

(2016) 09 MP CK 0015

MADHYA PRADESH HIGH COURT (GWALIOR BENCH)

Case No: Cr. Revision No. 309 of 2016 (Against the order passed by 8th Additional Sessions Judge, Gwalior in S.T. No. 157 of 2014)

Dilshad

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Sept. 15, 2016

Acts Referred:

- Arms Act, 1959 - Section 25, Section 27
- Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 7, Section 7A
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12
- Penal Code, 1860 (IPC) - Sect

Citation: (2016) 3 JabLJ 442

Hon'ble Judges: Shri D.K. Paliwal, J.

Bench: Single Bench

Advocate: Shri B.P.S. Chauhan, learned Public Prosecutor, for the Respondent/State; Shri Ankit Saxena, learned Counsel, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri D.K. Paliwal, J. - This revision petition has been preferred by the petitioner under Section 104 of the Juvenile Justice (Care and Protection of Children) Act 2015, aggrieved by the order passed by the 8th Additional Sessions Judge in S.T. No. 157/2014, vide order dated 9.2.2016 whereby the claim of the juvenility of the petitioner has been disallowed.

2. Brief facts of the case are, that a Crime No. 1098/2014 for the offences punishable under Sections 302, 201, 120B of IPC, further under Sections 25/27 of Arms Act at Police Station Janakganj has been registered against the petitioner/accused.

After due investigation, charge sheet has been filed against the petitioner/accused and case was committed for trial before the Sessions Court. In the Sessions Court an application has been moved on behalf of the petitioner/ accused under Section 7, 7A of the Juvenile Justice (Care and Protection of Children) Act, 2015 of the "Act", claiming that the petitioner is juvenile at the time of incident.

3. The application was opposed by the respondent by filing reply. An application has also been filed by the respondent for conducting ossification test of the petitioner/accused, which was allowed by the Session Court. After that, the learned Additional Sessions Judge recorded the evidence regarding the juvenility of the petitioner.

4. The learned Additional Sessions Judge, after appreciating the evidence and material came to hold that the age of the petitioner/accused, on the date of incident is 18 years and 6 months. Hence, the petitioner is not juvenile. Being aggrieved with the finding, the instant revision petition has been filed.

5. It is submitted that the impugned order is illegal and contrary to the settled principle of law and learned trial Court failed to appreciate the evidence in its proper perspective. AW-1, who is the father of the petitioner/accused has categorically stated that the petitioner is born in the year 2000. Similarly Raje Ali (AW-2), who is the Principal of the concerned school has proved the date of birth of the petitioner/accused which was entered in the school register.

Despite the school record, regarding the date of birth which shows that the petitioner/accused was juvenile, the learned trial Court recorded a finding that the petitioner/accused was not a juvenile at the time of incident. Hence, the aforesaid finding deserves to be set aside and the impugned order be quashed and the petitioner/accused be declared to be a juvenile at the time of incident.

6. The learned Government Advocate supported the impugned order and submitted that the school record pertaining to the date of birth of the petitioner/accused has rightly been disbelieved by the Court below.

7. I have considered the submissions advanced by the learned counsel for the parties and also perused the record.

8. Before going into controversy involved in the matter, it would be useful to reproduce the relevant Act to arrive at just conclusion:-

"Juvenile Justice (Care and Protection) Rules, 2007.

12. Procedure to be followed in determination of age.

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of marking of the application for that

purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and sent him to be observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(1) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

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

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

And while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of the juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule(3), the Court or the Board or as the case may be the committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save the except where, further inquiry or otherwise is required, inter alia in terms of Section 7 -A, Section 6-4 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the

sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

9. The Hon"ble Apex Court while considering the juvenility in the case of **Parag Bhati v. State of Uttar Pradesh (AIR 2016 page 2428)** observed that;

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 as laid down by this Court in **Abuzar Hossain (AIR 2013 SC 1020)** (supra) an enquiry for determination of the age of the accused is permissible which has been done in the present case.

10. In the case of **Abuzar Hossain alias Gulam Hossain v. State of West Bengal (2012) 10 SCC 489: (AIR 2013 SC 1020**, para 36, 3) wherein a three Judges Bench of Apex Court had summarised the position for determining the juvenility of an accused. In para 39.3 of the judgment, it has been held as under:-

"39.3 As to what materials would prima facie satisfy the Court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the Court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction 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 **Akbar Sheikh (AIR 2009 SC (supp) 1638** and **Pawan (2009 AIR SCW 2171)** these documents were not found prima facie credible while in **Jitendra Singh (AIR 2011 SC (Cri) 51)** the documents viz. School leaving certificate, mark sheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the Court, the Court may act upon such documents for the purpose of Section 7-A and order an enquiry for determination of the age of the delinquent"

11. Nisar Ahmad (AW-1) deposed that his marriage was solemnized 30 years ago. He has six children, his first daughter Shahana was born in the year 1999 and after one year son Altaf was born then after four years daughter Bably was born then thereafter daughter Heera was born. Thereafter in the year 2000 son Dilshad was born. He further stated that he got his son Dilshad admitted in Sumit Bal Niktan, Omnagar Mainpuri Road. The transfer certificate of Dilshad from school is Ex.D/1

and school transfer certificate of daughter Heena of the said witness is Ex.D/2. He deposed that "A" to "A" portion of the said documents, the date of birth is mentioned where his son's Dilshad has been shown as 15 years.

12. Raje Ali (AW-2) in his statement stated that he is working as Principal in Sumit Bal Niktan, Shikahavadh. Ex. D/3 is the scholar register of his school, wherein at Sr No. 11/15, the date of birth of Dilshad Khan son of Mohad Nishad is mentioned as 15.7.2000. In the portion marked "C" to "C" in place of "Nisar," "Nishad" has been mentioned as father of the Dilshad.

13. No other evidence has been examined in support of date of birth of the petitioner/accused.

14. Raje Ali (AW-2) in his cross examination admitted that Ex. D/3 and Ex. D/4 does not bear his signature. He further admitted that he has not issued Ex.D/1 and D/2. He also admitted that when Dilshad was admitted in school he was not posted as Principal. He categorically stated that the entries have been made by the Principal Smt. Puja Mishra. From the statement of Raje Ali, it is crystal clear that he has not made any entry in the register. The entry has been made by Smt. Puja Mishra, who has not been examined. The Ex.D/1 reveals that in the column of date of birth of scholar is mentioned as 15-7-2000 while in the column of name of father of the student "Mohd. Nisar" has been mentioned. Ex.D/4, which is transfer certificate reveals that in the column of father of the student Dilshad, "Mohd. Nisad" Ramesh Nagar Shikohabad has been mentioned, while in the column of date of birth in the figure of 15.7.2000 over writing has been done so as to mention the year as 2000 which is marked as "A" to "A". Raje Ali (AW-2) also admitted in para 7 that in the document Ex D/4 there is cutting in the column of date of birth at "A" to "A". He further admitted that in the column of father's name earlier Nishad was mentioned and later on it has been changed to "Nisar" because name of Nisar was not mentioned in the register.

15. Thus, from the statement of Raje Ali (AW-2), it is clear that he has not made any entries in the register, but the entries have been made by Smt. Puja Mishra, who has not been examined. There is overwriting in Ex. D/4, in the column of date of birth and also in the name of father of Dilshad Khan. The registers Ex. D/1 and D/3 are not verified by any competent authority. There is no material on the basis of which these entries have been made. The trial Court has noted in para 16 that the registers do not have paging, in the entries with regard to 11/28, 11/31, 11/32, 11/38, 11/40, 11/53, 11/61, 11/71, 1/75, 11/76, 11/83, 11/90, no date of birth is mentioned. Similarly in entry 4/25 date of birth of Aslam Khan, Ku. Ruksad, Mustkeen Khan, Kadil Khan, Nanim Khan, Ku. Shurmeen, Amir Khan, Imran Khan and Ku. Heena Khan is not mentioned in words. Thus, it appears that the register has not been kept in accordance with rules.

16. Considering the aforesaid analysis, the documents proved by Raje Ali (AW-2) appears to be suspicious. Therefore, the entries regarding date of birth mentioned in the Ex.D/1, D/3 and also the statement of Nishar Amhad cannot be believed. In such circumstances, the learned trial Court has rightly considered the medical report furnished by Medical Board after examining the petitioner on 11.1.2016 and as per this medical report, the age of the petitioner has been found between 20-22 on 11.1.2016. The alleged incident was committed on 26.12.2014. Thus, on the date of commission of offence, the age of the petitioner was more than 18 years. Hence, he was not a juvenile on the date of alleged incident.

17. In view of the aforesaid discussion, this Court comes to the conclusion that the learned Courts below have rightly held that the petitioner was not a "juvenile" on the date of alleged commission of offence.

18. This revision petition is bereft of merit, hence, it deserves to be and is hereby dismissed.