

Sumit vs The State (Nct Of Delhi) on 16 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. 725/2019 & CRL.M.A. 23022/2023
SUMIT

THE STATE (NCT OF DELHI)

Through: Mr. Pradeep Gahal
State with Adv.
Adv. Sunny Sharm
Jain Adv. Nayan
Kumar Adv. Dhruv
Shristhi Setia
Deepankar Katar
SI Teena, PS Dw

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

% 16.08.2024 CRL.M.A. 23022/2023 (Seeking permission for bone ossification test)

1. This application has been filed seeking permission/enquiry into the claim of juvenility as raised by the appellant. The appellant was convicted by order dated 30th January, 2019 and sentenced to RI 20 years for offences committed under Sections 376D and 366 IPC in addition of fine. This appeal was filed before this Court against the aforesaid impugned order and has been pending since.

2. During the proceedings before this Court on 14th October, 2022 when an application for suspension of sentence being CRL.M.(BAIL) 322/2022 was This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/08/2024 at 22:52:26 filed, it was claimed that the date of birth by the transfer certificate issued by the Higher Secondary School, Bhatasa, Farrukhabad, U.P. was 20th May, 2000, as per which the appellant would have been a juvenile on the date of the incidence (being 23rd December, 2017).

3. However, an objection was taken by the State that as per the matriculation certificate, the date of birth was 14th April, 1999. In this regard, status report was requisitioned.

4. As per the status report dated 14th February, 2024, the documents which had been submitted with regard to the age of the appellant, were tabulated as under:

5. It was reiterated in the status report that even as per the record of the Primary School Bhatasa, where the accused had studied from 01st Class till 04th Class, the date of birth was 15th May, 1997

and that was the record of the This is a digitally signed order.

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6. Counsel for the appellant, however, relies upon the following tabulation, to place the matters in perspective:

7. Accordingly, she states that the transfer certificate issued by Dwarika Singh Public School, Jyona Jyoni, Faruk Nagar, U.P. where the appellant had been studying in Class 5th, shows the date of birth as 20th May, 2000.

8. In this regard, the APP for the State submits that these documents are not verified and according to a bare perusal, they seem to be forged. He submits that reliance ought to be placed on the matriculation certificate itself (and only other documents, in absence of the same), in line with Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, or otherwise on Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which for ease of reference are reproduced as under:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/08/2024 at 22:52:27 Section 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:

"12. Procedure to be followed in determination of Age. -- (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--

(a)(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 a 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."

Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under:

"94. Presumption and determination of age.--(1) Where, it is obvious to the Committee or the Board, based on the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/08/2024 at 22:52:27 appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining--

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

(emphasis added) This is a digitally signed order.

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9. To counter this, counsel for appellant points out to the decision of the Hon'ble Supreme Court in *Rishipal Singh Solanki v. State of U.P.*, (2022) 8 SCC 602 where the Court after traversing catena of judgments in regard to juvenility, held in para 33 as under:

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case.

A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies. 33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/08/2024 at 22:52:27 application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission

of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised. 33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance. 33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

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33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions. 33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding

the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

(emphasis added)

10. Accordingly, she states that as per para 33.3 of the decision of the Supreme Court in Rishipal Singh (supra), presumption would certainly arise, based on the submission of the State, of the matriculation certificate as being conclusive proof of the juvenility but it can be rebutted by contra evidence of the transfer certificate provided and, therefore, as per para 33.8 if two views were possible on the said evidence, then the Court should lean in favour of holding the accused to be a juvenile in borderline cases.

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11. Even though prima facie to this Court the matriculation certificate seems to be direct and conclusive evidence of the appellant's age read in consonance with the provisions cited by the APP above, considering this 'claim' has been raised by the appellant, the issue ought to be examined.

12. Adverting to Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Court considers it fit to direct the ASJ to examine these documents regarding age propounded by the appellant as also the verification by the status report alongwith documents annexed with produced by the State. The documents may be examined in original, if made available by either party, and the observations of the ASJ be recorded and placed vide a report before this Court.

13. Parties to appear before the ASJ South West Dwarka on 30th August, 2024.

14. Copy of the order be sent by the Registry, to the Principal District and Sessions Judge Sout-West Dwarka to place it before the concerned Court. The conviction was by court of ASJ in FIR 370/2017 PS Dwarka Sector 23.

15. List before this Court on 14th November, 2024.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J AUGUST 16, 2024/MK/na This is a digitally signed order.

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