

(2017) 04 AHC CK 0004

In the Allahabad High Court

Case No : Special Appeal Defective No. - 205 of 2017

Sahjadi Khatoon

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 68, Section 7A
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12

Citation : (2017) 3 AILLJ 527

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Gautam and P.N. Saxena, Advocates, for the Appellant; C.S.C. and Upendra Kumar Mishra, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. For the reasons stated in affidavit filed in support of delay condonation application, as the same constitutes sufficient cause for condoning the delay in filing special appeal, the Delay Condonation Application is allowed. Special appeal is treated to have been filed well within time.

2. Sahjadi Khatoon as well as Saif Ansari are before this Court for quashing of the order dated 17th February, 2017 passed by learned Single Judge in writ petition no. 8945 of 2016 (Sahjadi Khatoon And Another v. State of U.P. and 6 others) wherein the learned Single Judge has proceeded to recall the order dated 26.02.2016, and further proceeded to dismiss the writ petition in question.

3. From the record in question, this much is reflected that Sahjadi Khatoon and Saif Ansari came to this Court on 26.02.2016, and this Court believing their version to be true, proceeded to pass following order:

"1. Heard learned counsel for the petitioners and learned standing counsel appearing for the State of U.P.

2. The petitioners as usual are claiming protection as they have married of their

own free will against the wishes of their parents/relatives.

3. The averments in the petition are supported by joint affidavit of the petitioners.

4. The petitioner no.1 is of marriageable age as per High School mark sheet/certificate (s).

5. In view of legal position which has been summed up in the case of Smt. Pooja and another v. State of U.P. and others 2013 (6) ADJ 225 without expressing any opinion about the marriageable age of both the petitioners, validity of their marriage or the genuineness of the marriage certificate, if any, produced, or the change of their religion, the writ petition is disposed of with liberty to the petitioners to approach the concerned court of magistrate/police authorities/Senior Superintendent of Police and to appraise any of these authorities of the disturbance by outsiders in their married life and in case it is so done, the police authorities would ensure that they are not put to any threat or torture and their married life is not disturbed provided they are prima facie found to be of marriageable age and further that they are not wanted or involved in any case in connection with the above marriage or living together and further that they apply for registration of the marriage in accordance with the provisions of the Uttar Pradesh Hindu Marriage Registration Rules, 1973/The Special Marriage Act, 1954 within a period of one month from today, as registration of marriage is compulsory vide decisions of the Supreme Court reported in (2006) 2 SCC 578 and (2008) 1 SCC 180 Seema (Smt) v. Ashwani Kumar and in case they fail to apply for registration of their marriage, the protection herein above would cease to operate.

6. The filing of this petition or the order of its disposal would not be treated as proof of marriage between the petitioners which would be subject to declaration of their marriageable status by the court of competent jurisdiction or upon the registration of their marriage with the competent authority in accordance with law.

7. Since the petition is being disposed of in limine, any person aggrieved by it is at liberty to apply for its recall, if the order has been obtained by suppression or concealment of facts or on false averments.

8. However, this order would not come in way of investigation, if any, pending before the police authorities.

9.The writ petition is disposed of accordingly with above observations."

4. Thereafter, record in question reflects that the Afsana Khatoon, mother of Sahjadi Khatoon came to this Court with the request to recall the order dated 26.02.2016 on the premises that petitioner no. 1 is a minor who was born on 20.05.1999 and such fact is also corroborated by her High School Certificate, wherein also her date of birth has been mentioned as 20.05.1999, whereas fact of the matter is that in order to procure the order of this Court a certificate of Maulvie Examination-2009 issued by the U.P. Board of Madrasa Education,

Lucknow, has been produced wherein the date of birth of petitioner no. 1 has been mentioned as 06.06.1995.

5. The learned Single Judge, it appears, has been swayed by the fact that petitioner has concealed the fact that petitioner no. 1 is High School pass and before this Court she has proceeded to rely on the certificate of Maulvie Examination-2009, probably to mislead the Court. On these presumption and premises, the impugned order in question has been passed.

6. From the side of the petitioner-appellants, it is being contended before us that once the certificate of Maulvie Examination-2009 was issued prior in time, same has been relied upon by the petitioner-appellants before this Court at the point of time when they have proceeded to file the writ petition in question and learned Single Judge also proceeded to pass the order in question, then without verifying the genuineness of Maulvie Examination Certificate and recording finding that it was ingenuine/ forged document filed before this Court, such an order could not have been passed and, as such, this Court should come to rescue of the petitioner appellants and the order passed by the learned Single Judge of recalling the order dated 26.2.2016 is per se bad.

7. From the side of the mother of petitioner appellant no. 1, it has been sought to be contended that the certificate of Maulvie Examination-2009, on the face of it, is a fictitious document and no credibility could be attached to the same.

8. The fact of the matter is that learned Single Judge, at the point of time, when has proceeded to pass an order dated 17.02.2017, has been much more swayed by the fact that there was a High School Certificate in favour of petitioner-appellant no. 1 and in spite of the same, the said document was not at all brought in to the knowledge and notice of the Court, whereas certificate of Maulvie Examination- 2009 granted in favour of petitioner appellant no. 1, issued by the U.P. Board of Madrasa Education, Lucknow, has been produced before this Court.

9. In order to find out as to what should be the age of the incumbent concerned and who could be accepted as a juvenile, there is a specific statutory provision that covers all the field in that regard known as The Juvenile Justice (Care and Protection of Children) Rules 2007, in which sub-rule (3) of Rule 12 gives a full-fledged mechanism, that is adhered to, in the matter of determination of age and for ready reference, same is as follows;

"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 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.

(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.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

10. Apex Court in the case of Jarnail Singh v. State of Haryana 2013 Law Suit

(SC) 515, has taken the view as follows:

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix.

11. Once the specific claim of mother of petitioner appellant no. 1 has been that the petitioner-appellant no. 1 is a juvenile and the petitioner-appellants have disputed the said situation, and has been claiming that certificate appended by her being prior in time was more reliable in reference of giving true picture about age of victim who otherwise was claiming that she is not a victim but has voluntarily entered into matrimonial alliance, then in our considered opinion, we proceed to set aside the order in question and proceed to direct that requisite exercise in consonance with Rule 12 of The Juvenile Justice (Care and Protection of Children) Rules 2007 be undertaken.

12. In view of this, once on mere presumption the order dated 17.02.2017 has been passed recalling the order dated 26.02.2016, in view of this, we do not approve of the said order in question and, accordingly, the order dated 17.02.2017 is hereby set aside, and we proceed to pass an order directing therein that petitioner appellant no. 1 should present herself before the court of learned Magistrate concerned, within two weeks from today, he/she shall satisfy himself/herself as to whether the girl is major or not and shall record her statement under section 164 Cr.P.C. The Magistrate concerned shall fix a date for the same purpose. Till then, no coercive step shall be taken against the petitioner appellants.

13. Based on the evidence adduced, final call qua the custody of petitioner appellant no. 1 can be undertaken.

14. It is further directed that in case the petitioner appellants approach the S.S.P./S.P. concerned to provide them protection for the purposes of appearing before the court concerned to record the statement of the petitioner appellant no. 1 under section 164 Cr.P.C., and for determination of age, the same shall be provided.

15. With the aforesaid directions/observations, present special appeal is disposed of.

16. Further we proceed to make it clear that we are not making any comment in this order that would affect the ongoing investigation in question as FIR has also been lodged and we hope and trust that the concerned investigating authorities would proceed in the matter in free, fair and impartial manner on the basis of the evidence adduced by the parties concerned.