

from their house in the intervening night of 13/14.01.2019. He suspected that she had been enticed away by the respondent by inducing her on the pretext of marriage and had also taken away some silver and gold ornaments as well as cash amount of Rs. 30,000/- kept in the house. After registration of FIR, investigation proceedings were initiated. The victim was recovered. Her statement under Section 164 of Cr.P.C. wherein she stated that she had gone with the respondent No.2 out of her own accord and nobody had forced her to do so and now she wanted to live with her parents. She refused to get her medical examination conducted. However, subsequently, she was medically examined. Offences under Sections 366, 376 of IPC, Section 6 of POCSO Act were added and offences under Sections 363/366-A of IPC were deleted. On 25.02.2019, the victim again recorded her statement under Section 164 of Cr.P.C. disclosing that the respondent No.2 and accused Ajay had forcibly taken her out of her house on the night of 13.01.2019 and had taken her to a room at village Makaround wherein rape was committed upon her by both of them and she was also kept confined. She was also found to be pregnant. Her pregnancy was got aborted in accordance with procedure prescribed by law. The respondent No.2 was detained on 17.03.2019. He suffered disclosure statement admitting his involvement in the subject crime and also took the name of the accused Ajay who had been arrested. Subsequently, after completion of inquiry, challan was presented against the juvenile in conflict with law 'A' i.e. respondent No.2 before the JJB. The present petitioner moved an application for sending the case to special Court

submitting that the respondent No.2 was about sixteen years as on the date of occurrence. A plea was taken that as per the record of Aanganwadi tracking register, the date of birth of the respondent No.2 was 23.08.2001, which came to be 17 years, 4 months and 22 days as on the day of occurrence and therefore, he could be tried as an adult by Special Children Court.

3. Reply to the abovesaid application had been filed by the respondent and vide order dated 12.09.2019, the prayer made by the present petitioner to this effect was rejected. Feeling aggrieved from the same, the present revision petition has been filed by the petitioner.

4. It is submitted in the petition and it is argued by his counsel that the impugned order is not sustainable in the eyes of law as while rejecting his application, the JJB ignored the fact that as per the tracking register maintained by the Anganwadi office of village of respondent No.2, his date of birth was 23.08.2001 and even in the copy of his Aadhar Card his date of birth was mentioned as 01.01.2001. He has argued that during the course of investigation, the date of birth of the respondent juvenile was considered to be as 15.06.2004 on the basis of record received from the office of principal of the government School, Rajound wherein the juvenile had studied. It is argued that since, the learned JJB had not considered the entries made in the tracking record showing that the respondent No.2 juvenile was above the age of sixteen years at the time of incident and could be tried as an adult, therefore, the impugned order was liable to be set aside.

5. Learned State counsel has supported the plea taken by the petitioner. However, learned counsel for respondent No.2 has argued that there was no infirmity in the impugned order. It was on the basis of the school record of respondent No.2 and the certificate issued by the principal of the said school that it was found that the date of birth of the respondent No.2 is 15.06.2004. At the time when he was considered as a juvenile, no objection had been taken by the petitioner as to claim of his date of birth. The extract of some tracking register which had been produced before the learned Magistrate, was not proved in accordance with law as it was simply a photocopy and no efforts had been made to show that this tracking register was infact record of Anganwadi of village of respondent No.2 and was maintained in accordance with law and was admissible in evidence. Therefore, it is argued that the petition does not deserve to be allowed. It is also submitted that the respondent No.2 has since been even held guilty vide judgment dated 09.11.2023 and it is only as per the order passed by this Court, that the order on quantum of sentence has been kept in abeyance. With these broad submissions, it is urged that the petition is liable to be dismissed.

6. Having heard learned counsel for the parties and perusing the record, this court finds no substance in the arguments raised by learned counsel for the petitioner. It may be mentioned that the Juvenile Justice (Care and Protection) Act, 2015 (for short 'the Act') has replaced the Juvenile Justice (Care and Protection of children) Rules, 2007 which gave

primacy to the matriculation certificate over other proofs of date of birth of an accused. As per Section 94 of the Act, 2015, the committee or the Board based on the appearance of the person brought before it under any provision of the Act on the claim that the said person is a child, can record observations as to the age of such person by making observation in this regard and may also proceed with the inquiry. As per sub-Section 2 of this Section, primacy shall be given to the date of birth certificate from the school, or the matriculation or equivalent certificate, if available and in the absence thereof; the birth certificate given by a Corporation or a Municipal Committee or a Panchayat; and only in the absence of the above that the age shall be determined by an ossification test or latest medical age determination test to be conducted on the order of the committee or the Board.

7. In the instant case, it is apparent from the record that at the time when the respondent No.2 was produced before the JJB, the State itself had claimed his date of birth to be 15.06.2004 on the basis of school certificate issued by the school wherein he had studied. At that stage, the present petitioner did not raise any objection qua the age of respondent No.2. subsequently, an application had been moved by the prosecution for sending the case of the petitioner to Special Court apparently for trying him as an adult, though, it was not specifically mentioned so in the application. The State had lodged its claim for trying the respondent No.2 by Special Court on the basis of extract of some tracking register maintained by the

aangandwadi of the village of respondent No.2, wherein his date of birth was recorded as 28.08.2001. The said extract had not been considered by the Board to be a document sufficient for the purpose of proving that respondent No.2 was above the age of 16 years at the time of occurrence which had allegedly taken place on the intervening night of 13/14.01.2019. This document was only a photocopy and had not even sought to be proved in accordance with law. The Board was required to assess the age of respondent No.2 according to the provisions of Section 94(2) of the Act, as per which, the Board while undertaking the process of age determination, shall seek evidence by obtaining the date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination board, if available; and in the absence thereof; the birth certificate given by a Corporation or a Municipal Authority or a Panchayat; and only in the absence of the above, age shall be determined by an ossification test. In the instant case, the respondent-State itself had placed on record, the school certificate of respondent No.2 showing his date of birth as 15.06.2004. As such, no reliance was required to be placed upon the extract of the tracking register of Anganwadi of the village of the respondent as the school record obviously prevailed over the said evidence.

8. At this juncture, it will be important to refer to the provisions of Section 15 of the Act, as per which, in case of a heinous offence alleged to have been committed by a child who has completed or is above the age of 16 years, a preliminary assessment with regard to the mental and physical

capacity to commit such offence, ability to understand the consequences of the offence and circumstances in which he allegedly committed the offence, shall be conducted by the Board. Prayer by the petitioner in this case had been made for sending the case of the respondent No.2 to the Special Court obviously for his trial as an adult; however, since no convincing and cogent material/evidence had been produced on record by the petitioner/State to show that respondent No.2 had completed the age of 16 years or above, rather his school record showed him to be fourteen years, six months and thirteen days on the day of alleged occurrence, therefore, in my considered opinion no illegality or irregularity whatsoever had been committed by the Board for declining the prayer so made by the petitioner as the basic requirement of Section 15 itself had not been proved.

9. It is also noteworthy that during the pendency of this petition, the petitioner had been granted opportunity by this Court to show that either any application had been filed by him or the State or any evidence had been produced at the appropriate time for proving that respondent No.2 was above the age of 16 years and entries as made in the certificate as issued by the school of juvenile qua date of birth were not correct but the petitioner has not been able to produce any such evidence on record, despite availing sufficient opportunity. Even no prayer for conducting preliminary assessment with regard to the mental and physical capacity etc respondent No.2 as required under Section 15 of the Act had at all been made by the petitioner and the only prayer was being made for sending him to Special

Court. Accordingly, finding no ground to allow this petition, the same is ordered to be dismissed. A copy of this order be sent to the Principal Magistrate, Juvenile Justice Board, Kaithal for the purpose of conducting further proceedings in the matter.

9th April, 2024

Parveen Sharma

1. Whether speaking/ reasoned

2. Whether reportable

[MANISHA BATRA]

JUDGE

:

:

Yes

Yes