

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Revision No. 83203 of 2023
(Imran Haider vs. The State and another)

JUDGMENT

Date of hearing: - 22-05-2024

Petitioner by: - Mr. Farrukh Gulzar Awan, Advocate.

State by: - Mr. Muhammad Moin Ali, Deputy
Prosecutor General

Complainant by: - M/s Mehram Ali Bali and Fahad Javed
Qureshi, Advocates

Muhammad Tariq Nadeem, J.:- Through this criminal revision filed under Section 436 read with Section 439 Cr.P.C. the petitioner has challenged the order dated 30.11.2023 passed by learned Additional Sessions Judge, Shorkot, District Jhang, whereby an application filed by Muhammad Hussain (respondent No. 2) for declaring him juvenile in case FIR No.189 dated 27.05.2023, for an offence under section 363 PPC (later on sections 302, 375-A and 34 PPC were also added during the course of investigation), registered at Police Station Shorkot Cantt. District Jhang, was allowed and he was declared a 'Juvenile' for the purpose of his trial in the above-mentioned case.

2. The synopsis of the case gleaned out from the crime report are that Imran Haider petitioner was resident of Chak No.5 Ghagh, Tehsil Shorkot, District Jhang, and shopkeeper by profession. On 26.05.2023 at about 07.00 p.m. when petitioner's son namely Hassan Raza, aged about 14 years, went outside the house after changing clothes, Muhammad Husnain respondent No. 2 and his co-accused forcibly

took him on motorcycle and when his son did not come back, he became worried. The PWs namely Muhammad Husnain and Abid Ali told the complainant that his son was kidnapped by Muhammad Hussain respondent No. 2 and his co-accused Asim Ali. The petitioner further maintained in crime report that his son be recovered after arresting the accused.

Initially the crime report was lodged against respondent No.2 and his co-accused namely Asim Ali for an offence under section 363 PPC. After the arrest of accused, they pointed out the place of murder of Hassan Raza and subsequently his dead body was also recovered by Rescue 1122 Khanewal. During investigation, respondent No.2 and his co-accused also disclosed and pointed out the place where they committed sodomy with Hassan Raza (deceased). Accordingly, the investigating officer added sections 302, 375-A and 34 PPC in this case.

3. After submission of report under section 173, Cr.P.C. charge was framed by the trial court on 16.10.2023 and thereafter on 02.11.2023, respondent No.2 filed an application for declaring him 'Juvenile' in the aforementioned case which was allowed by the trial court *vide* impugned order dated 30.11.2023. Hence, this case.

4. It is *inter alia* contended by learned counsel for the petitioner that the trial court has aired the impugned order on wrong premises of law; that according to School Leaving Certificate issued by the Principal, Khurram Memorial Girls High School (registered), Azadpur, Tehsil Shorkot, District Jhang, the date of birth of respondent No.2 is 01.01.2004, in this way, he was major at the time of occurrence; that Form-B issued by NADRA, wherein the date of birth of respondent No.2 has been shown as 20.05.2006, is not a valid document but the trial court has wrongly relied upon the same; that in the presence of conflicting documents qua the age of respondent No.2, it was the duty of trial court to issue a direction for his ossification

test. To embellish his arguments, learned counsel for the petitioner has placed reliance upon the case-laws titled as Muhammad Anwar vs. Muhammad Sufiyan and another (2009 SCMR 1073), Oam Parkash vs. The State of Rajistan and another (2012 SCMR 1400), Sultan Ahmad vs. ASJ-I, Mianwali and two others (PLD 2014 Supreme Court 758) and Saleem Khan vs. The State and others (PLD 2020 Supreme Court 356).

5. Contrarily, learned counsel for respondent No.2 emphatically argued that Form-B issued by NADRA is a public document, wherein the date of birth of respondent No.2 is mentioned as 20.05.2006. Further argued that the School Leaving Certificate produced by the petitioner before the trial court was issued by a private school, therefore, it has no value in the presence of Form-B issued by NADRA.

Similarly, learned Deputy Prosecutor General has submitted that the trial court has passed a well-reasoned and speaking order after applying its sagacious and judicial mind which needs no interference by this Court.

6. I have heard the learned counsel for the parties, anxiously considered their arguments and perused the record with their able assistance.

7. The main thrust of arguments advanced by learned counsel for the petitioner is that there are two conflicting documents qua the date of birth of Muhammad Hussain (respondent No.2), for the reason, it was incumbent upon the trial court to issue a direction for his ossification test. However, I am not in agreement with this contention because conducting the ossification test of an accused for the purpose of determination of his age as a juvenile offender or otherwise was necessary under Section 7 of the Juvenile Justice System Ordinance, 2000 (now repealed), which is reproduced as infra for the purpose of facilitation:-

Section 7 Determination of age.– If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.

On 24.05.2018, Juvenile Justice System Act, 2018, was promulgated and Section 8 of the Act *ibid* deals with the procedure for declaring any accused as juvenile which reads as under:-

8. Determination of age. ---(1) Where a person alleged to have committed an offence physically appears or claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer shall make an inquiry to determine the age of such person on the basis of his birth certificate, educational certificates or any other pertinent documents. In absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer.
(2) When an accused person who physically appears to be a juvenile for the purpose of this Act is brought before a Court under section 167 of the Code, the Court before granting further detention shall record its findings regarding age on the basis of available record including the report submitted by the police or medical examination report by a medical officer.

Besides, Sections 2(b), 2(h), 4(7) and 16 of the Act *ibid* are also relevant to the facts and circumstances of this case, which are reproduced hereunder:-

2. Definitions. ---In this Act, unless there is anything repugnant in the subject or context: -
(a)
(b) "child" means for the purposes of this Act a person who has not attained the age of eighteen years;
(c)
(d)
(e)
(f)
(g)
(h) "juvenile" means, a child who may be dealt with for an offence in a manner which is different from an adult;

4. Juvenile Court. ---
(1)
(2)
(3)
(4)
(5)
(6)
(7) If any court taking cognizance of an offence finds that an accused brought before it is a juvenile, it shall transfer his case to the Juvenile Court for further proceedings.

16. Orders that shall not be passed with respect to a juvenile.---

(1) No person who was a juvenile offender at the time of commission of an offence shall be awarded punishment of death.

(2) No juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed or given any corporeal punishment at any time while in custody:

Provided that if there is reasonable apprehension of the escape of the juvenile offender from custody who is more than sixteen years of age and involved in heinous offence or he is previously convicted of an offence punishable with imprisonment for life, for reasons to be recorded, he may be handcuffed or put into a solitary confinement in a Juvenile Rehabilitation Centre or observation home for a period not exceeding twenty-four hours.

A comparative study of the above mentioned provisions of law has made it abundantly clear that in terms of Section 7 of the repealed Juvenile Justice System Ordinance, 2000, medical report qua the determination of age was necessary, but Section 8 of the Juvenile Justice System Act, 2018, contemplates that where an accused physically appears to be a juvenile or he claims himself to be a juvenile, the officer in-charge of the police station or the investigating officer shall make an inquiry for the determination of his age on the basis of birth certificate, educational certificates or any other pertinent documents and in the absence of such documents, age of accused should be determined on the basis of his medical examination vice versa when an accused, who appears to be a juvenile, is brought before a court under section 167, Cr.P.C. the court before granting his further detention shall record its findings regarding his age on the basis of available record submitted by the police or medical examination report. It may not be out of place to mention here that investigating officer has written the age of respondent No. 2 in the certificate of identification annexed with report under section 173, Cr.P.C. as 18/19 years but no inquiry was conducted for the determination of his age by the officer in-charge of the police station or the investigating officer as well as by learned Magistrate. In this way, they all have failed to perform their legal obligation in this case. It has been well settled by now that if a thing is required to be done in a particular manner, then the same should be done in that very manner

and not otherwise. Wisdom can be derived from the case-laws tilted as Manzoor Hussain vs. The State and 8 others (2013 P.Cr.L.J. 18), Nasreen Akhtar vs. Mian Abbas, SHO and 7 others (2016 P.Cr.L.J. 578), Zahida Parveen alias Gooma and another vs. The State and others (2019 P.Cr.L.J. 1491) and Adil Khan vs. The State and another (2020 P.Cr.L.J. 729).

8. It is worthwhile noticeable here that in the present case, the petitioner has entirely relied upon a school leaving certificate for determination of age of respondent No.2, but learned counsel for the petitioner could not satisfy this Court that how the school leaving certificate which was got issued from a private school i.e. Khurram Memorial Girls High School Azadpur, Tehsil Shorkot, District Jhang, can be given preference over Form-B, which has been issued by NADRA in favour of respondent No.2 much prior to the happening of incident.

Another important aspect of this case which cannot be lost sight of is that the school leaving certificate produced by learned counsel for the petitioner before the trial court is pertaining to one Muhammad Husnain son of Muhammad Waheed but in the instant case the name of accused is Muhammad Hussain son of Muhammad Waheed. For clarity, this Court *vide* order dated 20.05.2024 called for the judicial record of the trial court, which has been produced today and after going through the judicial record, it can be easily adjudged that the name of student mentioned in the school leaving certificate is Muhammad Husnain and not Muhammad Hussain (respondent No.2). Another fact which raises a serious question about the authenticity of school leaving certificate is that according to this document, Muhammad Husnain son of Muhammad Waheed got admission in Khurram Memorial Girls High School Azadpur, Tehsil Shorkot, District Jhang, on 29.10.2008 as a student of nursery class and he remained studying there till 31.03.2013 i.e. for a period of four years

five months and two days but he could pass only class one during this long span of time.

In the light of above-noted peculiar facts and circumstances of this case, school leaving certificate relied upon by the petitioner for determination of age of respondent No.2 cannot be said to have contradicted Form-B, which is a public document and has been issued in latter's favour by NADRA. More so, learned counsel for the petitioner has relied upon the case-law titled as Saleem Khan vs. The State and others (PLD 2020 SC 356) wherein the Supreme Court of Pakistan has held that ossification test/medical report should be called only in the absence of documentary evidence or contradiction between the documents. In this way, wisdom laid down by the Supreme Court of Pakistan in the above-referred case also goes against the petitioner.

9. In addition to the above, judicial record of the trial court relating to juvenility depicts that respondent No.2 had also produced his birth certificate issued by Secretary Union Council Ahmad Pur East, District Bahawalpur, along with his Form-B issued by NADRA which both are public documents and in these documents, his date of birth is mentioned as 20.05.2006. I am of the view that medical report was necessary in terms of Section 7 of the repealed Juvenile Justice System Ordinance, 2000, but in Section 8 of the Juvenile Justice System Act, 2018, it has been mentioned that in absence of documentary evidence about the age of accused person, it may be determined on the basis of medical examination report by a medical officer, but when there is documentary evidence pertaining to the age of respondent No.2 then no question arises to send him for ossification test, which even otherwise, normally varies one to two years of the age of examinee. A reference in this respect may be made to the case titled as Intizar Hussain vs. Hamza Ameer, etc. (2017 SCMR 633)

wherein the Apex Court of the country has held as under:-

۶۔ جہاں تک معالجین خصوصی کی رپورٹ کا تعلق ہے وہ ماہر یا ماہرین کی رائے پر مشتمل ہے جس کو قانون کے مروجہ اصولوں کے تحت حرف آخر یا حتمی نہیں سمجھا جاسکتا کیونکہ X-Ray یعنی برقناطیسی شعاعوں

کے ذریعے ہڈیوں کے عکس کی بنیاد پر طبی ماہر / ماہرین سو فیصد غلطی سے پاک اور حتمی رائے انسانی عمر کے متعلق نہیں دے سکتے کیونکہ اس میں زیادہ سے زیادہ ۲ سال یا کم سے کم ایک سال تک کمی بیشی کا احتمال رہتا ہے، نیز برقیاتی شعاعوں کے ذریعے عکس لینے والی مشین کی ساخت اور اس کی درست کارکردگی بھی ہمارے ملک میں ایک سوالیہ نشان ہمیشہ رہتا ہے اور ان پر قائم کردہ رائے اندازوں پر مبنی ہوتی ہے لہذا اس کو ہرگز قطعی نہیں سمجھا جاسکتا۔ اگرچہ اس کے مقابلے میں محض سکول کے سرٹیفیکیٹ یا رجسٹر داخلہ میں جو تاریخ پیدائش درج کی جاتی ہے کو بھی انفرادی طور پر حتمی اور ناقابل رد نہیں سمجھا جاسکتا۔ مقدمہ ہذا میں چونکہ یونین کونسل کے پیدائش سے متعلق رجسٹر اور فارم (ب) جو کہ نادرا کے محفوظ شدہ یادداشت کا حصہ ہے۔ دونوں سرکاری دستاویزات جو کہ وقوع سے کئی سال پہلے ان میں تاریخ پیدائش ملزم کی درج کی گئی ہے۔ سکول کے رجسٹر میں درج تاریخ پیدائش ملزم کی مکمل اور پوری تائید کرتی ہے جس کو صرف مضبوط شہادت کے ذریعے ہی رد کیا جاسکتا ہے لیکن مثل مقدمہ پر ماسوائے مذکورہ طبی ماہرین کی رائے کے علاوہ کسی اور قسم کی شہادت موجود نہ ہے۔ جس کو مندرجہ بالا سرکاری یادداشت کو رد کرنے کے لیے کافی سمجھا جائے۔"

In the light of above mentioned circumstances, I am of the view that in the case in hand when respondent No.2 has produced two authentic documents i.e. Form-B issued by NADRA and Birth Certificate, then these documents should be given preference over the school leaving certificate issued by a private school and produced by the petitioner. The question of juvenility should be firstly decided in the light of documentary evidence and only in the absence of such documents, controversy of age can be resolved through ossification test.

10. Insofar as the contention of learned counsel for the petitioner that respondent No.2 filed application for declaring him a 'Juvenile' at a belated stage and the trial court has ignored this fact is concerned, I am of the considered view that this contention has no force because in this case, neither the Station House Officer nor the Investigating Officer or learned Area Magistrate have acted in accordance with law. Mere fact that respondent No.2 did not claim himself to be a juvenile during the process of investigation as well as before the Area Magistrate, is not a valid ground to oust him from claiming the relief before the trial court at the time of his trial. The record evinces that after framing of charge on 16.10.2023, respondent No.2 submitted application before the trial court on 02.11.2023 for declaring him

juvenile, therefore, the trial court was quite competent to entertain and decide the application of respondent No.2. In the case-law tilted as Saleem Khan vs. The State and others (PLD 2020 SC 356), the Supreme Court of Pakistan has been pleased to hold as infra:-

“5. The determination of the age or juvenility of the accused under the Juvenile Ordinance was the responsibility of the trial court, requiring the trial court to hold an inquiry including obtaining a medical report for the determination of age. However, this process underwent change under section 8 of the Juvenile Act, wherein if the accused physically appears or claims to be a juvenile, the Police shall make an inquiry to determine the age of the accused on the basis of his birth certificate, educational certificate or any other pertinent document. In the absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer. Therefore, the Police are to determine the juvenility of the accused and thereafter the case is put up before the Juvenile Court for trial. Section 8(2) provides that if the accused physically appears to be a juvenile when brought before a court (of general criminal jurisdiction) under section 167 Cr.P.C the court shall before granting further detention record its finding regarding age of the accused. Section 4(7) of the Juvenile Act provides that a criminal court of general jurisdiction can find the accused to be a juvenile and thereafter transfer the case to the juvenile court for further proceedings. Therefore, in the absence of any inquiry by the Police the determination of age and juvenility of the accused can be determined by the court having taken cognizance of the matter. This is what happened in the instant case, when the court declared the petitioner to be a juvenile on the application of the petitioner.

6. Determination of age of an accused who appears or claims to be a juvenile is, therefore, initially the statutory responsibility of the Police. In the absence of which, the court of general jurisdiction enjoys the power to determine the age of the accused, and if declared to be a juvenile, transfer the case to the concerned Juvenile Court. In the instant case, the Police had not carried out any such exercise and therefore the court on the application of the petitioner issued the required declaration. The determination of age by the court is also a statutory obligation, hence the time spent in obtaining the said finding or declaration by the court cannot possibly be termed as delay caused in the trial by the accused, so as to deprive him of his right to bail on the ground of statutory delay. Any such determination of age by the court is a statutory requirement and forms part of the trial.”

11. Learned counsel for the petitioner has not argued on the point that birth certificate or Form-B issued by NADRA and produced by

respondent No.2 before the trial court are forged documents. I have observed that according to birth certificate of Muhammad Hussain (respondent No.2) his date of birth is 20.05.2006 which was got entered in the record of Union Council Ahmad Pur East, District Bahawalpur on 30.05.2006, i.e. after ten days of his birth. Similarly, his Form-B was issued by NADRA on 03.10.2016 whereas the incident in the present case took place on 26.05.2023. Both the above mentioned documents are of much prior to the date of occurrence. Furthermore, even if it is presumed that there are contradictory documents qua the age of respondent No.2, i.e. birth certificate, Form-B issued by NADRA in favor of respondent No.2 and the school leaving certificate relied upon by petitioner, famous principle of criminal jurisdiction that in case where two views relating to the age of accused are possible, the view in favour of the accused is normally to be accepted as observed in the case-law reported as Muhammad Zubair vs. The State (2010 SCMR 182) comes to rescue the accused/respondent No.2. Relevant lines from the esteemed judgment are reproduced as under for ready reference:-

“Be that as it may, the fact remains that there is a doubt in respect of the age of the appellant because according to him he was about 18 years of age whereas according to the complainant he was 20 years of age at the time of incident. In such a situation, it is to be seen as to whether doubt is to be decided in favour of the accused or the complainant. A similar question was examined by this Court in the case of “Ijaz Hussain vs. The State” 2002 SCMR 1455 and it after relying upon the case of “Umar Hayat v. Jahangir 2002 SCMR 629 held that **“in case where two views relating to the age of accused are possible, the view in favour of the accused is normally to be accepted.”** In the case of Sohail Iqbal v. the State 1993 SCMR 2377 it has been held as under:-

In view of discrepancy in recording the age of appellant it is only fair that the benefits should be extended to him particularly in view of the precedent of this Court quoted by the learned counsel for the appellant i.e. Javed Iqbal v. The State 1982 SCMR 447. ”

12. Other judgments cited by learned counsel for the petitioner are not applicable in this case because most of the case-laws are pertaining to repealed Juvenile Justice System Ordinance, 2000.

13. As a natural corollary of above discussion, this Court has reached an irresistible conclusion that the trial court has passed a well-reasoned and speaking order after applying its judicial mind which needs no interference by this Court. Resultantly, instant criminal revision is hereby **dismissed**.

14. Office is directed to send back the record of the trial court immediately.

(MUHAMMAD TARIQ NADEEM)
Judge

Approved for reporting

JUDGE

*Announced, prepared, Dictated on 22.05.2024
and singed on 29.05.2024*

Khurram