

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Revision No.87-2015

Muhammad Faizan Riffat Ullah Khan

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.12.2015	Syed Zahid Hussain Bukhari & Ms. Khalida Parveen, Advocates for petitioner. Malik Waheed Anjum, Advocate for respondent No.2. Mr. Ahmed Hassan Rana, State Counsel with Ghulam Habib, SI with record.
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Through this petition, the petitioner seeks
following relieves:-

“It is, therefore, most respectfully prayed that the revision petition may very kindly be accepted and impugned order dated 06.10.2015 passed by learned Additional Sessions Judge, Islamabad-West may kindly be set aside and by allowing petitioner’s application for declaring him a juvenile. Petitioner may kindly be declared as a juvenile and he ma kindly be tried as such in the supreme interest of justice.

It is also prayed that till the final decision of the revision petition, proceedings before the learned Additional Sessions Judge, Islamabad-West may kindly be stayed”

2. Respondent No.2/complainant lodged FIR No.244-2014 dated 25.03.2014 under section 302, 364, 201 & 109 PPC registered at P.S. Margalla, Islamabad against the petitioner. After usual investigation, challan was submitted before the learned Additional Sessions Judge, Islamabad-West. The petitioner moved an application u/s 7 of the Juvenile Justice System Ordinance, 2007 for declaring him as a juvenile, which was dismissed vide impugned order dated 06.10.2015, hence this petition.

3. It is contended by the learned counsel for the petitioner that the impugned order is against law and facts of the case; that learned Additional Sessions Judge, Islamabad-West was not justified in preferring the report of medical board when there was concrete evidence qua the age of the accused; the accused was born on 14.04.1997, as is evident from his testimonials which are intact and the petitioner was of tender age at the time of occurrence; that the petitioner was born in Banno, KPK and his birth was duly registered in the record at Banno; that ossification test is not conclusive proof of age of the petitioner, as it only gives a clue

as to the age, rather the best evidence is the testimonials of the petitioners existing much prior to the occurrence with regard to age of the petitioner; that learned Additional Sessions Judge was not justified to mechanically invoke provision of section 7 of the Juvenile Justice System Ordinance, 2000. This exercise had to be restored only when there was no other proof available like school leaving certificate and other testimonials which contain date of birth of the petitioner; that the medical opinion cannot override the evidence of birth which remained undisputed and un-rebutted by the prosecution; that the learned trial court has not appreciated the dictum laid down in 2005 MLD 148 & 2004 MLD 1526; that even-otherwise there are two views which can be drawn from the material available on record, one from the medical board and the other from testimonials of the petitioner, the second view i.e. testimonials of the petitioner has to be normally adopted. In support of above contentions, reliance has been placed upon 2002 P.Cr.LJ 633, 2005 YLR 1029, PLD 2009 Lahore 535, 2013 P.Cr.LJ 1440, 2002 P.Cr.LJ 1237, 2002 MLD 1817, 2002 P.Cr.LJ 2034.

order passed by the learned Additional Sessions Judge, Islamabad-West for the reasons recorded therein and reiterated the same. Further, he has relied upon PLD 2004 SC 758 & 2004 SCMR 121.

5. Learned State Counsel has adopted the arguments advanced by learned counsel for respondent No.2.

6. I have heard the arguments and perused the record, relevant provisions of law and the authorities referred by both the sides.

7. From general features of this case, it appears that at investigation stage, such plea was neither raised nor there was any observation of I.O. with regard to minority of the accused/petitioner. On making application by petitioner u/s 7 of the Juvenile Justice System Ordinance, 2007 before learned trial court, inquiry was conducted by the learned trial court. Ossification test was also conducted by the medical board of E.M. PIMS Hospital, Islamabad under the directions of the learned trial court. Certain documents in support of age of the petitioner were also produced which included admission form said to have been attested by Headmaster of Government Higher Secondary

School, Bassali, Tehsil & District, Rawalpindi. The said admission form contained address of petitioner/accused as Village & Post Office, Baga Sheikhan Tehsil & District Rawalpindi, whereas other documents showed his address as Lacki Marwat, Bannu. Since neither birth certificate was produced nor any school certificate was brought on record, wherein date of birth is mentioned. The complainant side moved an application before learned trial court to summon the Principal, Government Higher Secondary School, Bassali, Tehsil & District, Rawalpindi along with record, which was allowed. The said Principal was examined by the learned trial court, who categorically denied his signatures on admission form of petitioner in respect of matriculation examination and even stated that he could not say as to whether petitioner remained his student at the said school or not. Such document available on record was thus proved to be a forged document in view of evidence of concerned PW namely Ch. Muhammad Ilyas, the said Principal. In view of such attempt on the part of petitioner/accused whereby he tried to prove himself as minor by maneuvering of record

i.e. admission form on which fake entries, stamp and signatures were affixed. On observing such mischief, learned trial court should have paid due consideration on close scrutiny of record produced before it.

8. Another very important feature which has been noticed from police record is that driving license and National Identity Card of the present petitioner were recovered at the time of seizure of car; the details of those documents along with others are though not available, but it leads towards inference that on attaining age of majority, he should have been issued such documents. These documents were returned to petitioner on superdari, but not produced with this petition meaning thereby concealment of its contents.

9. Moreover, the Directorate General of Immigration & Passport Office had entertained the application of the petitioner which contained date of birth of the petitioner as 14.04.1997, but Rawalpindi is shown as his place of birth.

10. Another feature which is required to be highlighted and creates doubt is that application of the petitioner for issuance of passport was

entertained on 31.03.2011, whereas certificate placed at page-16 of this petition was issued on 28.01.2015 by Dy. Assistant Director, Regional Passport Office, Islamabad with the following words: -

“It is certified that the Passport No.FT4101121 (Tracking ID 1010101669) issued to Mr. Muhammad Faizan Riffat Ullah Khan son of Riffat Ullah Khan, date of birth 14.04.1997 CNIC No.61101-4821112-5) issued on 24.02.2006 by this Office has been destroyed/weeded out after completion of five year as per Directorate General of Immigration & Passports, Headquarter, Islamabad Policy (policy letter enclosed)”

11. The document placed on record at pages-44 & 45 of this petition i.e. Family Registration Certificate shows name of petitioner as Muhammad Faizan Riffat Ullah Khan and his date of birth as 14.04.1997. This documents shows status of the present petitioner as adult. It is observed that such type of registration certificate always bears details of adult and minor family members separately with their specifications. The birth certificate issued by NADRA shows late entry as 26.05.2015, whereas incident was allegedly occurred on 25.03.2014.

12. It is again noticed that record maintained with Director General, Immigration & Passport shows place of birth of the petitioner at Rawalpindi,

whereas in his birth certificate same has been mentioned as District Bannu, KPK.

13. Learned trial court did not furnish its own opinion with regard to above discrepancies, rather inquiry was conducted to determine age of the petitioner. Learned counsel for the petitioner mainly emphasized that those documents since believed to be genuine by the learned trial court, should have been deemed as such. In this regard, it is observed that the duty casts upon learned trial court when it observes that one document has been maneuvered, but from perusal of impugned order, it is evident that this aspect has not been discussed which in my view is an infirmity therein.

14. As far as the application moved by the mother of the petitioner complaining against one doctor namely Naseer who allegedly demanded some amount from her, who later on did not form opinion in favour of petitioner is concerned, in this regard, it is observed that ossification report, whereby opinion was formed by the medical board was issued on 26.06.2014, whereas application was filed on 28.06.2014. It is further observed that Medical Board was comprised of four Doctors

including two Assistant Professors Radiology, who rendered opinion regarding age of petitioner therefore the application filed by mother of petitioner seems to be an afterthought merely to create doubt about opinion formed by medical board.

15. The petitioner has mainly attacked upon ossification test which, in his opinion, is based upon guess of the doctors. It is observed that ossification test is though based upon guess forming opinion after examination of X-rays of Wrist Joints, but it can hardly be variative of one year and not beyond that as observed in various pronouncements based on medical knowledge.

16. It is observed that ossification test prevails over birth certificate and school leaving certificate as held in the case of Muhammad Zakir Vs. The State & Another reported in 2004 SCMR 121.

17. Otherwise, the best way to determine age would be the educational record which was not filed in the instant case by the petitioner seeking separation of his trial as tender aged accused. In failure to submit such documents, learned trial court ordered for constitution of medical board for

determining age including ossification test. The medical board consisting of four doctors gave its opinion regarding age of the petitioner i.e. 25 years & 6-months which has to be considered as authenticated, as there exists no reason to disbelieve ossification test as well as opinion formed by the medical board.

18. The mandate of law includes medical opinion along with other material considered during course of inquiry which was conducted on the orders of learned trial court to thrash out real facts with regard to age of present petitioner.

19. For the foregoing reasons, I am of the confirmed view that petitioner cannot claim relief on the basis of documents submitted and in view of his own conduct by which, he produced forged documents before the learned trial court and also on the basis of variance in record as observed after its scrutiny, hence relief claimed is declined.

20. Instant criminal revision is dismissed.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for Reporting

Blue Slip is added.
Wslw

JUDGE