

(2021) 09 DEL CK 0244

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2513 Of 2020

Satish Kumar Khanna

APPELLANT

Vs

State Of Nct Of Delhi & Anr

RESPONDENT

Date of Decision : 22-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 120B, 366, 366A, 370A, 372, 506
Protection Of Children from Sexual Offences (POCSO) Act, 2012 — Section 4
Juvenile Justice (Care and Protection Of Children) Act, 2015 — Section 49, 94, 94(2)(i)
Juvenile Justice (Care and Protection Of Children) Act, 2000 — Section 7A
Juvenile Justice (Care and Protection Of Children) Rules, 2007 — Rule 12, 12(3), 12(3)(a), 12(3)(a)(i), 12(3)(a)(ii), 12(3)(a)(iii), 12(5)

Citation : (2021) 09 DEL CK 0244

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Abhay Kumar, Meenakshi Dahiya, Rajveer Pandey, Rajat Mangla

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 17.12.2019 passed by the learned ASJ-07/Special Court, POCSO Act, South-East District, Saket Courts, New Delhi in Case No. 220/19 arising out of FIR No. 22/2019 registered under Sections 366(A)/372/506/34 IPC at Police Station K.M. Pur and seeking directions to constitute a Medical Board to conduct the ossification/bone test of the child victim/respondent No. 2. The charge sheet in the instant case has been filed under Sections 366/366(A)/370A/372/420/506/120B/34 IPC and Section 4 of the POCSO Act.

2. Vide the aforesaid order, the Sessions Court has rejected the petitioner's prayer seeking directions for conducting the ossification test of the child victim.

3. Briefly stated, the present FIR came to be registered on 16.01.2019 on a complaint made by the child victim, wherein she stated that her date of birth being 12.08.2001, she was about 17 years and 4 months of age at the time, which fact finds mention in her school documents as well as in her Aadhar Card. It was further stated that when she was residing in Kotla Mubarakpur with her family, she met the accused Shabnam through her class friend, in the second week of October, 2018, as her family was looking for a rented accommodation. Shabnam started visiting the child victim's house and offered her education and employment in Bhatinda, Punjab. On enquiry by the family of the child victim, it was informed by accused Shabnam that the job would be of a receptionist in a factory. As the child victim's family was undergoing financial hardship, they accepted the offer, for which Shabnam demanded Rs.50,000/-. In lieu of money, the child victim's mother gave her jewellery to Shabnam. On 20.10.2018, Shabnam took the child victim to the house of the present petitioner in Bhatinda, Punjab, where initially the petitioner's family attempted to persuade the child victim to marry him but when the child victim refused, they started threatening her at gunpoint. On 24/25.10.2018, the child victim was brought to Delhi and taken to Saket Court, wherein she was made to sign some papers. Thereafter, she was taken to a shop in Vasant Vihar and her thumb impression was taken for the purpose of getting another Aadhar Card in her name. Subsequently, she was taken to Ghaziabad where she stayed locked overnight at the house of Shabnam. On 26.10.2018, she was taken back to Bhatinda by the petitioner and the husband of accused Shabnam. One day, upon hearing the petitioner talking to his mother, where it was suggested by her that the child victim be made to do the work of prostitution, the child victim sought the help of her sister to escape and reached the house of her parents.

4. Learned counsel for the petitioner has restricted his arguments to assailing the invocation of Section 4 of the POCSO Act on the ground that at the relevant time, the child victim was a major. It was submitted that though as per prosecution case, the child victim's date of birth is 12.08.2001, different dates of birth are found mentioned in certain documents, according to some of which she was a major at the relevant time. In support of his contention, learned counsel has referred to a certificate stated to be issued in the name of the child victim by a school in Deoria, U.P. as well as to an Aadhar Card and a PAN Card issued in her name. In these documents, the date of birth of the child victim is stated to be recorded as 04.02.2000, 01.01.2001 and 12.08.2000 respectively. He has also referred to an affidavit dated 14.01.2019 filed by the child victim before the learned Chief Metropolitan Magistrate, South-East District, Saket Courts, New Delhi, wherein she had stated her age as 17.5 years. In this factual background, learned counsel for the petitioner has pressed the prayer for ossification test of the child victim.

5. Per contra, learned APP for the State, duly assisted by learned counsel for the complainant, has vehemently opposed the prayers made in the petition, including the prayer seeking ossification test of the child victim. It is submitted that in her

statement given to the police, the child victim had clearly stated that she was brought to Delhi by the accused persons and taken to a shop in Vasant Vihar, where her signatures were obtained on certain papers for preparation of another Aadhar Card.

6. I have heard learned counsels for the parties and have also gone through the material placed on record.

7. This Court takes note of the fact that no provision of the POCSO Act prescribes the manner in which the age of a child victim should be determined. However, a procedure to determine the age of a 'juvenile in conflict with law' has been prescribed in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter, referred to as the JJ Act, 2015), which is *pari materia* with Section 7-A of the erstwhile Juvenile Justice (Care and Protection of Children) Act, 2000, and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter, referred to as the JJ Rules, 2007).

8. In *Suraj Puri v. State* reported as MANU/DE/4508/2019, this Court, while relying on the decision of the Supreme Court in *Jarnail Singh v. State of Haryana* reported as (2013) 7 SCC 263, held that the procedure employed to determine the age of a 'juvenile in conflict with law' in terms of Rule 12 of the JJ Rules, 2007 shall equally apply to the process of determination of age of a child victim.

9. Before proceeding to analyse the submissions made in the facts of the present case, I deem it profitable to refer to Section 94 of the JJ Act, 2015, which reads as under:-

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

10. Section 94 of the JJ Act, 2015 thus prescribes that when a Child Welfare Committee or the Juvenile Justice Board, before whom a person is brought, has doubt regarding whether or not such person is a child, it shall undertake an age determination inquiry. The scope and width of such inquiry has been determined by the Supreme Court in *Ashwani Kumar Saxena v. State of Madhya Pradesh* reported as (2012) 9 SCC 750, wherein it was observed as under:-

"31. We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 12(3)(a)(i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. 'Age determination inquiry' contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the

matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."

11. Recently, the Supreme Court in *Sanjeev Kumar Gupta v. State of Uttar Pradesh and Another* reported as (2019) 12 SCC 370, after analysing the entire conspectus of law, interpreted Section 94 of the JJ Act, 2015 in the following manner:

"17. ...Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the Examination Board concerned in the same category [namely (i) above]. In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category."

12. Examining the prayer made in the petition in light of the abovementioned exposition of law, it is noted that the Sessions Court had directed the Investigating Officer to conduct an inquiry to ascertain the authenticity of the documents relied upon by the petitioner. After conducting of the inquiry, a Report dated 29.08.2019 was placed on record, according to which the child victim had never studied in the alleged school in Deoria, U.P. A Reply dated 24.08.2019, received from the Principal of the said school, was also placed on record to this effect. The Report further stated that the entry contained in the Gram Panchayat Register did not depict the exact age of the child victim.

13. In the present case, the Investigating Officer has collected the child victim's date of birth certificates from the schools where she studied in the first and eighth standards and at both the schools, her date of birth is recorded as 12.08.2001.

14. In view of the availability of the abovementioned school certificates from two different schools, as per which the child victim's date of birth is 12.08.2001, and in view of the statement of the child victim as to her being made to sign papers

in order to obtain another Aadhar Card in her name, this Court finds no ground to interfere with the order passed by the Sessions Court. Consequently, the present petition is dismissed.