Punjab-Haryana High Court
Raman vs State Of Haryana on 27 August, 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 1704 of 2009 (O&M)
Date of decision: August 27 ,2009

Raman

.. Petitioners

v.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kapil Aggarwal, Advocate for the petitioner.

Ms. Ritu Punj, Deputy Advocate General, Haryana.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 7.7.2009, passed by the learned court below, whereby the application filed by the petitioner for declaring him juvenile was rejected.

The petitioner is an accused in FIR No. 235 dated 21.11.2008, registered at Police Station, Mahesh Nagar, Ambala Cantt. under Sections 307/302 IPC and 25 of the Arms Act. It is alleged in the FIR that the petitioner is guilty of committing murder of Vikram. After investigation, challan was presented. The case was committed to the Court of Session for trial. It is at this stage that application for declaring the petitioner a juvenile was moved with the plea that his date of birth was 17.8.1992 and on the date of commission of alleged offence, he was 16 years and 3 months old. In support of the claim, record of the school was produced, besides oral statements. However, not being satisfied with the record produced by the petitioner, the learned court below dismissed the application.

Learned counsel for the petitioner submitted that to substantiate the plea raised by him for being declared as juvenile, the petitioner had produced on record sufficient evidence, however, the same has not been given due weightage by the learned court below. The documentary evidence produced has been brushed aside in comparison to the oral evidence. Reference was made to the affidavit sworn by the father of the petitioner on 3.12.2003 at the time when the petitioner was to be admitted in Government Primary School, Babyal, where he appeared in Criminal Revision No. 1704 of 2009 [2] 5th class examination during the session 2003-04. The date of birth of the petitioner

mentioned therein was 17.8.1992. Similar was the position with regard to the admission and withdrawal register of the school, where against admission No. 7302 dated 8.12.2003, the date of birth of the petitioner was shown as above. At that time, he was admitted in 5th class. As the petitioner was withdrawn from the school on 31.3.2004, his school leaving certificate also mentioned the same date. Reference was also made to the ration card, in which the age of the petitioner was shown as 12 years. The same was issued in the year 2005. Referring to the aforesaid material and also the fact that the FIR came to be registered for the alleged offence committed by the petitioner on 21.11.2008, it was submitted that the aforesaid documents cannot possibly be created as the same pertain to the years 2003, 2004 and 2005 and were proved from the record of the government authorities, which are maintained in due course. It was further submitted that as against the aforesaid documentary evidence, reliance on the oral statements and mentioning of age of the petitioner at the time of his arrest and at the time of his medical examination cannot be relied upon. Reliance was placed upon Daya Ram alias Dev Puri v. State of Haryana, 1999(1) RCR (Criminal) 362 (P&H); Gurmit Singh v. State, 2001(2) RCR (Criminal) 218 (Delhi); Kameshwar Prajapati v. State of Jharkhand, 2006(1) RCR (Criminal) 491 (Jharkhand); Revi-Ul-Islam v. State, 2006(3) RCR (Criminal) 321 (Delhi); Manjeet v. State, 2007(1) RCR (Criminal) 370 (Delhi); Santokh Singh v. Harkirat Singh alias Kirat and another, 2008(2) RCR (Criminal) 938 (P&H) and Pappu v. Sonu and another, 2009(2) RCR (Criminal) 293 (SC).

On the other hand, learned counsel for the State submitted that ration card cannot possibly be relied upon for the purpose of determination of age of any person. RW1 - Rajbir Singh, Inspector/SHO, Police Station, Mahesh Nagar, Ambala Cantt in his statement before the court during the course of proceedings for declaration of the petitioner as a juvenile, stated that at the time of his arrest, the petitioner disclosed his age as 18 years. Similarly, at the time of his medico- legal examination, the age was disclosed as 19 years. Even on interrogation, he stated that he was working in a Science Factory at Ambala Cantt. where he disclosed his age as 18 years. The submission was that once the petitioner had himself disclosed his age at various places to be more than 18 years, there was no question of considering his age as less than 18 years on the date of commission of offence. An admission at any stage would certainly be taken against the person making such a statement which is not said to be not voluntarily. If the petitioner had studied in a school upto 5th class, he would certainly be knowing his age.

Criminal Revision No. 1704 of 2009 [3] Heard learned counsel for the parties and perused the paper book. The issue similar to what is in dispute in the present case was considered by Hon'ble the Supreme Court in Hari Ram v. State of Rajasthan and another, 2009(2) RCR (Criminal) 878 (SC). Considering the earlier judgments on the issue, Hon'ble the Supreme Court dealt with the issue in the following manner:

> "17. Since the application of the Juvenile Justice Act, 2000, to a person brought before the Juvenile Justice Board (hereinafter referred to as `the Board') depends on whether such person is a juvenile or not within the meaning of Section 2 (k) thereof, the determination of age assumes special importance and the said responsibility has been cast on the said Board. Subsequently, after the decision of a Constitution Bench of the Court in the case of Pratap Singh v. State of Jharkhand and another, 2005(1)

RCR (Criminal) 836: 2005(1) Apex Criminal 358: [(2005) 3 SCC 551], the legislature amended the provisions of the Act by the Amendment Act, 2006, by substituting Section 2(l) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence" (emphasis supplied) and to include Section 7-A which reads as follows:

"7A. Procedure to be followed when claim of juvenility is raised before any court.

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward Criminal Revision No. 1704 of 2009 [4] the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect." (Emphasis supplied)

18. Section 7-A makes provision for a claim of juvenility to be raised before any court at any stage, even after final disposal of a case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not. The aforesaid provisions were, however, confined to Courts, and proved inadequate as far as the Boards were concerned. Subsequently, in the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is a comprehensive guide as to how the provisions of the Juvenile Justice Act, 2000, are to be implemented, Rule 12 was introduced providing the procedure to be followed by the Courts, the Boards and the Child Welfare Committees for the purpose of determination of age in every case concerning a child or juvenile or a juvenile in conflict with law. Since the aforesaid provisions are interconnected and lay down the procedures for determination of age, the said Rule is reproduced hereinbelow:

"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 making 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 send him to the 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 Criminal Revision No. 1704 of 2009 [5] 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 cases 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 a 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 and except where, further

inquiry or otherwise is required, inter alia in terms of Section 7A, section 64 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.

Criminal Revision No. 1704 of 2009 [6] (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) of the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law." Sub-Rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the Court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in Sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7A when a claim of juvenility is raised.

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33. In addition to the above, Section 49 of the Juvenile Justice Act, 2000 is also of relevance and is reproduced hereinbelow:

"49. Presumption and determination of age. -(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority 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."

Criminal Revision No. 1704 of 2009 [7]

34. Sub-Section (1) of Section 49 vests the Competent Authority with power to make due inquiry as to the age of a person brought before it and for the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a

finding as to whether the person is a juvenile or a child or not, stating his age as nearly as may be. Sub -Section (2) is of equal importance as it provides that no order of a Competent Authority would be deemed to have become invalid merely on account of any subsequent proof that the person, in respect of whom an order is made, is not a juvenile or a child, and the age recorded by the Competent Authority to be the age of the person brought before it, would, for the purpose of the Act, be deemed to be the true age of a child or a juvenile in conflict with law. Sub-Rule (3) of Rule 12 indicates that the age determination inquiry by the Court or Board, by seeking evidence, is to be derived from:

(i) the matriculation or equivalent certificates, if available, and in the absence of the same;

(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;

35. Sub-Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted Medical Board, which would declare the age of the juvenile or the child. In case exact assessment of the age cannot be done, the Court or the Board or as the case may be, the Child Welfare Committee for reasons to be recorded by it, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within a margin of one year.

36. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals."

Criminal Revision No. 1704 of 2009 [8] In Gurmit Singh's case (supra), Delhi High Court; Kameshwar Prajapati's case (supra), Jharkhand High Court and Revi-Ul-Islam's case (supra), Delhi High Court opined that if a school leaving certificate is produced to prove the age, the same should normally be relied upon, unless there is other convincing evidence to rebut the same. In Santokh Singh's case (supra), this Court opined that in case of proof of age, hypertechnical approach should not be adopted and if two views are possible, the court should lean in favour of holding the accused to be a juvenile.

If the facts of the present case are examined in the light of the enunciation of law, as referred to above, in my opinion, convincing documentary evidence is available on record, which would lead to

the conclusion that date of birth of the petitioner is 17.8.1992. To substantiate this plea, documentary evidence in the form of admission in the school way back in the year 2003 and result for 5th class examination during the session 2003-04 was placed on record. The FIR in question was registered on 21.11.2008. By no stretch of imagination, it can be said that the aforesaid record was got fabricated later on, as the same is 5 years prior to the date of occurrence. Even if it is considered from another angle, the petitioner attended Government Primary School, Babyal for 5th class during the session 2003-04, meaning thereby when he appeared in 5th class examination in 2004, he was 11-1/2 years of age, if considered from the date of birth mentioned in the school record as 17.8.1992, which is quite appropriate. As against this, mere oral statement of the petitioner at the time of arrest or his medical examination or what was mentioned to his employer cannot be considered as convincing to dis- lodge the documentary evidence, as referred to above.

For the reasons mentioned above, the impugned order passed by the learned court below is set aside and it is held that date of birth of the petitioner is 17.8.1992. Accordingly, he being 16 years and 3 months of age on the date of occurrence, is declared to be a juvenile.

The petition stands disposed of accordingly.

(Rajesh Bindal) Judge August 27 , 2009 mk