

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Revision No. 56647 of 2024.

(Kamran Mushtaq Versus The State & 02 others)

J U D G M E N T

Date of hearing	08.11.2024
Petitioner represented by	Mrs. Bushra Qamar, Advocate.
State represented by	Ms. Noshe Malik, Deputy Prosecutor General.
Respondent No.2 represented by	Malik Muhammad Akbar Awan, Advocate.

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MUHAMMAD AMJAD RAFIQ, J:- Through this petition orders dated 03.08.2024 and 10.09.2024 passed by the learned Additional Sessions Judge, Bhera District Sargodha were assailed by the petitioner on the ground that while relying on medical report/ossification test, the documentary evidence produced by the petitioner in support of his application to declare him the juvenile within the meanings of Juvenile Justice System Act, 2018 was rejected.

2. Learned counsel for the petitioner contends that Section 8 of the Juvenile Justice System Act 2018 (JJSA 2018) put a primary duty upon the police to ascertain the age of the accused on the basis of birth certificate, educational certificate or any other pertinent documents, and in the absence of such documents police may obtain a medical report; but once the police decide that accused is juvenile, the Court cannot further dilate upon the veracity of such opinion, and jurisdiction of the Court arises only when police fails to perform its duty. According to her, the Court can draw such power under Section 4(7) of the JJSA 2018 as held in a case

reported as 'SALEEM KHAN Vs The STATE and others' (PLD 2020 Supreme Court 356). Further states that in this case, challan of the accused/ petitioner was sent as juvenile offender therefore, learned trial Court was not authorized to conduct inquiry so as to reject the documents available in the form of birth certificate, Form ب of NADRA (National Database and Registration Authority) and school leaving certificate. Also states that as opposed to mandate of Section 8 of the JJSA, 2018 learned trial Court has preferred to obtain medical report without legal justification. She claims that according to the educational and other documents, age of the petitioner was less than 18 years, whereas, as per medical report, his age was counted as 21/22 years thus, Court should have given preference to the educational & other documents over the medical report or when two divergent opinions are on the record, one favourable to the accused should have been adopted. In support of her arguments she has placed reliance on the cases reported as 'انتظار حسین بنام حمزہ امیر وغیر' (2017 SCMR 633), "KHUSHAL Vs The STATE" (2018 YLR 1605), "AHMAD KHAN Vs THE STATE and another" (2003 YLR 315) & "SULTAN AHMED Vs ADDITIONAL SESSIONS JUDGE-I, MIANWALI and 2 others" (PLD 2004 Supreme Court 758). She says that JJSO 2018 is a special law which has been enacted to save guaranteed rights of juvenile offenders which cannot be taken away lightly. Reliance was also placed on cases reported as "MEHRAN Vs UBAID ULLAH and others" (PLD 2024 Supreme Court 843) & "KHAWAR KAYANI Vs The STATE and others" (PLD 2022 Supreme Court 551). Her last submission was that unless the documents produced in support of juvenility are held fraudulent or bogus, they are to be relied upon. In this respect she has referred the case reported as "MUHAMMAD ISHAQ Vs MUHAMMAD NADEEM and another" (2002 SCMR 440).

3. On the other hand, learned counsel for respondent No.2 opposed the contentions on the ground that though it is the duty of police to assess the age of the offender during investigation for

which they are bound to make an inquiry but in this case, neither the accused claimed himself as juvenile throughout the investigation nor his age was written in the case diary on his arrest and police has not also made any inquiry rather on conclusion of investigation, with the connivance of the accused party, in already drafted challan inserted the word “juvenile”; therefore, when the police have not made the inquiry, it was incumbent upon the Court under Section 4(7) of the JJSA 2018 to conduct a proper inquiry, as explained in the case reported as ‘SALEEM KHAN Vs The STATE and others’ (PLD 2020 Supreme Court 356). Further stated that authenticity of the document is to be decided before accepting it in favour of any party because if the documents submitted before the Court are accepted without verification, it would open a situation when the offender would manage ante-date documents to assert juvenility, as has been done in this case. Further states that when documents are ambiguous then only option left with the Court is to seek and rely on the medical examination report. In this respect he has placed reliance on a case reported as “OM PRAKASH Versus STATE OF RAJHISTAN and another” (2012 SCMR1400). Thus, he supported and defended the impugned orders. Learned Deputy Prosecutor General argued that it is the duty of prosecution to scrutinize the report under section 173 Cr.P.C. and point out defects therein; therefore, concerned District Prosecutor must have raised objection about proof in respect of juvenility before sending the case to the Court which has not been done in this case.

4. *Heard. Record perused.*

5. In order to determine the legal position, it is essential to reproduce Section 8 of the JJSA 2018.

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.

Section 8 of JJSA 2018 used word ‘inquiry’ to determine the age of person on the basis of birth certificate, educational certificate or any other document, primarily to be made by the police and then by Magistrate before order for further detention. It is trite that object of the inquiry is to determine the truth or falsity of certain facts in order to take further action thereon as held in a case reported as “P. Sirajuddin Vs Government of Madras, represented by the Chief Secy., Madras and others” (AIR 1968 Madras 117). The Supreme Court of Pakistan in a case reported as “SULTAN AHMED Versus ADDITIONAL SESSIONS JUDGE-I, MIANWALI and 2 others” (PLD 2004 Supreme Court 758), has declared that the inquiry for age determination is a form of judicial proceedings calling for application of Qanun-e-Shahadat Order, 1984 (the Order), which says it applies to all judicial proceedings in or before any Court. Thus, documents primary or secondary, in support of age of accused, shall be not be accepted at the whims of the parties without verification but on the touchstone of admissibility rules contained in the Order. Reliance in this respect is place on a case reported as “MUHAMMAD ASLAM and others Versus THE STATE and another” (PLD 2009 Supreme Court 777), wherein it was held as under;

“Entertaining documents handed down from across the bar and then acting upon the same, would be fraught with the danger of the courts being misled into passing unwarranted orders. Such-like documents should never be accepted without being tested for their authenticity and genuineness which would be possible only if the procedure prescribed by the said Order of 1984 was followed and where the accused was also put through the requisite medical examination.”

6. Firstly, Let’s see the requirement of section 8 *ibid*, which says that ‘in the absence of documents’, age of accused may be determined on the basis of a medical examination report. Absence of documents

does not mean that there is no document at all rather it means absence of authentic, correct & true documents as admissible in evidence. Inquiry for age determination is like a voir dire process (trial within trial) which cannot be left at the mercy of police. Enactment of section 8 ibid requires the police to collect material for and against claim of juvenility to save precious time of the Courts so as to avoid unnecessary entangling in summoning of stary records on the applications of the parties, as was the requirement of section-7 of erstwhile law i.e., Juvenile Justice System Ordinance 2000. Thus, once the police opinion is made available to the Court with documentary proof or with medical examination report, it becomes easy for it to conduct a prompt inquiry for early determination of age of accused which earlier takes months to reach out. This beneficial provision requires that concerned Court on receiving Juvenile-challan shall start inquiry to check the veracity of material through the process of verification while calling reports from concerned public offices or school with authorized persons as witnesses whose testimonies shall be recorded in chief with cross examination and then the Court shall pass an order. Supreme Court of Pakistan has also passed like direction through case reported as “MUHAMMAD ASLAM and others Versus THE STATE and another” (**PLD 2009 Supreme Court 777**), that *Court should call upon the parties to lead their evidence oral or documentary with a right to the other party to test the veracity or the genuineness of the same in accordance with law and then to arrive at a judicial decision in terms thereof.* Such direction was also followed in cases reported as “SAJJAD RASUL Versus ARSLAN ZAIN-UL-ABIDIN” (**2021 MLD 2088**); “MIRWISE Versus MOHIB-UR-REHMAN, SI/SHO POLICE STATION, LORALAI and another” (**2021 PCr.L.J 10320**); “SAQLAIN Versus THE STATE and others” (**2020 PCr.LJ 374**); “MUHAMMAD AYYAZ Versus THE STATE” (**2018 PCr.LJ 132**) & “JAVED ULLAH Versus THE STATE” (**2012 YLR 2076**). Form the above discussion, it is clear the age of the accused shall only be accepted on the basis of documents after proper inquiry. If after inquiry into such documents, Court rejects them, then it must direct for

medical examination. Reliance is placed on cases reported as “OM PRAKASH Versus STATE OF RAJHISTAN and another” (2012 SCMR 1400); “ZUHAIB ZAFAR Versus THE STATE” (2006 YLR 2052) & “DOST MUHAMMAD Versus THE STATE” (2020 MLD 1384).

7. Supreme Court of Pakistan while discarding birth certificate declared it a volunteered entry by the accused, in a case reported as “MUHAMMAD ANWAR Versus MUHAMMAD SUFFYIAN and another” (2009 SCMR 1073) as under;

“The entry of date of birth in the above mentioned register Dakhil Kharij and in the above mentioned Provisional Result Certificate are not independent sources of information about the said respondent's date of birth because they only followed the information volunteered by the student himself or someone connected with him. Since such certificates are based on the information about the date of birth as volunteered as mentioned above, therefore, the same could never be found to be a conclusive proof of the concerned person's date of birth.”

8. Every accused who is under the charge of murder is liable to sentence of death if the case stands proved, therefore, to avoid death penalty accused is duty bound to prove his claim of being juvenile on the basis of true documents and burden of proof lies on him. In this case as per allegation in FIR, Sami Hasnain was murdered due to firing by the petitioner in the presence of witnesses. Occurrence took place on 28.05.2023, accused claimed his date of birth as 11.11.2005. Learned trial Court while summoning record of police, NADRA and School along with witnesses, conducted a thorough inquiry and it was found that police has not mentioned the age of accused in police case diary on his arrest and kept it blank and accused also did not raise plea of juvenility throughout investigation. Birth certificate of the petitioner was obtained on the basis of civil suit filed after the occurrence. Earlier Form “B” obtained in year 2019 was not based on any authentic document and school leaving certificate was also having volunteer entry of date of birth without any proof. Learned trial Court had no other choice except to call for a medical examination report as required by Section-8 *ibid*. Report duly

signed by five specialist doctors reflects age of petitioner as 21-22 years even above the grace margin of 1-2 years. Learned trial Court while rejecting documents tendered by the petitioner opted to rely on medical report, thus, has not committed any illegality or irregularity so as to warrant any interference by this Court.

8. In the light of above discussion, there is no substance in this petition therefore, the same is hereby **dismissed**.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**

Signed on_____.

**Ajmal Rana.*

APPROVED FOR REPORTING.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**