

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Criminal Revision No. 122-P/2017
(with Cr.M.No.335-P/2017)

JUDGMENT

Date of hearing: : 17th November, 2017

Petitioner(Irshad Ahmad) By: Mr. Shabbir Hussain Gigyani,
advocate.

Respondents:

State By: Syed Sikandar Hayat Shah,
AAG.

Accused/respondent: By: Sahibzada Riazatul Haq,
advocate

QAISER RASHID KHAN, J:- This criminal revision is directed against the order of the learned Additional Sessions Judge-X, Peshawar dated 25.9.2017, whereby the application of the petitioner for the examination of the accused/respondent through Medical Board/radiologist for the accurate determination of his age, has been dismissed.

2. Facts relevant to the present petition are that the accused/respondent Bilal along with other co-accused stand

charged in case FIR No.775, dated 21.5.2016 under Sections 302/324/34 PPC of Police Station Chamkani, Peshawar. He was sent for trial before the learned Additional Sessions Judge-X, Peshawar and on 10.8.2017 when the case was fixed for framing of the charge against the accused/respondent, he presented his Matric DMC according to which his age was below 18 years at the time of the commission of the offence and the learned trial court, accepting the said DMC as an authentic document, issued directions to the prosecution to submit separate challan against the accused/respondent under the Juvenile Justice System Ordinance, 2000. Feeling aggrieved, the petitioner, being complainant of the case, moved an application before the learned trial court requesting for the age determination of the accused/respondent through proper inquiry and medical board in the light of section 7 of the Ordinance ibid. The learned trial court, after hearing arguments of the learned counsel for the parties, dismissed the application vide order dated 14.9.2017, hence the instant criminal revision petition.

3. Arguments heard and the available record perused.

4. Since the learned counsel for the petitioner banks upon Section 7 of the Juvenile Justice System Ordinance, 2001, therefore, the same is reproduced as under for ready reference:-

“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.”

After going through the recitals of the aforesaid section of law, the question to be decided is that whether under section 7 of the ibid law, it is obligatory on the trial court to have recourse to the Medical Board for the determination of the age of an accused in every case. Certainly, under this provision of law, when there is no concrete proof or documentary evidence qua the juvenility of an accused, the trial court can resort to such exercise of sending the matter to the Medical Board, but in

the instant case, the accused/respondent, before the framing of the charge, presented his DMC of SSC examination in support of his claim of minority which the learned trial court accepted as an authentic document. More so, the petitioner has not challenged the validity or authenticity of the document produced by the accused/respondent in the form of DMC of SSC issued by the BISE, Peshawar, either before the learned trial court in his application nor before this court through the instant petition but has simply averred that the age of the accused/respondent be determined through the Medical Board. Otherwise too, when the said document has not been held by the competent forum as fraudulent or bogus, its authenticity cannot be brushed aside on the bald assertion of the petitioner. As per his Matric DMC, at the time of the alleged commission of the offence on 21.5.2016, the accused/petitioner was below 18 years of age, i.e. 17 years, 8 months and 11 days.

In view of the foregoing discussion, the learned trial court has rightly dismissed the application of the petitioner. I am fortified in my view by the dictum laid down by the august Apex Court in the case reported as Muhammad

Ishaq Vs Muhammad Nadeem and another (2002 S C M R
– 440) and Intizar Hussain vs Hamza Amir and others
(2017 S C M R – 633).

5. Resultantly, this criminal revision petition, being
 without any substance, stands dismissed along with Cr.Misc.

No.335-P/2017.

Announced on
17th Nov., 2017.


 JUDGE

27/11/17