
(2010) 09 DEL CK 0263
In the Delhi High Court
Case No : Criminal M.C. 1110 of 2010

Santosh Singh

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 12(3)

Citation : (2010) 09 DEL CK 0263

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Tanvir Ahmed Mir, for the Appellant; Arvind Kr. Gupta, APP, for the Respondent

Judgement

Sanjiv Khanna, J.—Learned Counsel state that the entire relevant material/evidence necessary for the disposal of the present petition has been filed and is on record and the matter may be heard and disposed of. Accordingly, I have heard the learned Counsel appearing for the petitioner and the learned APP for the State.

2. By the impugned order dated 14th December, 2009, learned Metropolitan Magistrate has decided two applications which were filed by Mintoo Kumar Singh and Santosh Singh that they were juvenile and the matter should be referred to Juvenile Justice Board in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act for short). In the impugned order, it has been held that Mintoo Kumar Singh was a juvenile but the petitioner herein Santosh Singh was more than 18 years of age at the time of alleged offence i.e. 9th February, 2008 and accordingly, can be tried under the ordinary law.

3. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as Rules for short) prescribes a procedure to determine the age of a person facing prosecution before the Court or the Juvenile Justice Board. Rule 12(3) reads as under:

12. Procedure to be followed in determination of age.-

(1)

(2)

(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. It is an admitted position that Santosh Singh is not a matriculate. Santosh Singh also does not have a birth certificate given by Corporation, Municipal Authority or Panchayat. What was placed on record was a transfer certificate issued by District Education Department, Sitamarja Rajkiye Madhya/Prathmik Vidhyalaya, Srinagar, Sitamani, Bihar. As per the said transfer certificate Santosh Singh was admitted to the school on 29th January, 1993 and had studied up to 15th July, 2003. He left the school while studying in class V. The date of birth of the Santosh Singh at the time of admission in the school was recorded as 5th July, 1985.

5. Learned trial court however was not satisfied with the said certificate and accordingly, CW-1 Ms.Poonam Kumari, Assistant Teacher, Primary School, Sri Nagar, District Sitamani (Bihar) and CW-2 Mr.Yogender Paswan, Head master were examined in the Court. CW-1 Ms. Poonam Kumari has stated that date of birth of Santosh Singh i.e. 5th July, 1985 has been taken from the school records/admission register but the school does not possess any proof of birth or birth

certificate submitted by the parents of Santosh Singh. She has further stated that Santosh Singh was directly admitted to class I and there was no class before class I. The school in question was up to class V only and did not have any senior classes. CW-2 Mr. Yogender Paswan has stated that the date of birth of Santosh Singh was 5th July, 1985 and this recorded at the time when he was admitted in class I on 29th January, 1993 and he left the school on 15th July, 2003. On cross-examination however he has stated that in Bihar parents enroll their children after augmenting their age as they are entitled to relief in form of food etc.

6. CW-3 Mr. Ashok Kumar Singh, Principal Rajkiye Madhya vidyalya, Hanuman Nagar, Police Station Major Ganj, Sitamani (Bihar) has stated that date of birth of Santosh Singh as recorded in their register was 25th March, 1994. He has further stated that Santosh Singh was admitted to the said school in the year 2005 in class VII. He has stated that no transfer certificate was submitted by Santosh Singh or his parents at the time of admission and the admission was made on the basis of the declaration made by the father of Santosh Singh.

7. Thus we have two different dates of birth given in the school records. The first date of birth is 5th July, 1985 when Santosh Singh was admitted to class I in the government primary girls school on 29th January, 1993. We also have a different date of birth given by his father in 2005 at the time of admission to class VII in Rajkiya Madhya Vidyalya, Hanuman Nagar, Police Station Major Ganj, Sitamani. At this time the date of birth given was 25th March, 1994. As per Rule 12(3)(ii) the date of birth certified issued by the school first attended is normally accepted.

8. Father of Santosh Singh Mr. Laxmi Narain Singh appeared as DW-1. He has stated that he has two children, Santosh Singh and a younger daughter. He has stated that he was got married to Ms. Sheela Devi in 1986 and this was his second marriage. He has stated that Santosh Singh was born in 1991 and his date of birth is 17th September, 1991. However, he was not able to give date of birth of his daughter but it was stated that she was born 7/8 years after Santosh Singh. He has stated that he had sent Santosh Singh to school when he was about two and a half /3 years of age. He is an illiterate villager. It is difficult to accept the specific date of birth given by him.

9. Mother of Santosh Singh DW-2 Ms. Sheela Devi has given a similar statement.

10. Father of Mintoo Kumar Singh, the other co-accused, Mr. Achewar Singh appeared as DW-3. He has stated that he got married to one Ms. Reena Devi in 1988 and has four children. Mintoo Kumar Singh is the second child. He has further stated that his son Mintoo Kumar Singh was elder to his nephew Santosh Singh by about 1? to 2 years. There are statements of DW-4 Mr. Vilas Singh, who is father of DW-2 mother of Santosh Singh and DW-5 Mr. Ram Padarth Singh, who knows Mr. Laxmi Narain Singh and claims that he had attended his wedding. The deposition of the said witnesses has to be read and weighed with reservation because they are interested witnesses and were aware and conscious that if Santosh Singh was a minor on the date of offence i.e. 9th February, 2008, he

would not suffer punishment under the ordinary law. There are also contradictions in their statements.

11. What is material and relevant and can be stated with certainty is that Santosh Singh was admitted to class I on 29th January, 1993. What was his age on the said date has to be inferred and requires guess work. In this regard it may be relevant to refer to the statement of CW-2 Mr. Yogender Paswan in which he has stated that it is a usual practice in Bihar that parents get their children enrolled by augmenting their age as they get benefits/relief from the government in the form of food, eatables, sugar and rice etc. His exact statement in the cross examination is as under:

It is correct that it is usual practice in Bihar that parents get their children enrolled by augmenting their age so that they get relief from the government in the form of food, eatables, sugar and rice. Even today school provides Khichdi today. I cannot say whether the parents of the accused have written the age of accused Mintoo Singh and accused Santosh Singh on the higher side due to the fact that I was not in the school at that time.

Possibly Santosh Singh started going to school at young age as food etc. is given and made available to the school children.

12. Keeping in view the aforesaid facts, the learned trial court had asked for opinion from a duly constituted medical board. The said report of the Senior Medical Superintendent is dated 18th August, 2009 and opines that Santosh Singh was more than 20 years but less than 22 years as per the ossification test conducted by Senior Medical Superintendent at Deen Dayal Upadhyay, Hari Nagar, Delhi. The said test/examination was done on 11th August, 2009.

13. Learned Counsel for the petitioner has submitted that ossification report is not exact or completely accurate and there have been cases where benefit of two years or reduction of two years of age has been given. It is stated that as per the ossification report Santosh Singh was about 18 and a half year on the date of the offence i.e. 9th February, 2008 and if he is given to benefit of two years, he would be a juvenile on the date of offence. Learned Counsel for the petitioner in this regard has drawn my attention to two decisions of this Court in Shehzad Vs. State (NCT of Delhi), and Vikas Chaudhary v. State (143) 2007 DLT 603. In the case of Shehzad, it has been observed that benefit of two years from the lower side can be given as per the usual practice. However, it is noticed that this judgment is prior to the Rules which were enforced in 2007. The second judgment in the case of Vikas Chaudhary is also prior to the date of enforcement of the Rules. In this judgment again benefit of two years was given from the lower age indicated in the ossification report.

14. In the present case even if it takes the ossification test as correct the age of the accused on the date of offence i.e. 9th February, 2008 would be slightly more than 18 years. It is accordingly a marginal case. It is noticed that co-accused Mintoo Kumar Singh has been declared a juvenile. As per father of Mintoo Kumar

Singh, DW-3 Achewar Singh, Mintoo Kumar Singh is elder to Santosh Singh. DW-3, Achewar Singh would not have made a wrong statement on this aspect, as it was contrary to the interest of his own son Mintoo Kumar Singh to state that he is older than Santosh Singh by 1 ? to 2 years. Even as per the date of births mentioned in the school records at the time of admission, Mintoo Kumar Singh is elder to Santosh Singh. The date of birth of Mintoo Kumar Singh is mentioned as 9th May, 1984. Both of them were admitted to the school on the same day. The State has accepted the order dated 14th December, 2009 in the case of Mintoo Kumar Singh declaring that Mintoo Kumar Singh was a juvenile on the date of the offence. In these circumstances, I am inclined to exercise discretion and in terms of Rule 12(3)(b) accept that the petitioner Santosh Singh should be given benefit of reduction of age mentioned in the ossification report of the medical board dated 18th August, 2009. The petitioner Santosh Singh with this benefit of one year will be less than 18 year on the date of the offence. Accordingly, the petition is allowed. Petitioner will be tried before the Juvenile Justice Board. The State will take necessary steps in accordance with law.