

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.3488 of 2019 (O&M)
Date of decision: 04.01.2024
Reserved on: 16.11.2023

Vinod ... Petitioner

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sarfraj Hussain, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The petitioner herein is challenging the order dated 19.09.2019 passed by the learned Additional Sessions Judge, Palwal in case arising out of FIR No.60 dated 03.06.2019 registered under Sections 302, 366A, 376D, 201 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station GRP, Faridabad, District Faridabad wherein he has been facing trial as an accused and whereby an application filed by him for declaring him as a juvenile, was dismissed.

2. The petitioner has challenged the impugned order on the ground that the same is not sustainable in the eyes of law. Learned counsel for the petitioner vehemently argued that the respondent had not

been successful in negating the claim of the petitioner that he was a juvenile on the date of incident and was entitled to all the protections under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (For short “JJ Act, 2015”). The concerned Court committed a grave error while ignoring the entries made in the Secondary and Senior Secondary Examination School Certificates respectively of the petitioner showing his date of birth as 16.09.2001, though as per Section 94 of the JJ Act, 2015, only these entries were such that were relevant. Reliance was wrongly placed upon the record of Women and Child Development Office, Palwal wherein the date of birth of one Vinod @ Ashok was mentioned as 09.11.1999 and even it had not been proved that these entries pertained to the present petitioner. He further argued that since the genuineness of the entries in the document as relied upon by the respondent itself was in great doubt and the legislative intent behind the provision of Section 94 of JJ Act, 2015 is that entries in the Matriculation Certificate were conclusive and fully reliable, therefore, the petition filed by the petitioner deserved to be accepted and the impugned order was liable to be set aside. In support of his argument, learned counsel placed reliance upon **Ashwani Kumar Saxena v. State of MP**, (2012) 9 SCC 750.

3. Per contra, the stand as taken by learned State counsel was that the petitioner had only produced photocopies of his Secondary Examination and Senior Secondary Examination School Certificates and these entries per se could not be accepted on their face value unless the

petitioner satisfied the conditions laid down under Section 35 of the Indian Evidence Act, 1872 (For short “Act, 1872”) which were not so satisfied and since contradictory evidence in the form of record maintained by the office of Women and Child Development Office, Palwal with regard to the exact date of birth of the petitioner had been produced by the respondent-State, therefore, no fault could be found in the findings as recorded by learned trial Court. Learned State counsel in this context has placed reliance upon **Sanjeev Kumar Gupta v. State of Uttar Pradesh and another**, (2019) 12 SCC 370.

4. Learned counsel for the petitioner as well as learned State counsel were heard at considerable length.

5. At the outset, it may be mentioned that the JJ Act, 2015 is a sequel to the Juvenile Justice (Care and Protection of Children) Act, 2000 (now to be mentioned as “Act, 2000”) which has since been repealed. Under the Act, 2000, an amendment was made w.e.f. 22.08.2006 under which Section 7A was inserted which provided the procedure to be followed when claim of juvenility is raised before any Court. As per this provision, on raising of claim of juvenility before any Court, it shall make an inquiry, take such evidence as may be necessary so as to determine the age of the person and shall record a finding whether the person is a juvenile or a child or not. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (For short “Rules, 2007”) prescribes procedure to be followed for determination of age. The juvenility of a person in conflict with law has to be decided prima facie

on the basis of physical appearance, or documents, if available. On repeal of the Act, 2000 and on the enforcement of JJ Act, 2015, the procedure to be followed when a claim of juvenility is raised before any Court is stipulated under Section 9 (2) and (3). Then under Section 94 of the JJ Act, 2015, though a presumption is raised that when a person is brought before the JJ Board or the Child Welfare Committee and the said person is a child, the Board shall record such observation stating the age of the child as nearly as may be. But where the Board or the Committee has reasonable ground for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee/Court, 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 Municipal Authority or a Panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

6. Undisputedly, a claim of juvenility may be raised at any stage even after the final disposal of the case and delay in raising the claim of

juvenility cannot be a ground for rejection of such claim. For making a claim with regard to juvenility, the claimant is required to produce such material which may prima facie satisfy the Court that an inquiry into the claim of the juvenility is necessary. The initial burden has to be discharged by the person who claims juvenility. The well settled proposition of law is that as to what material would prima facie satisfy the Court and/or is sufficient for discharging the initial burden, cannot be catalogued nor can it be laid down as to what weight should be given to specific piece of evidence which may be sufficient to raise presumption of juvenility. In **Arnit Das v. State of Bihar**, (2000) 5 SCC 488, it was observed by Hon'ble Supreme Court that while considering the question as to determination of the age of an accused for the purpose of ascertaining whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced in support of the plea that he was a juvenile and, if two views may be possible, the Court should lean in favour of holding the accused to be a juvenile in border line cases. This is because the Act being a welfare legislation, Courts should be jealous to see that a juvenile derives full benefits of the provisions of the Act, but at the same time, it is also imperative for the Courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishment for having committed serious offences.

7. It is very important to mention here that the Hon'ble Supreme Court in a celebrated pronouncement cited as **Parag Bhati (Juvenile)**

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through Legal Guardian-Mother-Smt. Rajni Bhati v. State of Uttar Pradesh and another, (2016) 12 SCC 744 had made the following observations:-

“26) It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

27) The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence

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indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.

28) It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

8. It will also apt to refer here to **Abuzar Hossain alias Gulam Hossain v. State of West Bengal**, 2012 (5) Recent Apex Judgments (R.A.J.) 380 which was referred to in **Parag Bhati's** case (Supra) wherein a three Judge Bench of Hon'ble Supreme Court has summarized the position for determining the juvenility of an accused by observing that the credibility and/or acceptability of the documents like the school leaving certificate or voter list etc. would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In **Sanjeev Kumar Gupta's** case (Supra), the Hon'ble Supreme Court had been dealing with

a case wherein the claim of juvenility of the accused was made on the basis of entries as to his date of birth as reflected in the Matriculation certificate issued by CBSE whereas the respondent had relied upon the entries made in the driving licence and Aadhar card. It was observed that the entries showing the date of birth of the accused in the certificate for secondary school examination purely on the basis of final list of students forwarded by his school by themselves cannot be accepted as authentic or credible as it was revealed that the date of birth was entered on the basis of information given by the father of the accused only.

9. On applying the ratio of law as laid down in the above cited cases to the peculiar facts and circumstances of the present case, it emerges that since the petitioner had moved an application claiming juvenility before the trial Court, therefore, the procedure was to be applied as contemplated under the provisions of the JJ Act, 2015 so as to seek evidence for the purpose of recording a finding stating the age of the petitioner and the burden was on the petitioner to satisfy the Court to discharge the said onus. The petitioner along with his application making prayer for declaring him as juvenile had annexed photocopies of two certificates i.e. Secondary Examination School Certificate and Senior Secondary Examination School Certificate respectively wherein his date of birth was mentioned as 16.09.2001. He neither examined any witness to prove that the entries of date of birth as reflected in these certificates satisfied the conditions laid down under Section 35 of Act, 1872 nor it was shown by him that the entries as to date of his birth were made on

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the basis of any birth certificate issued by Municipal Committee etc. Obviously, the entries made in these certificates as to date of birth of the petitioner were on the basis of record maintained by CBSE purely on the basis of the final list of students forwarded by the school wherein the petitioner studied and not on the basis of any other underlying document and in view of the contra evidence produced by the State in the form of entries made in the record/register of Women and Child Development Office, Palwal, which being entries in the record of public office are per se admissible and are presumed to be maintained in due course of law, the petitioner has obviously not been able to prove that the entries so relied upon by the respondent are false. Though a simple plea was taken that in the entries produced on record by the respondent-State, his name was mentioned as Vinod alias Ashok and not only Vinod but it is also not his version that he was never known by the name of Ashok or these entries were not got recorded qua him but were relating to some other person of same name, parentage and village. It is no doubt true that a person in conflict with law would be entitled to special protection under the JJ Act, 2015, if he proves a clear and unambiguous case in his favour of being a juvenile below the age of 18 years on the date of incident. However, when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual and cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as it is also the duty of the Court to protect the confidence of common man in the institution

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entrusted with the administration of justice. Reference in this regard can be had to the observations made by the Hon’ble Supreme Court in **Parag Bhati’s** case (Supra).

10. As per the discussion made above, it emerges that in the absence of any evidence produced on record by the petitioner in terms of Section 35 of the Act, 1872 to prove relevancy of the certificates relied upon by him and to treat the entries made therein as conclusive proof of date of his birth and in view of the contra material placed by the respondent on record, further substantiated by the fact that the petitioner could not be allowed to have cavalier and casual approach in a heinous crime like the one as committed by him in this case to claim him as a juvenile, it is held that the learned trial Court committed no wrong in observing that the petitioner had failed to prove that he was a juvenile.

11. In view of the discussion as made above, I do not find any illegality in the order passed by the learned trial Court. Accordingly, the petition fails and is dismissed.

12. Miscellaneous application(s), if any, also stand disposed of.

04.01.2024

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Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE

Yes/No
Yes/No