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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-5823-2018 (O&M)

Date of decision: 08.02.2024

Brijesh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Yogeshwar Dayal Kaushik, Advocate
for respondent No.2/ complainant.

MAHABIR SINGH SINDHU, J.

Present revision has been filed, under Section 401 of Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.') for setting aside the impugned order dated 22.11.2018 passed by learned Additional Sessions Judge, Faridabad (for short "ASJ"), whereby an appeal preferred by the State of Haryana under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act') was accepted and order dated 18.08.2018 of ld. Chief Judicial Magistrate, Faridabad, (for short "CJM"), declaring the petitioner as juvenile was set aside.

2. Learned counsel for the petitioner contends that impugned order has been passed in gross violation of the Section 94(2) of the Act; hence not

legally sustainable. Further contends that learned ASJ while allowing the appeal failed to appreciate that as per matriculation certificate (Ex.AW-2/A), date of birth of the petitioner is recorded as 18.10.1999 and the date of alleged occurrence is stated to be 22.01.2017; thus, on that date, petitioner was less than 18 years of age. Again contended that as per Section 94(2)(i) of the Act, the date of birth recorded in the matriculation certificate has to be given preference over other proof(s) of age in such like matters; hence, the impugned order is liable to be set-aside.

3. *Per contra*, learned State counsel submits that prosecution had summoned concerned Clerk from the office of Civil Surgeon, Faridabad (RW-1), who proved the birth certificate of petitioner, according to which, his date of birth is recorded as 22.10.1997; thus, he was more than 18 years of age on the date of alleged occurrence. Further submitted that ASI Bansi Lal while appearing as RW-2 also deposed that he has verified the birth certificate (RW-1/A) issued by the Civil Surgeon; hence, date of birth of the petitioner has rightly been determined as 22.10.1997. Lastly submitted that this Court while exercising jurisdiction under Section 401 Cr.P.C, ought not to interfere with the findings recorded by learned ASJ while passing the impugned order.

4. Learned counsel for respondent No.2 also submitted that ld. ASJ has rightly passed the impugned order after due consideration of the matter; hence hence no interference is required by this Court.

5. Heard both sides and perused paper-book.

6. Before proceeding further, it would be relevant to recapitulate the relevant part of order dated 18.08.2018 passed by learned CJM and which reads as under :-

“7. *In view of aforementioned Section, it is clear that the*

*birth certificate from the school or the matriculation or equivalent certificate will be given priority while presuming and determining the age of person. There is no escape from the preferences given in the aforementioned sections. The birth certificate is given second preference. In present case, the matriculation certificate Ex. AW-2/A reflecting the date of birth of applicant as 18.10.1999 will be given preference over the date of birth mentioned in birth certificate Ex. RW-1/A. The law is crystal clear on the point of preferences of the documents to be given at the time of determining age of a person. Besides above, the Hon'ble Apex Court in **Siba Bisoyi v. State of Odisha, 2017(4) R.C.R. (Criminal), 409 (S.C.)** held that the matriculation certificate containing his date of birth issued by secondary education school and entry in the admission register maintained by that school would serve as conclusive proof of his date of birth. The Hon'ble Apex Court clearly held that the matriculation certificate containing the date of birth would serve the purpose. The aforementioned authority is fully applicable in present case. Besides it, the Hon'ble Allahabad High Court in **Sher Singh @ Sher: v. State of U.P. 2016(4) R.C.R. (Criminal) 639 (Allahabad)** also held that firstly matriculation certificate be relied upon, if it is not available, then birth certificate to be relied upon. From the aforementioned provision coupled with judgments of the Hon'ble Apex Court and Hon'ble High Court, it is clear that the matriculation certificate Ex. AW-2/A is the authentic document to determine the age of the applicant/accused. As per the said certificate, the date of birth of the applicant/accused is 18.10.1999. The date of occurrence is 22.01.2017. Thus, as on the date of occurrence the applicant/accused Brijesh was less than 18 years of age. Hence, the applicant/accused Brijesh is declared juvenile in conflict with law.”*

A perusal of the aforesaid extract reveals that learned CJM
relied upon matriculation certificate of the petitioner and according to which,

his date of birth is recorded as 18.10.1999; thus, he was found to be less than 18 years of age on the date of alleged occurrence i.e. 22.01.2017.

7. Aforesaid order was challenged by the respondent-State in an appeal before learned ASJ and the same was allowed while passing the impugned order, observing as under:-

“13. So far as the other authority Sher Singh @ Sheru Vs. State of U.P. (supra) cited by lower court in the impugned order is concerned, it is also distinguishable on facts. In view of authority Jyoti Prakash Rai @Jyoti Prakash Vs. State of Bihar (supra) this court is of the considered opinion that the respondent has failed to prove the certificates Ex. AW1/A and Ex. AW2/A relied upon by him as per section 35 of Indian Evidence Act. On the other hand the evidence added by the appellant in the form of birth certificate Ex. RW1/A wherein the date of birth of respondent is recorded as 22.10.1997 along with his parents name inspires confidence in the absence of any plea of respondent that the said birth certificate is forged and fabricated and hence it can be taken into consideration in view of section 94 (2)(ii) of Juvenile Justice (Care and Protection of Children) Act, 2015.

14. For the reasons recorded above, this court is of the considered view that learned lower court without properly appreciating the evidence adduced by the parties regarding juvenility of Brijesh as well as the proposition of law has erred in declaring the respondent Brijesh as juvenile. Accordingly, while setting aside the impugned order, the present appeal by respondent Brijesh is hereby allowed herein declared and as is major. Copy of judgment to be placed on the case file of Sessions trial. File be consigned to record room after due compliance.”

8. There is no quarrel that as per Section 94(2)(i) of the Act, the date of birth certificate from the school, or the matriculation or equivalent

certificate from the concerned examination Board is having a precedence over other proof(s) to determine the point in issue. For reference, the relevant text of Section 94 of the Act reads as under :-

"94. Presumption and determination of age.--(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."

From perusal of Section (94)(2)(i) (*supra*), it is clearly

discernible that for determining the age in such like matters, the first and the foremost document to be relied upon is “*the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board*”; and in the absence thereof, the birth certificate given by corporation; or municipal authority; or panchayat, as the case may be, can be taken into consideration.

9. In the present case, matriculation certificate of the petitioner showing his date of birth as 18.10.1999 is very much available on record as Ex.AW-2/A and the authenticity of the same has been duly verified by AW-1 (Rajesh), an official of the school, from where petitioner had completed his matriculation. Even in pursuance of the order dated 08.01.2024 passed by this Court, the original matriculation certificate of the petitioner has been produced and after going through the same, there remains no doubt that this certificate is genuine. Moreover, respondents are not able to persuade this Court that matriculation certificate of the petitioner is fake or fabricated; nor there is any such allegation to that effect.

Thus, the reasoning assigned by learned ASJ that the certificate has not been proved as per Section 35 of the Evidence Act is not acceptable as this provision (Section 35 of the Evidence Act) does not talk about the proof of a document; rather it only deals with the relevancy of a document. In such a scenario, this Court is of the considered opinion that the impugned order passed by learned ASJ, while setting aside the order of learned CJM is indefensible in law; hence liable to be invalidated.

10. Consequently, revision is allowed. Impugned order dated 22.11.2018 is set aside. Order dated 18.08.2018 passed by learned CJM is restored.

11. Needless to say that above observations be not construed as an

expression of opinion on the merits of controversy, in any manner.

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

08.02.2024

SN

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

(MAHABIR SINGH SINDHU)

JUDGE