

(2019) 10 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Criminal Revisions (CRR) No. 27 Of 2018, IA No. 01 Of 2018, CrIM No. 916 Of 2019

State Of Jammu & Kashmir And Others

APPELLANT

Vs

Shubam Sangra

RESPONDENT

Date of Decision : 11-10-2019

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Act, 2000 — Section 7A, 64A
Jammu And Kashmir Juvenile Justice (Care And Protection Of Children) Act, 2013 —
Section 7, 8, 13(3), 49, 52, 53
Registration Of Births And Deaths Act, 1969 — Section 13(3), 19(3)
Juvenile Justice (Care And Protection Of Children) Rules, 2014 — Rule 74, 74(3), 74(5)
Juvenile Justice (Care And Protection Of Children) Rules, 2007 — Rule 12, 12(2),
12(3), 12(5)
Jammu And Kashmir Registration Of Births And Deaths Rules, 1975 — Rule 19(3)

Citation : (2019) 10 J&K CK 0016

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : H.A.Siddiqui, Rahul Pant

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted with the object for providing proper care, protection and treatment by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation, but, at the same time, it has also to be seen that a heavy duty is cast upon the Courts that while determining the age, the Court has to bear in mind that unscrupulous/accused should not get himself declared as juvenile on the basis of wrong certificate.

2. This Revision Petition is filed under Section 52 of the J&K Juvenile Justice (Care and Protection of Children) Act, 2013 (for short, the Act of 2013)

questioning order dated 27.03.2018 passed by the Chief Judicial Magistrate, Kathua in File No. 317/Misc. thereby ascertaining the date of birth of the respondent-Shubam Sangra as 23.10.2002 and declaring him to be a juvenile under the Act of 2013.

3. A bare look at the order impugned would show that the Court below has passed the order in compliance to order dated 14.03.2018 passed by this Court in OWP No. 259/2018 whereby Chief Judicial Magistrate, Kathua was directed to ascertain the age of the respondent herein within a period of ten days from the date of receipt of the certified copy of the order passed by this Court without being influenced by the record submitted by the District Medical Board. Pursuant to the order passed by this Court respondent had been subjected to the Medical Board, but, at the time of passing of the final order, this Court has categorically directed the Chief Judicial Magistrate, Kathua to ascertain the age of the respondent without being influenced by the record submitted by the District Medical Board. The said direction of the Court was in conformity with Rule 74 of the Juvenile Justice (Care and Protection of Children) Rules, 2014 (for short, the Rules of 2014).

4. The order impugned has been challenged on the grounds that the Court below could not have ignored the opinion given by the Board of Doctors constituted by the Principal Medical College, Jammu. It is further contended that the trial Court has misconstrued and misunderstood the import of order dated 14.03.2018 passed by this Court thereby restricting the inquiry only to the entry made in the date of birth record of the Municipal Committee, Hiranagar and the School. It is further contended that the date of birth recorded in the Municipal records cannot be gone into as there are no supporting documents to support the same and the date of birth was recorded in the Municipal record on misrepresentation of facts. It is further contended that since there is contradiction in recording the date of birth of the respondent, as such, the Court below was required to go into the opinion given by the Medical Board. It is further contended that in view of the letter of Block Medical Officer, Hiranagar denying any birth on 23.10.2002, the Court was obliged to go into the opinion given by the Medical Board and, as such, the Court has overlooked the contradiction in the basic record of Tehsildar, Hiranagar in recording the date of birth of the respondent as also the order passed by the Magistrate pertaining to the date of birth of elder brother and sister of the respondent. It is also contended that the Court below was obliged to examine the basis of the entry made by the Executive Officer, Hiranagar Municipality and return a finding on its authenticity before accepting the same as gospel truth. It is alleged that the order of Tehsildar, which is the basis for entry of date of birth of respondent in the record of birth of Hirangar Municipality suffers from patent infirmity. It is further contended that the statutory protection available to a Juvenile under law cannot be misused to shatter the confidence of Society in the Rule of law. It is also contended that the SIT has produced the challan against the respondent as a Juvenile without waiving their right to challenge the order impugned and integrating the trial of respondent with the

adult accused. Thus, it is contended that the court below seems to have been influenced by the observations of this Court wherein it was directed to determine the age uninfluenced by the medical opinion.

5. Mr. Siddiqui, learned Sr. counsel further argued that the order under challenge passed by the learned CJM, Kathua is without jurisdiction as he has not afforded any opportunity to produce the medical witnesses, which is clear violation of mandate of Section 8 of the Juvenile Justice Act 2013 besides mandate of Rule 74 of the J&K Juvenile Justice (Care and Protection of Children), Rules 2014. He further contends that very basic order of Executive Magistrate under Section 13(3) of Registration of Deaths and Births Act, 1969 is without jurisdiction, nullity in law and cannot form the basis for registration of date of birth of respondent. It is also contended that from the order of Tehsildar, Executive Magistrate, it is not discernible as to whether any procedure much less a legal procedure was followed or not as no hospital record was ever produced nor was in existence. He further contends that the difference between two elder siblings of the respondent is improbable. In support of his contention, he has placed reliance on the judgment titled Ashwani Kumar Saxena V. State of MP reported in 2009(12) SCC 750, Om Parkash V. State of Rajasthan, reported in AIR 2012 SC 1608, Abuzar Hossain alias Ghulam Hossain V. State of West Bengal, reported in 2012(10)SCC 489, Parag Bhatti V. State of UP and another reported in 2016(12) SCC 744, and B.G.Gangadharappa V. Tehsildar, Soraba, Taluk, Soraba passed by the High Court of Karantaka reported in 1995 Cr.L.J. 2820.

6. On the other side, Mr. Pant learned counsel appearing for the respondent has made submission supporting the order impugned in the present petition. In support of his submission, he relies upon the judgment titled Shri Ganesh v. State of Tamil Nadu reported in 2015(17) SCC 8660, Ashwani Kumar Saxena V. State of Madhya Pradesh, reported in 2012(9) SCC 750, Jabar Singh V. Dinesh and another reported in 2010(3) SCC 757 and Darga Ram alias Gunga V. State of Rajasthan reported in 2015(2) SCC 775. Lastly, Mr. Pant has also argued on the question of maintainability of the Revision Petition.

7. Heard learned counsel for the parties and perused the record.

8. Rule 74 of J&K Juvenile Justice (Care and Protection of Children) Rules, 2014 provides for determination of age and covers the allied area For facility of reference, it is reproduced as under:-

"74. Determination of Age (1) Whenever an alleged offender who appears to be below the age of 21 years is produced before a Court not being the Board, it shall on the very first date of production question the alleged offender about his age, satisfy itself that he is not a juvenile, make a note of its findings and order immediate transfer of the matter to the Board where necessary.

(2) When a juvenile or child or a juvenile in conflict with the law is produced before the Board or the Committee as the case may be, it shall determine and declare his age within a period of thirty days from the date of such production.

(3) The Board or the Committee, as the case may be shall, as far as possible, decide the juvenility or otherwise, on the basis of physical appearance or documents available, if any. Where an inquiry is instituted by the Board or the Committee for determination of age, such inquiry shall be conducted on the basis of following evidence:-

(i) the birth certificate issued by a Corporation or a Municipal Committee or any other notified authority; or

(ii) the matriculation or equivalent certificate

(iii) in absence of the certificates mentioned in sub-clauses (i) and (ii) or in case of any contradiction arising there from, the authority deciding the age issue may refer the matter to a duly constituted Medical Board, which shall record its findings and submit to the Juvenile Justice Board.

(4) All Government Hospitals shall constitute Medical Boards for medical age examination, consisting of a Physiologist, a Dental Examiner and a Radiologist or Forensic Expert, of whom one shall be notified as the Chairperson.

(5) All the members of the Medical Board shall give their individual findings on age, which shall then be forwarded to the Chairperson of the Board to give the final opinion on the age within a margin of one year.

(6) The duly constituted Medical Boards shall give their report with the findings on age within 15 days of request being made in this regard."

9. Rule 74 Sub Clause (3) prescribes the mechanism for determination of question of juvenility of the alleged offender by holding an inquiry and as per the scheme of Rule, the Court below was obliged to hold inquiry on the basis of the birth certificate issued by the Corporation or Municipal Committee or any other notified authority or Matriculation or equivalent certificate or in absence of certificate mentioned in sub clauses (i) and (ii) or in case of any contradiction arising therefrom, the authority deciding the age issue may refer the matter to a duly constituted Medical Board, which shall record its findings and submit it to the Juvenile Justice Board. It is again relevant to refer Sub Rule 5 of the Rule 74 that the Chairman of Board has to give the final opinion on the age within a margin of one year. Thus, it is clear that the scope of inquiry as contemplated in Rule 74 is curtailed by the Rule itself by reference to the manner in which the inquiry is required to be conducted. Rule categorically states that the birth certificate issued by the Municipal Corporation/Municipal Committee or any other notified authority is to be considered for determination of the age and the opinion of the Medical Board is to be resorted to only in absence of the said certificate or in case of any contradiction arising thereto.

10. The Supreme Court in the case of Ashwani Kumar Sexana (supra) has laid down the scope of inquiry as prescribed under the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 12 of 2007 Rules. As per the scope of inquiry and as held by the Apex Court itself the Court is not supposed to

conduct such roving inquiry and to go behind those certificates to examine the correctness of those documents kept during the normal course of business. Only in such cases, where those documents or certificate are found to be fabricated or manipulated, the Court, the Juvenile Justice Board or the Committee need to go for Medical Board for age determination.

11. It is appropriate to examine the judgment as referred by the learned counsel for the petitioners. In the judgment passed by the Hon?ble Supreme Court in case Ashwani Kumar Saxena V. State of Madhya Pradesh (supra), their Lordships for the first time had examined the scope and the nature of inquiry contemplated under Section 7A of the Juvenile Justice (Care and Protection of Children) Act 2000 read with rules framed thereunder and Rule 12 Sub Rule 3 provides evidence to be taken into consideration for determination of age of the Juvenile in conflict with the law and the same is reproduced hereunder:-

Section 12 in The Juvenile Justice (Care and Protection of Children) Rules, 2007
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 of 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.

12. Even the procedure provided for determination of the age is the same/similar under the J&K Act except that in the Central Act the matriculation or equivalent certificate is given the precedence over the date of birth from the School first attended and lastly the birth certificate issued by the Corporation or a Municipal authority or a Panchayat is looked into and in the absence of the above mentioned three certificates, the opinion of the Medical Board is sought. Coming to the present case, it is not disputed that date of birth of the respondent recorded in the Municipal Committee, Hiranagar is 23.10.2002 and the said date of birth was recorded on 15.04.2004. The scope of inquiry is very limited inasmuch as per the law settled by the Apex Court in the case of Ashwani Kumar Saxena v. State of MP, reported in 2012 (9) SCC 750. It would be appropriate to reproduce paragraph Nos. 28, 34 and 35 of the said judgment as under :-

"28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all

words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

34. "Age determination inquiry" contemplated under section 7A of the Act r/w 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 need 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 need 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 above mentioned 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.

35. Once the court, following the above mentioned 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 subsection (5) or 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 the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination."

13. In the aforesaid paragraphs, the Hon^{ble} Supreme Court has held that the date of birth is not to be determined like a trial of a criminal case. Even the scope of the proceedings for determination of age has been properly explained by the Apex Court. In the present case, the Magistrate has determined the age of the respondent strictly in accordance with the mandate of the Apex Court. Even this Court vide its order dated 14.03.2018 passed in OWP No. 59/2018 had directed the Magistrate to ascertain the age of the respondent without being influenced by the record submitted by the District Medical Board. The aforesaid directions issued by this Court were strictly in accordance with Rule 74 of the Juvenile Justice (Care and Protection of Children) Rules, 2014. A perusal of order impugned whereby the witnesses have been examined and only such of the witnesses, who were relevant to prove the certificate issued by the Municipal Committee, Hiranagar have been examined. It further shows that the Executive Officer, Municipal Committee, Hiranagar was examined as a witness and he had proved the date of birth certificate and recorded the date of birth of the respondent. The aforesaid witness was duly cross-examined by the State. Even the father of the respondent was duly examined and the State was also given an opportunity to cross-examine him. On the basis of the evidence adduced, the finding of fact has been arrived at by the Magistrate, which cannot be faulted.

The Apex Court in *Ashwani Kumar Saxena's* has held that no roving inquiry is permitted to go behind the certificate to examine the correctness of the certificates. Only in case of fabrication or manipulation of the documents, the Court may go for medical report for age determination. In the present case, it is no body's case that date of birth, which was recorded in the Municipal Committee, Hiranagar in the year 2004 is a fabricated document. As such, the order impugned has been passed strictly in accordance with the mandate of Sections 7 and 8 of the Juvenile Justice Act, 2013 read with Rule 74 of the Juvenile Justice (Care and Protection of Children) Rules, 2014, which prescribes the procedure for determination of age and there was no need to examine any member of the Medical Board or even the Executive Magistrate as the petitioners never disputed the order passed by the Executive Magistrate. A perusal of the objections, which were filed by the petitioners before the trial Court will show that it was never the case of the petitioners that the Executive Magistrate has not passed the order. Even the communication of the Tehsildar, Hiranagar, which has been placed on record by the petitioners as Annexure-B will show that the Tehsildar, who was holding the post on 14.03.2018 has categorically stated that the record is not traceable as the old miscellaneous record has been dilapidated and under these circumstances he is not in a position to submit the original record of the same. The record of the trial Court shows that the petitioners were given an opportunity to cross-examine the witnesses examined while conducting inquiry, as such, the plea that the opportunity was not afforded to the petitioners, is not sustainable.

14. The plea as raised by Mr. Siddiqui, learned Sr. AAG that under Section 13(3) of the Registration of Births and Deaths Act, 1969 only the Judicial Magistrate has the power and the Tehsildar/Executive Magistrate, Hiranagar had no authority/competence to direct recording of date of birth certificate. The aforesaid plea of Mr. Siddiqui is also not sustainable as admittedly the date of birth of the respondent was recorded as far back in the year 2004 in the Hiranagar Municipal Committee, the question of fabrication will not arise in the present case as even in the school where the respondent was first admitted in the Ist lower class after he passed UKG is the same 23.10.2002 whereas admittedly, the FIR in question where the issue of juvenility of the respondent has arisen came to be registered in the year 2018, as such, there is no scope for manipulation or fabrication of the record to claim the benefit under the Act of 2013. Otherwise also, the perusal of the order passed by the Executive Magistrate will show that the same has been passed under the Jammu and Kashmir Registration of Births and Deaths Act, 1956 and the Rules framed thereunder. Though the plea of competence has never been raised by the petitioners before the trial Court, therefore, the competence of the Executive Magistrate to issue direction to the Municipal Committee, Hiranagar to register the date of birth in the year 2004 was never disputed by the State before the court below. The Registration Act came into force in some of the States except Jammu and Kashmir w.e.f. 01.04.1970, but, in so far as the State of Jammu and

Kashmir is concerned, it came into force on 01.10.1970 vide GSR 1718 dated 26.06.1970 only for the following areas:

Ø Area comprised within the jurisdiction of Police Station of Ramnagar in Udhampur District;

Ø Area comprised within the jurisdiction of Police Station of Kupwara in Baramulla District;

Ø Area comprised within the limits of Municipalities of Jammu and Srinagar; and

Ø Area comprised within the limits of Town Area Committee of Anantnag, Kathua and Leh.

15. Whether the provisions of the aforesaid Act were further extended to other parts of the State including Hiranagar Municipal Committee is a question of fact, which was required to be proved before the Court below. Even during the course of hearing before this Court, Mr. Siddiqui has not produced any Notification specifying the year of coming into force of the aforesaid Act in rest of the areas of the State. Mr. Siddiqui, learned Sr. AAG has not produced any Notification specifying the date of extension of the Act (supra) in the areas covered by the Municipal Committee, Hiranagar and that is the reason the aforesaid issue was never raised by the petitioners before the trial Court meaning thereby that the order passed by the Executive Magistrate after recording evidence under Section 19(3) of the Registration of Births and Deaths Act, 1956 read with Rule 19(3) of the J&K Registration of Births and Deaths Rules, was valid. The Executive Magistrate, as such, was competent to issue necessary directions and order passed by him was within his competence. A perusal of the order passed by the Executive Magistrate on 15.04.2004 will show that the Magistrate has passed the order with respect to the date of birth of the respondent after the evidence was led before him, as such, the date of birth was recorded in the Municipal Committee, Hiranagar as far back as on 15.04.2004, i.e., almost 14 years prior to the commission of offence in question. The Apex Court in Ashwani Kumar Saxena's case read with the judgment passed in Shri Ganesh V. State of Tamil Nadu as relied upon in paragraph 34 of the judgment of Ashwani Kumar Saxena's case by holding that the Court is not expected to conduct such a roving inquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business.

16. So far as the judgment of the Apex Court in Parag Bhatti's case (supra), the Apex Court was dealing with the fact that the forged documents had been produced for the determination of the age. It is appropriate to reproduce paragraph No.28 as under:-

"28. It is settled position in law that if the matriculation or equivalent certificate are available and there is no other material to prove the certificate, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a

contradictory stand is being taken by the accused which raise a doubt on the correctness of the date of birth then as laid down by this court in Abuzar Hassain (supra) enquiry of the determination of the age of the accused is permissible which has been done in the present case."

17. In the recent judgment passed by the Apex Court in case titled Sanjeev Kumar Gupta v. State of UP and another, wherein the Supreme Court had gone behind the certificate because of the reason that the accused himself mentioned his date of birth in the driving licence, Adhar card, voter ID as also 8th standard marks sheet as 27.12.1995 whereas, the matriculation certificate indicated the date of birth as 17.12.1998. In this view of the matter, there was serious dispute with respect to the age and accused had himself claimed to be a major by mentioning his date of birth as 27.12.1995, whereas in one of the school certificate on the basis of which the entry was recorded in the Board, he was shown as minor. Thus, the judgment in Sanjeev Kumar Gupta's case was passed, which does not support the case of the petitioners. In so far as the present case is concerned, the date of birth of the respondent is 23.10.2002 as recorded in the Municipal Committee, Hiranagar in the year 2004. The date of birth recorded in the admission form in the Ist Lower Class in Modern Public Higher Secondary School, Hiranagar in the Sessions 2008-09 is again 23.10.2002 rather there is a clinching evidence and conclusive proof that the date of birth of the respondent is 23.10.2002.

18. The trial Court while passing order has considered this aspect of the matter and held that there is no scope for fabrication or manipulation as the date of birth of respondent was recorded way back on 15.04.2004 whereas the alleged commission of offence was taken place in January, 2018, as such, the trial Court itself ruled out the scope of fabrication or manipulation. More particularly, when State is not denying the date of birth of the respondent recorded in the year 2004 in the Municipal record.

19. Once the finding of fact has been returned by the Court below, this Court while exercising the revisional jurisdiction may not upset the same unless and until the same is found to be perverse. In the present case, the date of birth was recorded in the municipal record in the year 2004 and it is not the case of the petitioners that date of birth certificate issued by the Municipal Committee, Hiranagar is fabricated, but, rather the petitioners wanted the trial Court to go behind those certificates to examine the correctness of the documents kept during the normal course of business. The aforesaid course or procedure is not available to the trial Court in view of the law settled by the Apex Court in number of cases. The date of birth of the respondent as recorded in the Municipal Record, Hiranagar has not been declared fabricated or false by any authority, as such, question referring the case to the Medical Board for determination of the age of the respondent may not arise.

20. Moreover, the perusal of the order would show that the proper inquiry has been conducted by the Chief Judicial Magistrate, Kathua and even as per the

certificate of the Modern Higher Secondary School, Hiranagar placed on record by the petitioners along with petition would show that the respondent was admitted in the said School for the Session 2008-09 in the first lower class and even in the said certificate date of birth of respondent is recorded as 23.10.2002. The petitioners have referred another certificate which records the date of birth as 23.10.2003, but, it is clarified by the father of respondent that said certificate has been wrongly issued by the school authority and it is also contended by the father of the respondent in his statement that he came to know about wrong recording of date of birth as 23.10.2003 only after the FIR was registered in the year 2018.

21. In the present case, as per Rule 74 of the Act of 2013, the determination of age of respondent has to be on the basis of the birth certificate issued by the Municipal Corporation/Municipal Committee or any other notified authority or matriculation certificate or any equivalent certificate. There is no matriculation certificate and only certificate available as mentioned in Rule 74(3) is the birth certificate issued by the Municipal Committee Hiranagar, which was recorded in the year 2004 and which categorically states that the date of birth of the respondent is 23.10.2002. It is no body's case that the date of birth certificate is outcome of any manipulation or fabrication after the commission of the offence to obtain the benefit of the Act, but, admittedly, the said entries had been made fourteen years prior to the commission of offence, therefore, there is no illegality or impropriety in the order impugned in the present petition.

22. The counsel for the respondent has also relied upon the case titled *State of Bihar v. Chhotu Pandey alias Roshan Pandey* reported in 2015 (17) SCC 660 wherein the Apex Court had upheld the order passed by the High Court whereby direction issued for medical examination of the alleged offender by the trial Court despite availability of the matriculation certificate for determination of the age was upset.

23. There is another aspect of the matter, which is equally critical to be noticed. There can be no denial of the fact that as per the report given by the Medical Board, the age of the respondent indicated is 19 years plus and in terms of the judgment of the Apex Court reported in 2015 (2) SCC 775 titled *Darga Ram alias Gunga v. State of Rajasthan*, there can always be margin of two years, i.e., the indicated age may vary plus minus two years. It would be appropriate to reproduce paragraph No.17 of the aforesaid judgment as under:-

"17. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart even if the age of the appellant was determined by the

upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile."

24. That apart, in terms of the Rule 75(3) of the Rules 2014, the accused may be granted the benefit of one year. In the present case, even if the respondent is not granted benefit of one year as contemplated by Rule 75(3) of Rules 2014, but, his age is reduced by two years in terms of aforesaid judgment of the Hon? ble Apex Court, even then he will be juvenile.

25. Learned counsel for the petitioners has referred the judgment in the case titled *Om Parkasah v. State of Rajasthan* and another, reported in 2012 (2) SCC (Cri) 666 to contend that the since the respondent is accused in heinous offence, as such, he cannot claim the benefit of juvenility by concealing the real facts. The same is not position here, it is clear case where there is no dispute about recording of date of birth in the municipal record and the school record, but, only dispute is being raised about the basis of recording of such date of birth. In the present case, as such, respondent having proved his age as 23.10.2002 with reference to the date of birth certificate issued by the Municipal Committee and the School authority and the trial Court has returned its findings of fact, so there is no scope of interference.

26. Admittedly, the date of birth of the respondent in the Municipal record as well as school record is shown as 23.10.2002, meaning thereby on the date of registration of the FIR, he was below the age of 18 years. Moreso, the petitioners have not denied the authenticity of the aforesaid record. Once there is clear proof of the respondent in the shape of birth certificate of the Municipal Committee and certificate issued by the school authority, the medical examination regarding the age of the respondent automatically loses its significance.

27. Next question raised by Mr. Pant is with regard to the maintainability of the Revision Petition. As held by the Apex Court in 2010(3) SCC 757 *Jabar Singh Vs. Dinesh* and another, the scope of Revision is very limited. The relevant paragraph of the judgment is reproduced as under:-

"29. A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled "Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which any competent authority or court of session has passed

an order for the purpose of satisfying itself as to the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial Court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial Court."

28. It is admitted by the petitioners that the scope of Revision is the same as the scope of Revision under Code of Criminal Procedure. Section 52 of Juvenile Justice Act, 20313 referred to by the petitioners also refers to the facts that Court has to satisfy itself as to the legality and propriety of any such order, as such, the factual findings of fact cannot be upset by the Court unless and until it is found to be perverse. In the present case where factual finding has been given by the Court below, therefore, there is no illegality or impropriety in the order, as such, there is no question of interference with the findings of the Court below.

29. In the instant case, the trial Court has given finding of fact relying upon the evidence and has acted in conformity with Rule 74 of the Rules of 2014 and that there is no perversion in the findings of fact, as such, the trial Court has not committed any illegality or impropriety which warrants interference in this Revision Petition. Accordingly, this Revision Petition is dismissed along with connected CrIM(s). Record, if any, be sent down. Interim direction, if any, shall stand vacated.