the Head of Post Graduate Department of Psychology, Government National College, Sirsa in order to make preliminary assessment in the instant case. The report submitted by the said expert is available on the record of the JJB, Sirsa. As per said report, the juvenile was not suffering from any mental illness and he appeared normal and his cognitive maturity was found as per his age and his mental ability makes him able to understand the repercussions of his act. So, in the instant case, the JJB should have passed an appropriate order under Section 18(3) of the Act of 2015, transferring the case to the Children's Court to try the juvenile offender as an adult.

18. In light of the above discussion, the present petition is hereby allowed and the impugned orders dated 06.06.2017 passed by JJB and dated



14.09.2017 passed by the Court of Sessions Judge, Sirsa are hereby set aside being not passed in accordance with law. The JJB is hereby directed to reconsider the matter, while taking into consideration the fact that age of juvenile at the time of occurrence was more than 16 years and thus, should pass afresh order as per Section 18(3) of the Act of 2015 and while doing so, also to consider the preliminary assessment report submitted by Head of Post Graduate Department of Psychology, Government National College, Sirsa. The aforesaid exercise is to be completed by the JJB, Sirsa within a period of 15 days of the receipt of copy of this order. The parties are directed to appear before JJB, Sirsa on the date already fixed in the inquiry being conducted by the said Board under Section 14 of the Act of 2015.

15.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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